

(2017) 04 AHC CK 0028

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Service Bench No. 738 of 2015

Dr. Puneet Kumar Gupta

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 226, Article 39(d)

Citation : (2017) 5 ADJ 56

Hon'ble Judges : Shri Narayan Shukla and Sheo Kumar Singh-I, JJ.

Bench : Division Bench

Advocate : Civil Misc. Writ Petition Service Bench No. 738 of 2015; Rakesh Chandra Tripathi, Rakesh Pathak and Sandeep Mishra, Advocates, for the Petitioner; C.S.C., A.S.G., Ajay Kumar Singh and Saurabh Lavania, Advocates, for the Respondent; Civil Misc. Writ Petition Service Bench No. 278 of 2014; Amrendra Nath Tripathi, Advocate, for the Petitioner; C.S.C., A.S.G., K.K. Srivastava, Rakesh Kumar Maurya and Saurabh Lavania, Advocates, for the Respondent; Civil Misc. Writ Petition Service Bench No. 870 of 2015; Syed Mohd. Munis Jafari, Advocate, for the Petitioner; C.S.C., A.S.G., Ajay Kumar Singh and Saurabh Lavania, Advocates, for the Respondent; Civil Misc. Writ Petition Service Bench No. 1784 of 2013; Sandeep Dixit, Advocate, for the Petitioner; C.S.C., A.S.G., Ajay Kumar Singh, Hemant Kumar Pandey and Saurabh Lavania, Advocates, for the Respondent; Civil Misc. Writ Petition Service Bench No. 973 of 2014; Dr. L.P. Misra, Advocate, for the Petitioner; C.S.C., A.S.G., Ajay Kumar Singh and Saurabh Lavania, Advocates, for the Respondent; Civil Misc. Writ Petition Service Bench No. 7238 of 2017; Amit Verma, Ajeet Kumar and Sunil Kumar, Advocates, for the Petitioner; A.S.G and Saurabh Lavania, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sheo Kumar Singh-I, J.— Heard Mr. Amrendra Tripathi and Shri Shashank Bhasin, holding brief of Dr. L.P. Mishra, Advocate, Mr. Amit Verma, learned counsel for the petitioners, Mr. Ajay Kumar Singh, learned Central Government Counsel, Mr. D.K. Singh, learned Standing Counsel as well as Mr. Saurabh Lavania, learned counsel for respondent no.5.

2. With the aid and assistance of and by taking shelter of Article 39(d) read with Articles 14 and 16 of the Constitution of India, which declares the constitutional goal enjoining the State not to deny any person equality before law in the matters relating to employment including the scales of pay, the petitioners have enforced the doctrine of equal pay for equal work, though it is not expressly declared a fundamental right under the Constitution.

3. By means of this these writ petitions filed under Article 226 of the Constitution of India the petitioners have raised a grievance that the respondents authorities have practised discrimination in violation of Articles 14 and 16 of the Constitution of India in refusing to pay them salary in the scale of pay prescribed for similarly situated contractual employees.

4. In order to appreciate petitioners' grievance, it is necessary to refer to the relevant facts giving rise to these petitions. The petitioners are qualified Ayush Doctors and were engaged as such and were posted in different districts in the State of Uttar Pradesh and their services were renewed time to time and are currently serving as contractual employees. The Union of India recognizing the importance of health in the process of economic and social development and improving the quality of life of citizens resolved to launch the National Health Mission Scheme to carry out necessary aid in the basic health care delivery system. The advertisement was issued for appointment on various posts in all the districts including the post of Medical Officer Allopathic Doctor, BDS Doctors as well as Ayush Doctors. Till the year 2009-10, honorarium for all the above mentioned doctors was proposed to be Rs.24,000/- per month but later on in 2010-11, the honorarium of Medical Officers Allopathic was increased to Rs.30,000/- per month. Similarly, for the year 2011-12, the honorarium of the Medical Officers Allopathic was increased to Rs.36,000/- per month for rural posting and Rs.33,000/- per month for urban posting and honorarium of Medical Officers BDS was increased to Rs.35,000/- per month for rural posting and Rs.30,000/- per month for urban posting. The honorarium of Ayush doctors was not revised and renewal of Ayush doctors was denied and aggrieved by the order, not renewing the period of Ayush doctors, they challenged the action before this Court and the Court while disposing the Writ Petition No.769 (SB) of 2011 directed to continue the services till the scheme continues and be paid accordingly. Aggrieved by the order, the State Government filed a Special Leave Petition (Civil) No.28122 of 2011, which was dismissed on 18.10.2011 and in compliance of the order of the Court the services of Ayush doctors were continued and renewed but the honorarium remained Rs.24,000/- per month. The grievance of the doctors for equal pay was further raised in Writ Petition No.295 (SB) of 2013 titled as Anil Kumar and others v. Union of India and others, which was disposed of by this Court vide order dated 01.03.2013 with the direction to the Principal Secretary, Health and Family Welfar, U.P., to take a reasonable decision and the Principal Secretary took the decision in the matter vide order dated 04.09.2013 whereby the representation was rejected on the ground that honorarium was to be fixed in terms of the operational guidelines/

record of proceedings and in the said terms the Government of India had approved honorarium only Rs.24,000/- per month.

5. In the counter affidavit, it has been submitted that the petitioners had taken the aid of Government Order dated 20.06.2012 which had been issued for appointment of the Medical Officers (Community Health) and Medical Officers (Ayurvedic and Unani) on contract basis in the Medical and Health Department of the State Government while the petitioners were appointed on contract basis under National Health Mission which is a scheme funded by the Government of India and the honorarium, which has been fixed and paid, is also fixed and paid by the Government of India. The Government Order dated 20.06.2012 regulates the honorarium of Medical Officers (Community Health) and Medical Officers (Ayurvedic and Unani) appointed on contract basis in the Medical and Health Department of the State Government. It has been submitted by learned counsel for the respondents that the said Government Order is not applicable in the case of the petitioners who are working under National Health Mission Scheme of the Government of India. The working hours as well as emergency duties as stated in the counter affidavit is different. The honorarium of Ayush Doctors for the financial year 2014-15 was paid as Rs.26,400/- and in the financial year 2015-16, the proposal for enhancement of 10% was sent to the Government of India but it was accepted only up to the extent of 5% and approved honorarium for Ayush Doctors for the said period is Rs.27,720/- per month.

6. Learned counsel for the petitioners has submitted that the work and responsibilities with qualification of the Ayush Doctors and other engaged Doctors are similar and the honorarium should be paid equal to other similarly situated persons.

7. When we examined the essential qualification for the post so advertised for contractual engagement then we found that essential qualification for Ayursh Doctors is BAMS, for Surgeon MS, for Physician MD and for Medical Officer Allopathic, it is MBBS. On the basis of advertisement and guidelines with regard to duties, it has been submitted by learned counsel for the respondents that qualification of the petitioners is different than the qualification of other doctors and work areas and responsibilities have also been prescribed in the guidelines which are not similar.

8. In all these cases the common question that arises for consideration is whether the petitioners appointed as Ayush doctors are entitled to equal pay. The version of the petitioners counsel is that the petitioners are discharging identical duties and functions as that of other doctors and they have been continuously working and have been paid salary without any enhancement. We have not been apprised of the specific terms and conditions subject to which the petitioners were employed or engaged but from the perusal of the advertisement and counter affidavit and also from the tenor of the pleadings and other records it can be safely inferred that the petitioners were appointed on purely temporary/contractual basis for a fixed period with a stipulation that they shall get a fixed

honorarium and there will be no claim or parity with the other cadre. Those who applied in response to the advertisement issued by the Government or the Chief Medical Officer concerned, must have been aware of the fact that they were being engaged/employed pursuant to the condition accorded in the advertisement/government guidelines, that appointment will not be against the post sanctioned by the Government, that they will have no right to claim absorption in the regular cadre and that they will be paid salaries and allowance in the form of fixed honorarium as shown in the Government Order or in the advertisement. They must have accepted the appointments/engagements knowing fully well that will have fixed tenure without any right to be continued in service or on a fixed honorarium.

9. The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and lay down the qualification etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by malafides.

10. In *State of Haryana v. Navneet Verma*: AIR 2008 SC 417, a Division Bench of two-Judges referred to *M. Ramanatha Pillai v. State of Kerala*: (1973) II LLJ 409 SC, *Kedar Nath Bahi v. State of Punjab*: AIR 1972 SC 873, *State of Haryana v. Des Raj Sangar* : (1976) I LLJ 301 SC, *Dr. N.C. Singhal v. Union of India* : [1980] 3 SCR 44) and *Avas Vikas Sanghathan v. Engineers Association*: (2006) II LLJ 516 SC and culled out the following principles :

- (a) the power to create or abolish a post rests with the Government;
- (b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;
- (c) creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration;
- (d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;
- (e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

(f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted.

11. In *Secretary, State of Karnataka v. Uma Devi (supra)*, the Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the Courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed on ad hoc or temporary basis or as daily wagers.

12. In *Divisional Manager, Aravali Golf Club and Anr. v. Chander Hass and Anr.*, 2007 (14) SCALE 1 also, a two-Judges Bench considered the issue relating to creation of post and held :

15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside.

13. The questions whether in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court can issue a mandamus and compel the State and its instrumentalities/agencies to regularize the services of temporary/ad-hoc/daily wage/casual/contract employees and whether direction can be issued to the public employer to prescribe or give similar pay scales to employees appointed through different modes, with different condition of service and different sources of payment have become subject matter of debate and adjudication in several cases.

14. The shift in the Court's approach became more prominent in *A. Umarani v. Registrar, Cooperative Societies*, (2004) III LLJ 780 SC, decided by a three-Judges Bench, wherein it was held that the State cannot invoke Article 162 of the Constitution for regularization of the appointments made in violation of the mandatory statutory provisions. In *Secretary, State of Karnataka v. Uma Devi (supra)*, the Constitution Bench again considered the question whether the State can frame scheme for regularization of the services of adhoc/temporary/daily wage appointed in violation of the doctrine of equality or the one appointed with a clear stipulation that such appointment will not confer any right on the appointee to seek regularization or absorption in the regular cadre and whether the Court can issue mandamus for regularization or absorption of such appointee and answered the same in negative. The Court adverted to the theme of constitutionalism in a system established in rule of law, expanded meaning given to the doctrine of equality in general and equality in the matter of employment in

particular, multi-facet problems including the one relating to unwarranted fiscal burden on the public exchequer created on account of the directions given by the High Courts and this Court for regularization of the services of persons appointed on purely temporary or ad hoc basis or engaged on daily wages or as casual labourers, referred to about three dozen judgments including R.N. Nanjundappa v. T. Thimmiah : (1972) I LLJ 565 SC, Daily Rate Casual Labour v. Union of India : (1988) I LLJ 370 SC, Bhagwati Prasad v. Delhi State Mineral Development Corporation : (1990) I LLJ 320 SC, Dharwad District P.W.D. Literate Daily Wage Employees Association and Ors. v. State of Karnataka and Ors. : (1990) II LLJ 318 SC, State of Haryana v. Piara Singh : (1993) II LLJ 937 SC and State of Punjab v. Surinder Kumar : [1992] 194 ITR 434 (SC) and held:

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. 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. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

15. Learned counsel for the petitioners has submitted that the petitioners should have a fair deal consistent with the guarantee enshrined under Articles 21 and 14 of the Constitution of India. They should not be made to work on a meager salary for years together. It would be unfair and unreasonable to extract work from the petitioners/employees who have been associated with the work and paid honorarium or remuneration which is grossly low. The claim of the petitioners for fixation of honorarium like the honorarium of other employees is based on the ground that their duties and functions are similar to those performed by other doctors but it has been contended by learned counsel for the respondents that the qualification, working condition and duties of the petitioners and other doctors are different and there is no parity in the work and qualification.

16. The principle of equal pay for equal work for men and women embodied in Article 39 (d) was first considered in *Kishori Mohanlal Bakshi v. Union of India*: [1962] 44 ITR 532 (SC) and it was held that the said principle is not capable of being enforced in a Court of law. After 36 years, the issue was again considered in *Randhir Singh v. Union of India* (supra), and it was unequivocally ruled that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. The ratio of *Randhir Singh v. Union of India* (supra) was reiterated and applied in several cases - *Dhirendra Chamoli v. State of U.P.* (supra), *Surinder Singh and Anr. v. Engineer-in-Chief, CPWD and Ors.* (supra), *Daily Rated Casual Labour v. Union of India* (supra), *Dharwad District P.W.D. Literate Daily Wage Employees' Association v. State of Karnataka* (supra) and *Jaipal v. State of Haryana*: 2000 Cri LJ 1778 and it was held that even a daily wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in *Federation of All India Customs and Central Excise Stenographers (Recognised) Union v. Union of India*: [1988] 3 SCR 998, *Mewa Ram Kanojia v. A.I.I.M.S.* : (1989) II LLJ 578 SC, *V. Markandeya v. State of A.P.* : (1989) II LLJ 169 SC, *Harbans Lal and Ors. v. State of Himachal Pradesh and Ors.* : (1989) II LLJ 466 SC, *State of U.P. and Ors. v. J.P. Chaurasia and Ors.* : (1989) I LLJ 309 SC, *Griha Kalyan Workers' Union v. Union of India* : (1991) I LLJ 349 SC, *Ghaziabad Development Authority v. Vikram Chaudhary*: (1995) II LLJ 703 SC, *State of Haryana and Ors. v. Jasmer Singh and Ors.*: (1997) II LLJ 667 SC, *State of Haryana v. Surinder Kumar*: [1997] 2 SCR 917, *Union of India v. K.V. Baby* : (1999) I LLJ 1290 SC, *State of Orissa v. Balram Sahu* : (2002) III LLJ 1115 SC, *Utkal University v. Jyotirmayee Nayak* : [2003] 3

SCR 344, State of Haryana and Anr. v. Tilak Raj and Ors. : (2003) III LLJ 487 SC, Union of India v. Tarit Ranjan Das : (2003) 11 SCC 658, Apangshu Mohan Lodh v. State of Tripura: AIR 2004 SC 267, State of Haryana v. Charanjit Singh: (2006) I LLJ 431 SC, Hindustan Aeronautics Ltd. v. Dan Bahadur Singh (supra), Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara (supra) and Canteen Mazdoor Sabha v. Metallurgical and Engineering Consultants (India) Ltd. : 2007 (10) SCALE 202, the Court consciously and repeatedly deviated from the ruling of Randhir Singh v. Union of India (supra) and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc. In State of Haryana and Ors. v. Jasmer Singh and Ors. (supra), the two-Judges Bench laid down the following principle :

8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted.

17. In Harbans Lal and Ors. v. State of Himachal Pradesh and Ors. (supra), the Court held that the claim of carpenters employed by an incorporated company for parity in wages payable to their counterparts in Government service is unsustainable. In Jawaharlal Nehru Technological University v. T. Sumalatha (Smt.) and Ors. (supra), it was held that the respondents who were employed under a scheme known as National Technical Manpower Information System, which was sponsored by the then Ministry of Education and Culture, cannot claim parity with the regular Government employees in the matter of pay scale.

18. In Canteen Mazdoor Sabha v. Metallurgical and Engineering Consultants (India) Ltd. (supra), another two-Judges Bench held that simply because some employees of a contractor of the alleged head employer are performing the task or duties similar to the employees of the head employer, it will not entitle such employees to claim parity.

19. Considering the qualification and duties as shown in the chart and advertisement, we are of the view that the work and qualification of the Ayush

doctors are different from other MBBS or BDS doctors. The mere fact that they were doing work similar to other doctors cannot be treated as sufficient for applying the principle of equal pay for equal work. Any direction by the Court with the aid of Article 226 of the Constitution of India would burden the exchequer relating to financial and policy matter and interference in the policy decisions though the order in question does not suffer from any legal or constitutional infirmity and it is not possible to entertain the plea of the petitioners for payment of pay or honorarium or other monetary benefits at par with other employees of other cadre having separate eligibility criteria for appointment by complying the principle of equal pay for equal work.

20. Learned counsel for the petitioners has submitted that the impugned order is violative of legitimate expectation of the petitioners and in violation of right to life, right to livelihood and right to dignity of life which is protected by Article 21 of the Constitution of India.

21. We have considered the question whether the petitioners can invoke the doctrine of legitimate expectation for supporting their claim. This part of the petitioners' claim is founded on their assertion that notwithstanding the contrary stipulation contained in the orders of appointment and condition of service, they had expected that in view of the Scheme the Government may absorb them on some future date or at least give benefit of the principle of equal pay for equal work. The above version or expectation of the petitioners is not tenable and cannot be accepted. The pleading of the parties on record do not show that any competent authority of the Government of India or State had ever given any assurance much less made a promise to the petitioners that they will be either absorbed or be given other financial benefits or the hike of salary at any interval of time. As a matter of fact, the petitioners joined the service as contractual employees on a fixed honorarium and they knew that their employment will come to an end on expiry of the tenure specified in the letter, order of appointment or cessation of the mission/programme. In this scenario, the doctrine of legitimate expectation cannot be invoked for sustaining the argument of the petitioners for equal pay.

22. The doctrine of legitimate expectation is a nascent addition to the rules of natural justice.

23. A formal statement on the doctrine of legitimate expectation can be found in the judgment of House of Lords in *Council of Civil Services Union v. Minister of the Civil Service* 1985 AC 374 (HL). In that case the Government tried to forbid trade unionism among civil service. For this, Civil Service Order-in-1982 Council was issued. The Court of appeal declared that the Minister had acted unlawfully in abridging the fundamental right of a citizen to become a member of the trade union. The House of Lords approved the judgment of the Court of appeal and held that such a right could not be taken away without consulting the concerned civil servant.

24. In India, the Courts have gradually recognised that while administering the affairs of the State, the Government and its departments are expected to honour the policy statements and treat the citizens without any discrimination. The theory of legitimate expectation first found its mention in *Navjyoti Coop. Group Housing Society v. Union of India* : AIR 1993 SC 155. In that case the right of a housing society for right to priority in the matter of registration was recognised in the following words :

... In the aforesaid facts, the Group Housing Societies were entitled to "legitimate expectation" of following consistent past practise in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of "legitimate expectation" may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the "legitimate expectation" without some overriding reason of public policy to justify its doing so. In a case of "legitimate expectation" if the authority proposes to defeat a person's "legitimate expectation" it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on "legitimate expectation" at page 151 of Volume 1(1) of Halsbury's Laws of England - Fourth Edition (reissue). We may also refer to a decision of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service*. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

It may be indicated here that the doctrine of "legitimate expectation" imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such "legitimate expectation". Within the conspectus of fair dealing in case of "legitimate expectation", the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline.

(emphasis supplied)

25. In *Food Corporation of India v. Kamdhenu Cattle Feed Industries* : AIR 1993 SC 1601, the Court considered whether rejection of the tender of the respondent was vitiated by arbitrariness. The claim of the respondents was negated in the following words :

In the contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-

arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is "fair play in action". Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. The rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise of by judicial review.

The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this context.

[Emphasis supplied]

26. In *Union of India and Ors. v. Hindustan Development Corporation and Ors.* AIR 1994 SC 988 the Court considered the doctrine of legitimate expectation and held :

For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence.

Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

[Emphasis supplied]

27. In *Punjab Communications Ltd. v. Union of India* : [1999] 2 SCR 1033, the Court observed as under :

The principle of "legitimate expectation" is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, predictability and certainty in the Government's dealings with the public. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made....

However, the more important aspect is whether the decision-maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change.... In sum, this means that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy. The choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

(emphasis in original)

28. In *J.P. Bansal v. State of Rajasthan* : [2003] 2 SCR 933, the Court refused to invoke the doctrine of legitimate expectation in favour of the appellant who claimed compensation of pre-mature termination of the contractual appointment as Judicial Member of the Rajasthan Taxation Appellate Tribunal.

29. In *Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan*: [2003] 2 SCR 112, the appellants claim for absorption in the regular cadre/regularization of service was rejected by the High Court. While approving the orders of the Single and Division Benches of the High Court, the Appellate Court observed:

23. On the facts of the case delineated above, the principle of legitimate expectation has no application. It has not been shown as to how any act was done by the authorities which created an impression that the conditions attached in the original appointment order were waived. Mere continuance does not imply such waiver. No legitimate expectation can be founded on such unfounded impressions. It was not even indicated as to who, if any, and with what authority created such impression. No waiver which would be against requisite compliances can be countenanced. Whether an expectation exists is, self-evidently, a question of fact. Clear statutory words override any expectation,

however founded.

30. In *Secretary, State of Karnataka v. Uma Devi* (supra), the Constitution Bench referred to the claim of the employees based on the doctrine of legitimate expectation and observed as under:

The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

31. In *Kuldeep Singh v. Govt. of NCT of Delhi* AIR 2006 SC 2652, the Court refused to invoke the doctrine of legitimate expectation to nullify the revised policy decision taken by the Government not to grant fresh liquor licenses.

32. In *Ram Pravesh Singh v. State of Bihar* (2007) 1 LLJ 202 SC, a two-Judges Bench considered the question whether the employees of *Futwah Phulwarisharif Gramya Vidyut Sahakari Samiti Ltd.*, which was a cooperative society, could claim absorption in the services of Bihar State Electricity Board by invoking the doctrine of legitimate expectation. The facts of that case show that the society was brought into existence by the State Government, the Electricity Board and the Rural Electrification Corporation for effective implementation of Rural Electrification Scheme meant for better distribution of electricity to rural areas, but the license of the society was revoked in the year 1995 and the Board refused to absorb the employees of the society. The learned Single Judge and Division Bench of the High Court declined to interfere with the decision of the Board. This Court dismissed the appeal of the employees and observed:

What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practise. The term "established practise" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practise established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practise of the

authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practise. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practise (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practise has a bearing, or by someone who has a recognised legal relationship with the authority.

33. After noticing the judicial precedents on the subject, we are of the view that the petitioners cannot invoke the theory of legitimate expectation for compelling the respondents to pay the honorarium which is paid to other doctors having different qualification and different duties.

34. Learned counsel for the petitioners has relied upon (1989) 2 SCC 235-Mewa Ram Kanojia v. All India Institute of Medical Sciences and others but the citation does not favour the petitioners. It has been stated in the above noted case that in judging the equality of work for the purposes of equal pay, regard must be had not only to the duties and functions but also to the educational qualifications, qualitative difference and the measures of responsibility prescribed for the respective posts. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of "Equal pay for equal work" would not apply. There is a reasonable classification on the basis of qualification and duties and if qualification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution of India. Similarly in (1989) 3 SCC 191, V. Markendeya and others v. State of Andhra Pradesh and others, which has been relied upon by the learned counsel for the petitioners, does not favour the petitioners on the ground that the citation provides that the question what scale should be provided to a particular class of service must be left to the executive and only when discrimination is practised amongst the equals, the Court should intervene to undo the wrong and to ensure equality among the similarly placed employees. The Court however cannot prescribe equal scales of pay for different class of employees.

35. In light of submissions made above, the aforesaid writ petitions are devoid of merits and the petitioners are not entitled for the relief claimed. Resultantly, the aforesaid writ petitions deserve to be dismissed and are hereby dismissed. The parties shall bear their respective costs.