
(2006) 03 CAL CK 0033

In the Calcutta High Court

Case No : M.A.T. No. 1474 of 2002 (CAN 8183 of 2005 and 496 of 2006) , F.M.A. No. 142 of 2003 (MAT No. 2940 of 2001) , F.M.A. No. 216 of 2004 (MAT No. 3769 of 2002) and F.M.A. No's. 412 of 2003 and 217, 218 and 219 of 2004

State of West Bengal and Others

APPELLANT

Vs

Sambhunath Chatterjee and Others

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 12, 14, 16, 226, 39
Limitation Act, 1963 — Section 5

Citation : (2006) 2 CALLT 482

Hon'ble Judges : V.S. Sirpurkar, C.J.;Arun Kumar Mitra, J

Bench : Division Bench

Advocate : Bikash Bhattacharjee, Dipankar Dutta and Biswarup Bhattacharjee, in FMA Nos. 142 and 143 of 2003, for the Appellant; Bhudeb Bhattacharjee and Sima Sengupta in FMA Nos. 412 of 2003, 216, 217, 218 and 219 of 2004 and MAT No. 1474 of 2002 and Dipak Banerjee, Ramkrishna Bhattacharjee and A. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Mitra, J.—All the above numbered appeals along with the applications are disposed of by this common Judgment and order. Claims/Prayers made out in the writ petition in connection with the above appeals are identical: facts are more or less same except one or two deviations as described hereinbelow. Since the points of law to be decided and facts in all the appeals are identical, all are taken up analogously for hearing.

Facts in Brief:

2. The writ petitioners herein claimed to be the Lecturers of different non-Government Colleges of West Bengal. The writ petitioners/respondents joined the respective institutions in or about the year 1976 to 1979. The writ petitioners/

respondents passed M.A. Examination in different subjects. The writ petitioners/ respondents have annexed the certificates in support of their qualifications but since the respondents haven't annexed the mark-sheets it is not clear as to what are the percentage of marks secured by them e.g. Sambhunath Chatterjee, the respondent No. 1 in FMA 142 of 2003 has annexed Higher Secondary certificate, Graduation certificate and Masters Degree certificate as annexure "A" collectively but nowhere in the writ petition it has been stated as to what are the percentage of marks secured by said Sri Sambhunath Chatterjee or no document has been annexed to that extent. The respondents/writ petitioners joined the respective Colleges on the basis of selection by selection committee constituted by the Governing body of the Colleges.

3. Initially, the respondents/writ petitioners were appointed on particular terms by different Colleges. Either they got ad hoc appointment or appointment as whole-time teacher etc. but not against specific scales. In the year 1975 the Government of West Bengal decided to introduce new pay scale for the University & College teachers" as per the guidelines or norms prescribed by University Grants Commission (shortly termed as UGC). Government order No. 372 Edn(CS)/5P-9/74 dated 7th April, 1975 with the subject "Revision of salary scales of University and College teachers". In the said Government order it has been written/indicated that the Government of India in November, 1974 of the Ministry of Education and Social Welfare, requested the State Govt. to consider the question of implementing in this State the Scheme of the revised pay scales of University and College teachers as recommended by the University Grants Commission with such modification, if any as may be considered necessary to suit local conditions. The Government of India offered to render financial assistance to the extent of 80% of additional expenditure involved in giving effect to the revised scales of any pay subject to the following conditions:

(i) Central assistance to this extent will be available for the period January 1, 1973 to March 31, 1979,

(ii) The State Government will bear the entire balance of expenditure and will not pass on the liability for any portion of it to the Universities or the managements of private colleges, and

(iii) The State Government will take over the entire responsibility for maintaining the revised scales with effect from April 1, 1979.

4. In the said Government order the scale of Lecturer has been fixed as Rs. 700-1600. In the said Government order in Clause 4 it has been written "The revised pay scales will be applicable to all teachers who were in position on 1st January, 1973 and also to those who were appointed according to the approved rules of recruitment against: posts: (i) Which were vacant on 1st January, 1973, but filled up later and (ii) Which were created after 1st January, 1973 with the approval of the competent authority."

5. In the said Government order in its annexure-I it has been written that

recruitment to all the categories of teachers of Universities as well as non-Government Colleges shall be made in future through the University Grants Commission to be constituted by the State Government strictly on merit and after advertisement on the basis of qualifications as prescribed in annexure III. It has also been stated that no appointment should be made on communal or caste consideration. Pending constitution of the University and College Service Commission status quo in regard to the existing method of recruitment but on the basis of the prescribed qualifications as in annexure III may be maintained until further orders except that recruitment of teachers including Principals of Non-Government Non-Sponsored Colleges shall also be made through the Selection Committees already constituted for the purpose of selection of teachers including Principals of Sponsored Colleges.

In annexure III the qualifications for recruitment to the posts of Lecturers have been prescribed which are as follows:

a) Consistently good academic record with 1st or high 2nd class (B plus) Master's degree in a relevant subject, or an equivalent degree of a foreign University.

b) An M. Phil, degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work.

6. Provided that if a candidate possessing the qualification as at (b) above is not available or not considered suitable, the college, on the recommendation of the selecting authority, may appoint a person possessing a consistently good academic record on the condition that he will have to obtain an M. Phil degree or a recognised degree beyond the Master's level within five years of his appointment, failing which he will not be able to earn future increments till he obtains that degree or gives evidence of equivalent published work of high standard. One Explanation clause is there which is as follows:

"Consistently good academic record" would mean overall record of all assessments throughout the academic career leading to the Master's degree, which should at least be B or high second class.

In another Government order being No. 670-Edn(CS)/4A-7/75 dated 9th July, 1975 it has been prescribed in the manner as follows:

The undersigned is directed to say that qualifications for future recruitment of teachers in Universities and Non Government Colleges have been prescribed in annexure III to this Dept. Memo No. 372-Edn (CS) dated the 7th April, 1975. The Direction of Public Instruction in his letter referred to above has offered his suggestions defining "a consistently good academic record" laid down as one of the items of qualifications for teachers of colleges and laying down the minimum standard for eligibility of the candidates for applying for the posts of lecturers of non-Government Colleges. After careful consideration of the suggestions of the

Director of Public Instruction and also other relevant factors, the Governor is pleased to prescribe the minimum standard qualification for eligibility of candidates applying for the posts lecturers in Non-Government Colleges including Sponsored colleges as follows:

Lecturers: (i) Higher Secondary/School Final/ 55% of the total University Entrance/Pre-University marks and above or any other (ii) I.A./I.Sc. or equivalent Examination 55% of the total marks and above. (iii) B.A./B.Sc./B.Com. Examination At least 55% marks in Honours subject. (iv) M.A./M.Sc./M.Com. Examination At least 55% marks in the relevant subject. Candidates, who have obtained at least 50% marks in their examination at (i) and (ii) above may be accepted provided they have obtained first class either in their B.A./B.Sc./B. Com. examinations or in their M.A./M. Sc./M. Com. Examinations.

Candidates with pass Degree in B.A./B.Sc./B.Com. examinations may not be accepted even though they may have obtained First Class in their Post-Graduate examinations.

Proviso to item(b) of the qualifications prescribed for college lecturers in annexure-III empowers the Selecting authorities to recommend candidates without qualifications as prescribe in item (b) in certain circumstances. Accordingly, candidates who do not possess they qualifications as prescribed under item (b) but who possess the qualifications as prescribed above may also be permitted to apply for consideration of selecting authorities.

Candidates who in lieu of an M.Phil Degree of a recognised university beyond the Master's level can produce at least two research papers (Review papers, anthology, etc. excluded) or high merit published in standard journals (nor journals of popular nature) may also be accepted. Such research papers are to be evaluated by an expert to be nominated by the Director of Public Instruction, West Bengal.

The Governor is further pleased to prescribe the minimum qualification for recruitment to the posts of Principals in non-Govt. Colleges as follows:

(a) Educational qualifications:

Candidates for the posts of Principals must possess, in addition to the educational qualifications prescribed for the posts of lecturers, a Doctorate Degree and should have teaching and administrative experience in an affiliated Degree college for at least 10 years inclusive of at least 5 years" administrative experience.

(b) Age : 45 years to 55 years.

Yours faithfully, Sd/- D.L. Guha Deputy Secretary.

7. The respondents/writ petitioners admittedly, didn't possess the minimum qualification prescribed as per the aforesaid UGC norms. In the writ petitions filed, the petitioners, however, claim the UGC scale effective from the date of

their initial appointments.

8. As stated above, the Government of West Bengal introduced UGC pay scale through the Government order dated 07/04/1975 effective from 01/01/1973.

9. The Government in 1977 watered down the qualification or insofar as the good academic record is concerned and from 55% the mark was reduced to 50% in honours examination and H.S./P.U./U.E. examinations taken together. This relaxation was made tenable for one year and it was circulated through the Government order No. 353 Edn.(C.S.) dated 1st April. 1977.

10. In the year 1988 Government revised the pay scales of Lecturers, Readers, Principals etc, of the non-Government Colleges. The existing scale, as per UGC norms was Rs. 700 - 1,600/- for the Lecturers and the same was revised and made as Rs. 2,200 - 4,000/-. The said revised scales were made effective from 1st January, 1986. The recruitment qualifications of Lecturers, however, was maintained and the requisite qualification was again prescribed as 55% marks or its equivalent in Master's degree in the relevant subject.

11. It has been stated in Clause 5 of the pay revision Memo No. 1096 Edn.(C.S.) dated 6th August, 1988. "This revised scales will not be applicable to the teachers who were or have been drawing pay in colleges in non-UGC scales."

12. Then again, another revision of pay scales in respect of the teachers of the State Aided Non-Government Colleges was made and the Lecturers were placed at the revised scale of pay at Rs. 8,000 -13,500/- (from the existing scale of pay being Rs. 2,200 - 4.000/-). The said revised scale was made effective from January 1, 1996 which was circulated through Government order No. 118-Edn(CS)/5P-52/58 dated 4th February, 1999.

13. The Government issued G.O. No. 1790-Edn(CS) dated 8th November, 1976 for the purpose of regularisation of appointment of teachers in non-Government Colleges made on or after 22/05/1975. From this Government order it would appear that the Government intended to regularise the appointment of teachers who were appointed on different dates on or after 22/05/1975 not in compliance of UGC norms and/or in violation of the conditions prescribed in the Government order dated 07/04/1975. It may be mentioned in this context that regarding appointment of Lecturers of non-Government Colleges, the provisions of West Bengal College Teachers' Security of Services Act, 1975 and the West Bengal Universities Control of Expenditure ordinance. 1976 came into play.

14. The State Government thereafter decided to extend the benefit of graded scale of pay to teachers of non-Government Colleges who haven't been absorbed in the post of Lecturers. It was stated in Government order No. 1352-Edn(CS) dated 3rd August, 1981 that in terms of G.O. No. 19-Edn(CS) dated 06/01/1981 the teachers of non Government Colleges (Sponsored and non-Sponsored) who were in position on 31/10/1979 and who couldn't be absorbed against regular vacancies in the post of Lecturer in view of the fact that they didn't satisfy the

qualifications prescribed for recruitment to the post of Lecturer or for non-availability of regular vacancies or for both the reasons were allowed to continue in the scale of Rs. 300 - 800/- plus usual D.A. It may be relevantly stated that G.O. dated 3rd August, 1981 is the basic order which gives reason for issuance of the G.O. No. 19 Edn(CS) dated 6th January, 1981.

15. In the year 1975 Higher Secondary (10+2) course was introduced and these two classes i.e. Class-XI and Class XII were being taken in different non Government Colleges. For this purpose the said non-Government Colleges appointed teachers for teaching in those two classes and subsequently, these teachers, who were recruited in the Colleges only for Higher Secondary units started teaching at Graduation level and the Higher Secondary units were ultimately abolished from the College sector and the said units were given to the Higher Secondary School sector but the teachers appointed in the Colleges for teaching at Higher Secondary level remained in the Colleges and continued with teaching at Graduation level and though they didn't possess the UGC prescribed qualifications, for such type of teachers the Government thought of introduction of a graded scale and allowed them to continue in the said scale of Rs. 300 - 800/- plus usual D.A. Through G.O. dated 6th January, 1981 graded scale was allowed to the College teachers at Rs. 300 - 800 plus usual D.A. and through G.O. dated 3rd August, 1981 the said scale was revised and in this G.O. it was prescribed that for teachers possessing Master's degree the scale of pay would be Rs. 500 - 1,360/- and for teachers possessing M.Phil degree or above the scale of pay would be Rs. 550 - 1,470/-.

16. In the above manner the respondents/writ petitioners were allowed graded scale with corresponding revision. The said graded scale was revised from time to time and ultimately, it was made at par with the UGC prescribed scale.

17. Through Government Order dated 21st September, 1991 graded teachers taking classes at the degree level were re-designated as Lecturers. In this memo it was made clear that such teachers could not be entitled to career advancement benefits as enjoyed by the teachers enjoying UGC scales of pay in non-Government Colleges. The pay of the writ petitioners/respondents was fixed in the revised scale at Rs. 8,000 - 13,500/- w.e.f. 1st January, 1996. Subsequently, by Government Order dated 29th May, 2000 graded teachers of non-Govt. Colleges, who were re-designated as Lecturers not having UGC norms but taking classes at the degree level were allowed benefits of career advancement by revision of scale of pay making it Rs. 10,000-15,000/-corresponding to the scale of Lecturers (Senior Scale) of non-Government colleges and Rs. 12,000 - 18,300/- corresponding to the scale of Lecturers (Selection Grade/Reader of non-Government Colleges). The benefits were allowed with notional fixation w.e.f. 1st January, 1996 and actual payment from 1st May, 2000.

18. It would appear from the order of scale revision issued in favour of the writ petitioners/respondents that in each and every memo issued revising their pay scales specific condition was laid down that they will not be entitled to UGC

scales. It is a fact also that at present the writ petitioners/respondents are getting pay equivalent to the Lecturers having UGC prescribed qualifications.

19. Now, the writ petitioners/respondents claim that they should be allowed this scale of pay and/or this pay effective from the date of their initial appointment. On this issue the respondents/writ petitioners moved different writ petitions and in different writ petitions identical orders were passed by different. Single Judges allowing the writ petitioners/respondents UGC scale of pay effective from the date of their appointment along with direction to pay the arrear. Against such Judgments/orders passed by different learned single Judges the appellants have preferred the above numbered appeals, Main thrust of challenge in these appeals is as to whether the writ petitioners/respondents are eligible and/or entitled to get scale of pay as per the UGC norms from the date of their initial appointment admittedly not having the UGC prescribed qualifications at the time of their recruitment.

Submissions:

20. The learned Counsel for the appellants Mr. Dutta has given a comparative table of scales of pay allowed to the Lecturers of non-Govt. Colleges (other than UGC scale of pay). The said table Is set out hereinbelow:

UGC Scale of Pay Scale of Pay for Lecturers for Lecturers of of Non Government Colleges Non-Government as prescribed from time Colleges as to time (other than prescribed from UGC scale of pay) time to time

1. Rs. 700-1600/- 1. Rs. 300-800/- was fixed w.e.f. 1.1.1973 as the scale of pay for was fixed as scale whole time teachers w.e.f. of pay vide G.O. 1.4.1969 vide G.O. dated 7.4.1975 dated 8.8.1969. 2. Revised to Rs. 2,200-4,000/ 2. The aforesaid scale of pay, -w.e.f. 1.1.1986 vide i.e. Rs. 300-800/- was G.O. dated 6.8.1988. allowed to whole time teachers of non-Government Colleges who were in position on 31.10.1979 vide G.O. dated 6.1.1981. 3. Revised to Rs. 8,000-13,500/- 3. Revised, w.e.f. 1.4.1981, w.e.f. 1.1.1996 to Rs. 500-1,360/- for vide G.O. dated 4.2.1999. teachers possessing Master's degree and to Rs. 550-1,470/- for teachers possessing Master's degree on acquiring M.Phil degree or above vide G.O. dated 3.8.1981. 4. Revised w.e.f. 1.4.1991 to Rs. 2,200-4,000/- vide G.O. dated 21.9.1991. 5. Revised w.e.f. 1.1.1996 to Rs. 8,000- 13,000/- without career advancement benefits vide G.O. dated 9.7.1999 read with G.O. dated 9.8.1999. 6. Revised scales of pay by way of career advancement benefits were allowed vide G.O. dated 29.5.2000 (notional fixation from 1.1.1996 and actual pay from 1.5.2000. Lecturers....Rs. 10,000-15,900/- (Senior Scale) Lecturers.... Rs. 12,000-18,300/- (Selection Grade/Reader)

21. The learned Counsel Mr. Dutta submitted that eligibility for drawing the UGC scale of pay was enshrined in the Government Order dated 7th April, 1975 and the respondents/writ petitioners didn't disclose the percentage of marks obtained by them in various examinations as referred to in the Government

Order dated 9th July, 1975. Mr. Dutta submitted that however, at the time of hearing of the appeal the learned Counsel for the respondents/writ petitioners fairly admitted that the respondents/writ petitioners do not possess qualifications as per UGC norms but the respondents/writ petitioners claim identical benefits with the Lecturers following the UGC norms on the principle of "equal pay for equal work". The learned Counsel for the appellants relied on the Apex Court decision reported in AIR 1977 SC 276. The learned Counsel mainly relied on the observations made in paragraph 9 of this decision and submitted that no Mandamus can be claimed unless the applicant has a legally protected right which is judicially enforceable and he is denied that right by someone who has a legal duty to do something or to abstain from doing something.

22. The learned Counsel Mr. Dutta further submitted that on the facts of the case it is manifest that the Government had a legal duty to grant benefits of UGC scale of pay to those Lecturers who possessed necessary requisite recruitment qualifications as laid down in the Government orders dated 7th April, 1975 and 9th July, 1975. Possession of the requisite recruitment qualifications beign a condition precedent for grant of benefits of UGC scales of pay, unless one possesses those requisite recruitment qualifications there would be no question of granting him such benefit by the Government. The learned Counsel submitted that no claim made in this behalf by any teacher would be thoroughly misconceived and liable to be refused only on the ground of non-fulfillment of the condition precedent. No legal right of the respondent No. 1 having been infringed by the Government by denying them UGC scale of pay the writ petitions itself are not maintainable in law and on facts and ought to have been dismissed as such by the learned single Judge.

23. The learned Counsel further submitted that by allowing the writ petition the learned single Judge committed serious injustice and for which the order under appeal is liable to be set aside.

24. The learned Counsel Mr. Dutta further submitted that on the plea of "equal pay for equal work" similarly circumstanced teachers not possessing requisite recruitment qualifications have been granted benefits of UGC scale of pay while the respondents have been denied such benefits, it is contended that unless one can show that one is legitimately entitled to the UGC scale of pay upon fulfillment of the condition precedent, the same cannot be claimed upon negative application of Article 14 of the Constitution of India. Mr. Dutta submitted that Article 14 is a positive concept and cannot be enforced in a negative manner and it is well settled proposition of law. Mr. Dutta In this regard relied on following decisions with its relevant paragraphs which are quoted hereinbelow:

Chandigarh Administration and another Vs. Jagjit Singh and another, .

8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such

instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will be incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be lawful and Justified one it can be followed and similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor his case. In our considered opinion, such a course-barring exceptional situations-would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the Judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).

Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, .

9. Apart from that even if it is assumed that concession was shown to such stallholders by the NDMC the appellants cannot make grievance in respect of discrimination under Article 14 of the Constitution. Having agreed to the terms of allotment they cannot legitimately claim that they should also be treated in the same manner. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept, nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination. None of the 98 stallholders was impleaded a party to the writ petitioners. The appellants questioned the validity of the allotment of 98 shops on concessional rates; without trade zoning restrictions in favour of the stallholders of Panchkuian Road, but they were primarily interested that same concessions in respect of licence fee and relaxation in trade zoning restrictions be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrine in Article 14 of the Constitution.

State of U.P. Vs. Neeraj Awasthi and Others, .

75. The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularized in the past, in our opinion, cannot be said to be a normal mode which must receive the seal of the Court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now well settled, (see: State of A.P. v. S.B.P.V. Chalapathi Rao SCC

para 8; Jalandhar Improvement Trust v. Sampuran Singh SCC para 13 and State of Bihar v. Kameshwar Prasad Singh SCC para 30.)

25. The learned Counsel submitted that it clearly appears from ratio decidendi of the aforesaid decisions that the mere fact that an authority passed a particular order similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination and that it has to be investigated first whether the order in favour of the other person is legal and valid before it. can be directed to be followed in the case of the petitioner.

26. According to Mr. Dutta if the order in favour of the other person is found to be contrary to law or unwarranted on facts and in the circumstances, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the authority to repeat the illegality or to pass another unwarranted order since there cannot be any equality in illegality.

27. Mr. Dutta further submitted that orders granting benefits of UGC scale of pay to other teachers not duly qualified cannot be investigated in the present proceeding since the beneficiaries are not before this Court and in any event those orders which have been passed ought not to have been passed if the condition precedent had not been fulfilled. Those orders, therefore, cannot form the basis of issuance of Mandamus particularly when it is amply clear that the respondents/writ petitioners doesn't possess the requisite recruitment qualification for appointment as Lecturers in terms of Govt. Orders dated 7th April, 1975 and 9th July. 1975.

28. The writ petitions, according to Mr. Dutta ought to have been dismissed being not maintainable.

29. Mr. Dutta then submitted that disparity in the scales of pay on the ground of different academic qualifications and/or recruitment qualifications is permissible and does not violate Articles 14 and 16 of the Constitution of India and is not longer res integra. Mr. Dutta in this regard relied on the following decisions with their relevant paragraphs-

(a) 2003 Vol.(II) SCC, 658 (paragraph 9).

(b) State Bank of India and Another Vs. M.R. Ganesh Babu and Others, .

(c) Shri Nain Singh Bhakuni and Others Vs. Union of India and Another, .

(d) State of Tamil Nadu and Another Vs. M.R. Alagappan and Others, etc., .

(e) Sita Devi and others etc. etc. Vs. State of Haryana and others, .

(f) 1993 supp.(1) SCC, 522 (paragraph 5).

(g) State of Mysore and Another Vs. P. Narasing Rao, .

For the purpose of discussion the relevant paragraph 9 of (a) above and paragraphs 16 and 17 of (b) above are quoted hereinbelow:

9. Strangely, the Tribunal in the review petition came to hold that the Commission had not based its conclusion on any data. It is trite law that it is not open for any Court to sit in Judgment as on appeal over the conclusion of the Commission. Further, the Tribunal and the High Court proceeded as if it was the employer who was to show that there was no equality in the work. On the contrary, the person who asserts that there is equality has to prove it. The equality is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements, commensurate with the position in the hierarchy, the qualifications required which are equally relevant.

State Bank of India and Another Vs. M.R. Ganesh Babu and Others,

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

17. Since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay or the plea of discrimination, as the case may be. (see: Federal of All India Customs and Central Excise Stenographers (Recognised) v. Union of India, State of M.P. v. Pramod Bhartiya, State of Haryana v. Jamser Singh and State of U.P. v. Ministerial Karmachari Sangh.

30. The offer decisions following the same principle are not quoted to encumber this Judgment.

31. Mr. Dutta on query from the Court submitted that "consistently good academic record" has been made an eligibility criteria for recruitment and hence any one not fulfilling such criteria is ineligible to present himself for recruitment.

32. Mr. Dutta submitted that it is also to be noted that cut-off marks have been prescribed and no one possessing the relevant degree/qualification with marks over and above such cut-off marks would obviously be ineligible for recruitment. The requirement of consistently good academic record is thus one of the ingredients of recruitment qualifications and based on recruitment qualifications it is permissible to fix different scales of pay for employees performing similar nature of duties.

33. Mr, Dutta submitted that in the decision reported in 1998 Vol.(3) SCC, 348 (paragraph 10) it has been held as follows:

Those who did not fulfil the above recruitment qualifications were to continue in the pre-revised scales....It becomes at once clear that for getting the benefit of that OM the employees similarly situated as Draftsmen in CPWD had to show that their recruitment qualifications were similar.

It is, of course, true that the Tribunal has observed in favour of the appellants that they were doing the same type of work as their counterparts in CPWD, but that by itself is not sufficient. If there was clear cut different in recruitment qualifications between the two sets of employees in CPWD on the one hand and CWC on the other, there cannot be any automatic linkage and parity of treatment for retrospective revision of pay scales as sought to be pressed in service by learned senior counsel for the appellants,

34. Mr. Dutta then relied on the Apex Court decision reported in Union of India (UOI) Vs. Tarit Ranjan Das, where it has been held "the equality is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualifications required which are equality relevant.

35. Mr. Dutta submitted that it is therefore, clear that fixation of graded scale of pay for teachers not possessing the requisite academic/recruitment qualifications for grant of benefits of UGC scale of pay is not at all discriminatory and does not violate Articles 14 and 16 of the Constitution of India.

36. It is also submitted by Mr. Dutta that the writ petitioners/respondents having not requisite qualifications, they are allowed graded scale of pay and as and when their pay revisions were made it has been clearly stated that the writ petitioners/respondents would not be entitled to the benefits of UGC scale.

37. Mr. Dutta submitted that in terms of Black's Law Dictionary, acquiescence and laches are cognate but not equivalent terms. While acquiescence has been described to be an act of submission to, or resting satisfied with, an existing state of things, laches implies a neglect to do that which the party ought to do

for his own benefit or protection.

38. It is submitted by the learned Counsel for the appellants that the respondents/writ petitioners received the graded scale of pay with stipulation to the extent that they would not be entitled to UGC scale of pay and subsequently, after such a long time changed the stance and they have now claimed UGC scale of pay from the date of their initial appointments. The learned Counsel submits that in such a case the question of acquiescence comes and the learned Counsel relied on a decision, reported in *Canara Bank Vs. Canara Sales Corporation and Others*, . The learned Counsel laid stress on the observations made in paragraph 30 of this Judgment. Mr. Dutta submitted that in this Judgment the Hon"ble Apex court observed that "it is necessary to prove that the party against whom the said plea is raised, had remained silent about the matter regarding which the plea of acquiescence is raised, even after knowing the truth of the matter."

39. Mr. Dutta, the learned Counsel appearing for the appellants submitted that undisputedly, the writ petitioners/respondents were made aware in clear terms that they would only be entitled to the graded scale of pay and not UGC scale of pay but they remained silent and this brings in the principle of acquiescence.

40. The learned Counsel submitted that the writ petition ought to have been dismissed only on the grounds of acquiescence and laches.

41. The learned Counsel further submitted that since no affidavit-in-opposition was filed on behalf of the State countering the contents of the writ petition the learned single Judge has of opinion that the State was not willing to contest. On the basis of the certificate issued by the Principle of the said College and relying on a Division Bench Judgment of this High Court dated July 15, 1997 in A.P.O.T. No. 350 of 1997, it was held that the writ petitions were to succeed.

42. The learned Counsel Mr. Dutta submitted that in the decision reported in 2003 Vol. (11) SCC, 658 (supra) in its paragraph 9 it has been held that "person who asserts that there is equality has to prove it."

The learned Counsel again referred to the decision reported in 2002 Vol.(6) SCC, 72 and on the observations made in paragraphs 8, 9 and 10 of this Judgment and submitted that here it has been held (i) non rebuttal of averments contained in writ petition cannot form the basis for grant of parity of scale of pay as claimed by the petitioners; (ii) several factors are required to be considered while evolving pay structure; (iii) claim of equal pay for equal work is not a fundamental right, but a Constitutional goal; (iv) it is the function of the executive to fix pay scales; and (v) the Courts should avoid giving a declaration granting a particular scale of pay."

43. The learned Counsel submitted that here, in the instant case it is manifest that the learned single Judge committed gross error of law in allowing the writ petitions. Reliance has been placed by the learned single Judge on the unreported decision of the Division Bench which is misplaced. The learned

Counsel submitted that it would appear from the said decision the non-selection of candidates through the College Service Commission was the reason for disentitling the concerned teacher to the benefits of the UGC scale. This reason didn't find favour with the Division Bench resulting in dismissal of the appeal filed by the State.

44. The learned Counsel Mr. Dutta submitted that it is however, to be noted that the Division Bench had observed that "it is not the case of fixation of pay scale on the basis of qualification". It is therefore, implied that the Division Bench was also of the view that if there be a difference in scales of pay based on qualification, that would not be per se discriminatory.

45. The learned Counsel submitted that the decision of the Division Bench relied upon by the learned single Judge in this case is therefore, distinguishable on facts and the learned single Judge ought not to have relied this decision of the Division Bench.

46. The learned Counsel submitted that the learned single Judge also grossly erred in granting benefits of UGC scale of pay with subsequent revision to the writ petitioners/respondents without noticing that the claim was time barred. He further submitted that although the Limitation Act, 1963 doesn't strictly apply in the writ proceedings but even the Writ Court has to be approached within a reasonable period of accrual of cause of action and any belated approach is liable to be nipped in the bud on the ground of laches.

47. He further submitted that it has been held in the decision reported in 1995 Vol.(5) SCC, 628 that in the matter of alleged improper fixation of scale although a continuing wrong occurs each time one is paid a salary which is not computed in accordance with the rules giving rise to validity based on recovery of arrear which is time barred would not be recoverable. The case before the Supreme Court in this regard arose out of an application u/s 19 of the Administrative Tribunal Act, 1985 which provides for limitation and hence the Supreme Court had the occasion to refer to the question of limitation which would arise for recovery of arrears of the past period.

48. The learned Counsel submitted that delay and laches in moving the Writ Court can definitely be a guiding factor for declining discretionary relief so far as arrears are concerned. He submitted that the order under appeal being manifestly wrong, is liable to be upset in appeal.

49. The learned Counsel Mr. Dutta concludingly submitted that the appeals are entitled to succeed, the orders under appeal are liable to be set aside and the writ petitions, consequently, should be dismissed. In the contempt proceedings filed by the respondents/writ petitioners alleging violation of the order under appeal, an order has been passed directing payment of the respondents/writ petitioners alleging violation of the order under appeal, an order has been passed directing payment of the respondents/writ petitioners Rs. I(One) lakh each on ad-hoc basis subject to decision in the present appeal. Such amount was released

by an order dated 19th November, 2001 and duly received by the respondents/writ petitioners. In the event of success of the appeal, according to the learned Counsel, direction may be passed for adjustment of the said amount paid with the future dues of the writ petitioners/respondents.

50. Mr. Dipankar Dutta made above submissions made in two appeals being F.M.A. 142 of 2003 and 143 of 2003, Mr, Bhudeb Bhattacharjee. senior advocate appearing for the appellants in F.M.A. 216 of 2004, F.M.A. 217 of 2004, F.M.A. 218 of 2004, F.M.A. 219 of 2004, F.M.A. 412 of 2003, MAT 1474 of 2002 adopted the submissions made by Sri Dipankar Dutta since the points of law to be decided are identical.

51. Mr. Banerjee, the learned Counsel for the respondents submitted that the writ petitioners are performing actual work or works at par with the other Lecturers who are getting UGC scales and naturally they are entitled to equal pay. Mr. Banerjee in this regard placed reliance on the decision of the Hon'ble Apex Court reported in 2001 Vol.15) SCC, 327 Anil Ratan Sarkar v. State of West Bengal and Ors.

52. Mr. Banerjee further submitted that the concept of good academic record has been watered down in the Government Order of 1986 and one or two of his clients have become M. Phil by now and naturally, the Government cannot say that all the respondents/writ petitioners don't possess similar qualification along with the Lecturers who are getting UGC scale or pay.

53. Mr. Banerjee submitted that there cannot be any differentiation making citation of marks. According to Mr. Banerjee, a person who has passed an examination securing 40% marks is an M.A. and the person who has secured 60% marks is also an M.A. and both are Lecturers and naturally, both will be entitled to equal pay.

54. Mr. Banerjee further submitted that Chittabrata Das, one of the respondents has by now acquired M.Phil degree and as such he possess the qualifications for UGC scale.

55. Mr. Banerjee submitted that so many Lecturers named in the writ petitions have been allowed UGC pay scale though they don't possess the qualifications as per UGC norms and since they have been allowed, the clients of Mr. Banerjee should also get equal pay and nonpayment to Mr. Banerjee's clients the UGC scale of pay is a clear and blatant violation of the provisions of Articles 14 and 16 of the Constitution of India.

56. Mr. Banerjee further submitted that his clients have been selected by the Selection Committee constituted by the Governing body and naturally, it cannot be said that they have been illegally recruited.

57. Mr. Banerjee further submitted that in the Judgment reported in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, the Hon'ble Apex Court has observed in its paragraph 17 and 30 that principle of "equal pay

for equal work" is deductible from Articles 14, 16 and 39(d) and may be properly applied to the cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer Paragraph 17 and 30 are quoted hereinbelow for convenience of discussion.

17. In this writ petition, the substantial grievance is that even though the three petitioners were respectively holding the post of Professor in Animal Pathology, Animal Genetics and Veterinary Parasitology from 1963, 1970 and 1970 respectively, when the pay-scale for the post of Professor, on the Commission underwent an upward revision to Rs. 1100-1600. the ICAR instead of straightway granting the scale to the petitioners, the holders of the posts of Professor, proceeded to issue an advertisement on May 21, 1974 inviting fresh applications for the post of Professor in the three subjects in which the petitioners were already holding the post of Professor and simultaneously appointed some others in different subjects and disciplines as Professors and gave them the revised scale while the petitioners were left to languish in the old scale. According to the petitioners, apart from gross discrimination in the matter of equal pay for equal work, the direct consequence of this unfair and arbitrary action of the third respondent was the adverse affectation in the seniority in the cadre of Professors because those who were appointed in the revised scale scored a march over the petitioners who continued to languish in the pre-revised scales. Petitioners contend that the situation is recreated which was adversely commented upon by the Minister in the Parliament that the recruitment policy adopted by ICAR necessitates a scientist to apply for posts and being interviewed by Selection Committee with attendant hazard and consequent frustration. Petitioners therefore pray firstly for canceling the advertisement issued for the purpose of inviting applications for the posts already held by them and secondly for granting them equality of treatment in the matter of pay-scales with other Professors with whom they stand on terms of equality and are better equipped because of longer experience. Petitioners say that in 1970/71 six posts of Professor were created in the revised scale of Rs. 1100/1600 at IVRI in the discipline of Poultry Science, Poultry Pathology, Veterinary Public Health (Calcutta Centre of IVRI), Biochemistry, Epidemiology and Veterinary Public Health (IVRI Centre). The revised scale was sanctioned for these newly created posts pursuant to the recommendation of the University Grants Commission. Let it be made distinctly clear that the revised scales were meant to the post of Professor in IVRI not for the post in any particular discipline. Petitioners were holding posts of Professors in IVRI, and therefore the petitioners contend that the posts of Professor held by them would be governed by the revised scale effective from the date on which new posts were created and filled in, in the revised scale; Respondents' response to this contention is that ICAR informed the director of IVRI as per its letter dated January 20, 1971 that three posts of Professor in the scale of Rs. 1100 - 1600 in Veterinary Bacteriology, Animal Nutrition and Animal Genetics have been sanctioned subject to the condition that the existing posts of Professor

obviously in the same disciplines in the scale of Rs. 700 - 1250 stand abolished. Shorn of embellishment, it would mean that the posts in the aforementioned three subjects shall henceforth carry the revised scale of Rupees 1100 - 1600. The respondents assert that the revised scale was not to be automatically granted to the existing holders of the posts but they would be considered with other applicants for appointment in the higher scales, if they are otherwise suitable. It was also said that in the letter of appointment as Professor each of the petitioners was informed that as the post of Professor is being upgraded, each of them will have to face selection test. Letter of appointment dated March 25, 1970 in respect of petitioner No. 2 though relied upon was not on the record but when produced in the course of hearing with an affidavit, it belied the statement. There is nothing in the letter of appointment of each of the petitioners that when the revised scale for the post of Professor will be introduced, the incumbent of the post will have to face a fresh selection. It is not clarified whether the three posts of Professor in Veterinary Bacteriology, Animal Nutrition and Animal Genetics in the pre-revised scale were already filled in and whether the holders of the posts got the revised scale without any, fuss of fresh selection on the part of the respondents. The counter-affidavit on behalf of respondents Nos. 1,2,3,4,5 and 11 is conspicuously silent on this point. However, it is contended that the qualifications for post of Professor while sanctioning the revised scale was altered inasmuch as when the post of Professor carried the scale of Rs. 700 - 1250, the essential qualification required was only a post-graduate degree in the specific discipline whereas in the post created in the revised scale. A doctorate degree in the subject along with the specialization in the relevant discipline was prescribed and which fact can be gathered from the model qualifications prescribed for similar posts in all the research institutes of ICAR. It was further asserted that earlier the minimum experience required was about 5 years whereas it was revised to 7 years. Nothing would be more misleading than this eyewash performance which really hides the true intendment namely, to exclude the present incumbents of the posts of Professor and to expose them to a competition with same rank outsiders who may as in the case of Dr. S.I. Sliha score a march in the name of selection which generally leaves a grey area. Petitioners Nos. 2 and 3 do hold a Doctorate in their respective discipline with experience extending more than 7 years in the discipline. Petitioner No. 1, who does not hold a Doctorate has to his credit M.R.C.V.S. which has been recognised by the Government of India as possessing post-graduate qualification in Veterinary and Animal Sciences and teaching posts including the post of Director of IVRI and continue to be recognized as guide/teacher for post-graduate degree courses. The subterfuge was to expose the petitioners to a fresh selection test with all its consequential uncertainties and that was the exact thing found by Dr. Gajendragadkar Committee. That is why it can be said that like the true Bourbons "ICAR has learnt nothing and forgotten nothing." The hard fact is that the petitioners were holding the posts of Professor when the revised scale became effective. In the letter dated January 20, 1971 sanctioning revised scale for the post of Professor, there is not even whisper that the existing incumbent

will be denied the benefit. In fact, it is well known that the University Grants Commission regularly recommends revised scales for every plan period for teaching posts and the revision takes note of inadequate scales sanctioned till the date of revision. The only jurisdiction offered by the respondents for denying scale is to be found in the counter-affidavit of Dr. M.S. Swaminathan. It is contended that the newly created post in the cadre of Professor is not the same as the then existing post and that there was marginal revision in the qualifications for the posts of Professor in the revised scale and that petitioners were not discriminated because they were given an opportunity to contest for the posts in the revised scale. The justification is too flimsy to merit any serious consideration, more so in view of the fact that it is difficult to envisage a situation in such institutes, undertaking advance research in Agriculture and Animal Husbandry where persons holding Doctorate qualification and enjoying the status of the post of Professor would be governed by the two different scales even though the duties, responsibilities and functions in various sister disciplines are identical. In such a situation Article 39(d), must assist us in reaching a fair and just conclusion. Elaborating the underlying intendment of Article 39(d), Chinappa Reddy, J. in *Randhir Singh Vs. Union of India (UOI) and Others*, , observed that construing Articles 14 and 16 in the light of the Preamble and Article 39(d), the Court was of the view that the principle "equal pay for equal work" properly applied to the cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employee"". The case in hand is a glaring example of discriminatory treatment accorded to old experienced and highly qualified hands with an evil eye and unequal hand and the guarantee of equality in all its pervasive character must enable this Court to remove discrimination and to restore fair play in action. No attempt was made to sustain the scales of pay of Professor on the doctrine of classification because the classification of existing incumbents as being distinct and separate from newly recruited hand with flimsy change in essential qualification would be wholly irrational and arbitrary. The case of the petitioners for being put in the revised scale of Rs. 1100 - 1600 from the date on which newly created posts of Professors in sister disciplines in IVRI and other institutes were created and filled in revised scale is unanswerable and must be conceded.

30. The first question to which we must, therefore, address ourselves is whether there is any substance in the contention of R. Gupta that even applying the amplified essential qualification, respondent No. 6 Dr. S.L. Mehta was not qualified for being selected for the post? The finding recorded by the High Court in this connection is eloquent to establish that Dr. S.L. Mehta did not fulfil either the original or the amplified essential qualifications, pertaining to experience. Says the High Court that the research experience of respondent No. 6 Dr. S.L. Mehta started from October. 1962 when he was preparing research thesis for M. Sc. The selection took place in February, 1972 with the result that the research experience of Dr. Mehta fell short of 10 years. This finding was not only not

controverted but is unassailable. And we do not subscribe to the view that the period spent in preparing thesis for M.Sc. - mark not Ph.D. counts towards required experience. It is well settled that experience to be of value and utility must be acquired after the educational qualification is obtained and not while acquiring the post-graduate qualification. In the case of Ph.D. Degree awarded on research the situation may be different. But preparing thesis after graduation for acquiring post-graduate degree would not count towards prescribed experience qualification. Respondent No. 6 qualified for M. Sc. in 1964 and Ph.D. towards the end of 1966 in soil science and Agricultural Chemistry under the guidance of Dr. N.B. Das and joined service at IARI in July. 1969, these facts are uncontroverted and, therefore, the High Court overlooked the fact that respondent No. 6 Dr. S.L. Mehta had research experience extending only over hardly a period of 5 years. Further the High Court failed to notice that respondent No. 6 appeared not to carry on research in the line of Nutrition of Protein Chemistry and therefore he did not fulfill the qualification at all and in our opinion, he even could not have been called for interview by the Selection Committee. Not only that, in para 10 of the writ petition in the High Court it was specifically asserted that respondent No. 6 Dr. Mehta did not satisfy the original or amplified essential qualification pertaining to experience because the post was under the project on the protein quality of millets, sorghum, wheat and other cereals concerned with studies on the nutritional quality of the foodgrains whereas Dr Mehta has never done any work nor published any literature in the line of nutrition nor was he ever basically trained in this line. In the counter-affidavits filed on behalf of respondents Nos. 2 and 4 that is Director General and Secretary to the Government of India. ICAR and Director-General of ICAR, this averment was neither questioned nor controverted nor denied. Further the High Court upheld the selection and appointment of respondent No. 6 Dr. Mehta holding that as the Selection Committee had power to relax the essential qualification, the appointment of Dr. Mehta was made after relaxing the essential qualification. We find it difficult to appreciate that the High Court should uphold an appointment of a person, to suit whose requirement, the essential qualification was amplified by providing an irrelevant additional amplification and yet who failed to qualify for the same by resorting to the power of relaxation. And we are not satisfied that the second Selection Committee had the power to relax essential qualification pertaining to experience. In this connection, it is advantageous to refer to the counter-affidavit of respondent No. 4, the Director-General of ICAR, where in he stated that first essential qualification pertaining to educational attainment was relaxable. He is silent as to the second essential qualification pertaining to experience. The relevant portion may be extacted:

Doctorate in Biochemistry or Organic Chemistry or Agricultural Chemistry - relaxable to M. Sc. Degree or equivalent post graduate qualifications in the case of candidates with exceptionally distinguished record of productive research.

58. It is not suggested that there was powers of relaxation with regard to second essential qualification. However neither respondent No. 6 nor respondents Nos. 2

and 4 ever asserted that but for power of relaxation claimed, respondent No. 6 could ever be said to have satisfied the essential qualification pertaining to experience. In this connection, we may refer to a counter-affidavit on behalf of respondents Nos. 3 and 5 to 7 which included respondent No. 6 the party concerned. In the counter-affidavit, there is a sphinx like silence with regard to the averments made in para 10 that respondent No. 6 Dr. Mehta did not satisfy the essential qualification pertaining to experience. Sub silentio an admission can be spelt on behalf of respondent No. 6 that he did not have requisite qualification as to experience. Therefore, the conclusion is inescapable that respondent No. 6 Dr. Mehta did not satisfy the essential qualification pertaining to experience even after the ICAR and its affiliates and respondent No. 4 amplified the essential qualifications. And we could not race the source of power if any to relax essential qualification as to experience. Therefore, on the face of it the selection of respondent No. 6 for the post of Senior Biochemist is utterly unsustainable. More so because there were others who fulfilled all essential qualification and one is left to speculate the reasons which weighed with the Selection Committee to reject them and to select a person who did not fulfill the essential qualification for such a post as Senior Biochemist, claiming non-existent power to relax the qualification."

59. Mr. Banerjee also relied on a decision reported in *Ajay Jadhav Vs. Government of Goa and Others*, . Mr. Banerjee relied on the observations made in paragraphs 4, 5 and 6 of this Judgment which are quoted hereinbelow:

4. The cause of the appellant has been opposed on the ground that, he was not having the required qualification for the post which required post-graduate degree and not post-graduate diploma. It was admitted that a circular dated 30.6.1988 was issued by the Directorate of Education under which among the qualifications prescribed by NCERT (National Council for Education, Research and Training) for teachers of various courses was prescribed pay scale for Teachers Grade I as 1640-2900. Subsequently a circular dated 13.8.1990 was issued by the Directorate of Education wherein it was stated that a doubt had arisen whether the same pay scale of Rs. 1.640-2.900 was also to be given to all incumbents holding alternate qualifications in the descending grade and that a reference was made to NCERT which had stated that "so far as the pay scales are concerned the States have to decide about it, keeping in view the prevalent norms and pay structure for similar categories of the teachers in the State." It was thus mentioned that certain anomalies in the pay scales were in existence and as such rationalisation of pay scales by setting right the existing anomalies would be informed in due course of time. By another circular dated 20.11.1990 it was clarified that candidates possessing the requisite qualification, i.e. post-graduate degree would be entitled to the pay scale of Grade I Teacher, i.e. Rs. 1,640-2,900. It was on account of this circular that the appellant was denied the pay scale of Rs. 1,640-2,900.

5. The appellant has submitted that the circular dated 20.11.1990 was set aside

by the Judgment of the High Court dated 11.2.1992 in Writ Petition No. 61 of 1991, filed by three teachers similarly situated. These teachers were in the pay scale of Rs. 1,640-2,900 which they were getting and in view of the circular of 20.11.1990 were downgraded to the pay scale of Rs. 1,400-2,600 from November, 1990. The High Court had ordered that the pay scale of Rs. 1,640-2,900 be resorted to them with effect from November, 1990. It was stated that this Judgment was not noticed by the High Court in the impugned Judgment. Reference was then drawn to the circular dated 30.6.1988. This circular we reproduce as under:

The Heads of Higher Secondary schools and Higher Secondary units of Colleges are hereby informed that the qualifications prescribed by Ncert for Grade I Teachers and part-time teachers to be appointed for various vocational subjects introduced in your school under the vocationalisation of Education at +2 stage are furnished in the annexure enclosed for guidance and necessary action. The said qualifications are worked out and approved by Ncert and may be considered for the appointment of teachers as said above.

The pay scale prescribed for Grade I Teacher with above qualifications is 1,640 - 2,900. In this regard, it is informed that if the schools do not get the qualified candidates as prescribed in spite of their efforts made by notifying the vacancies in the local Employment Exchange, local newspapers and all-India newspapers, the local schools are permitted to appoint less qualified candidates available in a lower scale for a fixed tenure of three or six months, as a stopgap arrangement with prior approval of this Department. Rest of the recruitment procedure will be the same as laid down in the education rules,

Sd/- (S.V. Kurade) (Director of Education)

Annexure to this circular, insofar as the qualification of the appellant is concerned, is as under:

Name of the Qualifications Qualifications vocational prescribed by prescribed by course NCERT for full-time NCERT for Part-time teachers teachers

8. Computer Technique/ (i) B.Tech/B.E. or Computer Programme equivalent in Computer Assistant Science/Engineering (ii) Diploma/Post Diploma with 2 years"s experience (iii) Master"s Degree in Computer Application (iv) B.Sc. in Computer Science with 3 years" Programming experience (v) M.Sc. in Physics or Maths or Statistics or Chemistry OR M.A. in Economics and Post graduate Diploma in Computers with 3 years" Programming experience.

6. It is not the appellant was having less qualification than prescribed in the circular or that his appointment was for fixed tenure of 3 or 6 months as a stopgap arrangement. The appellant has also pointed out with reference to a comparative chart filed in the proceedings that teachers similarly situated and having the same qualifications are getting the pay scale of Rs. 1,640-2,900. These teachers are apart from the three teachers in Writ Petition No. 61 of 1991.

mentioned above. There has been no reply to this submission of the appellant as to how other teachers with the same qualification are getting higher pay scale of Grade I teacher. It appears to us that it is a clear case of discrimination.

60. Mr. Banerjee further relied on a decision reported in *Daily Rated Casual Labour employed under Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, . Mr. Banerjee submitted that in this Judgment the Hon"ble Apex Court, has observed "we are of the view that such tenure amounts to exploitation of labour. The Government cannot take advantage of its dominant position and equality any worker to work even as casual labour on starvation wages. It may be said that he casual labours have agreed to work on such low wages. That has done because he has no other choice. This poverty that has driven him to that state. The Government should be a model employer. Where all the views that on the facts and circumstances of this case the classification of employee in the regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to the employees in the corresponding regular cadre particularly in the lowest rung of the department where the pay scale are the lowest is not tenable."

61. Mr. Baneerjee relied on another decision reported in *Dhirendra Chamoli and Another Vs. State of U.P.*, on the same principle.

62. Mr. Banerjee then laid emphasis on grant of UGC scale of pay to the Lecturers who are not having qualifications as per UGC norms and who are getting UGC scale of pay from their initial appointments. Mr. Banerjee submitted that this is violation of Article 14 read with Article 39(d) inasmuch as the said Lecturers also do not possess requisite qualifications but they are getting UGC scale of pay but the writ petitioners/respondents are deprived of the same scale of pay.

63. Mr. Banerjee submitted that the learned single Judge relied on a Division Bench Judgment and if this Division Bench Judgment differers with that Division Bench Judgment then this Division Bench should refer if to the higher Bench as per judicial norms.

64. Mr. Banerjee submitted that his clients are entitled to UGC scale of pay from 1976 onwards and the learned single Judge rightly allowed Rupees One lakh as ad hoc sum towards their payment.

65. Mr. Banerjee relied on a decision of the Division Bench of the Hon"ble Orissa High Court reported in *Smt. Bandita Dash v. State of Orissa and Anr.* 1998 Vol. (1) ESC, wherein the Division Bench has observed "a person who is already in service and has a research degree cannot be put to a lower pedestal than one who is appointed afresh."

66. Mr. Banerjee further submitted that this Court should dismiss the appeals and should uphold the Judgment delivered by the learned single Judge.

67. Heard the learned Counsel for the appellants as well as the respondents/writ

petitioners. The following points need be decided in the instant appeals on the basis of the documents on record and the submissions made by the learned Counsel for the respective parties.

Points for decision:

- 1) Whether the writ petitions are maintainable or are liable to be dismissed on the principle of acquiescence.
- 2) Whether the writ petitioners/respondents are entitled to UGC scale of pay from the date of their initial appointment.
- 3) Whether the writ petitions can be termed as time barred or are liable to be dismissed inasmuch as the writ petitioners being guilty of laches or delay.
- 4) Whether the principle of Article 39(d) read with Articles 14 and 16 are applicable insofar as the claims of the writ petitioners are concerned.
- 5) Whether judicial review in the matters of pay fixation is permissible and the learned single Judge was justified in granting UGC scale of pay to the respondents/writ petitioners.

68. Before dealing with the points for decision, the backdrop of the pay revision ascribed in the following manner:

Before 1975 the usual procedure for recruitment of Lecturers in non Government Colleges was that publications were being made, the candidates used to apply, Selection Committees were constituted by the Governing body of the Colleges and appointment was made and this process continued for a long time even after the 1975 bringing in UGC norms all over West Bengal. The persons who were appointed after 1975 without following UGC norms were appointed irregularly but at certain point of time the Government thinking about the services of those Lecturers who have been continuing for a long time and with socialistic approach regularise their services but put them in a graded scale and designated them as graded teachers. This is the background on which the writ petitioners' services were regularised and they were fixed in graded scales as graded teachers,

69. In answer to the first point it can be safely said or rather it is admitted that as and when revisions were made in the pay revision memo concerning the petitioners it has been categorically stated that the petitioners will not be entitled to UGC scale of pay but since their day of appointment till date neither the writ petitioners challenged their initial fixation of pay as graded Lecturers in the graded scale of Rs. 300-800/- nor did the writ petitioners during their pay revision in 1981 or 1991 and 1996 challenged the said revision memo and on the contrary accepted the scale and in this process the respondents/writ petitioners acquiesced their rights and only on this score the learned single Judge should have dismissed the writ petitions inasmuch as after acquiescing their rights the writ petitioners cannot make any attempt to revive back their acquiesced rights. In our view, on that score only the writ petitions failed. In this context reference

may be drawn, in our opinion, to the Hon"ble Apex Court decision reported in AIR 1987 SC, 1603 (supra) and in our view the learned single Judge wrongly entertained the writ petitions and wrongly passed his Judgment on the same.

70. In answer to the second point we should observe that as stated earlier, the writ petitioners are not in possession of the qualifications prescribed by the Government in the year 1975 which is termed as UGC scale of pay and as such the writ petitioners having not qualified, cannot claim such pay scale where qualifications have been specified against the scales. In that view of the matter we can safely say that the writ petitioners/respondents have no legal right to claim UGC scales since the writ petitioners are not following UGC norms insofar as their qualifications are concerned. Since the writ petitioners/respondents have no legal right, the writ petitions on that score also, cannot be said to be maintainable or entertainable.

71. It appears from records, more to say from admitted records that writ petitioners were appointed in a period from 1976 onwards to 1979. Thereafter, writ petitioners' graded scales of pay were revised in 1981, 1991 and 1996 but the writ petitioners moved the instant writ petitions after a prolonged delay of 15 years. Nowhere in the writ petitions there is explanation of such delay, though, in strict sense Limitation Act is not applicable in writ proceedings but in different decisions the Hon"ble Apex Court has observed that the writ petitions are to be moved within a reasonable time from their causes of action. What is the reasonable is to be derived from the particular facts and circumstances of that case and if there is no explanation of a delay which is uncalled for in moving the writ petition, the Court can safely say that the said writ petition is not entertainable. In the instant case delay in moving the writ petitions cannot be said to be reasonable inasmuch as the petitioners when initially fixed in the graded scale could have challenged the said scale and could have said that they are entitled to UGC scale and as such here the delay can be said to be "unreasonable". On this score also the learned single Judge should not have entertained the writ petitions declaring the same as time barred.

72. In answer to the fourth point it is needless to mention that Article 39(d) being a directive principle is not enforceable in Court of Law unless the same is fortified with violation of Articles 14 and 16. It is also needless to mention that differentia created on the basis of quality of qualifications is accepted and cannot be said to be in violation of the provisions of Articles 14 and 16. Article 14 is a positive concept. The writ petitioners/respondents herein gave some illustrations or examples of appointment of some persons as Lecturers and payment to them as per UGC scales, though they don't possess UGC norms or UGC prescribed qualifications. Obviously, these appointments are illegal. The Government in colourable exercise of powers have made these appointments through back door and this is highly deplorable and unfair on the part of the Government. We, however, hope and trust that in future such appointments will not be given and the Government will take steps against the erring officers for whose fault or

laches these things were allowed to happen. But the writ petitioners taking advantage of such illegality cannot pray for writ of Mandamus directing the Government to perpetuate this illegality and the writ petitioners cannot claim that since some illegality was committed in respect of somebody they have been allowed to perpetuated that illegality and naturally, violation of Articles 14 and 16 comes in is a totally wrong, pervert concept. In our view, therefore, the writ petitioners cannot claim those benefits which have been given to some Lecturers illegally and if in this process Articles 14 and 16 are created then Article 39(d) in itself cannot be said to be enforceable in the Court of Law. In the above view of the matter, here, there is no violation of the provisions of Articles 14 and 16 and principle of "equal pay for equal work" is not applicable in the case of the writ petitioners/respondents.

73. Insofar as the pay fixation part is concerned, it has been made clear by the Hon"ble Apex Court in different decisions referred to above, which have been relied on by Mr. Dutta that pay fixation is a principal duty of the expert body like financial experts of the Government and normally, in such cases the scope of judicial review is very much limited. The Government In it its wisdom took a policy decision that those who possesses a particular qualification in the matter of their placements in a particular scale will be allowed the said particular scale of pay and there cannot be any illegality or mala fide (though the said UGC norms haven"t been challenged and mala fide haven"t also been pleaded).

74. It is therefore, a matter of admitted records that the writ petitioners/respondents didn"t possess the requisite qualifications to get the UGC scale of pay from the date of their initial appointments and we also arrive at a conclusion that the writ petitioners neither are entitled to nor can they claim the UGC scale of pay. The learned single Judge placed reliance on a Division Bench Judgment reported in Matter No. 1030 of 1995 *Bed Prakash Basu v. State of West Bengal and Ors.* which doesn"t bring about any ratio decidendi or doesn"t make out any principle of law and as such Judgment cannot have any binding effect on this Division Bench and the same is distinguishable on facts also.

75. We don"t find any reason how the learned single Judge could entertain these writ petitions and how the single Judge passed an order directing the Government to give advance sum of Rupees one lakh to each of the writ petitioners.

76. We, therefore, allow the appeals, set aside the of order impugned in the above numbered appeals. We also allow the applications u/s 5 of the Limitation Act filed in connection with M.A.T. No. 1474 of 2002. The other application pending in connection with M.A.T. No. 1474 of 2002 is being disposed of herewith.

77. We. also direct the State Government to adjust the amount given to concerned writ petitioners/respondents against their future salaries on proportionate basis in twenty installments. The first of such installments for the purpose of adjustment will be deducted from the salary of March 2006 and

thereafter the deductions will be onwards month by month till the entire sum given to them as per the direction of the learned single Judge is adjusted.

With the above observations and with the above directions the above appeals are allowed as stated above. The writ petitions in connection with the above appeals are consequently, dismissed.

There will be however, no order as to costs.

Urgent xerox certified copy of this order may be supplied to the parties upon usual undertaking.

V.S. Sirpurkar, C.J.

78. I agree.