

(1998) 10 GAU CK 0009

In the Gauhati High Court

Case No : Civil Rule No"s. 84, 92 and 279 of 1992

Ramendra Nath Dey

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 07-10-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (1998) 4 GLT 126

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : A.M. Lodh, A. Chakraborty, A. Ghosh, P.K. Paul and M. Dutta, for the Appellant; U.B. Saha, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—By this common judgment, these Civil Rules (No. 84 of 1992, 92 of 1992 and 279 of 1992) are proposed to be disposed of at the very outset, it is necessary to clear the fact of each case separately.

2. In Civil Rule No. 84 of 1992, the Petitioner Shri Ramendra Nath Dey, Senior Lecturer of Government Music College, Agartala, has claimed the pay scale recommended by the University Grants Commission for the post of Assistant Professor with effect from 1.12.1977 and the senior scale of pay with effect from 1.12.1985 along with the prayer for a direction to the Respondents not to appoint any other person as Vice-Principal of the said College except the Petitioner. The Petitioner who is a Master-Degree holder in Classical Vocal Music having to his credit the masters degree in Bengali and bachelors degree in Education, joined the post of Senior Lecturer in the said College on 30.4.1977 for imparting lessons in degree course in music. Initially, the college was affiliated with the Calcutta University, but on constitution and establishment of the Tripura University, the B-Music of the college was affiliated with it with effect from 29.10.1987. In 1986, Government of Tripura extended the University Grants Commission scales of pay to the College Teachers" working in the State of

Tripura. The Petitioner claimed the U.G.C. scale meant for the Assistant Professor with effect from 1.12.1977 (post of Senior Lecturer has been re-designated as Assistant Professor) and, on completion of 8 years from 1.12.1977, the senior-scale meant for the Assistant Professors with effect from 1.12.1985 as per U.G.C. recommendation. The claim of the Petitioner is mainly based on the judgment of this Court passed in Civil Rule No. 78 of 1980 wherein the Court while holding that the B-Music course of the Government Music College is a degree level course of the college affiliated to the Tripura University also recommended the U.G.C. pay scale to the Principal on the ground that denial thereof to the Principal was arbitrary and contrary to the provisions of Article 14 of the Constitution. The Petitioner being one of the three members of the teaching staff, taking the said judgment as ground-swell, has staked his claim. The Petitioner, being senior most lecturer of the college also sought for a direction for consideration of his candidature for promotion to the post of Vice-Principal.

3. In Civil Rule No. 92 of 1992, Smt. Ashima Bhattachagte and in Civil Rule No. 279 of 1992 Smt. Namita Deb Choudhury seek relief by way of a direction for their absorption in the post of Assistant professor of the College in the B-Music Wing with consequential benefits of U.G.C. scale with effect from their respective date of joining.

4. The Petitioner in Civil Rule No. 92 of 1992 having her Masters Degree from Rabindra Bharati University, Calcutta and, at the relevant time, working as Assistant Teacher in Maharani Tulshibati Giris Higher Secondary School, was selected and deputed to the Music college to conduct the classes in the streams of Rabindra Sangeet, Western Music and Kamataka music in the B-Music Wing and, accordingly, she joined the college on deputation on 9.12.1977.

5. The Petitioner in Civil Rule No. 279 of 1992, was initially appointed as Lecturer in Melagarh Higher Secondary School, West Tripura and was working at the relevant time in Government Women's College when she was deputed to the Government Music College where she had joined on 5.12.1977 to impart lessons in Bengali which is one of the objects prescribed.

6. The Petitioner in Civil Rule No. 84 of 1992 stands on different footing in as much as he was directly appointed as lecturer in the Music College while the Petitioners in other two writ petitions were deputed from their parent departments while working as lecturer/Astt Teacher in Higher Secondary Schools. In view of this difference in the standing of the Petitioners, the case of the Petitioners in Civil Rule No. 84 of 1992 is proposed to be dealt with separately.

7. It would appear from para 6 of the counter submitted by the state that the Music college (B-Music wing) was deemed to have been affiliated to the Tripura University with effect from 2.11.1987. The status of this college as a Degree College and its affiliation to the University came in question in an earlier writ petition (Civil Rule No. 78 of 1980) and this petition was disposed on 6.1.1989 directing payment of U.G.C. scale as per U.G.C. recommendation to Shri

Tripurendra Bhowmik, the writ Petitioner, who was then working as Principal of the college. Acting upon the said judgment, the State Government extended the scale as per U.G.C. recommendation to the Principal by addendum dated 31st May, 1993 inserting necessary provisions in the Government Notification No. F.1(499)-DHE/88 dated 31.3.1989. It is, therefore, clear that the State Government accepted in principle the ratio laid down in the said case to extend the U.G.C. scale to the Principal of the College. This sets at rest the question regarding the status of the music college (B-Music Wing) and this question cannot be re-opened for decision afresh by this Court.

8. Shri A. Chakraborty, learned senior Counsel for the Petitioner, argued that since the judgment delivered by a Division Bench of this Court was accepted and acted upon by the Government, they cannot now deny their obligation under the judgment to extend the U.G.C. scale to the writ Petitioner. He has also referred to an observation made by the Division Bench in para 5 of the judgment to the effect that the affidavit-in-reply filed by the State Government on 4.1.1989 in the said writ petition clearly showed that three members of the teaching staff including the Principal of the Music college were conducting B-Music course and denial of University Grants Commission pay-scale to the Petitioner(Principal) was, therefore, discriminatory and arbitrary. He sought for extension of U.G.C. recommendation on the basis of said ratio.

9. In para 6 of the affidavit-in-opposition dated 24.3.1995, the State Government denied that the applicant was appointed as teacher of Degree College (B-Music) as no post of teacher was created either for diploma course or degree course. It is further averred that the Petitioner being a teacher like other writ petitioners cannot be redesignated as an Assistant Professor with the benefit of corresponding U.G.C. scale. But the statement by the Government in their counter does not reflect the correct position. From Annexure-1, at page 11, we find that Shri Ramendra Nath Dey, the Petitioner, was offered the post of Senior Lecturer in Vocal Music and was directed to report for duties to the Principal Government Music College, Agartala. Annexure-1, in unambiguous language, shows that the Petitioner was at the very first instance appointed as Senior Lecturer in Vocal Music in the Government Music College. It is not understood as to how the Government in their affidavit could say that the status and position of the Petitioner is of a teacher like other writ Petitioners. Submission made by the learned Government Advocate is, therefore, liable to be rejected (in view of Annexure-1) as the status of the writ Petitioner as Senior Lecturer with effect from the date of his appointment is evident in Annexure-I.

10. The Government vide Notification dated 31st March, 1989, extended the U.G.C. scales to the college teachers of Tripura with effect from 1.1.1986. While implementing the U.G.C. recommendation in respect of college teachers, the Government excluded from its purview certain colleges including the Government Music College. Para 2 of the Government Notification of 1989 reads as follows:

2. The Govt, of Tripura have now decided to adopt and implement the revised

pay scales for the teachers of Govt. Degree Colleges, Govt. College of Education, Regional College of Physical Education and Tripura Government Law College with effect from 1.1.1986. These orders shall not apply to the teachers of Tripura Engineering College, Govt. Music College, Basic Training College and Govt. College of Art and Craft.

11. It would appear from the above that the government by way of policy decided to implement the revised pay scales for the teachers of Degree Colleges in the State of Tripura. But the teachers of the Government Music College which is also a Degree College so far it relates to the B-Music wing have been excluded. Obviously, the Government Music College imparting lessons in music at degree level and being affiliated to the Tripura University cannot be excluded from the purview of the scheme (Annexure-R/1) In para 7 of the Annexure-R/1 we find the reason for such exclusion. Para 7 of Annexure-R/1 read as follows:

7. The revised scales of pay are applicable only to the teaching staff of the colleges in the categories as mentioned in para 2 above, who having been appointed as such on whole time basis were in position on 1.1.86 or thereafter and were or have been drawing pay in the U.G.C. scales, 1973 against sanctioned posts.

The revised scales will not be applicable to the teachers who were or have been drawing pay in colleges in Non-U.G.C scales.

12. It would appear from para 7 reproduced above that the revised scales were not given to the teachers who were or have been drawing pay in colleges in non-U.G.C. scales. This means that the college teachers of the State of Tripura who were not already in receipt of U.G.C scales were kept outside the purview of the revised recommendation brought into force in the year 1986. This is, indeed, a policy matter of the State Government and therefore, it requires consideration whether it would be just and proper for this Court to interfere with the policy decision. Law is, however, settled that interference with the policy decision will be permissible when only the Petitioner succeeds in making out a case that he has been arbitrarily deprived of the scale while other persons similarly situated have been allowed.

13. Before embarking upon further discussion, it is considered imperative to dispose of a technical objection raised by Mr. U.B. Saha, learned Government Advocate controverting the claim of the Petitioner on the ground that the claim of the Petitioner is barred by the principle of res-judicata as a similar question raised by the Petitioner in Civil Rule No. 195 of 1997 was decided against him. The Petitioner Shri Ramendra Nath Dey filed the aforesaid Civil Rule No. 195 of 1997 for quashing the seniority list. Recruitment Rules and the appointment of the Principal on the ground of inconsistency with the guidelines prescribed by the University Grants Commission. The pay scale given to the Principal which was less than that U.G.C. scale in force at that time was also one of the grounds for assailing the Recruitment Rules. The learned Single Judge, after a threadbare

dismission, dismissed the writ petition thereby rejecting the contention of the writ Petitioner that the Rules and the seniority list prepared thereunder were violative of U.G.C. norms. According to Mr. U. B. Saha, learned Government Advocate, the applicability of the U.G.C. norms in respect of the Government Music College having been rejected by the learned Single Judge in the writ petition filed by the Petitioner (Civil Rule No. 195 of 1997), the Petitioner is therefore, estopped from raising the same question again in the instant writ petition.

It would appear from the aforesaid judgment that the learned Single Judge relying upon the decision of the Supreme Court in *R.L. Bansal and others Vs. Union of India and others*, observed that the Rules made under proviso to Article 309 of the Constitution, being legislative in character, cannot be struck down merely because the Court thinks that these are unreasonable. But the question relating to unreasonable and arbitrary exclusion of the Lecturers of the Music College from the purview of U.G.C scale was not an issue in that case and the decision of that case was rendered without reference to any specific prayer for implementation of such recommendation in respect of the Petitioner. Therefore, this aspect of the matter which was not covered by the aforesaid judgment remains open for adjudication. Another special feature is that the instant petition was filed in 1992 whereas the judgment discussed above relates to Civil Rule No. 195 filed in 1997. A decision pronounced in a subsequent writ petition not exactly on the same subject and on a different context, cannot be construed as a bar. Even, it cannot operate as constructive res-judicata so as to disentitle this Court from adjudicating the question relating to unreasonable and arbitrary refusal of the U.G.C. scale.

14. Now let us revert back to the claim of the Petitioner based on the earlier judgment passed in Civil Rule No. 78 of 1980 (Annexure-3). The said judgment was rendered by a Division Bench of this High Court and for the purpose of appreciating relevance thereof, it is necessary to reproduce here-in-below certain excerpts from the said judgment:

3. It is not disputed that the Tripura Government Music College is conducting B. Music course along with other diploma and certificate course. It is also not diluted that for the purpose of B. Music course the College was affiliated to the Calcutta University in the year 1977 and now to the Tripura University.

5. The decision of the Government is absolutely clear and unambiguous. The Government decided to grant University Grants Commission pay scales to teachers of all colleges affiliated to University. From the supplementary affidavit filed by the Petitioner we find that recently State Government decided to grant the said pay scales even to the members of the Regional College of Physical Education affiliated to University for the purpose of degree as well as diploma. That being the position, we do not find any justification for not granting the University Grants Commission pay scale to the present Petitioner of the college as the college is conducting B-Music Course. and it is affiliated to the University. Mr.

Majumder, has raised another contention that as the college is also conducting diploma and certificate course the Petitioner is not entitled to get the pay scale as these courses are not affiliated to any University. In reply, Mr. Lodh has rightly submitted that this is an additional work conducted by the college in question and for that reason the present Petitioner cannot be denied of his right to get the pay scale of the University Grants Commission. From the affidavit-in-reply filed by the state on 14.1.89 we find that three members of the teaching staff including the Principal of the Music College are conducting B. Music course. This is the admitted position. So, we are constrained to hold that denial of University Grants Commission pay scale to the present Petitioner is discriminatory and also arbitrary and is hit by Article 14 of the Constitution.

15. The above decision irresistibly leads to the conclusion that the senior Lecturers of the Music College who are similarly situated with the Principal cannot be denied the U.G.C. scale unless they fall short of U.G.C. norms, or otherwise disqualified. So for the Petitioner Shri Dey is concerned, the materials on record show that he is a Master Degree holder in Bengali and Music and also possess a Bachelors degree in Education. Annexure-4 issued by the Joint Secretary to the Government of Tripura itself shows that the Petitioner Shri Dey, on consideration of his qualification and other eligibility was allocated to the degree course in the Government Music College along with Smiti Ashima Bhattacharjee, the writ Petitioner of Civil Rule No. 92/92. This allocation was made on fulfilment of the eligibility criteria prescribed by the University Grants Commission. This is evident from the penultimate para of the office order referred to above. Therefore, the eligibility of the Petitioner for entitlement to the U.G.C. scale also stands cleared from the order passed by the Joint Secretary, Education Department. That apart, there is no effective challenge to the claim that the Petitioner is a whole-time teacher. This narrows down the scope of enquiry in this case to the sole question whether non-receipt of U.G.C. scale form before would be an acceptable ground to keep them out of the purview of the scheme.

16. Mr. Chakraborty, learned senior counsel put much emphasis on the judgment in C.R. 78 of 1980. But the learned Government Advocate controverted the claim pleading that the judgment delivered by this Court in the foresaid Civil Rule was contrary to the principles laid down by the Supreme Court in *State of West Bengal and others Vs. Tropical School Employees' Union and others*, His further argued that the aforesaid judgment was a judgment in personam and, as such decision of that case is not relevant for the purpose of adjudication of the dispute in the instant writ petition.

17. In *State of West Bengal and others Vs. Tropical School Employees' Union and others*, the Supreme Court did not endorse the decision of the High Court in extending the benefit of pay scales prescribed by the U.G.C. to the non-teaching medical staff and also to class IV Government employees. In the instant case, we are dealing with a duly appointed Senior lecturer who has been discharging his duties as a teacher in Music College since 1977. It is beyond one's

comprehension as to how the decision rendered by the Supreme Court in respect of non-teaching staff could be imported to apply to a member of teaching staff of a degree level college. The analogy sought to be introduced is undoubtedly wide on the mark and has no significance.

18. In Union of India (UOI) and Another Vs. P.V. Hariharan and Another, the Supreme Court sounded a note of caution against interference with the pay scale recommended by the Pay Commission. It would appear from para 5 of the judgment that it was a case where the tribunal interfered with the pay scales without adequate reasons and without being conscious of the fact that fixation of pay is not the function of the Tribunal. In that case, the pay structure recommended by the Pay Commission was unsettled. Here we are not dealing with the recommendations by the U.G.C. The State Government while implementing the recommendations excluded the Government Music College from the purview of U.G.C. scale and propriety of this very order is in challenge. The decision in this case will rest on the sole question as to whether the State action in keeping the lecturers of the Government Music College out of the purview of the U.G.C. scale is unreasonable and arbitrary. The structure of the scales recommended by U.G.C. was also not in dispute in the earlier writ petition. Nor it is disputed here. I am, therefore, unable to agree with the learned Govt. Advocate that the decision in Civil Rule No. 78 of 1980 was in any manner contrary to the law laid down by the Apex Court.

19. Learned Government Advocate further argued that the judgment delivered by the Division Bench in Civil Rule No. 78 of 1980 is a judgment in personam and the decision rendered therein cannot be relied upon to extend the benefit to the Petitioners. In the aforesaid judgment, the Division Bench accepted Music College(B-Muse Wing) as a Degree level College and this decision is undoubtedly final and decisive so far as the status of the College is concerned. The claim of the Petitioner for U.G.C. scale will, however, depend upon his eligibility vis-a-vis the validity of the provisions of para 2 of the Government Notification dated 31st March, 1989. Therefore, the decision of this Court in Civil Rule No. 78 of 1980, whether in personam or in rem, has immense significance in determining the claim of the Petitioner.

20. The documents on record unquestionably point out that Shri Dey was duly appointed as Lecturer of the Music College and has been serving as such since 1977. He also fulfils the U.G.C. criteria required for such posts. The State Govt while extending the scale to the similarly circumstanced teachers, excluded the Petitioner from the purview of U.G.C. scale. Even, he was not considered when the U.G.C. Scale was extended to the Principal of the College under direction of the Court. This undoubtedly amounts to discrimination. It is true that differential treatment "per se" does not constitute violation of Article 14, but absence of reasonable basis for such differentiation does. The reason for such discrimination as is available in para 7 of the Government Notification of 1989(Annexure-R/1) does not appear to be adequate. It is evident that while all the teachers in Degree

Colleges in the State have been given the benefit of the U.G.C. scale. The eligible teaches of the Music College (B-Music including the writ Petitioner have been left out only on the ground that they were not covered by the U.G.C. scale from before. That apart, the plea of financial constraint as is evident from Government file produced before the Court to justify such differential treatment does not augur well with the concept of equal protection. Differential treatment, without any reasonable basis, is impermissible and has to be taken care of. The State action which is ex facie bereft of judicial attachment cannot but be deprecated as arbitrary. Had the exclusion been on the ground of lack of qualification and experience, the question would have been altogether different. The manner in which and the grounds for which the distinction has been made undisputedly shows that the decision making process was influenced by consideration other than legal and judicial. Annexure-R/1, the executive order embodying the arbitrary decision of the State cannot clog the process of justice. The prayer for extending the U.G.C. scale has to be allowed despite the fact that the Scheme Annexure-R/1 has not been specifically challenged.

21. The other prayer of the Petitioner for a direction not to fill up the post of vice- Principal by any person other than the Petitioner himself is not maintainable on the ground that the authorities are free to proceed to fill up the post of Vice-Principal in accordance with the Recruitment Rules. If the Petitioner is within the consideration zone for promotion to said post, his candidature will naturally be taken by the authority concerned for consideration for promotion to the said post in accordance with the provisions of the rules. Hence, no direction to this effect is felt necessary.

22. Now, let us refer to Civil Rule No. 92 of 1992 filed by Smti. Ashima Bhattachajee. While working as Asstt. teacher in Maharani Tushibati Girls' H.S. School she was deputed to work in the Music College in her existing pay and allowances vide order dated 1.12.1977. The deputation order reads as follows:

No. F. 3(3)-Music/77 Government of Tripura Education Directorate Dated, Agartala, the 1/12/1977. MEMO

Subject: Deputation of Assistant Teacher Smti. Ashima Bhattacharjee(MA in Music), Asstt Teacher, M.T. Grils' H.S. School, Agaitala is temporarily deputed to work in the Govt Music College, Agartala with her existing pay and scale of pay plus admissible allowances until further orders. She will report for her duties to the Principal, Govt. Music College. Agartala, Immediately.

Sd/- Director of Education Tripura.

23. In the same manner the Petitioner of Civil Rule No. 279 of 1992. Smti Namita Deb Choudhury, an Assistant Teacher was also deputed to the Music College in ho-existing pay and allowances sometime in the year 1977.

24. It would appear from the deputation orders that they were deputed in their capacity as Assistant teachers to work in the Govt Music College since 1977, both

the writ Petitioners have been working in the Music College without any interruption. It would, further, appear from the pleading and connected documents that both of them are also duly qualified to hold the post of Senior Lecturer as per U.G.C. norms. The certificates issued by the Principal (available at Annexure-3 A in case of Smti Ashima Bhattachajee and Annexure-3 in case of Smti Namita Deb Choudhury) would show that both of them were attached to the B-Music section of the college and have been imparting lessons in the degree course of the College since the day they joined the College on deputation. Besides, Smti Ashima Bhattachajee was also appointed by the Controller of Examinations of Calcutta University as examiner for the B-Music course Examination in 1980, 1983 and 1987. Situated thus, it has to be decided whether the writ Petitioners who had put in 15 years of service at the time of institution of the writ petitions and by now, completed 20 years and whose services have been utilised in the degree course of the Music College all through could be denied the U.G.C. pay contrary to the dictum "equal pay for equal work" and refused absorption as senior lecturers (Asstt. Professor) as claimed by them. There is no denial to the fact that both the Petitioners submitted representations for their absorption without loss of time. Smti. Bhattacharjee, submitted her representation in the month of August, 1991 while Smti. Namita Deb Choudhury submitted her representation on 20th July, 1977 and also on subsequent occasions for absorption. But the Respondents did not think it necessary to inform them of the decision, if any, taken on such representations. On the other hand, their services were utilised in the college without being recalled back to the lending department. Even they were not given proforma promotion in their parent department. All these may be read as demonstrative of the intention on the part of the Respondents not to repatriate the Petitioners to their parent departments. But now, exhibiting utter ignorance of the circumstances which compelled the Petitioners to work in the Music College for such a long time, the Respondents are resisting their claim for absorption and U.G.C. scale without any reasonable ground while other teachers similarly circumstanced have been given the said benefits. This will get further crystallized if we take note of Annexures-10 and 10-A of the supplementary affidavit. The State Government has, in pursuance of a judgment passed by this Court, appointed some Assistant Teachers as lecturers/ Assistant Professors of the Government Degree College. Because of its importance for the purpose of this case, one of such notifications is reproduced below:

No. F.1(5-51)-DHE/79 Government of Tripura Education Department Dated Agartala the 21.11.1995 NOTIFICATION

With reference to Government of Tripura, Education Department's Notification No. F.1(411)-DHE/88(L-G) dated 30.5.1989 issued in pursuance of the judgment passed by the Hon'ble Gauhati High Court. Agartala Bench, the Governor is pleased to appoint the following Assistant teachers as mentioned in Column No. 2 of the Schedule below as Lecturers/Assistant Professors of Colleges as mentioned in Column No. 3 in the pre-revised scales of pay as mentioned

against each in Column No. 4 with other admissible allowances with effect from the date as mentioned against each of their names in Column No. 5 and post them temporarily to the colleges as mentioned column No. 6 of the Schedule:

SI No. Name of Assistant Teacher Post against which appointed Pre-revised scale of pay Date of appointment with retrospective effect Degree College to which posted

1 2 3 4 5 6

1. Smti. Nibha Roy Choudhury Lecturer Higher secondary) Bani Bidyapith Lecturer Rs. 275-650/- 16.9.68 M.B.B.S. College Agartala.

2. Sri Dwipendra Ch. Roy, Asstt. Teacher, Khowai H.S. School, Khowai Lecturer Rs. 275-650/- 16.8.98 Govt. College of Education, Agartala

3. Sri Malay Kr. Saha Assistant Teacher, Pallimangal H.S. School Agartala Assistant Professor in Bengali Rs. 700- 1600/- 17.12.77 Govt. College of Education, Agartala

25. It would appear from above notification that some Assistant Teachers were appointed as teachers/assistant Professors in various subjects retrospective effect in M.B.B College and Government College of Education. This retrospective appointment shows that they were on deputation to the said Colleges. These colleges are covered by the U.O.C. scale as per Annexure-R/1. Therefore, there cannot be any reason for the Government to deny the same benefit to the writ Petitioners, namely Shrimati Ashima Bhattacharjee and Smti. Namita Deb Choudhury.

26. The learned Government Advocate cited some decision of the Supreme Court to counter the claim of the Petitioners. In the case of The Regional Manager and Another Vs. Pawan Kumar Dubey, it would appear that the Supreme Court did not approve of sudden reversion of the Petitioners without reasonable explanation regarding existence of any administrative exigency for such reversion. The Supreme Court also observed that before Article 16 is held to have been violated by some action, there must be a clear demonstration of discrimination between one Government servant and another, similarly placed. The principles highlighted in the case does not salvage the cause of the Respondents.

27. Learned Government Advocate vehemently argued that the Petitioners are now serving in the Government Music College by virtue of the stay order granted by the Court and, as such, they cannot have any mileage out of their service after stay was granted by the Court. The order for maintenance of status quo was passed by this Court on 20.12.1995 in case of Smti. Ashima Bhattacharjee and on 4.1.1996 in case of Namita Deb Choudhury after hearing the learned Government Advocate. The Petitioners joined the Music College in 1977 and by the time the stay orders were passed, they had completed about 18/19 years of service. This is indeed a long period and has to be given due waitage.

28. During pendency of the writ petition, vide Memorandum dated 25th March, 1996(Annexure-4), the Petitioner Smti. Ashima Bhattachajee was directed to be released from the Government Music College on reversion to join M.T. Girls H.S. School. This order passed on 12.3.1996 was subsequently withdrawn by order dated 25.3.1996. This is suggestive of the fact that the Respondents are bent upon in reverting the writ Petitioners to their parent department while they appointed other teachers on deputation to M.B.B College and Government College of Education as lecturers and Assistant Professor. The refusal of such benefit to the writ Petitioners without any reasonable basis sounds a note of discord. This approach bereft of judicial sanctity is ex facie discriminatory. In fact, the services of the Petitioners have been utilised by the State Government in the degree course for more than a decade without least reservation. Denial of their claim for absorption and better pay at this far end of their service career without any cogent reason is undoubtedly demonstrative of malice unsustainable in law.

29. In T. Shantharam Vs. State of Karnataka and Others, the Supreme Court disapproved repatriation of an employee on deputation to another department to a higher post where he had worked uninterruptedly for about 32 years. According to the Supreme Court, such reversion was not justified.

30. Learned Government Advocate further placed reliance on the decision of the Supreme Court regarding right of deputationists and their regulation by referring to decisions in Ratilal B. Soni and others Vs. State of Gujarat and others, , D.M. Bharati Vs. L.N. Sud and others, , State of Haryana and others Vs. Piara Singh and others etc. etc., , and 1996 VIII AD 680 (SC) The decision in Ratilal (supra) cannot be invoked in this case for the reason that it was a case of deputation of members of Panchayat Service of the State of Gujarat to the State Government and the judgment rendered in that case was on a different context distinguishable from the factual matrix of this case. The decision in D.M. Bharati(Supra) mainly related to lapses on the part of an employee removed from service in challenging the order of removal within a reasonable time. The decisions in Piara Singh(Supra) and Bishamber Dutta(Supra) have been rendered on different context. These decisions are of no help to the Respondent-state.

31. Here, we may refer to the decision rendered in Bhagwan Dass and Others Vs. State of Haryana and Others, Where in para 13, in the backdrop of fact situation of that case, the Apex Court held that when the duties and functions discharged and work done by supervisors appointed on regular basis and those appointed on temporary basis are similar, the fact that the scheme under which temporary appointments are made is a temporary scheme and posts are sanctioned on an annual basis regard to the temporary nature of the scheme cannot be a factor for violating "equal pay for equal work" doctrine. According to Supreme Court, whether appointments are for temporary periods against posts in temporary scheme is irrelevant and, when it is shown that the nature of the duties and functions discharged and the work done is similar, the doctrine of "equal pay for

equal Work" is to be applied. Similarly view is also available in Swapan Kumar Choudhary and others Vs. Tapas Chakravorty and others, The writ Petitioners have been working as Lecturers in the degree course of the Music College since 1977. The duties and functions discharged by them are equal to other Assistant teachers who were also on deputation and appointed as lecturers/Assistant Professors with retrospective effect. It is, therefore, not understood as to how the Petitioners could be discriminated with their counterparts in other colleges. In my considered opinion, it will be a miscarriage of justice if the discrimination is allowed to continue.

32. After careful consideration of the case laws referred to by both the parties and considering the circumstances of these cases, I am of the opinion that a case of differential treatment without reasonable basis has been made out. As such, the Petitioners deserve absorption and pay benefit.

33. In the result, the writ petitions are allowed. The Respondents are directed to issue necessary orders within 3 months giving benefits claimed by the writ Petitioners in their respective petitions in terms of the observations made here-in-before.

No order as to costs.