

(2014) 04 AHC CK 0272

In the Allahabad High Court

Case No : C.M.W.P. No. 35304 of 2010 Along-with C.M.W.P. Nos. 36417 of 2010 and 50404 of 2011

Lalit Kumar Shakya

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 21, 226

Citation : (2014) 9 ADJ 76 : (2014) 5 AWC 4668 : (2014) 4 ESC 2369

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : R.P.S. Chauhan, Advocate for the Appellant; S.K. Mishra, Advocate for the Respondent

Judgement

@DELETEUPPERDATA

Sudhir Agarwal, J.—Heard Sri R.P.S. Chauhan, learned counsel for the petitioners and learned standing counsel for the respondents.

2. These three Writ Petitions involve common questions of facts and inter related legal issues, therefore, as requested and agreed by learned counsel for the parties, I have heard the same collectively and the same are being decided by this common judgment.

3. The leading Writ Petition No. 35304 of 2010 (hereinafter referred to as "first petition") would be referred in extenso for the reasons that pleadings are complete in this writ petition while in other two, i.e.. Writ Petition No. 36417 of 2010 (hereinafter referred to as "second petition") and Writ Petition No. 50404 of 2010 (hereinafter referred to as "third petition"), the respondents though have filed counter-affidavit but the petitioners have not filed rejoinder-affidavits. It is, however, agreed between the parties that facts and document in all these petitions being common, the same may be read collectively in each other, as may be required.

4. In the first and second petitions, petitioners have challenged advertisement dated 24.2.2010 with a further mandamus that they should be allowed to continue on the post of Computer Operator/Data Entry Operator and as and when require, should also be considered for renewal of their term on the said post, while in third petition, matter relates to parity in pay.

First and Second Petitions:

5. The dispute regarding continuance in service and entitlement of petitioners for renewal as also whether respondents are justified in proceeding for fresh recruitment by issuing advertisement dated 24.2.2010, is an issue involved in first and second petition, hence, in this regard, brief but relevant facts, may be stated as under:

6. The petitioners" claim that they are continuously working since 2008-2009, i.e., date of their initial engagement. Even if their engagement was initially for a particular tenure, after lapse thereof, petitioners are entitled for continuance and cannot be replaced by another set of tenure appointments, hence, they are entitled for renewal and continuance. The central issue, which has to be adjudicated here at,

"(i) whether petitioners are entitled to seek a writ of mandamus commanding respondents to consider petitioners for renewal on their term, and

(ii) whether petitioners are entitled to continue so much so for that a writ of mandamus be issued to this effect."

7. In other words, whether respondents are guilty of violating any principle of law or alleged constitutional rights of petitioners by resorting to a fresh process of recruitment vide public advertisement dated 24.2.2010, is the moot question, calling upon this Court"s verdict in first and second petition.

8. Sri R.P.S. Chauhan, learned counsel for the petitioners in first and second petition contends that petitioners having been working with the respondents since 2008-09 and onwards, their work and performance is satisfactory, their service has not been terminated so far, hence, respondents cannot proceed to hold a fresh selection by publishing advertisement dated 24.2.2010. The respondents cannot substitute ad hoc employees by another set of ad hoc employees and in any case, so long as petitioners are not terminated, no fresh recruitment can be made on the posts on which petitioners are working. He also said that respondents are not considering application form of petitioners, which is wholly illegal.

9. Per contra, the case set up by respondents is that petitioners have not been appointed by them. They are not employees of respondents. They were employed by a private agency namely M/s. Laxmi Narain Gramodyog Samiti, with whom agreement was " entered by Commissioner, Rural Development, for feeding of data under M.I.S., and in furtherance of that contract, petitioners were deployed by said private agency, for data feeding work. After termination of

agreement with the said private agency, petitioners cannot claim any right to continue to work with respondents.

10. The appointment of Technical Assistant at Gram Panchayat Level pursuant to Government order dated 17.7.2006 was challenged in various writ petitions including Writ Petition No. 3513 of 2009 decided on 20.3.2009, in which this Court declared paras 5.4, 5.5, 5.5 (a), 5.9, 8.1, 8.2, 8.3 and 8.4 of U.P. Rural Employment Guarantee (Second Amendment) Scheme, 2008, notified on 23.10.2008, ultra vires. The aforesaid decision was challenged in Special Appeal Nos. 515 of 2009 and 680 of 2009. The Division Bench allowed special appeal vide judgment dated 6.11.2009 and set aside judgment of learned single Judge. There against S.L.P. Nos. 35284 and 35299 of 2009 were filed and vide order dated 18.12.2009, Supreme Court stayed Division Bench judgment. It is said that in view of aforesaid situation and particularly since appeal is still pending before Apex Court, scheme dated 8.2.2007, as amended by Government order dated 3.9.2007, is presently validly operating, which is in respect to appointment of Technical Assistants. It is further submitted that petitioners have referred to Government Order dated 17.7.2006, but it is in respect to Junior Engineers and Technical Assistants. So far as other officers are concerned, they are now governed by Government Order dated 19.1.2010 and advertisement has been published pursuant thereto.

11. Learned standing counsel submitted that irrespective of various Government Orders, as stand today, the fact remains that under no principle of law, petitioners can claim right to continue with respondents, having not been appointed by them, and therefore, basically their claim is fallacious.

Third Petition:

12. The petitioners, fifteen in number in third petition, are presently functioning as Computer Operator/Data Entry Operator in various blocks of District Budaun. In respect of work performed under Mahatma Gandhi National Rural Employment Guaranteed Act, 2005 (hereinafter referred to as "Act, 2005") and the rules and orders issued thereunder, have invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a mandamus commanding respondents to extend principle of "equal pay for equal work" and pay salary/wages/remuneration to them @ Rs. 8,000 per month as is being paid to other regularly appointed Computer Operator/Data Entry Operator working in other districts to perform duties under the aforesaid Act.

13. The case set up by petitioners is that they are performing duties of Computer Operator/Data Entry Operator, having been appointed on various dates in 2008-2009, but paid a meagre sum of Rs. 3,000 per month, though other regularly appointed Computer Operator/Data Entry Operators are receiving salary/wages/remuneration @ Rs. 8,000 per month, therefore, they are being discriminated in the matter of pay, which is illegal, arbitrary and violative of Articles 14 and 21 of Constitution. In this regard petitioners have also raised

their grievance before respondents authorities through representations but the same is rejected by Collector, Badaun vide order dated 25.7.2011 (Annexure-1 to the writ petition). A writ of certiorari has also been requested for quashing the aforesaid order of Collector, Budaun.

14. The respondents have contested claim of petitioners stating that petitioners were neither appointed by competent authorities of respondents at any point of time nor they are validly appointed persons in the capacity of Computer Operator/Data Entry Operator and, therefore, their claim for equal pay for equal work is thoroughly misconceived. Pursuant to enactment of Act, 2005, a Government Order was issued by Central Government, launching a scheme commonly called as "M.A.N.R.E.G.A. Scheme", which was to be implemented across the State of U.P. (this Court is not concerned with application of said scheme in other part of country). For the purpose of feeding relevant data in computers, in respect of work performed under M.A.N.R.E.G.A. Scheme, certain service providers were engaged at District level or block level. One such service provider M/s. Laxmi Gramodyog Sansthan, Bisauli was engaged for the aforesaid purpose in District Budaun. The work of M.I.S. feeding was to be performed by aforesaid agency.

15. The agency employed/engaged petitioners and" forwarded their names to the officers concerned so that job of Computer Operator/Data Entry Operator be allowed to be performed by these persons. During the period of subsistence of contract between District officials and aforesaid agency, entire payment was made to the said agency and therefrom petitioners received their salary/wages. However, it appears that after the period of agreement with aforesaid agency concluded, engagement and service of petitioners still continued, and Block Development Officers, as per requirement of work, made payment of wages, on daily basis, to petitioners from funds available under M.A.N.R.E.G.A. Scheme.

16. The petitioners were never engaged/appointed by competent appointing authority of respondents in accordance with the procedure consistent with Articles 14 and 16. Now the system of service Provider has been done away and procedure prescribed under relevant Government Orders, i.e., Government Order dated 19.1.2010 is to be followed for direct engagement by District Offices.

17. The petitioners were employees of M/s. Laxmi Gramodyog Sansthan, Bisauli, which was assigned job of M.I.S. feeding under an agreement. As per agreement, the aforesaid agency deputed one person in every development block to perform work of M.I.S. feeding. The payment was made by Block Development Officers to the said agency during the period of agreement, wherefrom petitioners may have been paid their salary but there was no relationship of employer and employee between department and the petitioners. They were never appointed by respondents authorities. No such letter of appointment has also been placed on record by petitioners. It is further said that mere fact that petitioners have been allowed to continue to discharge certain duties by concerned Block Development Officers, after cessation of agreement with agency, and making payment directly to petitioners on daily wages for the

work performed by them, would not confer upon them, status of validly appointed employees of respondents, so as to entitle salary admissible to regularly appointed persons.

18. Sri R.P.S. Chauhan, learned counsel for the petitioners basically contended in the context of third petition that since petitioners are performing duties which are similar to those as are performed by Computer Operators/Data Entry Operators working under M.A.N.R.E.G.A. Scheme in different blocks of other districts, therefore, looking to the nature of duties, doctrine of "equal pay for equal work", is applicable entitling petitioners to claim parity in the matter of salary. The regularly appointed counter parts of petitioners working in other districts are getting salary @ Rs. 8,000 per month while petitioners were paid much lessor wages i.e., Rs. 3,000 or Rs. 3,500, which is highly exploitative, irrational and arbitrary. The petitioners therefore, are entitled for payment of salary/remuneration/wages at par with other persons discharging similar duties.

19. Learned standing counsel per contra contended that petitioners firstly, are not employees appointed in the service of respondents following any procedure of selection and secondly, that engagement of petitioners for some time according to exigency of work will not entitle them to claim parity in the matter of pay and other benefits with employees, who have been appointed after being selected in a selection, consistent with Articles 14 and 16(1) of the Constitution, and, therefore, doctrine of "equal pay for equal work" has no application in the case in hand.

20. The crucial issue, therefore, up for consideration in first and second petition are:

"A. Whether petitioners are persons appointed by respondents?

B. Whether petitioners have any right, contractual or otherwise to claim continuance and/or renewal of their term/tenure with respondents?

C. Whether there is any privity of contract between petitioners and respondents, which can be enforced in a writ jurisdiction under Article 226 of Constitution by issuing a mandamus to the respondents to continue petitioners in the job, they are presently working?"

21. So far as third petition is concerned, central issue up for consideration is, "whether in the facts and circumstances of this case, principle of "equal pay for equal work" is applicable in the present case entitling petitioners to claim parity in the matter of pay/salary/remuneration with regularly appointed Computer Operator/Data Entry Operator in various blocks of different districts under M.A.N.R.E.G.A. Scheme".

22. First, I would take up first and second petitions. Here, no letter of appointment issued by respondents authorities has been placed on record. There is nothing to show that these petitioners were appointed. The work experience certificate issued by Block Development Officers have been placed on record.

This cannot be equated with appointment letter by respondents. Though it is disputed by petitioners that they were not engaged initially by M/s. Laxmi Gramodyog Sansthan, Bisauli, which is a stand taken by respondents in the counter-affidavit but then to contradict the same, nothing has been placed on record to show the manner in which petitioners were appointed.

23. In rejoinder-affidavit filed in first petition, it is said that for implementation of Act, 2005, State Government issued a, letter dated 17.7.2006 making, provision for appointment of Computer Operator and Technical Assistant through Service Providers. The scheme was amended by U.P. Rural Employment Guaranteed (Second Amendment) Scheme, 2009 notified on 23.10.2008 whereby it was provided that Computer Operator and Technical Assistant should be appointed by District Administration. The aforesaid Government order dated 23.10.2008 was challenged in Writ Petition No. 3513 of 2009, which was allowed by learned single Judge vide judgment dated 20.3.2009. In the Special Appeal No. 515 of 2009 preferred by State of U.P., Division Bench vide judgment dated 6.11.2009 reversed the judgment and upheld Government order dated 23.10.2008. Aggrieved thereto. Special Leave to Appeal (Civil) Nos. 35284 and 35299 of 2009 filed in which Apex Court has stayed the judgment of Division Bench and the appeal is pending before Apex Court. However, in my view, the aforesaid litigation do not turn anything on so as to help petitioners in regard of their appointment.

24. In Para 5 of first petition, though the case set up by petitioners is that selection was made by District Level Authorities and after petitioners' selection on merit, they were appointed as Computer Operator under M.A.N.R.E.G.A. Scheme but no letter of appointment has been placed on record. It is interesting to note that this para 5 of first petition has been denied in para 10 of the counter-affidavit and it is said that Commissioner, Rural Development, executed an agreement dated 17.10.2008 with M/s. Laxmi Narain Gramodyog Samiti, Budaun for feeding of data under M.I.S. The aforesaid agency appointed certain individual for feeding work and appointments were not made by respondents. The payment, as per agreement, made to the appointee but neither any advertisement was issued by respondents nor any selection was made by respondents nor appointments were made by them after following any process of selection conducted by them. The petitioners were employees of M/s. Laxmi Narain Gramodyog Samiti and under its control, having been appointed by the same. Before 24.2.2010, no advertisement has been issued by respondents for making appointment on the post of Computer Operator/Data Entry Operator. This para 10 of counter-affidavit has been replied in para 6 of rejoinder-affidavit wherein it is said that letter dated 17.10.2008, i.e., agreement between Commissioner, Rural Development and private agency is illegal. This presupposes the agreement. It is further said that after disengagement of Society, petitioners have been directly appointed by concerned Block Development Officer of District Budaun and they are paying salary, as have already been noticed. There is no letter of appointment but the fact is that petitioners after disengagement of

Society and agreement is over, had continued to be engaged/employed by concerned Block Development Officers in exigency of work and payments have been made from funds of M.A.N.R.E.G.A.

25. The question is whether such engagement or employment of petitioners entitle them any legal right to claim continuance and renewal of their term with the respondents.

26. The facts, as discussed above, make it very clear that none of the petitioners have been appointed by respondents on any post. An appointment commences with issuance of letter of appointment but in the case in hand, no letter of appointment has been issued by respondents. The petitioners at the best may have been appointed by a private agency and deployed to discharge duties in furtherance of an agreement, of service executed between Commissioner, Rural Development and such Service Provider, i.e., M/s. Laxmi Narain Gramodyog Samiti but that will not make petitioners employees of respondents. However, it is also a fact that after the aforesaid system is over, petitioners are continuing to discharge their function with respondents.

27. Can such a continuance be treated, a deemed valid appointment or any principle of holding over creating some kind of right with petitioners to claim continuance of their employment would apply is another angle to consider the above question.

28. In order to hold an office or appointment in State, or where the funds are being released from State Exchequer for payment of salary to the appointees, it goes without saying that State has to make appointments following the process of open recruitment, giving equal opportunity of consideration to all concerned. In other words, an appointment has to be made in such a case by State or its authority following procedure, which is consistent with Article 16(1) of the Constitution. It includes advertisement of vacancies i.e., notifying to the Employment Exchange, advertisement in newspaper or other means.

29. In State of Orissa and Another Vs. Mamata Mohanty, , the court said:

"....some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television...."

30. The court further said that no person can be appointed even on temporary or ad hoc basis without inviting applications from all eligible candidates. In that case, appointments were made after notifying vacancies to Employment Exchange and putting a note on the notice board. The court condemned it and

said:

"If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered."

31. The court went on to observe that a person appointed illegally or not employed after following procedure consistent with Articles 14 and 16, he shall not be entitled for salary. The court said:

"A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

32. It is interesting to notice that in *State of Orissa and another v. Mamata Mohanty*. (supra), the court also observed that if a person has continued to work, that by itself will not confer any right upon him since principle of holding over or concept of adverse possession is not applicable in service jurisprudence. Relying on its earlier decision in *Dr. M.S. Patil Vs. Gulbarga University and Others*, , the court said:

"The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour."

33. The above observations are attracted with full force in the case in hand where none of the petitioners have even been appointed by respondents and there is no compliance of Articles 14 and 16 of Constitution but since petitioners are simply continuing to discharge duties, on that basis, they cannot claim any right, legally or constitutionally, else it would be directly infringing constitutional mandates of Articles 14 and 16 of Constitution. Such an interpretation and such a consequence cannot be conceived by court and therefore, this Court cannot take a view, which would confer an illegal and unconstitutional benefit upon petitioners.

34. Even otherwise, at the best, engagement and employment of petitioners emanates from a pure and simple contract. Though there was no direct contract of petitioners with respondents yet assuming that contract of employment petitioners had with Service Provider, namely M/s. Laxmi Narain Gramodyog Samiti, can be read as that with respondents, still I do not find that it can confer any right of continuance and renewal of their term. At the best, employment and engagement of petitioners is clearly in the realm of pure contract. If contract was for a fixed tenure, it comes to an end by efflux of time on expiry of period for which the same was executed. Even continuance of petitioners thereafter would

not confer any right upon them particularly when it is not pursuant to any letter or appointment or agreement.

35. Taking this view, this Court in *Vivek Kumar Misra, Dhananjay Kumar Sahu and Onkar Nath Singh Late Sri Rajendra Singh Vs. State of U.P.* , said:

"From the nature of appointment of the petitioners, it is thus evident that it was a contract appointment for a fixed tenure with condition therein that the same may be renewed subject to good performance and mutual agreement. The existing contract being time bound, came to an end by efflux of time on expiry of the period for which the same was executed. Thereafter, continuance of the petitioners, if any, would not be pursuant to any letter of appointment or agreement. The right of the petitioners to continue in service in the absence of any letter of appointment is neither vested in them nor they can claim as an existing right *moreso* in the absence of an appointment letter issued by the employer. This Court cannot provide an appointment letter to the petitioners though the employer has chosen not to appoint them after the period of appointment is over. The appointment made for a limited period came to an end by efflux of time needs no order of termination. This is what has been held by the Apex Court in *Director. Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava*, , where dealing with a similar kind of contractual appointment, the court held that it would end automatically by efflux of time."

36. In *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, of judgment, a Constitution Bench has observed:

"If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued."

37. Learned counsel for petitioners, however, submitted that on account of wide-spread unemployment and lack of bargaining power, petitioners are not in a condition to negotiate with respondents on equal terms and therefore, had no option but to agree whatever conditions are imposed upon them by respondents for giving employment. He said, if a condition of employment is *ex-facie*, unreasonable and exploitative, the same should not be adhered to and the respondents be directed to continue with the agreement.

38. In my view, submission cannot be accepted for more than one reason. However, instead of adding in my words, I find it appropriate to refer *Uma Devi* (*supra*), where rejecting a similar contention, the Constitution Bench of the Apex Court, in para 36 of the judgment, has observed:

"It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain-not at arms length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on

that ground alone, it would not be" appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment, brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term."

39. A Division Bench of this Court in *Dr. Alok Kumar Singh and Others Vs. State of U.P. and Others*, , considering similar kind of tenure appointment on contract basis, has held that petitioners cannot claim "right to continue in service beyond the period of appointment provided in the letter of appointment. This has been followed by a subsequent Division Bench in *Sarvesh Kumar Singh Vs. The State of U.P. and Others*, and *Vivek Kumar Misra, Dhananjay Kumar Sahu and Onkar Nath Singh Late Sri Rajendra Singh Vs. State of U.P.* .

40. It is feebly suggested that selection was made by service providers, i.e., M/s. Laxmi Narain Gramodyog Samiti after advertisement of vacancies and, therefore, ex facie, it cannot be said that petitioners' appointment from very inception is not consistent with Articles 14 and 16 of Constitution. Though there is nothing on record to fortify above submission that petitioners' initial engagement was made after advertisement of vacancies etc?, but even if, for the sake of argument it is accepted, still I do not find that it can improve petitioners' situation. At the best it can be said that in accordance with conditions of agreement, appointments were made. However, the scheme talks of engagement of persons only on contract basis and that too for a fixed tenure, may be subject to renewal based upon performance.

41. When an appointment even if legal and valid, but contractual one, and governed by certain terms and conditions thereof, parties are bound to adhere to those conditions and cannot travel beyond that. Once appointment is made for fixed tenure, it would come to an end automatically on expiry of period for which appointment was made. The termination is automatic by efflux of time on expiry of said period. The continuance of person thereafter would not be on the basis of

said agreement pursuant where to incumbent was appointed for a fixed tenure, it has already come to an end by efflux of time.

42. The consequences followed in a tenure appointment made clear in Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, . where the Apex Court has said that tenure appointment comes to an end by efflux of time and it does not require even an order of termination after expiry of the period. The incumbent ceased to have right to work on the expiry of the period for which he is appointed.

43. The question whether petitioners have any right, legal, constitutional or otherwise, enforceable in a court of law, to insist upon employer to continue them in employment till the scheme continues or the post is available. In the present case, petitioners' appointment was for a limited period. They were well aware of these terms and conditions and had entered into, with open eyes, in the contract. Once terms and conditions are laid down in the contract, it is not open to anyone to claim that some part of conditions would be binding and remaining must be ignored. If petitioners commence their work under a contract, which was for a fixed tenure, it has to come to an end, after efflux of time, and petitioners cannot claim that this tenure part must be ignored altogether. They also cannot claim renewal as a matter of right. If the petitioners are allowed to continue without there being any renewal of tenure and letter of appointment issued by employer, it would amount to permitting petitioners to continue contrary to the terms and conditions of their engagement and also the scheme whereunder they were appointed. The scheme under which petitioners have been appointed and have taken partial advantage, they are bound to adhere thereto and cannot wriggle out of that part, which does not suit to them.

44. Even otherwise, assuming that petitioners' appointment was contractual and petitioners have continued to work, whether it can be enforced in a court of law and that too in a writ petition. In other words, when right to continue is not based either on the statute or the Constitution or otherwise in law; then a writ of mandamus compelling the authorities to continue the petitioners in employment can be issued since for issuance of writ of mandamus, condition precedent is the existence of a legal right upon the aggrieved person and a legal obligation corresponding upon the authorities concerned. In Uma Devi (supra) the Apex Court, considering the question as to when a writ of mandamus can be issued by the court directing employer either to absorb the employee in permanent service or to allow him to continue, has held:

"In order to that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it."

45. Even otherwise, enforcement of contract of personal service in a writ jurisdiction is not permissible except of certain limited circumstances. The

petitioners" appointment was not in a Department of Government and instead they were engaged by a private agency constituted for the purposes of implementation of a scheme launched for a fixed period. The scheme launched by the Government of India is under an executive order. It does not have the status of a statute or statutory order. The nature of the engagement of the petitioner, therefore, is not to be governed by status but is like an ordinary contract of service between a master and servant. In *Roshan Lal Tandon Vs. Union of India (UOI)*, , drawing distinction between the employment under a contract and status, it was held that there is no vested contractual right in regard to the terms of service where the employment is one of the status. The origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to the post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is mere one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by public law and not by mere agreement of the parties. The relationship between the Government and the servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. In the language of jurisprudence, status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.

46. Thus, in the cases where the appointment and conditions of service are governed by statute, the relationship is that of status and not mere a contract. However, in other cases, it is purely a contract of service resulting in a relationship of ordinary master and servant. In the present case, it cannot be said that the petitioners employment is that of a status since it is not governed by statutory provisions in any manner. It is purely and simply an ordinary contract of service between master and servant. In such cases, where the contract of service is not governed by the statutory provisions, it is well-settled that contract of service cannot be sought to be enforced by seeking reinstatement or continuance in employment since such a relief is barred under the Specific Relief Act. In *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , considering question as to when such a relief is granted. Apex Court observed:

"Under the common law the court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well-recognised exceptions. It is open to the courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by doing so the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly, under the Industrial Law, jurisdiction of the

Labour and Industrial Tribunals to compel the employer to employ a worker whom he does not desire to employ, is recognised. The courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute,..."

47. Again in para 25 of the judgment, the court held:

"The position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognized exceptions to this rule and they are : To grant such a declaration in appropriate cases regarding (1) a public servant, who has been dismissed from service in contravention of Article 311. (2) Reinstatement of a dismissed worker under Industrial law by Labour or Industrial Tribunals. (3). A statutory body when it has acted in breach of a mandatory obligation, imposed by statute."

48. The above view has been reiterated in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, ; Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, ; Life Insurance Corporation of India Vs. Escorts Ltd. and Others, . Similar view has been taken by this Court also in A.K. Home Chaudhary v. National Textile Corporation U.P. Ltd., Kanpur, 1984 UPLBEC 81 and B.M. Varma Vs. State of U.P. and Others, .

49. Coming to the question of renewal also, I find that after abolishing scheme of engagement of persons through Service Providers, the Government decided to engage these persons on its own consistent with Articles 14 and 16 of the Constitution. It issued Government Order laying down conditions for recruitment on such post and petitioners cannot claim that ignoring this scheme, now prepared by State Government, consistent with Articles 14 and 16 of the Constitution, the petitioners should be considered, to the exclusion of others, for renewal ignoring the fact, firstly that initial engagement/appointment of petitioners is not by respondents, and secondly, in any case, engagement of petitioners is not after complying with requirement of equal opportunity of employment to all concerned, i.e., in conformity with mandate of Articles 14 and 16 of Constitution.

50. Even doctrine of legitimate expectation come to an end at this stage when respondents decided to proceed to make appointment after advertisement of vacancies and complying the requirement of Articles 14 and 16 of Constitution.

51. Lastly, it is contended that even as per new procedure, respondents are proposing to make tenure appointment and a tenure appointment should not be substituted by another tenure appointment.

52. The submission is thoroughly misconceived. Here is a case where a time bound appointment was made and after completion of the tenure, the respondents are proceeding to make fresh selection having decided not to renew the tenure of earlier appointees in the light of new scheme, consistent with Articles 14 and 16 of Constitution. The question of substitution of the petitioners

does not arise since in law, they have already ceased to be in employment after expiry of the period for which they were appointed.

53. The question as to what a "tenure appointment" means, was considered in Dr. L.P. Agrawal Vs. Union of India and others, , wherein the court observed that:

"Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of office on completion of his tenure...."

54. It is true that respondents allowed petitioners to continue and thereafter in view of certain interim orders, engagement is continuing, but the same cannot be allowed to continue to the extent of rendering the new scheme of recruitment redundant for the reason that tenure of petitioners' appointment has already exhausted. In law, they are neither validly appointed nor holding their post as a matter of right. This Court, therefore, cannot direct respondents to continue them in service otherwise such an order would be without any extension of letter of appointment issued by employer on the basis of which, employee can claim right to hold the post or continue the office. Such an eventuality cannot be conceived from a judicial order. In the Constitution Bench decision in Uma Devi (supra), the court has also observed that it is always open to the employer to make short term temporary appointment on contract basis and there is no inherent vice therein.

55. In view thereof, I do not find any right vested in the petitioners and the questions formulated above are answered against them.

56. Now, I proceed to consider question of "equal pay for equal work" engaged in third petition. Admittedly, no letter of appointment issued by respondents or authorities of State of U.P. or Government of India appointing petitioners in any capacity has been placed on record. When specifically asked, learned counsel for the petitioners stated that concerned Block Development Officers have issued certificate of experience/performance of work to petitioners but no letter of appointment is possessed by petitioners. In these facts and circumstances, this Court finds no reason to disbelieve stand taken by respondents in third petition that initially for discharge of M.I.S. feeding in M.A.N.R.E.G.A. Scheme, a private agency M/s. Laxmi Gramodyog Sansthan, Bisauli was engaged by them and petitioners were employed by said agency to give effect contractual work assigned to aforesaid agency. The engagement of petitioners, therefore, is by a private agency and it was in furtherance of giving effect to contract executed by respondents with the said agency. The State Government formulated scheme for appointment of Computer Operator/Data Entry Operator in every development block through Government order dated 19.1.2010, whereunder District Magistrate was declared to be Controlling Authority for conducting selection etc. For appointment of Computer Operator/Data Entry Operator, para 3 thereof

provides as under:

3. Services of one Computer Operator/Data Entry Operator shall be availed in each development block. The prescribed educational qualification/eligibility shall be "O" Level or equivalent thereto. A maximum of Rs. 8,000 per month shall be paid as an honorarium for this post. While availing the services, reservation rules laid down by the State Government shall be followed."

(English Translation by the court)

57. The procedure for selection and appointment, as stated in para 2(1) thereof, reads as under:

(1) The advertisement for the posts shall be published by the District Magistrates of all the districts in national newspapers and in popular district level/local newspapers, stipulating a maximum of one week time for the receipt of applications. Details of applications such as post-wise educational qualification, eligibility, age and reservation shall be made available on the district website, leaving no chance to any applicant to say that his application was not taken into consideration. On the applications received from the applicants, separate marks for educational qualification, experience and prescribed personality test in interview shall be assigned as per merit. Accordingly, on the basis of their total marks, candidates shall be selected against the vacancies in each district, ensuring adherence to the reservation policy enforced by the State Government.

(English Translation by the court)

58. It is not the case of the petitioners that they have been appointed in accordance with procedure prescribed in Government order dated 19.1.2010 and possess educational qualification also as stated therein. In fact, in entire writ petition, nothing has been said by petitioners regarding their qualifications when it is not their case that they possess requisite qualification provided in Government order dated 19.1.2010 for regular appointment on the post of Computer Operator/Data Entry Operator. The petitioners thus have neither undergone any process of selection nor have been appointed as Computer Operator/Data Entry Operator by any authority of respondents as neither any letter of appointment is on record nor they possess requisite qualification prescribed for regular appointment on the post of Computer Operator/Data Entry Operator nor are governed by other provisions to which regularly selected appointed persons are subjected can it be said that still in the matter of pay/salary/remuneration petitioners would be justified in claiming parity with regularly appointed Computer Operator/Data Entry Operator and for payment of salary @ Rs. 8,000 per month. In other words can it be said that doctrine of "equal pay for equal work" is applicable under the circumstances, as discussed above.

59. In *Randhir Singh Vs. Union of India (UOI) and Others*, , Apex Court considering principle of equal pay for equal work held that it is not an abstract

doctrine but one of substance. Construing Articles 14 and 16 in the light of Preamble and Article 39(d) of the Constitution, Apex Court held that principle of equal pay for equal work is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer.

60. However, it was also held--

"It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional, avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of "equal pay for equal work" would be an abstract doctrine not attracting Article 14 if sought to be applied to them..."

61. In *Dr. Shashi Kant and Another Vs. State of Bihar and Others*, , the Apex Court applying principle of equal pay for equal work, in para 20 of the judgment, considered correctness of defence taken by employer justifying non application of said principle, and held--

"the ministerial staff in the N.D.M.C. constitute a unified cadre. The recruitment policy for the selection of the ministerial staff is a common one and the recruitment is also done by a common agency. They are governed by a common seniority list. The ministerial posts in the three wings of the B.D.N.C. viz, the general wing, the electricity wing and the waterworks wing are interchangeable posts and the postings are made from the common pool according to administrative convenience and exigencies of service and not on the basis of any distinct policy or special qualifications. Therefore, it would be futile to say that merely because a member of the ministerial staff had been given a posting in the electricity wing, either due to force of circumstances or due to voluntary preferment, he stands on a better or higher footing or in a more advantageous position than his counterparts in the general wing. It is not the caste of the respondents that the ministerial staff in the electricity wing perform more onerous or more exacting duties than the ministerial staff in the general wing. It therefore, follows that all sections of the ministerial staff should be treated alike and all of them held entitled to the same scales of pay for the work of equal nature done by them."

(Emphasis added)

62. In *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, , it was held:

"there may be qualitative difference as regards reliability and responsibility justifying different pay scale. Functions may be the same but the responsibilities

make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination"

(Emphasis added)

63. It was further observed that-

"the same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less, it varies from nature and culture of employment," (Para 11)

(Emphasis added)

64. In Jaipal and Others Vs. State of Haryana and Others, , the Apex Court held:

"The doctrine of equal work equal pay would apply on the premise of similar work, but it does not mean that there should be complete identity in all respects. If the two classes of persons do same work under the same employer, with similar responsibility, under similar working conditions the doctrine of equal work equal pay would apply and it would not be open to the State to discriminate one class with the other in paying salary. The State is under a constitutional obligation to ensure that equal pay is paid for equal work."

(Emphasis added)

65. In State of U.P. and Others Vs. J.P. Chaurasia and Others, , the Apex Court while considering justification of two pay scales of the Bench Secretaries of the High Court, observed:

"Entitlement to the pay scale similar would not depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the" respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best Judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to linker with such equivalence unless it is shown that it was made with extraneous consideration"

(Emphasis added)

66. In Grih Kalyan Kendra Workers" Union Vs. Union of India and others, , it was

observed:

"the question of parity in pay scale cannot be determined by applying mathematical formula. It depends upon several factors namely nature of work, performance of duties, qualifications, the quality of work performed by them. It is also permissible to have classification in services based on hierarchy of posts, pay scale, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the object sought to be achieved."

(Emphasis added)

67. In Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, , the Apex Court observed:

"job valuation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department, (ii) the nature of contribution expected of him, (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions, (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties, (v) the extent of powers vested in him, (vi) the extent of his dependence on superiors for the exercise of his powers, (vii) the need to coordinate with other departments etc. It was further observed that normally a pay structure is evolved keeping in mind several factors e.g., ((i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer s capacity to pay etc.

(Emphasis added).

68. In Jaghnath Vs. Union of India and another, the Apex Court following earlier judgment observed that--

"classification of officers into two grades with different scales of pay based either on academic qualification or experience, or length of service is sustainable. Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There is selection grade for District Judges. There is senior time scute in Indian Administrative Service. There is supertime scale in other like services. The entitlement to these higher pay scales depends upon seniority-cum-merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself."

69. In Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, , the Apex Court held that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. It does not mean that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake, sometimes on account of want of relevant data and scales for evaluating performance of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. Some of the factors which have to be kept in view for job evaluation may include (i) the work programme of his department, (ii) the nature of contribution expected of him, (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions, (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties, (v) the extent of powers vested in him, (vi) the extent of his dependence on superiors for the exercise of his powers,, (vii) the need to coordinate with other departments, etc.

70. The court further says that a pay structure is evolved normally keeping in mind several factors, like, (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. The list is not exhaustive but illustrative.

71. In State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, , the Apex Court held as under--

"It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukharji, J. (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may vary from post to post. It may vary from institution to institution We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The respondents (original petitioners) have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that the distinction between their scale of pay and that of non-technical Lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by mala fides, either in law or in fact [see the approach adopted in Federation case). It must be remembered that since the plea of equal pay for equal work has to be examined with

reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the original petitioners (respondents herein) have failed to discharge."

72. In *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, , the Apex Court observed:

"the principle of equal pay for equal work should not be applied in a mechanical or casual manner. Inequality of the men in different groups excludes applicability of the principle of equal pay for equal work to them. Unless it is established that there is no reasonable basis to treat them separately in matters of payment of wages or salary, the court should not interfere holding different pay scale as discriminatory"

73. In *Sher Singh and Others Vs. Union of India (UOI) and Others*, , the Apex Court rejected the claim of the library staff of Delhi University and its constituent colleges regarding parity in pay with the teaching staff on the ground that the nature of duties, work load, experience and responsibilities of the two sets of employees in question are totally different from each other.

74. In *Union of India (UOI) and Others Vs. Delhi Judicial Service Assn. and Another*, , the Apex Court reversing the judgment of the High Court allowing the same scale of pay to all the officers of Higher Judicial Services, held:

"We think that the High Court was not right in giving selection grade scale of pay to all the officers on the principle of equal pay for equal work. If that be so the Dist. Munsif (Junior Civil Judge, Junior Subordinate Judge) etc. lowest officer in judicial hierarchy is entitled to the pay of the Senior most super-time scale District Judge as all of them are discharging judicial duty. The marginal difference principle also is equally inappropriate. Similarity of posts or scale of pay in different services are not relevant. The nature of the duty, nature of the responsibility and degree of accountability etc. are relevant and germane considerations. Grant of selection grade, supertime scale etc. would be akin to a promotion. The result of the impugned direction would wipe out the distinction between the time Scale and Selection grade officers. The learned counsel for the Union of India, pursuant to our order, has placed before us the service conditions prevailing in the Higher Judicial Services in other States in the country. Except Gujarat which had wiped out the distinction after the judgment in *All India Judges Association's* case, all other States maintained the distinction between the Grade I and Grade II Higher Judicial offices or Time Scale and Selection Grade or Supertime scales etc. In fact this distinction is absolutely necessary to inculcate hard work, to maintain character, to improve efficiency, to encourage honesty and integrity among the officers and accountability. Such distinctions would not only be necessary in the Higher Judicial Service but also, indeed in all services under the State and at every stage."

75. In *Sita Devi and others etc. etc. Vs. State of Haryana and others*, , the Apex Court upheld different pay scale on the basis of qualification relying on earlier

judgments of Apex Court in State of Mysore and Another Vs. P. Narasing Rao, ; The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, and P. Murugesan and Others Vs. State of Tamil Nadu and Others, .

76. In State of Haryana Vs. Jasmer Singh and others, . the Apex Court justified different pay scale on various factors observing as under:

"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."

77. In Garhwal Jal Sansthan Karmachari Union and another Vs. State of Uttar Pradesh and others, , the Apex Court in para 8 of the judgment rejected the claim of pay parity between employees of Jal Nigam and Jal Sansthan on the ground of qualitative difference in the duties, function and responsibilities in the two organizations.

78. Considering the difference in mode of recruitment and different service rules, in State of Rajasthan Vs. Kunji Raman, , the Apex Court upheld different pay scale for work charge employees and those employed in regular establishment.

79. In Union of India and Others Vs. Pradip Kumar Dey, , question of parity of pay scale of Naik, Radio Operator in C.R.P.F. and employees working as Radio Operator in Directorate of Coordination Police Wireless came up for consideration on the principle of equal pay for equal work and the Apex Court negated parity observing that different pay scale prescribed taking into account hierarchy in service and other relevant factors cannot be interfered as it would disturb entire chain of hierarchy.

80. In State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., , Apex Court observed as under:

"Though "equal pay for equal work" is considered to be a concomitant of Article 14 as much as "equal pay for unequal work" will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work, tint also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference."

81. In *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, , it was held in para 10--

"It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge, While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not Justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to" a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter..."

82. In *State Bank of India and Another Vs. M.R. Ganesh Babu and Others*, , Apex Court observed in para 16--

"The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well-settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the

responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court."

83. The difference in pay scale and wages for work charge employees and those engaged in regular establishment has been upheld in *State of Punjab and Others Vs. Gurdeep Kumar Uppal and Others*, ; *State of Punjab and Others Vs. Ishar Singh and Others*, and *Punjab State Electricity Board and Others Vs. Jagjiwan Ram and Others*, .

84. In *Deb Narayan Shyam and Others Vs. State of West Bengal and Others*, , Apex Court summarised as to when doctrine of equal pay for equal work would apply in the light of exposition of law laid down in catena of its earlier decisions and said:

"Large number of decisions have been cited before us with regard to the principle of "equal pay for equal work" by both sides. We need not deal with the said decisions to overburden this judgment. Suffice it to say that the principle is settled that if the two categories of posts perform the same duties and function and carry the same qualification, then there should not be any distinction in pay scale between the two categories of posts similarly situated. But when they are different and perform different duties and qualifications for recruitment being different, then they cannot be said to be equated so as to qualify for equal pay for equal work."

85. The above dictum has been followed in *Union of India (UOI) and Another Vs. Mahajabeen Akhtar*, .

86. In *Haryana State Electricity Board and Another Vs. Gulshan Lal and Others*, , the Court observed that same or similar nature of work, by itself, does not entitle an employee to invoke doctrine of equal pay for equal work. Qualification, experience and other factors would be relevant for the said purpose.

87. A three Judge Bench of Apex Court in *State of Haryana and Others Vs. Charanjit Singh and Others*, etc. etc., , said that the principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course the qualities and characteristics must have a reasonable relation to the object sought to be achieved. In service matters merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that a person has not gone through the process of recruitment in certain cases make a difference. If the educational qualifications are different then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a

Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justify a difference in pay scales. The earlier nomenclature designating a person as a carpenter or a craftsman is not enough to come to the conclusion that he was doing the same work as another carpenter or craftsmen in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by mere volume of work. There may be qualitative difference as regards reliability and responsibility.

88. This has been followed in Union of India (UOI) and Others Vs. Dineshan K.K., , Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S. Uppal and Others, and Food Corp. of India and Others Vs. Ashis Kumar Ganguly and Others, . Recently in State of Punjab and another v. Surjit Singh and others, 2009(11) Scale 149, after referring to its earlier judgments, the Apex Court has summarised the dictum in the following manner:

"In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay)."

89. It further says that grant of benefit of doctrine of "equal pay for equal work" depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity. The Apex Court in Surjit Singh (supra), also stressed upon that the principle has undergone a sea change and the matter should be examined strictly on the basis of the pleadings and proof available before the court to find out whether the distinction between two based on any relevant factor or not. The onus to prove lie on the person who alleges discrimination and claims enforcement of the doctrine of equal pay for equal work.

90. In State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai, , the court said that it is well-settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in designation or nature or quantum of work is not determinative for equality in the matter of pay scales. The court has to consider the factors like the source and mode of recruitment/appointment, qualifications, nature of work, the value thereof, responsibility, reliability, experience, confidentiality, functional need, etc. In other words the equality clause can be invoked in the matter of pay scale only

when there is a whole sale identity between the two posts.

91. In *State of Punjab and Another Vs. Surjit Singh and Others*, , the court said that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those, who are left out, of course, qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay. A mere nomenclature designating a person say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. A party who claims equal pay for equal work has to make necessary averments and prove that all things are equal.

92. In *State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai*, , the court said that doctrine of equal pay for equal work can be invoked only when the employees are similarly situated and that similarity of the designation or nature or quantum of work is not determinative of equality in the matter of pay scales and that the court has to consider several factors and only when there was wholesale identity between the holders of two posts, equality clause can be invoked and not otherwise.

93. In *A.K. Behra Vs. Union of India (UOI) and Another*, , the court, in paras 84 and 85, said:

"84. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed.

85. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive.""

94. In *State of Rajasthan and Others Vs. Daya Lal and Others*, , the court culled down following principles:

"Part time temporary employees in Government run institutions cannot claim parity in salary with regular employees of the Government on the principle of

equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with Government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

95. This decision has been followed in Union Territory Administration, Chandigarh and Others Vs. Mrs. Manju Mathur and Another, .

96. In Hukam Chand Gupta Vs. Director General, I.C.A.R. and Others, , the court observed that in order to attract doctrine of "equal pay for equal work", assessment of the nature and quality of duties performed and responsibilities shouldered by the incumbents is necessary. Even if, the two persons are working on two posts having same nomenclature, it would not lead to the necessary inference that the posts are identical in every manner.

97. Thus, the persons, who have not been engaged after undergoing process of recruitment, consistent with Articles 14 and 16 of the Constitution and are governed by different sets of terms and conditions, they cannot claim parity with those who have undergone such process.

98. Looking for the aforesaid principles laid down by Apex Court and exposition of law, I find that petitioners cannot claim to be similarly situated and place as regularly appointed Computer Operator/Data Entry Operator. Firstly, it is not shown that petitioners possess requisite qualifications or the same qualifications as are possessed by other regularly appointed persons. Secondly, petitioners have not faced regular selection competition in the matter of public employment as enshrined under Articles 14 and 16 of the Constitution, inasmuch as, vacancies were never advertised, no process of selection has undergone and it is not the case of the petitioners that they have undergone any such process of selection conducted by respondents or other authority. No letter of appointment has been issued to the petitioners like other regular employees. The petitioners are under no obligation, responsibility etc. as those who are regularly appointed and subjected to disciplinary proceedings also.

99. Since petitioners have not been appointed by respondents, they can only be discontinued while regularly appointed persons are liable to face disciplinary action involving punishment of dismissal and removal. It is well known in service jurisprudence that punishment of dismissal renders a candidate ineligible for future employment in the State service. Therefore, degree of responsibilities of regularly appointed persons and petitioners obviously are different. The petitioners cannot be said to be accountable in the manner as the regular employees are. Since petitioners have not been appointed they may be performing the work relating to computer, which may or may not be the same as is being performed by Computer Operator or Data Entry Operator or less or more. In some of the experience certificate it is said that petitioners have performed work related to computer and in some it is said that work and performance rendered by petitioners is that of Computer Operator/Data Entry

Operator. Thus, it cannot be said that petitioners are equally placed with other regular employees so as to attract doctrine of equal pay for equal work. The Collector, Budaun has rightly denied the said request of the petitioners and I find no fault therein.

100. All the three petitions, in view of the above discussion, are devoid of merit.

101. Dismissed. No costs