

(2010) 01 JH CK 0075
In the Jharkhand High Court

S.P. Singh and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 01 JH CK 0075

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred by the petitioners, who have already been redesignated as Demonstrators from their original designation as Lab Assistants/Technicians. The petitioners are aggrieved of Clause 4 at page 69 of the compilation of the notification, which was issued on 28th September, 2007 (Annexure 5 to the memo of petition), putting a rider that the redesignated employees will not be included in the teaching cadre nor they will be entitled for the benefits of teaching posts. By the aforesaid notification, all these petitioners have been redesignated as Demonstrators, but, with the rider at Clause 4 of the notification, which is under challenge in this writ petition.

2. Learned Counsel for the petitioners has argued out the case, in a much detail, starting from earlier batch of petitions. The earliest writ petition is C.W.J.C. No. 387 of 1995 (R), which was filed by those petitioners, before the Hon'ble High Court at Patna for redesignating them as Demonstrators from their original posts of Lab Assistants/Technicians and the said petitioner was decided in their favour vide order dated 7th September, 1995. Thus, initially there was a dispute whether the Lab Assistants/Technicians can be redesignated as Demonstrators or not and by the said writ petition, the action of the State Government was challenged that though there are guidelines given by the University Grant Commission, the State of Bihar was not redesignating the Lab Assistants/Technicians as Demonstrators, though they were qualified. Qualification of a Lab

Assistant/Technician is Intermediate with Science or Intermediate with Arts whereas qualification for the post of Demonstrator is a Degree of Bachelor with Science or a Degree of Bachelor with Arts and vide order dated 7th September, 1995, it has been held by the Hon"ble High Court at Patna that those Lab Assistants/Technicians, who are having statutory qualifications for appointment or redesignation as Demonstrators, should be redesignated as Demonstrators and there was no further challenge to this decision by the State in Letters Patent Appeal.

3. It is farther contended by the learned Counsel for the petitioners that, thereafter, second batch of employees filed writ petition bearing C.W.J.C. No. 2176 of 1996(R) before Hon"ble Patna High Court and this writ petition was decided vide order dated 4th April, 1997, wherein also, similar direction was given that those Lab Assistants/Technicians, who were possessing statutory qualification for the posts of Demonstrators, should be redesignated as Demonstrators. One more direction was also given that if the petitioners cannot be accommodated as Demonstrators, then they will be also be considered as Teachers. Against this order, L.P.A. No. 274 of 1997(R) was preferred, which was decided vide order dated 9th December, 1998, wherein, first direction i.e. the Lab Assistants/Technicians, who were qualified for the posts of Demonstrators, should be redesignated as Demonstrators, was approved but, the second direction, given by the learned Single Judge was not approved.

4. Thereafter, against the order dated 9th December, 1998, passed in L.P.A. No. 274 of 1997(R), Special Leave Petitions were preferred by both the parties (i.e. State as well as petitioners) and both the petitions were admitted and were given Civil Appeal Nos. 4215 and 4216 of 2002 and the Hon"ble Supreme Court decided both the Civil Appeals vide order dated 22nd July, 2002, which is reported in State of Bihar and Another Vs. Radha K. Jha and Others etc. etc., and both the Civil Appeals have been dismissed and, thus, the order, passed in L.P.A. No. 274 of 1997(R) dated 9th December, 1998, has been affirmed and approved and merged with the order, passed by the Hon"ble Supreme Court. Thus, the net effect of the final decision, given by the Hon"ble Apex Court is that those Lab Assistants/Technicians, who were qualified for being appointed as Demonstrators, should now be redesignated as Demonstrators and it has been held by the Hon"ble Supreme Court in paragraph No. 11 of the aforesaid decision that the Lab Assistants/Technicians cannot be considered for the posts of Teachers, without looking to their qualifications etc. Meanwhile, State of Jharkhand came into existence because of reorganization of State of Bihar.

5. Learned Counsel for the petitioner further submitted that in compliance of the aforesaid order, passed by the Hon"ble Supreme Court dated 22nd July, 2002, the Government of Jharkhand has issued a Notification dated 7th April, 2003, which is at Annexure 2 to the memo of this writ petition, whereby, those persons, who were Lab Assistants/Technicians, were redesignated as Demonstrators.

6. It is further contended by the learned Counsel for the petitioners that the Government of Jharkhand has issued another Notification dated 16th April, 2008 (Annexure 9 to the memo of rejoinder affidavit, filed by the petitioners), whereby, Clause 3 was inserted to the effect that the redesignated employees will not be included in the teaching cadre nor they will be entitled for the benefits of teaching posts. This Notification dated 16th April, 2008 was made applicable for the 2nd batch of Lab Assistants/Technicians. Thus, the first batch of Lab Assistants/Technicians were already appointed as Demonstrators, without the aforesaid clause, as per Notification dated 7th April, 2003, but, for any reason, whatsoever, second Notification dated 16th April, 2008 was issued, wherein, Clause 3 was inserted that the redesignated employees will not be included in the teaching cadre nor they will be entitled for the benefits of teaching cadre. There was no reason for the Government to add such a clause. This clause was added without any basis of facts and law and, thus, it was an arbitrary approach of the respondents and, therefore, was challenged once again.

7. Learned Counsel for the petitioners further submitted that insertion of the aforesaid Clause 3 in a Notification dated 16th April, 2008 (Annexure 9 to the rejoinder affidavit, filed by the petitioners) had given a birth to again a dispute and, thereafter, wisdom was prevailed upon the respondents and the said Clause was withdrawn by another Notification dated 23rd May, 2009. In between, there was a Letters Patent Appeal No 190 of 2009 and decision therein dated 17th July, 2009; there was a contempt matter bearing Cont. (Civil) Case No. 99 of 2007 and the order in contempt application dated 25th February, 2009; again L.P.A. No. 177 of 2009 and decision in L.P.A. dated 25th May, 2009. Every decision has gone against the Government, in all the aforesaid three matters and ultimately, the said Notification dated 23rd May, 2009 was issued and Clause 3, which was inserted in the earlier Notification dated 16th April, 2008, was withdrawn.

8. Learned Counsel for the petitioners further submitted that despite the aforesaid Notification dated 23rd May, 2009, for 3rd batch of Demonstrators, again same type of Clause has been inserted by Notification dated 28th September, 2007 (Annexure 5 to the memo of petition), especially Clause 4 therein, and against this Clause 4, the present petition has been preferred. Thus, Clause 4 of Annexure 5 is under challenge in this writ petition, mainly for the reason that if the present petitioners, who have already been appointed as Demonstrators, are fully qualified and eligible for appointment to the posts of Lecturers, they must be appointed as Lecturers, subject, to availability of vacancy with the respondents and subject to their eligibility and also on the ground that earlier same type of error, which was committed by the Government vide Notification dated 16th April, 2008, was compelled to be withdrawn and a fresh Notification dated 23rd May, 2009 was issued. Thus, similar treatment may be given to the petitioners, because position of these petitioners, who have already been appointed as Demonstrators, is alike the earlier Demonstrators, appointed by the State of Jharkhand vide Notification dated 16th April, 2008 and vide Notification dated 7th April, 2003. There is no difference in between these

petitioners/Demonstrators and the earlier batch of Demonstrators and it is also submitted by the learned Counsel for the petitioner that the respondents cannot give different treatment to those, who are alike and, therefore, there is a breach of right of equality also as well as there is a violation of Article 16 of the Constitution of India and, therefore, Clause 4 of Annexure 5 dated 28th September, 2007 deserves to be quashed and set aside.

9. I have heard learned Counsel for the respondents, who has submitted that looking to the order, passed in C.W.J.C. No. 2176 of 1996(R) dated 4th April, 1997, it appears that the second direction, which was given by the Court that the Lab Assistants/Technicians should also be considered for the teaching posts, has been quashed and set aside in L.P.A. No. 274 of 1997(R) vide order dated 9th December, 1998 and this decision was carried in Special Leave Petitions and the Special Leave Petitions were converted into Civil Appeal Nos. 4215 and 4216 of 2002 and both the Civil Appeals were also dismissed by a decision, rendered in the case of State of Bihar and Another Vs. Radha K. Jha and Others etc. etc., . The order, passed in L.P.A. No. 274 of 1997(R) dated 9th December, 1998 has been affirmed and is merged in an order, passed by the Hon''ble Supreme Court and on this basis it is contended by the learned Counsel for the respondents that the Lab Assistants/Technicians cannot be appointed as Teachers. It is contended by the learned Counsel for the respondents that the decision, given in L.P.A. No. 274 of 1997, has been affirmed by the Hon''ble Supreme Court and on that basis, Clause 4 has been inserted by the State of Jharkhand in a Notification dated 28th September, 2007 at Annexure 5 to the memo of petition and, therefore, the present petitioners are not entitled for their consideration for the posts of Teachers nor they are entitled for any benefit, attached with the teaching posts and, therefore, this writ petition deserves to be dismissed.

10. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) initially the Lab Assistants/Technicians were appointed by the respondents, more particularly before bifurcation of the State of Jharkhand from erstwhile State of Bihar and under the guidelines, given by the University Grant Commission, they were to be redesignated as Demonstrators. As they were not redesignated as Demonstrators, a writ petition bearing C.W.J.C. No. 387 of 1995(R) was preferred, which was decided in favour of the petitioners vide order dated 7th September, 1995 and the State was directed to redesignate those Lab Assistants/Technicians as Demonstrators, who were duly qualified for appointment as Demonstrators. The qualification for the post of Lab Assistants/Technicians was Intermediate with Science/Arts and the statutory qualification for appointment to the posts of Demonstrators was Degree of Bachelor in Science/Arts. Thus, by the aforesaid decision, those Lab Assistants/Technicians, who were duly qualified to be appointed as Demonstrators, were ordered to be redesignated as Demonstrators. This order has attained its finality, because no appeal was preferred against this decision, as per the submissions, made, by the

learned Counsel for both the sides.

(ii) the aforesaid decision dated 7th September, 1995 was not made applicable to other Lab Assistants/Technicians and, therefore, similarly situated employees have to file another writ petition bearing C.W.J.C. No. 2176 of 1996(R), which was decided vide order dated 4th April, 1997 and again a similar direction was given that those Lab Assistants/Technicians, who were statutorily possessing the qualification for appointment to the posts of Demonstrators, should be redesignated as Demonstrators and one more direction was also given that if the respondent-State is unable to accommodate them, looking to some technical difficulty, as Demonstrators, then they must be considered as Teachers.

(iii) the aforesaid decision dated 4th April, 1997 was challenged by the State in L.P.A. No. 274 of 1997(R), which was decided by a Division Bench vide order dated 9th December, 1998, whereby, the first direction, given by the learned Single Judge in C.W.J.C. No. 2176 of 1996(R), was affirmed and upheld to the effect that the Lab Assistants/Technicians, who are otherwise qualified to be appointed as Demonstrators, should be redesignated as Demonstrators, but, the second direction, given by the learned Single Judge, that the Lab Assistants/Technicians should be accommodated as Teachers was not approved by the Division Bench in the Letters Patent Appeal. Thus, partly the Letters Patent Appeal was allowed and the first direction, given by the learned Single Judge, was upheld whereas the second direction given by the learned Single Judge was quashed and set aside.

(iv) being aggrieved and feeling dissatisfied by the order, passed in the aforesaid Letters Patent Appeal, the State as well as the private parties preferred two different Special Leave Petitions before the Hon'ble Supreme Court. Both the Special Leave Petitions were admitted and were given numbers as Civil Appeal Nos. 4215 and 4216 of 2002. Both the Civil Appeals were dismissed vide order dated 22nd July, 2002 and the decision, rendered in the case of State of Bihar and Another Vs. Radha K. Jha and Others etc. etc., . Thus, the net result and effect is that the order passed in L.P.A. No. 274 of 1997(R) dated 9th December, 1998 was affirmed by the orders, passed by the Hon'ble Supreme Court in Civil Appeal Nos. 4215 and 4216 of 2002 dated 22nd July, 2002 and paragraph Nos. 8, 10 and 11 thereof read as follows:

8. The learned Counsel appearing for the State of Bihar has also tried to submit that the decision of the Supreme Court relied upon by the learned Single Judge in the first writ petition No. 387 of 1995 pertained to Technical Institute of West Bengal and that case has no application to the present case. But we find that the matter was examined and the learned Single Judge in writ petition CWJC No. 387 of 1995 had categorically held that the Division Bench decision of the Patna High Court in the case of Sindeshwari Prasad Singh and that of the Supreme Court applied to the case in hand and a direction was issued to decide the representation in the light of those decisions. So far as the decision in CWJC No. 387 of 1995 is concerned, it does not appear to have been challenged and

therefore had attained finality. We find force in the submission made on behalf of the Lab Assistants that in case the State wanted to take a stand that the decisions of the Supreme Court and that of the Patna High Court in the case of Sindeshwari Prasad Singh did not apply to the facts of the present case, they could not say so by means of an administrative order passed on their representation in the teeth of the judicial finding in the judgment of the learned Single Judge dated 7-9-1995 in CWJC No. 387 of 1995 that the said two decisions had full application to the present case. But the only way open to the State was to challenge the abovesaid order before an appropriate forum. We also find that the contempt petition filed by the Lab Assistants also seems to have been decided taken a view that the order passed by the State Government on the representation was not in keeping with the direction issued by the learned Single Judge in the first writ petition. That order also does not seem to have been challenged. Another opportunity provided to the State to decide the representation culminated in repetition of the same exercise in rejecting the representation without following the two judgments in the light of which representation was directed to be decided. The plea raised by the State of Bihar on the basis of the judgment in CWJC No. 9485 of 1995 decided on 13-8-1996 saying that Lab Assistants could not be upgraded as Demonstrators will make no difference so far as the present case is concerned. As a matter of fact, the latter decision dated 13-8-1996 should have followed the earlier decision dated 7-9-1995 which on the other hand was distinguished saying that the Government had to take a decision in the matter. In case the earlier case namely CWJC No. 387 of 1995 decided on 7-9-1995 stood distinguished, it would not be open to the State to argue that it would come in the way of implementing the order passed by the High Court dated 7-9-1995 in CWJC No. 387 of 1995. The latter order does not in any manner affect the finality of the order passed on 7-9-1995. The state was thus left with no option but to decide the representation following the two decisions referred to in the order dated 7-9-1995.

10. That judgment was allowed to have attained finality. It was only in reply to the contempt proceedings initiated by the Lab Assistants that the notification of 1975 was pressed into service to say that only those Lab Assistants who were appointed prior to 1-1-1973 alone could be designated as Demonstrators and not those appointed thereafter whose services were to be terminated. On behalf of the Lab Assistants, it has been vehemently urged that even after issuance of the order of 1975, a number of Lab Assistants had been redesignated as Demonstrators in different years. Some documents are on the record to indicate such redesignations in the years 1981, 1983 and in 1988 with certain conditions about non-admissibility of emoluments. On the basis of these specific orders redesignating Lab Assistants as Demonstrators, it is submitted that the order of 1975 was never acted upon and in different colleges Lab Assistants were designated as Demonstrators. It is also submitted that there is nothing to indicate that in pursuance of the aforesaid order of 1975, services of anyone may have ever been terminated. The State could not deny the aforesaid facts,

however, the stand is that the orders issued from time to time designating Lab Assistants as Demonstrators were wrongly issued. But, surprisingly, it is to be found that no step was ever taken to set the wrong right except at a very late stage. Same orders are now said to have been issued which according to the other side have not been implemented. Learned Single Judge in the second writ petition namely CWJC No. 2176 of 1996(R) has noticed that in CWJC No. 522 of 1979(R) a similar question had arisen and ultimately an order was passed for redesignating Laboratory Assistants as Demonstrators in the scale of pay as per UGC norms. The case related to graduate Laboratory Assistants of Muzaffarpur Institute of Technology and the case was duly contested on behalf of the State Government. It could not be indicated on behalf of the State as to what material difference it would make by reason of the fact that in the case in hand they are Lab Assistants/Lab Instructors etc. under Ranchi University and not in the labs of Technical Institutes. Both are governed by the norms of UGC. It would have been only appropriate if all these pleas had been raised, if at all, including one about abolition of posts of Demonstrators in Writ Petition No. 387 of 1995 as they involve disputed facts as to whether order of 1975 was ever acted upon or not etc. That was not done nor was any appeal preferred. Presently dispute is confined to compliance with the order passed in Writ Petition No. 387 of 1995 and thereafter in contempt proceedings.

11. Insofar as the appeal preferred by the Lab Assistants is concerned against the order by which the Division Bench set aside the direction of the Single Judge to treat the Lab Assistant as Teachers we find that the order of the Division Bench cannot be faulted with. Apart from the fact that no such specific prayer was made, the Bench rightly observed that such a general direction could not be issued as the qualifications and other relevant facts in respect of each Lab Assistant may have to be examined by the State Government while considering their representation. We, therefore, find no merit in the challenge made against that part of the order of the Division Bench.

(Emphasis supplied)

Thus, in view of the aforesaid decision, it has been held by the Hon"ble Supreme Court that those Lab Assistants/Technicians, who were duly qualified for appointment to the posts of Demonstrators, should be redesignated as Demonstrators and they cannot be directly considered for the teaching posts, without considering "qualifications and other relevant facts in respect of each Lab Assistant" (like educational qualification etc.). Thus, the claim of the Lab Assistants/Technicians, approved by the Hon"ble Supreme Court, were two folds:

(a) That they were to be redesignated as Demonstrators, if they are duly qualified for the said posts; and

(b) If they are educationally qualified and if they are otherwise also eligible, their claim for the teaching posts cannot be brushed aside mechanically, especially looking to paragraph No. 11 of the aforesaid decision.

(v) meanwhile, State of Jharkhand came into existence by reorganization of the State of Bihar. In pursuance of the decision rendered by the Hon'ble Supreme Court and in compliance of the direction by the Court, the Government of Jharkhand issued an order/notification dated 7th April, 2003, which is at Annexure 2 to the memo of petition, whereby, all those petitioners were redesignated as Demonstrators;

(vi) For any reason, whatsoever, the Government of Jharkhand issued another order/notification dated 16th April, 2008, which is at Annexure 9 to the rejoinder affidavit, filed by the petitioners, wherein, the Government of Jharkhand has added Clause 3 to the effect that these Demonstrators, who are redesignated, are not entitled to be included in a teaching cadre nor any benefit of teaching post will be given to them. There was no earthly reason for the respondent-Government to add Clause 3, because in the earlier Notification dated 7th April, 2003, no such condition was attached nor there was any prima facie justifiable reason for adding Clause 3. By adding Clause 3, those, who are alike, were treated differently and, therefore, the Demonstrators again made hue and cry and this Clause 3, which was inserted in a Notification dated 16th April, 2008, was ultimately withdrawn by the Government of Jharkhand, by issuing another Notification/order dated 23rd May, 2009. Thus, the wisdom prevailed upon the respondent-State and the Demonstrators were permitted to be considered for appointment to the post of Lecturers, which is known as teaching cadre, as per Jharkhand State Universities Act, 2000, provided they are duly qualified and subject to availability of the vacancy. Looking to the arguments, canvassed by both the parties, it appears that meanwhile W.P.(S) No. 3807 of 2004 was preferred, which was decided vide order dated 22nd August, 2006 in favour of the Demonstrators. This order was not complied with and, therefore, Contempt Case (Civil) No. 99 of 2007 was filed, which was also decided in favour of the original petitioners vide order dated 25th February, 2009. Meanwhile, against the order, passed in W.P.(S) No. 3807 of 2004 dated 22nd August, 2006, at a much belated stage, Letters Patent Appeal bearing L.P.A. No. 190 of 2009 was filed by the State. Similarly, the State also preferred one mere Letters Patent Appeal bearing L.P.A. No. 177 of 2009 against an order dated 25th February, 2009, passed in Contempt Case (Civil) No. 99 of 2007. Both these Letters Patent Appeals, preferred by the State, bearing L.P.A. No. 190 of 2009 and L.P.A. No. 177 of 2009, were dismissed by the Division Bench of this Court vide order dated 17th July, 2009 and 25th May, 2009 respectively. Thus, all these four matters i.e.

(a) W.P.(S) No. 3807 of 2004, decided on 22nd August, 2006.

(b) Contempt Case (Civil) No. 99 of 2007, decided on 25th February, 2009;

(c) L.P.A. No. 190 of 2009, decided on 17th July, 2009; and

(d) L.P.A. No. 177 of 2009, decided on 25th May 6, 2009 were decided against the State and confirmed position was that the Lab Assistants/Technicians, who were duly qualified for appointment to the posts of Demonstrator, should be

redesignated as Demonstrators and looking to the Notification issued by the respondent-Government dated 23rd May, 2009 (Annexure 9 to the rejoinder affidavit, filed by the petitioners), the net effect will be that Clause 3, which was added in the earlier order dated 16th April, 2008, has been withdrawn. Meaning thereby, the Demonstrators, who are redesignated, can also be considered on the teaching posts as Lecturer, subject to availability of vacancy and subject to their eligibility for the posts of Lecturer. Thus, if there is a vacancy for the post of a Lecturer and if a redesignated Demonstrator is possessing educational qualification as well as experience for appointment to the post of Lecturer, such a redesignated Demonstrator ought to be considered by the respondent-University for appointment to the post of Lecturer and his claim cannot be brushed aside only on the ground that he is a redesignated Demonstrator and, therefore, even though he is otherwise duly qualified and eligible for appointment to the post of a Lecturer, his claim is discarded. Such a stand of the respondent-State is absolutely arbitrary and dehors the facts and law and in utter violation of the aforesaid decisions, especially looking to withdrawal of Clause 3, which was inserted on 16th April, 2008, by reissuing another order dated 23rd May, 2009. Same error has been committed by the respondents again by inserting Clause 4 in the order/notification dated 28th September, 2007 at Annexure 5 to the memo of petition. This is a second time error, committed by the respondents. Initially, it was in their order/notification dated 16th April, 2008, which was rectified by another order/notification dated 23rd May, 2009. For no justifiable reasons, in facts and in law, again Clause 4 has been added for the petitioners, who are redesignated as Demonstrators. Section 2(v) of the Jharkhand State Universities Act, 2000 reads as under:

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context:

xx xx xx xx (v) "Teacher" includes Principal, University Professor, College Professor, Reader, Lecturer, Demonstrator and other person imparting instruction in any department, college or institute maintained by the University.

(Emphasis supplied)

Thus, Demonstrator can be appointed as Teacher also, subject to fulfillment of educational qualification and experience, looking to the aforesaid decisions as well as; paragraph No. 11 of the decision, delivered by the Hon"ble. Supreme Court, as reported in State of Bihar and Another Vs. Radha K. Jha and Others etc. etc., and looking to Government Notification dated 23rd May, 2009 (Annexure 9 to the rejoinder affidavit).

I, hereby, quashed and set aside Clause 4 of a communication/order/notification, issued by the State of Jharkhand dated 28th September, 2007 (Annexure 5 to the memo of petition).

(vi) The State of Jharkhand must keep in mind that those, who are alike, must be treated equally. As stated hereinabove, initially the Lab Assistants/Technicians

were redesignated as Demonstrators in pursuance of an order, passed in earlier writ petitions and an order in Letters Patent Appeal and an order by the Hon"ble Supreme Court, which is now reported in State of Bihar and Another Vs. Radha K. Jha and Others etc. etc., . Those Demonstrators were also further promoted as Lecturers vide Notification dated 30th November, 2005, which is at Annexure 3 to the memo of petition. Thus, the first batch of Demonstrators, in whose favour the orders were passed by the Hon"ble Supreme Court, were already redesignated as not only Demonstrators, but, were subsequently further promoted as Lecturers i.e. in the teaching cadre also.

(vii) Likewise, the State of Bihar has also published a Notification dated 14th June, 2006, which is at Annexure 4 to the memo of petition. Thus, there was no reason for the respondent-Government to insert a Clause that the redesignated Demonstrators will not be considered for teaching posts and will not be given the benefits of teaching posts. Initially the same type of error was committed by the State of Jharkhand in its order/notification dated 16th April, 2008 by inserting Clause 3 and subsequently, the wisdom has prevailed upon the State of Jharkhand and the aforesaid Clause 3 of its order/notification dated 16th April, 2008, was withdrawn by subsequent order/notification dated 23rd May, 2009 (Annexure 9 to the rejoinder affidavit, filed by the petitioners) and once again, same error has been committed by the State of Jharkhand by inserting Clause 4 for the present petitioners, who are also redesignated Demonstrators. Again and again, same type of error ought not to have been committed by the respondents and every time, the poor litigants have to file the petitions. Such type of multifariousness of the petitions could have been avoided by the State authorities. By adding Clause 4 in a letter/notification dated 28th September, 2007 (Annexure 5 to the memo of petition), which is under challenge in this writ petition, it creates two different classes amongst the redesignated Demonstrators, though they are at par with each other and similar.

For creation of two classes; (a) classification must be based upon intelligible differentia; and (b) there must be a reasonable nexus, between the classification (based upon intelligible differentia) and the goal to be achieved by this classification. These are the two cardinal conditions of classification. None of them is fulfilled in the facts of the present case. Clause 4 of Annexure 5 i.e. letter dated 28th September, 2007 created two classes:

- (a) Demonstrators prior to 28th September, 2007; and
- (b) Demonstrators subsequent to 28th September, 2007.

There is no intelligible differentia between these two classes of Demonstrators. Both are redesignated Demonstrators from the posts of Lab Assistants/ Technicians. Both are performing same duties. Their pay scale: is same. Their qualification is the same. Thus, there is no rational basis for classification. Thus, test number one fails for valid classification.

Likewise, there is no nexus between classification and the goal to be achieved.

Earlier batch of redesignated Demonstrators were appointed in Teaching cadre by Notification dated 30th November, 2005 issued by the State of Jharkhand (Annexure 3 to the memo of petition), looking to vacancy and their educational qualification. Paragraph 11 of the reported decision i.e. Jyoti Kaul and Others Vs. State of M.P. and Another, has indicated that the Lab Assistant cannot be directly ordered to be appointed as Lecturers or in teaching cadre, without considering qualifications and such other relevant facts in respect of each Lab Assistant.

Thus, different treatment cannot be given to those, who are similarly situated. Earlier redesignated Demonstrators were already given the benefits by Notification dated 7th April, 2003 as well as by Notification dated 30th November, 2005 for the teaching posts also and the present petitioners are not different type of Demonstrators. Though all are sailing in the same boat or bus. State has given different treatment to the present petitioners by adding Clause 4 in the impugned order/notification (Annexure 5 to the memo of petition).

11. Thus, there is a gross violation of the right of equality, vested in the petitioners under Article 14 of the Constitution of India as well as the right, vested in the petitioners under Article 16 of the Constitution of India and, therefore, I hereby quash and set aside Clause 4 of the notification, issued by the respondents dated 28th September, 2007 at Annexure 5 to the memo of petition and I hereby direct that the redesignated Demonstrators, who are having requisite qualifications or those, who are possessing statutory qualification and eligibility for the teaching posts, which is known as Lecturer, as per Jharkhand State Universities Act, 2000, shall be considered for the posts of Lecturers.

12. It is made clearer by the learned Counsel for the petitioners that their highest claim in this writ petition is that if they are duly qualified and eligible for appointment to the post of Lecturers, they must be considered and Clause 4 of the impugned order/notification dated 28th September, 2007, which is at Annexure 5 to the memo of petition, may be quashed and set aside. This contention has been accepted by this Court. Clause 4 of the impugned order/notification dated 28th September, 2007, which is at Annexure 5 to the memo of petition, is hereby quashed and set aside, in view of the facts, reasons and judicial pronouncements, and if the petitioners/redesignated Demonstrators are, otherwise eligible and qualified for appointment to the posts of Lecturers, I hereby direct the respondents to consider the claim of these petitioners for appointment to the posts of Lecturers, subject to availability of the posts of Lecturers, as early as possible and practicable, preferably within a period of 16 weeks from the date of receipt of a copy of the order, passed by this Court.

13. This writ petition is, accordingly, allowed to the aforesaid extent, with no order as to costs.