

(1999) 06 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No's. 4053 of 1984, 107/85, 4795, 5025, 5133, 5410, 5719 and 5720/86, 974, 3317, 3585 and 4044/87, 4813/95, 4268/88, 2520/89, 3334/91 and 1959/92

Saurashtra Safai Kamdar Vikas Samitee

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Citation : (2000) 2 GLR 1476

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : M.O. Joshi, S.K. Zaveri, K.G. Vakharia, Mehul Vakharia, N.K. Majmudar, for the Appellant; Manisha Lavkumar, instructed by M.G. Doshit and Co. for Respondent Nos. 1 and 2, for the Respondent

Judgement

M.S. Shah, J.—In this group of petitions, the petitioners have challenged certain Government Resolutions making modifications in the Schemes of appointing educated unemployed from the Socially and Educationally Backward Class communities and also from amongst the educated unemployed from the most backward of the Scheduled Castes as Pracharaks for the purpose of propagating the schemes formulated by the Government for upliftment of the Socially and Educationally Backward Classes and also for upliftment of the most backward of the Scheduled Castes and also the subsequent Government decisions to abolish the Schemes during pendency of these petitions.

2. In view of the recommendations made by the Commission headed by late Mr Justice Baxi (popularly known as the Baxi Commission) for granting various benefits and reliefs to the Socially and Educationally Backward Classes (82 such communities were classified as such by the Baxi Commission), by Government Resolution dated 15.3.1979 the State Government in the Labour Welfare and Backward Classes Development Department formulated the scheme of appointing educated unemployed from amongst the Socially and Educationally

Backward Classes (hereinafter referred to as the "SEBC") as Pracharaks for propagating the schemes for upliftment of the SEBC. The accompaniment of the said resolution provided that the scheme would be known as the scheme for giving honorarium to the educated unemployed amongst the SEBC. The object of the scheme was to pay honorarium to the educated unemployed persons from the above communities with the idea that they do not get disheartened during the period of unemployment, they get some encouragement for putting in work and in the meantime can get another regular employment. The selection was to be made from out of the candidates belonging to the SEBC possessing the qualification of SSC or Graduation and of age upto 23 years. The selected candidate was to be assigned work in the area of his residence and was to report at the office of the District Social Welfare Officer where he would be assigned the work and duties. The resolution prescribed the following duties :-

- (i) to collect data and to undertake scrutiny of the particulars of each of the Socially and Educationally Backward Classes;
- (ii) To get their (of Socially and Educationally Backward Class Communities) children admitted to schools;
- (iii) to educate atleast 5 children;
- (iv) To conduct adult education classes;
- (v) To propagate family planning and to bring atleast two cases every month.
- (vi) To propagate the benefits of afforestation;
- (vii) To propagate the schemes for development of the Socially and Educationally Backward Classes and to go to the concerned Government Offices;
- (viii) To give guidance for obtaining loans from banks for the Socially and Educationally Backward Classes and to fill in forms for that purpose;
- (ix) To go to the Taluka Offices for preparing the papers for obtaining land for constructing residential units for such communities; and
- (x) To carry out any other duties which may be assigned by the District Social Welfare Officer.

It was expected that the selected candidates would be assigned duties for six hours every day and for two hours the candidates would make efforts for getting regular employment for themselves and thus the candidates were expected to put in work for about eight hours every day. The Pracharaks were to get a weekly off on Sundays, but they were not to get any rights or benefits as Government employees. The pracharaks were also prohibited from undertaking any political activities. The assignment was to be temporary and the Pracharaks could be relieved without giving any reason by giving a day's notice. The Pracharak could on his own relieve himself after giving 15 days notice to the District Social Welfare Officer.

3. As per the Resolution dated 15.3.1979, for all this work the Pracharaks were to be paid monthly honorarium of Rs. 100/- after submission of the diary. The Court is informed that the Government had subsequently provided that the honorarium would be Rs.150/- per month for matriculates and Rs.200/- per month for graduates and each of them was to be paid Rs. 50/- per month as travelling allowance in case duties were assigned to him in areas outside the area of his residence. Initially, about 200 Pracharaks were to be appointed.

4. Thereafter the State Government in the Labour Welfare and Backward Classes Development Department issued another Resolution dated 6.12.1979 providing for a similar scheme of appointing educated unemployed as Pracharaks from out of the Bhangi Community which was considered to be one of the most backward amongst the Scheduled Castes. Similar scheme as per the scheme of SEBC Pracharaks was formulated and 184 posts of Pracharaks were sanctioned by the Government by the aforesaid Resolution dated 6.12.1979. By October, 1980 the Government had appointed 182 Honorary Pracharaks. By Government Resolution dated 28.10.1980 the Government sanctioned further 98 posts of Pracharaks. All the Pracharaks were to work under the District Social Welfare Officer for the purpose of implementation of the component plan. The Government also sanctioned other posts like Deputy Director of Social Welfare, Head Clerk, Statistical Assistant, Senior Clerk, Junior Clerk, English Typist, Clerk-cum-Typist for the Cell created for implementation of the component plan.

5. Subsequently, by Government Resolutions dated 20.11.1984 and 30.7.1986, the Government decided that since the Pracharaks were not permanent Government employees and that they were only being paid honorarium and travelling allowance, the Pracharaks should be given the benefit of honorarium for a period of 2 years only and those who were already appointed earlier and had completed 2 years, should not be continued and in their place other educated unemployed should be given benefit of the scheme. While the Government Resolution dated 20.11.1984 in respect of the Pracharaks from amongst SEBC provided for a two year term for the fresh appointees, the Government Resolution dated 30.7.1986 in respect of the Pracharaks from amongst the Bhangi Community provided that the Pracharaks to be newly appointed shall be appointed only for a period of one year. The rest of the contents and conditions of the scheme were continued without any alteration.

6. In view of the aforesaid Government Resolutions, a number of Pracharaks from amongst the SEBC as well as from amongst the Bhangi Community apprehended termination of their employment and, therefore, a number of petitions came to be filed in the years 1984, 1985 and 1986. On this basis services of some Pracharaks who had not filed any petitions were about to be terminated in later years. Hence, they also filed similar petitions subsequently.

7. The petitions can broadly be divided into three categories:-

(i) Special Civil Application No. 4053/84 is filed by a Non-Governmental

Organization (NGO) which apprehended the stoppage of grant which it was getting under the scheme under which it was earlier permitted to employ Pracharaks for discharging the duties referred to in the Government Resolution dated 15.3.1979.

(ii) Special Civil Application Nos. 107/85, 4795/86, 4044/87 and 1959/92 are filed by the Pracharaks belonging to the Socially and Educationally Backward Classes (SEBC).

(iii) Special Civil Application Nos. 3585/86, 5719/86, 974/87, 5025/86, 5719/85 5720/86, 5410/86, 3317/87, 4813/95, 5133/86, 2520/89, 3374/91 and 4268/88 are filed by the Pracharaks from amongst the Bhangi Community (Scheduled Caste).

8. This Court had issued notice to the State Government and the other respondents to show cause why these petitions should not be admitted. After hearing the parties, this Court admitted the petitions and in a number of petitions restrained the respondents from terminating the employment of the petitioners. In this manner, 87 Pracharaks from amongst the SEBC communities and 53 Pracharaks from amongst the Scheduled Castes continued in service. By Government Resolution dated 3.5.1995, the Government abolished 113 vacant posts of Pracharaks out of the originally sanctioned 200 posts of SEBC. Similarly, by Government Resolution dated 19.10.1996, the Government abolished all the vacant posts of Pracharaks for Scheduled Castes and sanctioned continuance of 52 posts of Pracharaks for Scheduled Castes category till disposal of the petitions.

9. The case of the petitioners in the petitions filed by the Pracharaks belonging to SEBC communities and Scheduled Castes, is as under :-

9.1 The petitioners were regularly employed by calling their names from the Employment Exchange and by requiring the petitioners to undergo selection at the hands of the selection committee consisting of the District Social Welfare Officer, District Employment Exchange Officer, Social Welfare Officer of the District Panchayat and Social Welfare Officer of the Taluka Panchayat and also a representative of the Directorate of Social Welfare.

9.2 The petitioners were educated unemployed who were compelled to accept this meagre remuneration of Rs.150/or 200/- per month although the petitioners were required to render services as full time employees. It is submitted that looking to the nature of their duties they were working like any other Government employees in Class III clerical service or in Class IV service and that the Government was violating the provisions of Article 23 of the Constitution by taking forced labour from the petitioners at a pittance.

9.3 The duties being discharged by the petitioners are of permanent nature and the petitioners are discharging the duties which are otherwise required to be discharged by the Government through its regular employees. The petitioners further contend that since the work is going to continue, the petitioners' services

could not be terminated and that they are required to be treated as regular employees and are required to be absorbed as employees in regular pay-scales.

9.4 The persons who were appointed in other similar schemes were either confirmed in their service or employees in Sarvodaya Scheme were absorbed in Government/Panchayat service and were being paid salary in the regular pay-scales whereas the petitioners are required to render services for the meagre remuneration.

10. Affidavit-in-reply has been filed by Mr V.P. Parmar, Deputy Director in the office of the Developing Castes Welfare Department stating that except for continuation of the petitioners who had obtained interim stay orders from this Court, the Schemes of appointing Pracharaks from out of SEBC communities and from out of Scheduled Castes have been discontinued.

After this group of petitions was heard for some time and in view of the submissions made on behalf of the petitioners, this Court had called upon the learned Government Pleader to place on record on affidavit the status of the Scheme/s and as to whether the other employees concerned with the scheme were continued in service or not. Accordingly in the affidavit dated 27.3.1997 Mr V.P. Parmar, Deputy Director has stated that initially 100 posts of Pracharaks were created for SEBC communities by Government Resolution dated 15.3.1979 and thereafter by Government Resolution dated 1.2.1980 further 100 posts of Pracharaks were sanctioned. In all 200 posts of Pracharaks were sanctioned for SEBC communities. By Government Resolution dated 20.11.1984, the Government decided that those Pracharaks who had completed two years should be relieved from their posts and the benefit should be given to other persons from the concerned communities. That decision was, however, stayed by Circular dated 28.1.1985 for a period of one year. By Government Resolution dated 23.6.1986 the Government decided to implement the circular dated 20.11.1984. Consequently, the Government relieved 113 Pracharaks from their posts and the vacancies were not filled in and the remaining 87 Pracharaks from amongst SEBC Communities were continued on account of the interim stay orders. The 113 vacant posts were ultimately abolished. Again in the affidavit dated 4.12.1997 filed by Mr B.R. Thaker, Under Secretary, Social Welfare Department it is stated that if these petitions are dismissed by this Court, the 87 posts of Pracharaks will also be abolished on 3.5.1995. It is further stated that the other posts like Head Clerk, Clerk, Typist, etc. created for implementation of the schemes for the benefit of the SEBC communities and Scheduled Castes are continued as those employees have to implement various other schemes over and above the scheme of Pracharaks.

11. In the affidavit dated 2.8.1997 filed by Smt. N.C. Zaveri, Deputy Director of Social Welfare it is stated that it is not correct to state that the Special Components Plan was made in furtherance of the Scheme of providing employment to the Bhangi Community people in the sense that implementation of the scheme was not the only purpose of the Special Components Plan. It is

stated that the Government had employed administrative staff under Government Resolutions dated 24.3.1981 and 4.7.1982 for implementation of the programme for abolition of untouchability and effective implementation of the provisions of the Civil Rights Protection Act, 1955 and the cost of the said set up is borne by the Central Government and State Government equally. The petitioners' averment that the scheme in so far as it relates to Bhangi Community is not abolished is denied.

12. At the hearing of these petitions, the learned counsel for the petitioners have made submissions reiterating the contentions raised in the petitions (para 9 above) and have also submitted that -

12.1 In view of the reports of various Committees appointed by the Government in the past, the petitioners are rendering useful services and are required to be continued on regular basis as they were already selected after interviews.

12.2 In alternative to their contention that the petitioners should be treated as regular employees, it is submitted that the petitioners should at least be paid minimum of the pay-scales available to the other Class III/Class IV employees and that in any case the petitioners are entitled to be paid minimum wages under the Minimum Wages Act.

12.3 In any case the very Government had provided for higher remuneration to the Pracharaks engaged by the voluntary agencies for discharging the same duties. Such Pracharaks engaged by private agencies were being paid monthly salary between Rs.375/and Rs.410/-. Subsequently, by Government Resolution dated 13.5.1987 the salaries were revised from Rs.375/to Rs.475/-, Rs.390/to Rs.540/- and Rs.410/- to Rs.610/depending on the length of service put in i.e. upto 5 years, 5 to 10 years and 10 years respectively and the travelling allowance was also increased from Rs.100/to Rs.150/per month. When the Government was giving grants to private agencies for paying salaries to their Pracharaks at the above rates, the petitioners employed by the District Social Welfare Officer after following the recruitment procedures could not have been discriminated against and could not have been paid smaller amounts merely by calling it honorarium.

12.4 The learned counsel for the petitioners have relied upon the following authorities in support of their contention that the petitioners are required to be regularized in service and that the petitioners are entitled to a writ that the petitioners be placed in the regular pay-scales and that the petitioners be paid at least minimum pay in the pay-scales of the Clerks or atleast minimum pay of the pay-scales for Class-IV employees.

1. Bhagwan Dass and Others Vs. State of Haryana and Others,

2. AIR 1982 SC 1473

3. The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.,

4. State of Haryana and others Vs. Piara Singh and others etc. etc.,

5. Niadar and Anr. v. Delhi Administration and Anr., (1992) 4 SCC 112

12.5 In the alternative, the learned counsel have submitted that even if the Scheme of Pracharaks is to be abolished, the petitioners are required to be absorbed in other Government departments and have further submitted that earlier the Government was running the schemes called Sarvodaya Scheme for upliftment of the masses in the rural areas and for that purpose voluntary agencies were being given grants for salaries to their employees. After abolition of the said Sarvodaya Scheme somewhere in the year 1980, the Government absorbed the employees of the Sarvodaya Scheme in Government/Panchayat service in the regular cadres of Clerks and other Class III and Class IV employment. When such benefit was given to the employees of private organizations engaged for the Sarvodaya Scheme, there is no reason why similar benefit should not be given to the petitioners.

13. On the other hand, Ms Manisha Lavkumar, learned Assistant Government Pleader has submitted that two separate schemes for appointing Pracharaks from out of the SEBC communities and from out of the Scheduled Casts were temporary schemes. The main objective of each scheme was to give temporary relief to the educated unemployed belonging to those communities so that they do not get frustrated on account of unemployment after finishing their studies - either matriculation or graduation and, therefore, the upper age limit was also fixed at 23 years. The appointment was to be given to such young persons of the community. A sort of stipend or pocket allowance was provided so that they could sustain themselves while looking for regular employment. The schemes were never evolved with a view to provide employment and, therefore, the scheme specifically provided that it was to be known as scheme for giving honorarium to the educated unemployed belonging to SEBC communities or to the Bhangi community. It was only in order to see that their self respect is not hurt by giving them mere doles that the Government also provided that they may be assigned certain work which was connected with the development and upliftment of the Socially and Educationally Backward Classes or the Scheduled Castes as they would be best persons to propagate such schemes and establish a rapport with the people of their own communities. In support of the said contention, the learned AGP also relied on the decision of this Court in the case of J.J. Shrimali Vs. District Development Officer, Mehsana and Others, .

It is also contended that the petitioners were never appointed as Government employees and the petitioners were merely designated as Pracharaks without creating any relationship of master and servant. The schemes, therefore, provided that they were not to get any rights or benefits available to Government servants and they could be relieved without giving them any notice or without giving any reason.

It is further submitted that since the schemes were floated only in order to give

temporary relief to educated unemployed who were to find out regular employment for themselves, the Government did not want to encourage such Pracharaks to claim status of regular employees and to defeat the rights of other persons belonging to the above communities to claim honorarium during their period of unemployment after passing the matriculation or graduation. However, the petitioners having accepted with open eyes their appointments as Pracharaks with honorarium of Rs.150 / Rs.200/- per month, subsequently claimed vested right and sought to defeat the claim of other educated unemployed belonging to their own communities. Hence, the Government was justified in issuing the Government Circulars dated 20.11.1984 and 30.7.1987 for providing for appointment of Pracharaks for a period of only two years/one year respectively.

The claim of equal pay for equal work is also resisted on behalf of the respondent-authorities.

14. Having heard the learned counsel for the parties, it appears to the Court that while there is some substance in the contention urged by the learned AGP that at the time of launching the scheme of appointing Pracharaks, the basic objective was to give a sort of honorarium to the educated unemployed from amongst the members of Scheduled Caste/s like Bhangis and also SEBC, but with passage of time the Government realized that Pracharaks were rendering services which were quite useful to the community and particularly the duties assigned to the Pracharaks were of great assistance to the Government itself in implementing the schemes meant for development and upliftment of the Scheduled Castes and SEBC. This is clear from the minutes of the meeting of the Committee headed by the then Chief Secretary Mr HKL Kapoor, Secretary, Social Welfare Department, Secretary, Rural Development and Agricultural Department and Secretary, Labour & Employment Department held on 9.6.1982. All the members of the Committee were of the view that since no representative of the Social Welfare Department was available at the village level, the Pracharaks were rendering useful services and the thrust of their services was in the matter of programmes for economic upliftment of the backward classes. Hence, until alternative arrangements were made, the Pracharaks were required to be continued. The Committee suggested that the work of assisting villagers belonging to the backward classes could in future be entrusted to gram sevaks who could be appointed under the village development schemes being implemented by the Department of Agriculture and Rural Development. However, gram sevaks were not appointed in adequate number and that, therefore, reduction in the number of Pracharaks could be resorted to only after 10 gram sevaks were appointed in each block. The Committee also noted that looking to the fact that since the Pracharaks were appointed pursuant to selection made by the Committee consisting of District level officers after interviews and the Pracharaks also possess qualifications ranging from SSC to graduation, if such Pracharaks are absorbed in Government or Panchayat service, there could be no administrative difficulties. However, the Government should not give any assurance that the Pracharaks would be absorbed in Government service or Panchayat service, but as and when they

apply for appointment to the posts like Panchayat Mantri or Clerks or other equivalent posts, they could be given preference considering their experience as Pracharaks and the Government should also consider relaxing the upper age limit, if necessary.

15. The report prepared by the Social Welfare and Tribal Development Department of the State Government on the Eighth Five Year Plan (1992-97) for the development of the Scheduled Castes published in April, 1993 gives details of the Special Component Plan where each department formulated need based programmes for the development of Scheduled Castes providing for specific financial outlays and prescribing physical targets for Scheduled Castes in the relevant schemes and included in the sectoral plan of each department. These are thus aggregated and presented as Special Component Plan for the State. The report further mentions that a detailed socio-economic survey of 1411 villages and towns having Scheduled Castes population of 250 and above was undertaken to identify the economic needs of each family and the infrastructural requirements of the Harijan Basties and that about 50% of the total Scheduled Castes population was covered by this survey and that a survey of the remaining villages was also required to be undertaken so that need based schemes are prepared by various departments.

The Report further refers to the most backward amongst the Scheduled Castes in the following terms :-

"Even among the Scheduled Caste, there are wide socio-economic disparities between different castes-Bhangi, Hadi, Nadia and Senva communities being the most backward among them. These four vulnerable communities, whose population is approximately 3.50 lakhs, are therefore singled out for special treatment and exclusive schemes have been formulated for their benefit. Recently (dated 14th July 1988) four more sub castes namely Garo (Groda, TURI, HARIJAN BAVA, VANKER SADHU have been included in the Vulnerable Groups."

It is thus clear that the Bhangi community is considered to be one of the most backward amongst the Scheduled Castes. In this connection, it would also not be out of place to quote the following extract from Mahatma Gandhi's article "Ideal Bhangi" in Harijan dated 28.11.1936 as found in the book "Caste Must Go and The Sin of Untouchability" by Mahatma Gandhi compiled by R.K. Prabhu, Navjivan Publishing House, Ahmedabad :-

"The ideal Bhangi of my conception would be a Brahmana par excellence, possibly even excel him. It is possible to envisage the existence of a Bhangi without a Brahmana. But without the former the latter could not be. It is the Bhangi who enables society to live. A Bhangi does for society what a mother does for her baby. A mother washes her baby of the dirt and insures his health. Even so the Bhangi protects and safeguards the health of the entire community by maintaining sanitation for it. The Brahmana's duty is to look after the

sanitation of the soul, the Bhangi's that of the body of society. But there is a difference in practice" the Brahmana generally does not live up to his duty, the Bhangi does willy nilly no doubt. Society is sustained by several services. The Bhangi constitutes the foundation of all services.

And yet our woebegone Indian society has branded the Bhangi as a social Pariah, set him down at the bottom of the scale, held him fit only to receive kicks and abuse, a creature who must subsist on the leavings of the caste people and dwell on the dung-heap. He is without a friend, his very name has become a term of reproach. This is shocking. It is perhaps useless to seek the why and wherefore of it. I certainly am unaware of the origin of the inhuman conduct, but I know this much that by looking down upon the Bhangi we - Hindus, Musalmans, Christians and all - have deserved the contempt of the whole world. Our villages have today become seats of dirt and insanitation, and the villagers come to an early and untimely death. If only we had given due recognition to the status of the Bhangi as equal to that of a Brahmana as in fact and justice he deserves, our villages today no less than their inhabitants would have looked a picture of cleanliness and order. We would have to a large extent been free from the ravages of a host of diseases which directly spring from our uncleanness and lack of sanitary habits.

I therefore make bold to state without any manner of hesitation or doubt that not till the invidious distinction between the Brahmana and the Bhangi is removed, will our society enjoy health, prosperity and peace and be happy."

It is unfortunate, but true, that these observations hold good even after six decades. The Bhangis whose forefathers were carrying night soil over their heads in rural areas and semi-urban areas have to suffer prejudicial treatment even at the hands of the members of the other Scheduled Caste/s.

The Balakrishnan Committee consisting of Mr Balkrishnan, Secretary (Economic Affairs) Finance Department, Mr Niranjan Singh, Secretary, Social Welfare Department, Mr C.R. Samajpati, Secretary, Panchayats Departments, Mr V.R.S. Cowlagi, Secretary (Planning), General Administration Department and Mr. K.V. Bhanujan, Secretary, Agriculture Department was constituted for recommending measures for effective implementation of Special Component Plan. In its report published in August 1984 this Committee recommended as under:-

"2.6 It is noticed that even within the Scheduled Castes, there are wide socio-economic disparities between different castes. The benefits of development including education have been availed of to a comparatively larger extent by some communities while Bhangis, Hadi, Nadia and Shenvas etc., have lagged behind. This would point to the need for greater attention to the upliftment of the poorest and most backward among the Scheduled Caste communities."

The Committee further emphasized the need for providing technical education and building up of the skills of Scheduled Caste youth after making the following observations in para 2.7 of the report :-

"2.7 The Committee noted that the development of education among the Scheduled Castes, has mostly been of general character and sufficient attention has not been paid to the skill building and technical education which would enable them to get gainful employment or start their own small enterprises based on the skills acquired. The general education merely add to the fast swelling ranks of unemployed educated youth. The Committee would, therefore, recommend that special attention should be paid to providing technical education and building up of the skills of the Scheduled Caste youth."

It is thus obvious that this kind of reorientation in the outlook of the members of the most backward community like the Bhangi community would be a long drawn out process which is bound to take many more years, if not decades. As already stated earlier, the Kapoor Committee had already taken note of the fact that the Pracharaks were rendering useful services for propagating the schemes for economic upliftment of the backward classes. The fact that the Pracharaks were required to render further additional services is also clear from the Circular dated 21.2.1997 (Annexure "F" Spl.C.A. 5025/86) issued by the Director of Social Welfare to all the District Backward Class Welfare Officers mentioning as under :-

"In the District level office, work of Junior Clerk like Inward-Outward, preparing Caste Certificates, registration of names of unemployed candidates, scrutiny of the application form under the Scheme etc. shall not be taken from the Honorary Pracharaks.

No work of scrutiny-sanctioning or payment/disbursement of subsidy or any process thereof in respect of difference Schemes shall be taken from the Pracharaks."

17. In view of the aforesaid material on record, it has to be held that while the genesis of the schemes in question was undoubtedly the idea to provide a sort of temporary relief by giving honorarium of Rs.100/- / Rs.200/- per month to the educated unemployed from amongst the members of the SEBC and the Bhangi Communities, with passage of time and in light of the experience gained by the authorities and realizing the useful services being rendered by the Pracharaks for propagating various schemes being floated by the Government for development and upliftment of the Scheduled Castes and SEBCs, the Schemes did not remain merely schemes for giving temporary relief to the Pracharaks. It is also required to be noted that it is not the case of the authorities that after the recommendation of the Kapoor Committee, adequate number of gram sevaks were appointed and, therefore, it was not necessary to continue the services of the Pracharaks. On the contrary, while issuing the Government Resolutions in 1984 and 1986, the Government was still smarting under the impression that the educated unemployed may be given the honorarium only for a couple of years and thereafter the honorarium may be paid to other persons who are the other educated unemployed from the backward communities. The Government was thus overlooking the relevant findings which were being given by High Power Committees like HKL Kapoor Committee and Balakrishnan Committee that the

Pracharaks were rendering useful services to the members of the Scheduled Castes and to the members of the SEBCs who were otherwise not in a position to take advantage of the schemes being floated by the Government for their benefit and that their services were also useful to the Government in the sense that they made the Government task of implementation of the schemes smoother because the schemes were being propagated, and the implementation of the schemes was facilitated, by experienced members of the backward communities themselves and not by bureaucrats.

In State of Haryana and others Vs. Piara Singh and others etc. etc., , also the Apex Court has held that although it is the Executive that takes the decision to create and abolish the posts and to lay down conditions of service subject, of course, to a law made by the appropriate Legislature, the Court comes into the picture to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any. The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. The Apex Court further held that where a temporary or ad-hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularization.

18. In view of the above discussion, the Government Resolutions dated 20.11.1984 and 30.6.1986 providing for discontinuing the services of the Pracharaks must be held to be arbitrary as the same were issued without taking into consideration the aforesaid relevant findings and recommendations made by the Committee headed by the then Chief Secretary Mr HKL Kapoor and the Committee headed by Mr R. Balkrishnan, Secretary (Economic Affairs) Finance Department. The said Resolution dated 20.11.1984 and any subsequent consequential resolutions in respect of the Pracharaks from amongst the SEBC and also the Government Resolution dated 30.7.1986 in respect of Pracharaks from amongst the Bhangi community and other backward communities of Scheduled Castes deserve to be quashed and set aside.

19. As regards the challenge to the Government Resolution dated 3.5.1995, the question remains whether the Government has abolished the posts of Pracharaks or whether it is only on account of the interim relief granted by this Court that the Government is not in a position to abolish the posts of Pracharaks. As far as the Pracharaks from amongst the Bhangi community are concerned, reliance is placed by the learned AGP on the Government Resolution dated 19.10.1996 stating that earlier in all 282 posts of Pracharaks were created on a temporary basis and that out of them on 54 posts, Pracharaks were discharging their duties. Out of them 2 Pracharaks were found to be guilty of some irregularities and, therefore, they were relieved. Consequently, 52 Pracharaks were still continued and on account of the interim injunction granted by this Court, 52 posts of Pracharaks were required to be continued on temporary basis till 28.2.1997 or till the decision of this Court in the present group of petitions.

Similarly, as far as the posts of Pracharaks from amongst the SEBC communities are concerned, by Government Resolution dated 3.5.1995, the Government abolished 113 vacant posts of Pracharaks and continued 87 posts of Pracharaks held by the persons belonging to SEBC communities. In the present petitions, we are not concerned with the said Government Resolution dated 3.5.1995 since by that Resolution the Government abolished only the vacant 113 posts of Pracharaks and, therefore, the present petitioners are not affected by the said decision.

The learned AGP, however, submits that after 3.5.1995, the Government has sanctioned continuance of the 87 posts of Pracharaks (SEBC category) only because of pendency of the present group of petitions as mentioned in the Government Resolutions dated 3.1.1997 and 3.3.1997 and that the Government is desirous of abolishing all the posts of Pracharaks. The learned AGP submitted that the power to create or abolish posts is an executive function and that this Court would not sit in appeal over the decision to abolish the posts of Pracharaks in exercise of the power of judicial review under Article 226 of the Constitution.

20. It is true that ordinarily this Court does not interfere with the decision of the Government to create or abolish posts. However, it appears that the aforesaid decisions of the Government as reflected in the Government Resolutions dated 19.10.1996 and 22.1.1997 and 3.3.1997 are merely based on the Government stand that the entire schemes of appointing Pracharaks were merely floated in order to give honorarium to the educated unemployed belonging to Scheduled Castes (Bhangi community) and to Socially and Educationally Backward Classes and that the Government did not now wish to continue this kind of relief or doles. As already stated above, though the genesis of the scheme was the desire to give relief to educated unemployed amongst the most backward Scheduled Castes and SEBC, but the high level Committees appointed by the Government clearly found that the Pracharaks have been rendering useful services for propagating the Government schemes for development and upliftment of the backward classes and that the Pracharaks assist the Government in smooth implementation of those schemes as the backwardness amongst the most backward communities in rural areas is such that on their own the members of the Bhangi community and other backward classes would not be in a position to take advantage of such schemes unless educated members of their own communities propagate the schemes and help them in availing of the benefits beings granted by the Schemes. In this connection, a reference may be made to Article 46 of the Constitution which reads as under :-

"46. Promotion of educational and economic interests of the weaker sections. - The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

It is true that Article 46 falls in Chapter IV of the Constitution and, therefore,

does not confer any fundamental right on the petitioners or other members of the backward communities. However, Article 37 clearly provides that the principles laid down in Part IV (Directive Principles of State Policy) are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. In *U.P. State Electricity Board vs. Harishankar Jain* AIR 1979 SC 65, the Hon'ble Supreme Court has held that Article 37 is a command to the Judges to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. In *The Registrar of High Court of Madhya Pradesh and Another Vs. B.A. Nigam and Others*, (Para 1802), the Apex Court observed as under :-

"Even though the Directive Principles are "non-justiciable", in the sense that they could not be enforced through a Court, they were declared, in Article 37, as "the principles fundamental in the governance of the country". the mandate of Article 37 was "it shall be the duty of the State to apply these principles in making laws". Primarily the mandate was addressed to the Parliament and the State Legislatures, but, in so far as Courts of Justice can indulge in some judicial law making, within the interstices of the Constitution or any Statute before them for construction, the Courts too are bound by this mandate."

In light of the aforesaid principles and in view of the material on record especially the report of the HKL Kapoor Committee and the report of the Balkrishnan Committee, this Court has no hesitation in holding that the aforesaid implied decision of the State Government to abolish the posts of Pracharaks is vitiated by non-consideration of the relevant facts and, therefore, in exercise of the power of judicial review under Article 226, the impugned resolutions are liable to be set aside.

21. The learned counsel for the petitioners have strenuously urged that in view of the aforesaid facts and circumstances and in view of the principles laid down by the Apex Court in *State of Haryana vs. Piara Singh* AIR 1992 SC 2103 and (1994) 4 SCC 112, the respondents are required to be directed to absorb the petitioners are regular employees since they have been working for the last more than 10 years. The learned counsel for the petitioners have also pressed their contention that even if the petitioners and other Pracharaks continuing in service cannot be treated as Government employees at present, the Government and the authorities are required to directed to absorb the petitioners in service in future.

22. Although the directions given in *State of Haryana vs. Piara Singh* might prima facie support the petitioners' case, it is required to be noted that in that case the State Government itself had framed a scheme for regularisation with which the High Court interfered under Article 226 and gave directions enlarging the eligibility for regularization which not only would tell upon the public exchequer but would also have the effect of increasing the cadre strength to a great extent. The Supreme Court, therefore, interfered with the decision of the High Court and

after observing that the creation and abolition of posts is a prerogative of the executive and that it is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate Legislature, the Apex Court held that the Court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions and that the main concern of the Court is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with requirements of Articles 14 and 16. The Apex Court further observed that there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularize employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but has to be a judicious one.

Having noted the aforesaid caution sounded by the Apex Court, it still bears repetition that Their Lordships did recognize the power of the Court under Article 226 of the Constitution to direct regularisation where a temporary or ad-hoc appointment is continued for long and, therefore, the Court can presume that there is need and warrant for a regular post. The observations were, of course, in the context of persons who are appointed as employees on ad-hoc basis. There is no reason why the same principle would not apply to the case like the present one where the pracharaks have been found rendering useful services to enable the State to carry out its obligations as enjoined upon the State Government by Article 46 of the Constitution.

23. Applying the aforesaid principles and considering the nature of the two Schemes under consideration, even after holding that the implied decision of the State Government to abolish the posts of Pracharaks is illegal and even after holding that the petitioners are entitled to continue in services as Pracharaks, (unless they had committed any act of misconduct or irregularity and are accordingly required to be dealt with), it cannot be said that the Pracharaks constitute a part of the regular State service nor can they be directed to be absorbed in State service straightaway since there is nothing on record to show as to against which particular posts the petitioners can be directed to be absorbed. Here, the Court is not dealing with the question of the power of the Government to create or abolish posts (which is already taken care of by the observations of the Apex Court in Piara Singh's case quoted in para 17 above), but it is the absence of any relevant material on the basis of which the Court could give directions to the State Government for immediate absorption of the petitioners in service against any particular post. Nevertheless while the Court does not propose to give any such absolute direction, in view of the report of the HKL Kapoor Committee and in view of the principles enunciated in Piara Singh's

case, it would be just and proper to direct the respondents to continue the petitioners as pracharaks and further to direct that while making any recruitment in future to Class III posts in services of the State (whether civil service or panchayat service), the petitioners who possess the educational qualifications for such posts shall be given first preference in view of their experience as Pracharaks for the last more than 10 years and that the Government shall also relax the upper age limit for recruitment to such posts, if the petitioners were within the age limit at the time of their initial appointment as Pracharaks.

24. The next question is whether the petitioners are entitled to get the relief for payment of regular pay-scales. It is not possible to grant the relief as prayed for by the petitioners since the question whether the petitioners are doing the same work as is being done by the employees recruited by the Government in regular Government service would require a detailed factual inquiry. On the basis of the material on record, it is not possible for this Court to give any definite finding one way or the other. Recently the Hon"ble Supreme Court has observed in State of Haryana and Others Vs. Jasmer Singh and Others, as under :-

"The principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. The evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

In light of the aforesaid pronouncement of the Apex Court, it is not necessary to deal with the previous authorities cited by the learned counsel for the petitioners.

Nonetheless even while declining the relief prayed for by the petitioners for regular pay-scale, and even while not accepting their contention about applicability of the Minimum Wages Act which would apply only to employees in the Scheduled Employment and the activities in question do not fall within the Schedule to the said Act, it cannot be overlooked that what the petitioners are being presently paid in the form of honorarium is only Rs.150/200 per month for matriculates/graduates plus travelling allowance at Rs.50/- per month. In this connection, a reference is required to be made to the Government Resolution dated 13.5.1987 by which the Government prescribed the revised pay of Pracharaks appointed by the voluntary organizations for propagating the same schemes in respect of which the petitioners also are appointed as Pracharaks by the District Social Welfare Officer. The details about the remuneration as stated

in the above Government Resolution are as under :-

Sr.	Post	Salary	T.A.	e	Revised	T.A.	No.	before	before	f	Salary	after
13.5.87	13.5.87	f	13.5.87	13.5.87	---	----	-----	-----	f	-----	-----	f
1.	Pracharaks	375	100	f	475	150	with service	f	upto 5 years	f	f	2.
Pracharaks	390	100	f	540	150	with service	f	between 5 and	f	10 years.	f	f
3.	Pracharaks	410	100	f	610	150	with service	f	of more than	f	10 years	f
4.	Administrator/	425	150	f	650	150	Mantri	f				

A perusal of the aforesaid Government Resolution would clearly show that the Pracharaks appointed by the District Social Welfare Officers are given a raw deal in as much as they are being paid a pittance for rendering the same services which are being rendered by the Pracharaks appointed by the voluntary organizations to which the Government pays grant. No justification is given for this invidious discriminatory treatment. As already indicated earlier, the main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with requirements of Article 14 16 and 23. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. The respondents are, therefore, required to be directed to pay the petitioners and all other Pracharaks honorarium at the same rates at which remuneration was paid to the Pracharaks employed by the voluntary agencies with effect from the date on which this group of petitions came to be filed in this Court i.e. with effect from 1.1.1985 onwards (Special Civil Application No. 107/85 was filed on 8.1.1985 - for convenience of calculation, the date being specified is 1.1.1985), or with effect from the date of appointment of individual petitioner/s, whichever is later.

It is clarified that the direction to pay the difference as aforesaid shall not apply in respect of the Pracharaks who are found to be guilty of any irregularities or against whom any inquiry is pending. They shall be paid such difference only after they are exonerated at the inquiry which shall be completed within four months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

25. In view of the above discussion, the petitions are partly allowed. The Government Resolutions dated 20.11.1984 and 30.6.1986 providing for discontinuing the services of the Pracharaks are held to be arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution. So also the Government Resolutions dated 3.5.1995, 19.10.1996 , 3.1.1997, 22.1.1997 and 3.3.1997 in so far as they contain the decision to abolish the schemes of Pracharaks belonging to SEBC communities and Bhangi community are declared as arbitrary and violative of Article 14 of the Constitution. This declaration, however, does not amount to automatic revival of the vacant posts which were abolished by the aforesaid Government Resolutions nor does it preclude the Government from reviving such vacant posts.

It is further directed that the respondents shall pay the petitioners and all other Pracharaks who have continued as Pracharaks, by virtue of the interim orders passed by this Court or otherwise, the honorarium at the same rates at which remuneration was fixed for Pracharaks employed by the voluntary agencies with effect from 1.1.1985 onwards or with effect from the date of appointment of individual petitioner/s, whichever is later. This direction shall be complied with within four months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

It is further directed that while making any recruitment in future to Class III posts in services of the State Government (whether civil service or Panchayat service), the Pracharaks who have continued in service and who possess the educational qualifications for such posts shall be given first preference in view of their experience as Pracharaks for the last more than 10 years and that the Government shall also relax the upper age limit for recruitment to such posts, if the Pracharaks were within the age limit at the time of initial appointment as Pracharaks.

Special Civil Applications other than Special Civil Application No. 4053 of 1984, are partly allowed in terms of the aforesaid directions.

26. As far as Special Civil Application No. 4053/84 is concerned, the same is filed by a voluntary agency which was receiving grants from the Government for payment of salary to Pracharaks. By communication dated 1.11.1983 (Annexure "B") from the Director of Social Welfare to the Secretary of the petitioner agency and by communication dated 19.1.1984 (Annexure "C") from the Secretary to the Government of Gujarat, Social Welfare Department to the Member of Legislative Assembly for the concerned area, it was communicated that the vacant posts of Pracharaks shall not be filled in and no fresh recruitment shall be made. The Court does not for the present express any opinion with regard to the said communications and disposes of Special Civil Application No. 4053/84 with liberty to the petitioners to make representation/s to the Government on the subject matter of the petition. As and when such a representation is made, the State Government shall decide the same in light of the observations made in this judgement, within three months from the date of receipt of the representation. The petitioners shall be at liberty to move this Court again in case of difficulty.

27. Rule is made absolute to the above extent in each petition with no order as to costs.