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(2006) 01 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26218 of 1991

Ram Krishna Mishra — APPELLANT

Vs

State of U.P., U.P. State Bridge Corporation Limited and Dy. Project Manager, Bridge Construction Unit U.P. Bridge Corporation Limited — RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:
Constitution of India, 1950 — Article 14, 141, 16, 16(1), 39

Citation : (2006) 7 AWC 7090

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Advocate : H.N. Singh and Bed Kant Misra, for the Appellant; N.C. Rajvanshi and M.K. Rajvanshi, for the Respondent

Final Decision : Dismissed

Judgement

Sabhajeet Yadav, J.—By this petition the petitioner has sought relief in the nature of writ of mandamus directing the respondents to pay the petitioner salary and allowances in pay scale of Rs. 1200/- to 2040/- at par with other Store Keepers working in the establishment of respondents and not to discriminate the petitioner from similarly situated other Store Keepers. The relief sought in the writ petition rests on the facts that the petitioner was appointed on the post of Store Keeper in U.P. State Bridge Corporation in scale of pay of Rs. 200-320 on 25.11.1974. In the year 1978 various appointments were made by corporation on the posts of Store Keepers but the appointees were placed in pay scale of Rs. 250/- to Rs.425/-. It is alleged that nature of duties and responsibilities attached to the posts Store Keepers appointed subsequently and at the time of appointment of the petitioner is same and identical. It is also alleged that the initial pay scale of petitioner of Rs.200-320 was revised in the time scale of pay of Rs. 360/- to 550/- whereas pay scale of another set of store-keepers of Rs. 250/- to 425/- was revised in scale of Rs.440/- to 710/- by the year 1979. On 7.3.1990 several new appointments on the post of store keepers were made by

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the respondents in the pay scale of Rs. 440/- to 710/-. In the year 1990, while accepting the recommendation of Pay Rationalization Committee the respondents have again revised the pay scale of Rs. 350/- to Rs.550/- in scale of Rs. 950/- to Rs. 1500/-whereas pay scale of Rs.440/- to 710/- revised in scale of Rs.1200/- to 2040/-. Feeling aggrieved against the said discrimination, the petitioner moved several representations before the authorities concerned but finding no favour with them ultimately compelled to file above noted writ petition.

2. A short counter affidavit has been filed on behalf of respondents in the writ petition, justifying the actions and inaction of respondents and in respect of grievances of the petitioner in para 4 and 5 of the counter affidavit the stand of the respondents are as under:

4. That instead of giving paragraph wise reply of the contents of the aforesaid writ petition, the deponent is giving a detailed reply of the main grievance raised by the petitioner in the aforesaid writ petitioner (i.e. whether he should also be paid salary & other allowances equal to those persons who are doing similar Nature of work). The petition can be decided on the basis of averments made hereinafter in this affidavit. If necessary and required by the Hon''ble Court, the respondents will file a detailed reply answering the writ petitioner parawise.

5. That main grievance raised by the petitioner in the aforesaid writ petition is that he has been appointed in the year 1974 in a pay scale of Rs. 200-250 EB-8-320, which has been later on revised/ raised to Rs. 360-550 and again revised to Rs. 950-1500 on the recommendation of the Pay Rationalisation Committee whereas other persons appointed as store keepers in Bridge Corporation were appointed in Pay Scale of Rs. 250-425 revised to Rs. 440-710 and further raised to Rs. 1200-2040 on the recommendation of the Pay Rationalisation Committee. Since all the store keepers working in Bridge Corporation are discharging similar type nature of work, hence the petitioner should also be given the pay scale as admissible to other store keepers working in the Bridge Corporation. In this connection, it is submitted the Bridge Corporation required store keepers having passed Diploma in Material Management. Accordingly, the Senior Personnel Officer of the U.P. State Bridge Corporation, wrote a letter dated 10.3.1978 to the Allahabad Polytechnic, Allahabad to send the list of the candidates, who have passed Diploma in Material Management and the proposed Pay Scale for these persons. The Training and Placement Officer of the Allahabad Polytechnic, Allahabad vide his letter dated 14.3.1978 sent names of 5 candidates, who have passed Diploma in Material Management and mentioned that Pay more than Rs.400/- per month is expected. On the basis of interview out of the 5 names sent by the Officer of the Allahabad Polytechnic, 3 persons were appointed on the post of Store Keeper in the Corporation vide office order dated 4.5.1978 in the pay scale of Rs. 250-425. However, only 2 candidates viz. Mahendra Kumar Pant and Shri Ram Shreya joined the post.

It is necessary to mention here that the petitioner has passed only Intermediate

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examination and does not possess Diploma in Material Management. The petitioner and other persons working as store keepers and possessing qualification equal to that of the petitioner, have been placed in the revised pay scale of Rs. 950-1500.

It is also relevant to mention here that 5 persons, who were working in the Public Works Department as Store Keepers in the Pay Scale of Rs. 454-600 have been appointed (Prati Niyukta) in the U.P. State Bridge Corporation in the Pay Scale of Rs. 440-710 vide office order dated 7.3.1990. These appointments have been made under the circumstances mentioned in the letter dated 31.3.1992 written by the Deputy Manager (Personnel) to the Assistant legal Advisor, U.P. State Bridge Corporation Limited, Lucknow. It is necessary to mention here that these persons were already getting salary in pay scale of Rs. 454-600 in Public Works Department and therefore, they were appointed in the Pay Scale of Rs.440-710 so that they may not suffer loss in salary. (Their Pay was protected) due to special reasons mentioned in the letter dated 31.3.1992, referred above. True copy of the letter dated 31.3.1992 of the Deputy Project Manager (Personnel) alongwith enclosures is filed herewith and marked as Annexure No.C.A.-1 to this affidavit.

3. In reply to the averments made in the aforesaid counter affidavit the petitioner has filed rejoinder affidavit whereby he has brought on record the office order of further revision of pay scale of store keepers and other employees vide office order of Managing Director dated 23.8.2000 with effect from 1.5.2000. The stand taken in the writ petition has been reiterated again in para 6 of the rejoinder affidavit as under :

6. That in reply to averment made in paragraph no. 5 of the counter affidavit it is submitted that the petitioner was initially appointed in the year 1974 in pay scale 200-250 EB-8-320, which was subsequently revised in pay scale 360-550 and again in pay scale 950-1500 and at present in pay scale 3050-4590 whereas an other set of store keeper who was appointed in the year 1978 was initially appointed in pay scale 250-425 which was revised in pay scale 410-710 and again in pay scale 1200-2040 and at present in pay scale 4000-6000. It is not in dispute that the petitioner and other store keeper in pay scale 440-710 which was revised again and again discharged the same duties on the post of store keeper. The only difference which is being claimed is that the qualification for appointment of the store keeper in pay scale 440-710 was Material Management Diploma whereas the petitioner is intermediate is wholly misconceived as the petitioner was appointed in the year 1974 at that time the qualification of the post of store keeper was only Intermediate and mere enhancement of basic minimum qualification of a post subsequent to appointment of the candidate will not disentitle the person already working on the post and the benefit of higher pay scale as changed in the qualification of a post is always prospective will not be retrospective it is settled principle of law that minimum qualification is to be given at the time of initial appointment and subsequent change in the

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qualification for a particular post will not affect the person who has already appointed and since undisputedly the petitioner is discharging the same duty as other store keeper and all the store keepers under the Bridge Corporation have been assigned the same duty there is no justification of making difference in pay scale so far the appointment on the deputation a store keeper from P.W.D. concerned they have been posted in pay-scale 440-710 though they are only intermediate not fulfilling the qualification of material management diploma only because they were already working in P.W.D. and since the petitioner was working in the Bridge Corporation and those persons have come in Bridge Corporation to discharge the same function as is being discharged by the petitioner, the petitioner is also entitled for the same pay scale. The total effect of arbitrary action of the respondent is that though the petitioner is discharging the same duty and he is senior most store keeper in the Bridge Corporation but he is getting less pay scale than his junior who were appointed or absorbed in the corporation after the appointment of the petitioner. The present revise pay scale of all the employee of the Bridge Corporation as has been adopted by circular of the Managing Director dated 23.8.2000 is being filed herewith and is marked as Annexure No.-l to this rejoinder affidavit.

4. I have heard Sri H.N. Singh, learned Counsel for the petitioner and Sri Manik Chandra Misra, Advocate holding the brief of Sri N.C. Rajvancy, learned counsel for respondents. Besides oral submission the learned counsel for the petitioner has also given written submission in support of the case of petitioner.

5. The thrust of the submission of learned counsel for the petitioner in nutshell is that the petitioner and other store keepers who were appointed in higher pay scale referred herein before are discharging similar and identical duties and responsibilities, the only justification given for differential treatment in pay scale between the petitioner and other set of store keepers, is difference in their qualification for respective posts. The store keepers having Intermediate qualification are given lesser pay scale whereas other set of store keepers appointed subsequently having Diploma in Polytechnic with Material Managements are given higher pay scale and some other store keepers appointed on the aforesaid post who were drawn from P.W.D. of Government on deputation, in protection of their pay scale at par with their parent department have also been given higher pay scale though they have qualification of only Intermediate. Except the aforesaid factor respondents did not point out any other factor in justification of the impugned action. Thus in given facts and circumstances of the case, the respondents have no justification to discriminate the petitioner from other sets of store keepers working in the same establishment of the respondents in respect of their pay scale revised from time to time and he is also entitled for same pay scale as given to other set of store keepers on principle of equal pay for equal works. In support of his submission, learned counsel for the petitioner has also placed reliance upon the decisions rendered in Bhagwan Dass and Others Vs. State of Haryana and Others, Grih Kalyan Kendra Workers'' Union Vs. Union of India and others, , Bhagwati Prasad

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Vs. Delhi State Mineral Development Corporation, , Umesh Kumar and Ors. v. Joint Secretary, U.P. Govt. and Ors. (1990) 3 U.P.L.B.E.C. 1925 and Rajesh Mohan Sukhla and another Vs. Union of Indian and another,

6. Learned counsel for the petitioner has further urged that in given facts and circumstances of the case differential treatment given to the petitioner from other set of store keepers in pay scale only on the ground of difference in qualification or higher qualification has no reasonable nexus with object of classification as such classification made between store keepers working in the corporation in this regard is without any reasonable basis and contrary to the provisions of Articles 14 and 16(1) of the Constitution of India. In support of his submission, he has placed reliance upon the decision rendered by Hon''ble Apex Court in H.C. Sharma and Others Vs. Municipal Corporation of Delhi and Others, Punjab State Electricity Board, Patiala and Anr. v. Ravinder Kumar Sharma and Ors. AIR 1987 S.C. 367 : 1986 L.I.C. 2076 Union of India (UOI) and Another Vs. R. Iyyaswamy and Others, a decision of Full Bench of Rajasthan High Court rendered in Shanker Lal Verma and Ors. v. The Rajasthan State Electricity Board 2000 (1) E.S.C. 150 and a Division Bench decision of this Court rendered in Aruvendra Kumar Garg v. State of U.P. and Ors. 2002 (2) E.S.C. 148.

7. Thus on the basis of rival contention and submission of learned counsel for the parties and materials available on record, it is necessary to point out that it is not in dispute that at the time of appointment of the petitioner on the post of store-keeper, he possessed minimum qualification prescribed for the post as Intermediate. The similar nature of duties and responsibilities of both the sets of store-keepers and volume and/or identical quantity of work has also not been disputed by the respondents in such a circumstances of the case as to whether difference in qualification on account of subsequent change would justify the differential treatment in pay scale of petitioner is a question required to be considered by this Court. In this connection it is necessary to point out that before I proceed to deal with the decisions cited by learned counsel for the petitioner in support of his case, I would like to discuss legal aspect of the matter in some detail herein after.

8. In Randhir Singh Vs. Union of India (UOI) and Others, the doctrine of "equal pay for equal work" has first time received consideration of Hon''ble Apex Court, wherein in para 6,7 and 8 of the decision the Hon''ble Apex Court held as under:

6...We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not he treated differentially in the matter of then-pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the

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same.

7...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, reasonbly 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.

8. It is true that the principle of ''equal pay for equal work'' is not expressly declared by our Constitution to he a fundamental right. But it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive principle of State Policy. ''Equal pay for equal work for both men and women'' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation.... Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle ''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 the different scales of pay do identical work under the same employer.

9. In P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, , third pay commission classified senior draftsman in the Ministry of Defence production in two groups and recommended higher pay scale for one group not on any merit-cum seniority basis but only on seniority cum-fitness basis and there was no denial any where that both these types of draftsman did the same work and discharge the same function, duties, therefore, grouping was found contrary to the Article 14 of the Constitution. In para 15 and para 17 of the decision the Hon''ble Apex Court has held as under:

15. The case on hand is much stronger than the facts of the Randhir Singh Vs. Union of India (UOI) and Others, In that case, the drivers belonged to two different departments. In this case, the Senior Draftsmen, divided into two groups are in the same department doing identical and same work. It is not a case of different grades created on the ground of higher qualification either academic or otherwise or an entitlement by any other criteria laid down. The justification for this classification is by the mere accident of an earlier entry into service. This cannot be justified.

17. For the purposes of the case on hand, it is sufficient to note that the classification between two groups of Senior Draftsmen is without any basis. They do the same work, they perform the same duties, and as such the ratio of the

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decision in Randhir Singh''s case applies to this case with greater force. The Order passed by the Government of India on 27th January, 1978, implementing this classification violates Article 14 of the Constitution and has to be struck down and we do so....

10. In M.P. Singh and Others Vs. Union of India (UOI) and Others, Hon''ble Apex Court held that among the employee of Central Bureau of Investigation, there are two classes of officials, deputationists and non-deputationist among Sub-inspectors, Inspectors and Deputy Superintendent of Police. There has been discrimination between the two groups with regard to the payment of special pay. In para 10 of the decision Hon''ble Apex Court held as under:

10. From the foregoing discussion it emerges that the Special Pay that was being paid to all the officers in the cadre of Sub-inspectors, Inspectors and Deputy Superintendents of Police in the Central Investigating Units of the Central Bureau of Investigation has nothing to do with any compensation for which the deputationists may be entitled either on the ground of their richer experience or on the ground of their displacement from their parent departments in the various States, but it relates only to the arduous nature of the duties that is being performed by all of them irrespective of the fact whether they belong to the category of the ''deputalionists'' or to the category of the ''non-deputationists''. That being the position, the classification of the officers working in the said cadres into two groups, namely, deputationists and non-deputationists for paying different rates of Special Pay does not pass the test of classification permissible under Articles 14 and 16 of the Constitution of India since it does not bear any rational relation to the object of classification.

11. In Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, the differentiation in pay scale of Stenographers in custom and Excise Department and their counter part in Central Secretariat before report of Fourth Pay Commission sought to be justified on ground of dissimilarity of responsibility, confidentiality and relationship with public and it was held that there is rational nexus with the object. In para 7 and para 11 of the decision Hon''ble Apex Court held as under:

7. Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the 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 such value judgment is made bonafide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right.

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11. In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. 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. The problem about equal pay cannot always he translated into a mathematical formula. If it has a rational nexus with the object to be sought for as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to he left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived at malqfide either in law or in fact. In the light of the averments made and in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved.

12. In Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, of the decision Hon''ble Apex Court held as under:

12. ...It is well settled 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 Commission, etc. But that is not to say 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, realize 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 performances 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....

15. It was then submitted that the Third (State) Pay Commission had failed to notice the upward revision of the educational requirement for direct recruitment as Sub-Registrars. It was rightly pointed out that one of the inputs for pay determination is educational requirement for the post. The higher the educational qualification the better would be the quality of service rendered and the end-result would in the ultimate be far more satisfactory. That indeed cannot he disputed. But educational qualification is only one of the many factors which has relevance to pay fixation. The complexity of the job to be performed and the responsibilities attached thereto are entitled to great weight in determining the appropriate pay scale for the job. Prima facie there appears substance in the grievance of the Sub-Registrars that while the minimum educational qualification for direct entry into the post has been periodically raised, the level of pay scale for the post has not undergone any change, whatsoever. We think the State Government ought to re-examine the question of the appropriate pay scale for Sub-Registrars in the light of the above and if it decides to upgrade the pay scale it may also consider if the pay scales of their superiors in the hierarchy need an

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upward revision.

13. In State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, while taking note of earlier decisions in para 12 of the decisions, the Apex Court held as under :

12. 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 Mukherji, J. (as he then was) in Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, 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 malafides, either in law or in fact (seen the approach adopted in Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, . 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.

14. In State of U.P. and Ors. v. Ministerial Karmchari Sangh AIR 1998 S.C. 303 the difference in pay scale between Lower Division and Upper Division Assistant in Secretariat and Directorate of Information was found justified on the ground of difference in mode of recruitment, qualification and channel of promotion. In para 18 of the decision Hon''ble Apex Court has held as under:

18. On facts, we have seen that the mode of recruitment, qualification, promotion are totally different in the case of appointments of Lower Division and Upper Division Assistants in the Secretariat and in the case of Lower Division and Upper Division Assistants (Clerical Cadre) in the Directorate of Information. This ground is sufficient for fixing different scales....

15. In State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, while taking note of earlier decisions in para 10 of the decision the Apex Court has held as under :

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

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keeping in view the prevailing financial position and capacity of the stale 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 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 justiceable 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. Even in a case where the court holds the order passed by the government to be unsustainable then ordinarily a direction should be given to the state government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the government to implement the same. As noted earlier, in the present case the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the state secretariat and the other in the central secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre.

16. Thus, from a close analysis of law laid down by Hon''ble Apex Court it is clear that though the doctrines of "equal pay for equal work" has not been expressly declared and recognised as fundamental right but certainly it has been recognised as our constitutional goal to be achieved by the government. The principle of ''equal pay for equal work'' is a concomitant of Article 14 and is deducible from Articles 14 and 16 of the Constitution and may be properly applied to the cases of unequal scale of pay based on no classification or irrational classification. It is well known that there can be and there are different grade in service with varying qualification for entry into a particular grade. The higher qualification for higher grade which may be either academic qualification or experience based on length of service reasonably sustain the classification of officer into two grade with different scale of pay. The educational requirement for the post is one of the well-recognised input for determination of pay structure. The higher educational qualification, the better would be quality of service rendered and the end result would in the ultimate be far more satisfactory that indeed cannot be disputed. But the educational qualification is only one of the many factors, which has relevance to pay fixation. The persons holding same post, performing similar work however, if the mode of recruitment, qualification and promotion is different, it would be sufficient ground for fixing different pay

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scales. Nomenclature of post or designation may be same but duties and responsibilities and qualities of work may vary from post to post and institution to institution. The application of doctrine depends upon the nature of work done. It cannot be judged by 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. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact''s, some less, it varies from nature and culture of employment. Although it is well settled that equation of posts and determination of pay scale is primarily function of the executive and not the judiciary and therefore, normally the courts are not enter into task of job evaluation which is generally left to expert bodies like pay commission etc. because of the reason that the task of job-evaluation is difficult and time consuming which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake some times on account of want of relevant data and scales for evaluating performance of different groups of employees. This would call for constant study of external comparisons and internal relativities on account of changing nature of job requirements and various factors have to be kept in view while evaluating the different jobs. But that does not meant to say that the courts have no jurisdiction and aggrieved employees have no remedy, if they are unjustly treated by arbitrary state action or inaction.

17. At this juncture it is necessary to point out that since the doctrine is as much as part of Articles 14 and 16(1) of the Constitution it follows that the concept of reasonable classification and all other rules evolved with respect to Articles 14 and 16 come into play wherever complaint into infraction of rules falls into consideration. Before 1 proceed further it would be useful to refer some decision of Hon''ble Apex Court where the scope of Article 14 has been considered by Hon''ble Apex Court in reference to Article 16 of the Constitution of India.

18. In Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others, of the decision a Constitution Bench of Hon''ble Apex Court observed as under :

12. The relevant law on the subject is well settled and does not require further elucidation. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a

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reasonable relation to the nature of the office or officers to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and, in that event a court may hold that there is no reasonable nexus between the differences and the requirement. In short, whether there is a reasonable classification or not depends upon the facts of each case and the circumstances obtaining at the time the recruitment is made. Further, when a State makes a classification between two sources of recruitment, unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable and violative of Article 16 of the Constitution: see Banarsi Das and Others Vs. The State of Uttar Pradesh and Others, , Banarsi Das and Others Vs. The State of Uttar Pradesh and Others, ; All India Station Masters'' and All India Station Masters'' and Assistant Station Masters'' Association, Delhi and Others Vs. General Manager, Central Railway and Others, , All India Station Masters'' and Assistant Station Masters'' Association, Delhi and Others Vs. General Manager, Central Railway and Others, and The General Manager, Southern Railway Vs. Rangachari, .

19. In State of Mysore and Another Vs. P. Narasing Rao, , a Constitution Bench of Hon''ble Apex Court has held that classification of two grades of tracers based on educational qualification, one group of matriculate tracer with a higher pay scale and other for non-matriculate tracers with a lower pay scale is not violative of Article 14 or Article 16 of the Constitution. For ready reference the observation made in para 4 of the decision is as under :

4. The relevant law on the subject is well settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion.... It is true that the selective test adopted by the Government for making two different classes will be violative of Articles 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laving down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such.... In our opinion, therefore, higher

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educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Articles 14 and 16 of the Constitution.

20. In The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , a rule which provided that only Degree holders in the cadre of Assistant Engineers shall be entitled to be considered for promotion to the next higher cadre of Executive Engineers and Diploma holders Assistant Engineer shall not be eligible for such promotion was challenged as violative of equal opportunity clause. A Constitution Bench of Hon''ble Apex Court repelled the challenge holding that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. In para 37, 38, 39, 40 and 55 of the decision Hon''ble Apex Court has observed as under :

37....Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

38. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It can not extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

39. Judged from this point of view, it seems to us impossible to accept the respondents'' submission that the classification of Assistant Engineers into Degree-holders and Diploma-holders rests on any unreal or un-reasonable basis. The classification, according to the appellant was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly correlated to it for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend.

40. On the facts of the case, classification on the basis of educational

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qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification....

55. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate articles 14 and 16 of the Constitution and must be upheld.

21. In Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, , A Constitution Bench of Hon''ble Apex Court while explaining the equality clause enshrined under Article 14 in matters relating to employment under Art. 16(1) of the Constitution in para 24 and 26 of the decision has held as under:

24. ...The court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course or realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated. "The Equal Protection of the Laws", 37 California Law Review, 341.

26. But we have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not he allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J. in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, "the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterized by dijferent and distinct attainments." Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would

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inevitably end in substituting the doctrine of classification for the doctrine of equality; the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others,

Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality.

22. While holding that the educational qualification forming valid basis of classification in the matters relating to employment, in para 28 of the aforesaid decision Hon''ble Apex Court has further held that but to permit discrimination based on educational attainments not obligated by nature of duties of higher post is to stifle the social thrust of equality clause as under :

28. Now, there are three decisions of this Court where educational qualifications have been recognised as farming a valid basis far classification. In State of Mysore and Another Vs. P. Narasing Rao, this Court held that higher educational qualifications such as success in S.S.L.C. examination are relevant considerations for fixation of higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in Mysore State one for matriculate tracers with higher pay scale and the other for non-matriculate tracers with lower pay scale cannot be said to be violative of Article 14 or 16. So also in The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another, a Central health Service Rule requiring that a Professor in Orthopaedics must have a post-graduate degree in particular specialty was upheld on the ground that the classification made on the basis of such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". A very similar question arose in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, where a rule which provided that only degree holders in the cadre of Assistant Engineers shall be entitled to be considered for promotion to the next higher cadre of Executive Engineers and diploma holders shall not be eligible for such promotion, was challenged as violative of the equal opportunity clause. This Court repelled the challenge holding that "though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications " and "the rule providing that graduates shall he eligible for such promotion to the exclusion of diploma holders" was not obnoxious to the fundamental guarantee of equality and equal opportunity. But from these decisions it cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid, irrespective of the nature and purpose of the classification or the quality and extent of the differences in the educational

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qualifications. It must be remembered that "life has relations not capable always of division into inflexible compartments". The moulds expand and shrink. The test of reasonable classification has to he applied in each case on its peculiar facts and circumstances. It may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purpose of achieving efficiency in public service, only degree holders in engineering shall be eligible for promotion and not diploma or certificate holders. That is what happened in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, and a somewhat similar position also obtained in The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another, . But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota. ''The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, a non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate Supervisors. That would clearly amount to denial of equal opportunity to him. To permit discrimination based on educational attainments not obligated by the nature of the duties of the higher post is to stifle the social thrust of the equality clause. A rule of promotion which while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors would clearly be calculated to destroy the guarantee of equal opportunity. But even so, we do not think we can be persuaded to strike down the Andhra Pradesh Rules in so far as they make differentiation between graduate and non-graduate Supervisors. This differentiation is not something brought about for the first time by the Andhra Pradesh Rules. It has always been there in the Engineering Services of Hyderabad and the Andhra States. The graduate Supervisors have always been treated as a distinct and separate class from non-graduate Supervisors both under the Hyderabad Rules as well as the Andhra Rules and they have never been integrated into one class. Under the Hyderabad Rules, the pay scale of graduate Supervisors was Rs. 176-300 while that of non-graduate Supervisors was Rs. 140-300 and similarly, under the Andhra Rules the pay scale of non-graduate Supervisors was Rs. 100-250, but graduate Supervisors were started in this pay scale at the stage of Rs. 150/- so that their pay-scale was Rs. 150-250. Graduate Supervisors and non-graduate Supervisors were also treated differently for the purpose of promotion under both sets of Rules. In fact, under the Andhra Rules a different nomenclature of Junior Engineers was given to graduate Supervisors. The same differentiation into two classes also persisted in the reorganized State of Andhra Pradesh. The pay-scale of Junior Engineers was

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always different from that of non-graduate Supervisors and for the purpose of promotion, the two categories of Supervisors were kept distinct and apart under the Andhra Rules even after the appointed day. The common gradation list of Supervisors finally approved by the Government of India also consisted of two parts, one part relating to Junior Engineers and the other part relating to non-graduate Supervisors. The two categories of Supervisors were thus never fused into one class and no question of unconstitutional discrimination could arise by reason of differential treatment being given to them.

23. Thus from a close analysis of the observations of Hon''ble Court made in aforesaid cases referred herein before namely Govind Dattatray Kelkar and Ors. (supra), P. Narsinga Rao (supra), Triloki Nath Khosa(supra and Mohammad Shujat Ali (supra) it is clear that Article 16 of the Constitution postulates that there shall be equality of opportunity for all citizens in the matter relating to employment or appointment to any office under the state or to promotion from one office to higher office thereunder. Article 16 is only an instance or incident of the guarantee of equality enshrined under Article 14. It effectuates the doctrine of equality in the sphere of public employment running from appointment through promotion and all other incidents of employment including payment of salary and other post retiral benefits of service. However this constitutional code of equality does not mean that same laws must be applicable to all persons. The doctrine of reasonable classification recognizes that legislature may classify for the purpose of legislation, but requires that classification must be reasonable. A reasonable classification is one, which includes all persons or things similarly situated with respect to the purpose of law. There should be no discrimination between one person or thing and another, if as regards the subject matter of legislation their position is substantially the same. The Hon''ble Apex Court has further cautioned that fundamental guarantee is of equal protection of the laws or equality before the law and the doctrine of classification is only subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society, therefore, it should not be carried to a point where instead of being a useful servant, it become a dangerous master. Therefore, mini-classifications based on micro-distinctions would be overdoing and undoing to the equality concept. In P. Narsinga Rao''s case (supra) it has been held that educational qualification can form valid basis for classification and higher educational qualifications are relevant considerations for fixation of higher pay scale, similarly persons appointed directly and by promotion, although were integrated into common class of Assistant Engineers, but they could for the purpose of promotion to cadre of Executive Engineers be classified on the basis of educational qualification and the Rule providing that the graduate shall be eligible for such promotion to the exclusion of Diploma holder was upheld as it was found not violative to Articles 14 and 16 of the Constitution, in T.N. Khosa''s case (supra). Thus, it was further held that the classification based on educational qualification with a view for achieving administrative efficiency cannot be said to rests on any fortuitous circumstances, but in Mohd.

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Shujat Ali''s case (supra) Hon''ble Apex Court has held that to permit discrimination based on educational attainments not obligated by nature of duties of the higher post is to stifle the social thrust of the equality concept. It was further observed that a rule of promotion which while conceding that non-graduate supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate supervisors as against non-graduate supervisors would clearly be calculated to destroy the guarantee of equal opportunity, even then the Hon''ble Apex Court did not strike down the rule in question so far as they make differentiation between graduate and non-graduate supervisors on the ground that this differentiation was not something brought about for the first time by Andhra Pradesh Rules. It has always been there in the Engineering services of the Hyderabad and Andhra States. The graduate supervisors have always been treated as distinct and separate class from non-graduate supervisors both under Hyderabad Rules as well as the Andhra Rules and they have never been integrated into one class. Under Hyderabad Rules the pay scale of graduate supervisors was Rs. 176-300 while that of non-graduate supervisors was Rs. 140-300. Similarly under Andhra Rules the pay scale of non-graduate supervisors was Rs. 100-250 but graduate supervisors were started in the pay scale of Rs. 150/- so that their pay scale was Rs. 150-250. Both the groups of supervisors were also treated differently for the purpose of promotion under both sets of rules.

24. Thus in view of settled legal position there can be no scope for doubt to hold that educational qualifications can form a valid basis for classification, and higher qualification which may either academic qualification or experience based on length of service reasonably sustain the classification of employee into two grades with different scale of pay. Therefore, it is necessary to examine that as to whether given facts and circumstances of the case changed educational qualification for the post of store keeper is sufficient justification for grant of higher pay scale to other set of store keepers who possessed such amended qualification? But before I proceed to examine the issue on the basis of aforesaid settled legal position, it is also necessary to examine the submission of learned counsel for the petitioner at this stage.

25. At this juncture, before coming to the submissions of learned counsel for petitioner and dealing with the case law relied upon, I would like to refer three decisions of Hon''ble Apex Court where the doctrine of binding precedent has been dealt with by Hon''ble Apex Court in some detail.

26. In case of Krishena Kumar and Others Vs. Union of India and others, while considering the doctrine of precedent in para 18 and 19 of the decision Hon''ble Apex Court observed as under :

18. The doctrine of precedent that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required.

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"This was what Lord Selborne said in Caledonian Railway Co. v. Walker''s Trustees 1882)(7) AC 259 and Lord Halsbury in Quinn v. Leathern 495 (1901) ACC (502) Sir Frederick Pollock has also said: "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision.

19. In other words, the enunciation of the reason or principle upon which a question before a Court has been decided is alone as a precedent. The ratio decidendi is the under-lying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case, which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration, if it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, 4lh Edn. Vol.26 para 573:

The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal''s duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment all are taken as forming the ratio decidendi.

27. In Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, some observations made in para 7 of the decision of Hon''ble Apex Court are as under:

7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has ''declared law'' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An ''obiter dictum'' as distinguished from a ratio decidendi is an observation by Court, on a legal question suggested in a

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case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur, and AIR 1973 S.C. 794). When Supreme Court decides a principle it would be the duty of the High Court of a subordinate Court to follow the decision of the Supreme Court. A judgment of the High Court, which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See Narinder Singh Vs. Surjit Singh, and Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another,

28. In the Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, the Hon''ble Apex Court has held that the judgments of courts are not to be construed as statute. The observations must be read in context they appear. For ready reference the observations of para-19 of the decision are reproduced as under:

19. Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid''s theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton 737 1951 ACC 761 Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

29. Now at this juncture it is necessary to examine the decisions cited by learned counsel for the petitioner in support of his case before proceeding further.

In case of Bhagwan Dass and Others Vs. State of Haryana and Others, relied by

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learned counsel for the petitioner, the supervisors appointed under Adult Education Scheme required to stay for whole day in village and to visit Informal Education Centre in the morning and Adult Education Centre in the night and they are also required to go on tour and to remain at head quarter once a week from 9 A.M. to 4 P.M. . The Hon''ble Apex Court in given facts and circumstances of the case has held that they are not part time employee but whole time functionaries and can not be denied pay equal to that of supervisor appointed on regular basis, irrespective of fact that they were appointed under a temporary scheme particularly when once it is shown that nature of duties and functions discharged and work done is similar. Thus, this decision of Hon''ble Apex Court has been rendered in different factual backdrop and have no bearing with the question in controversy involved in this case.

30. In Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, Hon''ble Apex Court has held that the initial minimum educational qualification prescribed for different post is undoubtedly a factor to be reckoned with but it is so at the time of initial entry into service. Once the appointment of petitioners were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective post on the ground that they lack prescribed educational qualification. This case is also distinguishable on facts, wherein claim of daily rated employee for regular appointment and confirmation on the post was under consideration, and they were allowed pay scale of regular employee but no controversy with regard to different pay scale on the ground of different educational qualification was under consideration of before Apex Court. Contrary to it emphasis was on their nature of appointment as on daily wage basis. Therefore, this case also can be of no assistance to the case of petitioner. The decision of Division Bench of this court rendered in Umesh Kumar and Ors. v. Joint Secretary, U.P. Govt. and Ors. has also no material bearing with the question in controversy involved in instant case and does not lend any support to the case of petitioner.

31. In Grih Kalyan Kendra Workers'' Union Vs. Union of India and others, the question for consideration before the Supreme Court enter-alia was as to whether employees of Grih Kalyan Kendra Union which was a registered society are discriminated in the matters relating to pay and other emoluments with other similarly placed employee or not? In given facts and circumstances of the case on the basis of recommendation of former Chief Justice in earlier proceeding before Apex Court, it was held that there being no other government or semi-government employee who can be regarded as being situated similarly as the employee of Kendra with whom comparison can be made, therefore, claim of petitioner must fail on that score. Accordingly this decision also can be of no assistance to the case of petitioner.

32. In Rajesh Mohan Sukhla and another Vs. Union of Indian and another, the petitioners were youth co-coordinators appointed in Nehru Yuva Kendra. Initially

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it was controlled by Ministry of Human Resources Development, Department of Youth Affairs and Sports of Central Government The grievance of petitioners was that they were not paid same salaries, allowances and other benefits as were being given to the coordinators appointed by the Central Government whereas they were discharging the same function. A Division Bench of this court has held that the only difference in two categories of employees was in the mode of recruitment though they were doing the same work and discharging same function as such can not be discriminated in the matter of payment of salaries. Thus the aforesaid decision of Division Bench of this Court is also distinguishable on facts and can be of no assistance to the case of petitioner.

33. In H.C. Sharma and Ors. case (supra) the relief was sought to declare petitioners graduate Engineers as separate category amongst junior Engineers and give them equal quota like Diploma holder Junior Engineers out of 50% quota for promotion as Assistant Engineers. It was held by the Hon''ble Apex Court that this cannot be done except by carving out two classes in the same category of junior Engineers on the basis merely of their qualification which is not justified in given facts and circumstances of the case. It was also observed that when both the categories of junior engineers were held eligible for promotion on the post of Assistant Engineer irrespective of their such educational qualification, in such situation fixation of any separate quota for promotion on the basis of merely their educational qualification would be without any reasonable basis. Thus, the aforesaid decision has no bearing with the question in issue and does not lend any support to the case of petitioner.

34. In Punjab State Electricity Board and Anr. v. Ravinder Kumar Sharma and Ors. (supra) the fixation of quota for promotion on the post of Line Superintendent of both types of Linemen and promotion of Diploma Holder Linemen who were junior to the petitioner on the basis of quota fixed for diploma holder were found arbitrary, particularly when they were performing same kind of work and duties and there was common seniority list for both Diploma holder and Non-Diploma holder Linemen in the Punjab State Electricity Board. In this case while placing reliance upon earlier decision rendered in Shujat Ali''s case (supra) Hon''ble Apex Court has held that where Diploma holder Linemen and non-Diploma holder Linemen were regarded as eligible and fit for promotion on the post of Line Superintendent and they belong to same and single cadre of service, having joint seniority list, in that eventuality it is difficult to see how consistently with the claim of equal opportunity any differentiation can be made between them by laying down a separate quota of promotion for each category. Thus in such a facts and circumstances of the case, it is not conceivable as to how the aforesaid decision of Hon''ble Apex Court, lends any support to the case of petitioner.

35. In Union of India and Anr. v. R. lyyaswamy and Ors. (supra) the validity of Rule 2(1)(a) of the Assistant Engineers (Akaswani and Doordharshan Group-B posts) Recruitment (Amendment) Rules 1985 was under consideration. In para 8

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of the decision Hon''ble Apex Court has held as under :

8. As noted by the Tribunal, minimum qualification for direct recruitment as Engineering Assistant is diploma in Engineering or B.Sc.degree with Physics as the main subject. All those who are recruited as Engineering Assistants constitute one single cadre. There is no difference as regards their pay or other emoluments on the ground that they are degree holders or diploma-holders. It is nobody''s case that the nature of duties and responsibilities of diploma-holders is different from those of the degree-holders. Thus no distinction is recognised between graduates and diploma holders at the level of Engineering Assistants and they are all considered as equals. The Tribunal was, therefore, wrong in proceeding on the basis that the degree-holders and diploma-holders enter the cadre of Engineering Assistants through different channels and that at the stage of entry, the requisite qualifications are also different. Even when the Engineering Assistants are considered for promotion to the higher post of Senior Engineering Assistants no distinction is made on the ground of their educational qualifications. The cadre of Senior Engineering Assistants is also a single undivided cadre and in the matter of pay, duties and responsibilities, all Senior Engineering Assistants are treated equally. Except that the post of Assistant Engineer is a Group ''B'''' gazetted post, no other reason could he advanced by the learned counsel appearing for the contesting respondents justifying a necessity to make a distinction between a graduate Engineer and a diploma-holder while considering Senior Engineering Assistants for promotion to that post. Simply because a certain percentage of the posts of Assistant Engineers was reserved for graduate Engineers in the past, that did not create any vested right in their favour. If merit and efficiency are the considerations while making promotions to the higher posts, there is no reason why a certain percentage of posts of Assistant Engineers should be reserved for graduate Engineers and they should not be made to compete with diploma-holders. A degree in Engineering is a better educational qualification than a diploma in Engineering; and, therefore, while competing for the post of Assistant Engineers, the graduate Engineers will have an edge over the diploma-holders. By adopting the new policy contained in Rules 2(1)(a) and (b) of the Amendment Rules, the Government appears to have made an attempt to balance the advantages arising out of merit and experience based on long service. The 25 per cent promotion quota rule enables those Senior Engineering Assistants who have rendered long years of service but due to certain reasons like age etc. do not desire to appear for the competitive examination but are otherwise fit for being promoted to such higher post. The policy underlying Rules 2(1)(a) and (b) of the Amendment Rules of 1985, therefore, cannot be regarded either as discriminatory or arbitrary. It is also not correct to say that by providing for promotion by selection by Departmental Promotion Committee against the 25 per cent promotion quota what the Government has done is to make unequals equal. As stated earlier, the diploma-holders were treated as equals in all respects in the subordinate cadres of Senior Engineering Assistants and Engineering Assistants.

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Thus from a close examination of aforesaid observation made by Hon''ble Apex Court, there is nothing to indicate that aforesaid decision lends any support to the case of petitioner hence it is also of no avail.

36. The decision of a Division Bench of this court rendered in Aruvendra Kumar Garg''s case (supra) has also dealt with a question of prescription of separate quota fixed for promotion on the post of Assistant Engineer from amongst Diploma holder and degree holder junior engineers based on qualification and held as violative of Articles 14 and 16(1) of the Constitution of India. In case this Court held that since Diploma holder Junior Engineers and Degree Holder Junior Engineers both are eligible for promotion on the post of Assistant Engineer hence having regard to the facts and circumstances of the case, fixation of separate quota for them would be contrary to the Articles 14 and 16 of the Constitution. Thus the above noted decision of this court in my considered opinion hardly lends any support to the case of petitioner.

37. The decision of Full Bench of Rajasthan High Court rendered in Shanker Lal Verma and Ors. case (supra) has also dealt with different issue wherein one of the question for consideration was whether the changed eligibility criteria including educational qualification sought to be introduced by amending the rules for promotion in question is to be seen on the date of occurrence of vacancy or any anterior date. Having regard to the facts and circumstances of the case the full Bench has held that since the amendment in rules is prospective in operation therefore it would not cover the vacancies occurred earlier in time. Thus this decision also hardly have any bearing to the question in issue and can be of no avail to the case of petitioner.

38. Now applying the aforesaid principle enunciated herein before in given facts and circumstances inasmuch as having regards to the factual back ground of the case it is necessary to point out that this differentiation in pay scale of two groups of store keepers is not something new brought about for the first time in recent past or in last one or two revisions of pay scales. It has always been there since very inception of creation of two different grades in store keepers in the corporation. It is not in dispute that petitioner was appointed as store keeper on 25.11,1974 in pay scale of Rs. 200-320. At that time the educational qualification for the said post was only intermediate. The petitioner was only intermediate at the time of his appointment on the aforesaid post. It appears that in the year 1978 the qualification for the post was changed and polytechnic Diploma in Material Management has been prescribed as essential qualification for the post, a different grade in the same service cadre was created in higher pay scale of Rs. 250-425 and appointees having amended qualification were placed in higher pay scale of Rs. 250-425. On revision of pay scales from time to time both the categories of store-keepers have always been treated as distinct and separate class. They were never fused together and integrated into one class. As revealed from undisputed historical back ground of the service that the pay scale of store keepers having Intermediate qualification initially was in scale of Rs. 200-320

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which was revised in scale of Rs. 360 to 550 in the year 1979 and again in the year 1990 revised in scale of Rs. 950 to 1500, whereas the initial pay scale of other sets of store keepers having qualification of Diploma in Material Management was revised from Rs. 250 to 425 to Rs. 440 to 710 in year 1979 and again in the year 1990 from Rs. 440-710 to Rs. 1200-2040. Lastly on 23.8.2000 the pay scale of Rs. 950 to 1500 revised in scale of Rs. 3050 to 4590, whereas pay scale of other set of store keepers Rs. 1200 to 2040 has been revised in scale of Rs. 4000 to 6000/- w.e.f. 1.5.2000. Thus the aforesaid two categories of store keepers have never been fused and integrated into one class, therefore, no question of unconstitutional discrimination could arise by reason of differential treatment being given to them in the fixation of their pay scale and its revision from time to time and no fault can be found in fixation of higher pay scale to the store keepers having Diploma in Material Management, as their better qualification have reasonable nexus with their duties and responsibilities and quality of work on their respective posts.

39. At this juncture it is also necessary to point out that since the plea of ''equal pay for equal work vis-a-vis alleged discrimination has to be examined with reference to Article 14 of the Constitution, therefore, the burden is upon the petitioner to establish by placing material before the court that the said classification is unreasonable and violative of Articles 14 and 16 of the Constitution. This burden in my considered opinion, the petitioner has failed to discharge. It is no doubt true that the petitioner''s allegation in the writ petition that he is discharging same duties and responsibilities as being discharge by other set of store keepers remains uncontroverted by the respondents in their counter affidavit but same alone cannot form sufficient basis to issue any writ, or order, directing the respondents to fix the pay scale of petitioner at par with other set of store keepers particularly when the respondents have taken specific stand in their counter affidavit that on account of change in qualification for the post, the higher pay scales were given to the persons who were appointed subsequently having better and amended qualification as held by Hon''ble Apex Court in para 8 of the decision rendered in Haryana Civil Secretariat Personal Staff Association''s case (supra). It is well settled that higher educational qualification are atleast presumptive evidence of higher mental equipment and higher the educational qualification, the better would be the quality of service rendered and it is one of the input in pay determination, therefore, unless the petitioner establishes that such change in qualification has no rational nexus with duties and responsibilities of post and nature and quality of work to be performed by the store keepers by placing relevant and positive materials before the court, no writ or direction sought by the petitioner can be issued in his favour. Admittedly the petitioner did not challenge the prescription of amended qualification for the post in question. He could not legitimately challenge the same unless it is shown that it was condition of his service and changed subsequently disadvantage to him. In this connection it is necessary to point out that qualification for recruitment is not condition of service as distinct from the

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condition of service it comes under the basic rules of recruitment as held by Hon''ble Apex Court in Keshav Chandra Joshi and others etc. Vs. Union of India and others, in para 32 of the decision in context of relaxation of rules regarding the conditions of service rather it is sole domain of employer to change the qualification for the post suiting to the need of duties and responsibilities attached to the post based on job evaluation and judicial scrutiny cannot be extended to that extent, not for the reason that court has no jurisdiction to look into the matter and inquire into it but because of the judicial restraint the courts need not to enter into field assigned to legislature or rule making authority as it would be otherwise substitution of opinion by the court in the field demarcated to legislature and rule making authority in whose favour there is also presumption that every factor which is relevant or material has been taken into consideration while formulating the policy underlying the rules. Secondly it is also not disadvantage to the petitioner for simple reason that on account of subsequent change in rules of recruitment in respect of qualification no vested right of the petitioner has been taken away as his services were neither terminated nor salary earlier drawn by him was reduced. Therefore, it can hardly be a case of prejudice caused to the petitioner on account of aforesaid change in qualification. Thus in my considered opinion unless the petitioner placed relevant material before the court that change in qualification was not required by expediency or need of public service and has no rational nexus with the duties and responsibilities for the post the fixation of high pay scale for the appointees having higher and better qualification cannot be found faulty.

40. Apart from it, it is also not the plain or simple case of the parties that minimum educational qualification for the post of store-keepers in the establishment of respondents still remains as intermediate and mere attainment of Diploma in Polytechnic automatic entitles the appointees higher pay scale irrespective of nature of duties and responsibilities attached to the post and difference in quality of work to be performed by such appointees. Although such classification merely based on qualification has also been upheld by Hon''ble Apex Court in atleast four cases referred herein before but particularly in P. Narsinga Rao''s case (supra) and T.N. Khosa''s case (supra)? mere attainment of higher educational qualification was held as reasonable basis for classification and as valid justification for grant of higher pay scale, in P. Narsinga Rao''s case (supra) and for the promotion in T.N. Khosa''s case. However, in Mohd. Shujat Ali''s case also the rule recognising classification based on higher qualification for fixation of higher pay scale for graduate supervisors and lower pay scale for non-graduate supervisors and fixation of their quota for promotion was also found justified in the aforesaid case. The case in hand is on stronger footing to the aforesaid cases. In this case from the perusal of averments made in the counter affidavit it is clear that the qualification for the post was changed in the year 1978 as it was found expedient in the interest of public service. Therefore, submission of learned counsel for the petitioner that this change in qualification subsequently for appointment on the post has no reasonable basis and has no

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rational nexus with the purpose of classification and correlation with duties and responsibilities of post and have no material bearing with the quality of work cannot be countenanced and has to be rejected. Accordingly fixation of higher pay scale for appointees subsequent to the appointment of the petitioner having changed and better qualification referred earlier cannot be said to be discriminatory and violative of Articles 14 and 16 of the Constitution.

41. Now only question remains to be considered that persons who have been appointed subsequent to the appointment of the petitioner by taking them on deputation from P.W.D. of Government, they have also possess only intermediate qualification but they were given higher pay scale as given to the Diploma holder Store keepers. In this regard the justification given in the counter affidavit is that the deputationist have come to join the corporation on their special terms and they were drawing salary in higher pay scale in their parent department, therefore, they were appointed in higher pay scale and for protecting their salary in higher pay scale, their salary has been fixed in higher pay scale. In my considered opinion, there can be no illegality in it. It is well recognised rule of deputation in service laws that deputationist are allowed more salary than that of even their parent department as prescribed by rules governing the terms and conditions of deputation. Some time they are allowed some additional money in lump-sum over and above their pay scale or salary from their parent department as compensation of transfer of their service from their parent department, therefore, on absorption of their service in corporation, if their higher pay scale is protected by the corporation, no fault can be found in it and same cannot furnish any ground to attack as discriminatory action as they are treated to be distinct and different class altogether. Thus the submission of learned counsel for the petitioner in this regard appears to be wholly misplaced and has to be rejected.

42. Thus in view of aforesaid discussions and observations, the writ petition is devoid of any merits hence liable to be dismissed. Accordingly the writ petition fails and dismissed.

There shall be no order as to costs.

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