

(1994) 05 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 30507 of 1994

Suresh Chandra Tewari and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Citation : (1994) 05 AHC CK 0024

Hon'ble Judges : Brijesh Kumar, J

Final Decision : Dismissed

Judgement

Brijesh Kamar, J.—In all the writ petitions mentioned above, common questions are involved, hence they have been heard together and are also being disposed of by a common judgment.

2. The petitioners, in the above noted writ petitions, except writ petition No. 1502 (S/S) of 1992 filed by the State (EngineerinChief. Irrigation Department, V. P. v. Makrand Singh, are parttime tubewell operators, who have prayed for issue of a writ of mandamus commanding the opposite parties to pay them in the regular scale of pay which is admissible and is being paid to fulltime tubewell operator. A prayer for quashing the notification, dated 2021992 (contained in Annexure1 to writ petition No. 3558 (S/S) of 1992 has also been made, by which their nomenclature has been changed from parttime tubewell operator to tubewell assistants and an honoraria of Rs, 550 per month has been fixed in lieu of pay. It has been prayed that their services may be regularised on the post of tubewell operators.

3. Some of the parttime tubewell operators had been raised an industrial dispute in connection with payment of same wages as are being paid to regular tubewell operators, which was decided by the labour court in their favour. The opposite parties have challenged the award of the labour court by filing Writ Petition No. 1592 (S/S) of 1992. Since the same questions are under consideration, this petition [viz., Writ Petition No. 1502 (S/S) of 1992] has also been heard, as indicated above, along with the bunch.

4. It appears that the services of tubewell operators were needed for operating tubewells in the command areas for irrigation of agricultural fields. After their selection, they had to undergo some kind of a short training of fifteen days or a month and after passing the examination, they were allowed to join their duties. Many of the petitioners have been working since long, say, may be for about tea years ; they had been appointed as parttime tubewell operators on consolidated salary of Rs. 299 per month. Their appointments were normally for a period of three years whereafter their services were to be terminated and reappointment was being given only if they were found suitable. This condition of three years" appointment and thereafter assessing their suitability again before issuing fresh appointment orders was challenged and the orders of termination on lapse of three years had been quashed by this Court. A copy of the judgment, dated 111990 has been filed as Annexure2 to writ petition No. 3558 (S/S) of 1992. Such conditions of services of tubewell operators, as prescribed by Office Memorandum issued from the office of Engineerin Chief, Irrigation, U. P. dated February 8, 1982 are contained in Annexure CA2 to the counter affidavit filed in Writ Petition No. 3558 (S/S) of 1992. On internal page 5 of Annexure CA2, it is provided that parttime tubewell operations were to work for a limited time and during rest of the time, they could do their own work. Their duty hours were fixec1 as 9,30 a. m. to 12 in the noon. It also provided that during off duty time, generally they should be available within the command areas. It also provided that they should belong to the village itself. Ultimately, however, a G. O., dated 2021992 was issued by the Government, addressed to the EngineerinChief, Irrigation; after reviewing the whole petition in regard to services of parttime tubewell operators it provided that they would be called as tubewell assistants. All of them ware to be given appointment letters in the prescribed form. It also provided that those who do not agree to be appointed after the issuance of the said G. O. on the new terms, against than further action shall be taken. Instead of Rs. 200 per month, a sum of Rs. 550 per month as honorarium was made admissible A provision for incentive allowance was also made. The petitioners have objected to the change of their nomenclature as well as payment of honorarium and other conditions of service, hence the said G. O., dated February 29, 1992 has also been challenged.

5. According to the petitioners, nature of their work is the same as that of the regular tubewell operators. They are also equally qualified. According to the petitioner, the condition of duty hours that parttime tubewell operators were to work only two and a half hours a day, is only a condition on paper; they have to work for the whole day as the irrigation is dependent upon the availability of electricity. Therefore, whenever, electricity is available, they are required and called upon to operate the tubewells. The amount of labour put in by them is the same as put in by the regular fulltime tubewell operator, on the basis of the submissions made above, they claim their regular appointment as tubewell operators and the scale of pay as revised and paid to fulltime tubewell operators.

6. The claim of disparity of the petitioners has, however, been denied by the

opposite parties. A counter affidavit has been filed by one Shri Komal Prasad, dated 11111992. Along with the affidavit, he has annexed a copy of the counter affidavit filed on behalf of the State in Writ Petition No. 3554 of 1992 Subhash Chandra Dohre v. State of U. P. It is averred that the said detailed counter affidavit be also read in the instant petitions.

7. We may straightaway come to the averments made in the counter affidavit filed by the department and the State Government indicated above, in defence of the case. What has been indicated in the counter affidavit is that

(i) the services of the parttime tubewell operators are on the basis of contract for a period of three years and after completion of the said period, their appointment again is considered provided their work has been satisfactory ;

(ii) their duty hours are from 9.30 a. m. to 12 in the noon ;

(iii) after the period mentioned above, they are free to do their own work ;

(iv) they are to be appointed in their own villages and are not to be transferred ; and

(v) after the prescribed hours of duty, the keys of the tubewells remain with the farmers and they themselves operate the tubewells, whereas the fulltime tubewell

8. In the counter affidavit filed on behalf of the State of U P In the case of Subhash Chandra Dohre (Writ Petition No. 3554 of 1992) sworn Ashok Kumar Duggal, Joint Secretary, Irrigation Department the Secretariat, the distinction between the petitioners and regularly pointed well operators has been given in Para 22. It has been stated that

(i) the mode of recruitment of fulltime tubewell operators is different from the mode of recruitment of parttime tubewell operators

(ii) the duty hours of the regularly appointed tubewell operators are six hours while the duty hours of parttime tubewell operators are two and a half hours;

(iii) the appointment of parttime tubewell operators is an appointment in contractual nature governed by letter of appointment fulltime tubewell operators are the Government they are entitled to all benefits available to Government servants; and

(iv) the parttime tubewell operators are free to do the their profession, or avocation whereas a Government servant is not entitled to carry on his own profession, business or avocation.

9. Apart from what has been indicated above, it is also stated that on an average a State owned tabewell gives an annual revenue of about Rs. 7,000 only while apart from the honorarium paid to the tubewell assistants, a huge financial expenditure is incurred by the State on the operation and maintenance of tubewells and the energy charges ; therefore, in case lulltime tubewell operators

are appointed, it would cast more financial burden on the Public Exchequer.

10. From a perusal of the pleadings taken by the parties, it is clear that the apposite parties do not deny that the nature of the work of parttime tubewell operators is the same as that of the fulltime tubewell operators. It is also not the case of opposite parties that there is any difference in the required qualifications of fulltime tubewell operators and parttime tubewell operators. It has though been said in the counter affidavit that the mode of recruitment of the two is different, but it has nowhere been elaborated in what manner it is different. It has been indicated that after selection, parttime tubewell operators have to undergo mechanical training for a short period, whereafter they pass an examination before they are allowed to join. The difference, however, between the two, as indicated in the counter affidavit, is that services of parttime tubewell operators are only for a period of two and a half hours while that of fulltime tubewell operators are for six hours ; services of fulltime tubewell operators are transferable whereas normally parttime tubewell operators are from their villages themselves where the tubewells situate or from a nearby village ; and after fixed duty hours, parttime tubewell operators are free to engage themselves in any business, profession or avocation, but that is not to with the fulltime tubewell operators.

11. It would thus be better to examine the above grounds of distinction before taking up other points.

12. First of all, we may consider about the dutyhours of parttime tubewell operator. It is true that in case the duty hours of the parttime tubewell operators are less as compared to regular fulltime tubewell operators, it is not open to them to claim same emoluments even though the nature of the work, the qualification and all other things be the same or similar. But according to the petitioners, it is submitted, the mention of dutyhours from 930 a.m. to 12 noon in the letters of appointment is merely on paper. It is a shame condition. According to them, they work for much more time and in any case, not less than the regular or fulltime tubewell operators. It is submitted that the duty hours fixed by the opposite parties are not realistic and practicable. The said duty hours cannot be adhered to as the supply of electricity is most uncertain, irregular and unpredictable. They have to operate tubewell whenever electricity is available. In case electricity is not available during 9.30 a.m. to 12 in the noon, then there is no question of operating tubewells during that period. The tubewells are operated any time day or night whenever electricity is available and as long as the fields need be irrigated. It is submitted that same is true about the full time regular tubewell operators. Neither they can, nor do they operate the tubewells all the day long. They do it only when the electricity is available. It is then stressed that it is in this connection that a condition is imposed that parttime tubewell operators should be available all the time in the village. If the working hours were to be strictly adhered to and the parttime tubewell operators were not to operate tubewells beyond two and a half hours as

fixed, it would not have been at all necessary to require their presence in the village. It is so required, only because whenever electricity may be available the petitioners may operate tubewells as long as the electricity is available and the fields are irrigated. This is what is done by the full time tubewell operators too. The fact that tubewells are operated even beyond fixed hours from 9.30 a.m. to 12 in the upon is evident from the own counter affidavit of the opposite parties. The counter affidavit of Sri Komal Prasad, particularly Para 6 may be referred to. It has been said that beyond the fixed hours, the keys of the tubewells remain with the farmers and they themselves operate the tubewells beyond the fixed hours.

13. One thing which has undisputedly emerged from the averments made in the counter affidavit referred to above is that tubewells are required to be operated beyond the fixed hours also. It is not understandable why the keys would be available with the farmer and how they would be permitted to operate the tubewells. If the tubewells can be operated by the farmers independently, why there must be parttime tubewells for two and a half hours only. In this context, the case of the petitioners and their averments cannot be doubted when it is said that they operate tubewells beyond the fixed hours of duty and whenever electricity is available. It is for this purpose that they are supposed to be always available there in the village, where they work.

14 In different writ petitions, averments have been made showing that parttime tubewell operators have been working for more than the fixed hours In Writ Petition No. 3207 (S/S) of 1991, Anshkalik Nalkup Chalak Sangh v. State of U. P., chart indicated in Para 2, which is supported by Annexures 1 2 and 3, shows the usual hours of work as put in by the petitioners as tubewell operators. The Supervisor, the Zildar and the Executive Engineer have issued certificates to that effect. In the counter affidavit, there is no denial of these facts, in Writ Petition No 6522 of 1992 (S/s) Banshi Lal Gupta v. State of U. P., attention of the Court has been drawn to Annexure1 (the Chart) showing statement of working hours of the petitioners for a period of six months. Similarly in Writ Petition No. 2520 of 1992 (Sis) Surendra Pal Singh v. State of U. P., Annexure8 has been filed to show that a direction was given to the parttime tubewell operators to be present on duty from 10 a.m. to 5 a.m. All these averments go to show that as a matter of fact, the duty hours of parttime tubewell operators are not confined to only two and a half hours a day, between 9.30 a. m. and 12 in the noon.

15. Reliance has also been placed upon Annexure3 filed along with Writ Petition No. 6426 of 1992 (S/s) Satya Veer Singh v. State of U. P., By an order dated 2761988, the prescribed authority under the Minimum Wages Act found, on the application moved by the parttime tubewell operators, that in fact they are fulltime workers and should be paid D.A. etc. The State Government filed a Writ Petition against the said order at Allahabad (sic) which was dismissed on 831990. A copy of the order has been filed as Annexure4 to the writ petition. The Writ Petition was dismissed on the ground of laches as well as on merit.

16. Learned counsel for the petitioners also rely upon the award given by the labour in the case of Makrand Singh and others, which is under challenge in the writ petition filed by the State, namely, Writ Petition No. 1502 (S/S) of 1992. It appears that though some letters and replies were filed on behalf of the opposite parties, but no representative was present to contest the case though duly served. Evidence was recorded. The parttime tubewell operators had deposed that their work to operate the tubewells and to put them off, to do the meter reading and to verify the area which is irrigated, to maintain the record and to hand over receipts to the farmers. They also look after the tools and machinery etc. and they are on duty from 9.30 a. m. to 6 p.m. The same is done by the full time tubewell operators. Documentary evidence was also adduced showing the duration, during which the tubewells had been operating as also the records showing the fields irrigated etc. It is also indicated in the award that on behalf of the opposite parties, it was placed that claim of parity was not tenable as parttime tubewell operators had to work only for two and a half hours. The labour court also took note of the G.O. dated 1181983 and the order issued by the Engineer in Chief, Irrigation dated 1931981, by which parttime tubewell operators were required to be present all the time at the tubewell or near it and in the command area of the tubewell generally. It was held that apart from two and a half hours they were also required to be present within the command area. Therefore, it would be taken that they are fulltime workers. It was also held that they perform same duties as the fulltime tubewell operators. On appreciation of the documents and the oral evidence as indicated above, the labour court allowed the claim of the parttime tubewell operators. It will be appropriate to consider the writ petition filed by the State against this award.

17. As a matter of fact, the finding which has been recorded on the basis of the record and the oral evidence adduced before the labour court, has not been challenged. There seems to be no escape from the finding that parttime tubewell operators work much more than two and a half hours which are on paper fixed as their duty hours. One of the grounds taken in the writ petition is that merely because they were required to be available within the command area, it was incorrectly inferred by the labour court that they worked for the full time. In this connection, it may be observed that this is not the only ground to hold that they worked for the full time. This observation of the labour court is also in the background of other facts and evidence placed on record. No interference can be made in the award of the labour court on the ground that parttime tubewell operators do not perform their duties more than two and a half hours.

18. All the above facts and circumstances including the documents and the order of the Prescribed Authority under the Payment of Minimum Wages Act as well as the award of the labour court, leave no room for doubt that fixed duty hours from 930 a.m. to 12 noon, as one of the conditions of service for appointment of parttime tubewell operators, is a condition on paper alone, which is neither adhered to nor is it practicable to adhere with. Tubewells are required to be operated beyond these fixed hours on the own showing of the opposite parties.

To say that the farmers who have the keys of the tubewells, do it themselves, does not stand to reason. Admittedly, the tubewell operators need some training. It also includes the job of filling up different documents and registers etc. and to issue receipts to the farmers. Therefore, there seems to be hardly any substance in the plea taken that the farmers themselves operate tubewells beyond the duty hours of parttime tubewell operators, More so in the teeth of the condition that they would normally be available near the tubewell or in any case within the command area.

19. On behalf of the petitioners, it has been submitted that the condition of two and a half hours of work is against the facts. This condition has been provided with a view to deprive the parttime tubewell operators, though performing the same job, of the wages of full time tubewell operators. The petitioners are a weaker party of the contract of service. All kinds of unreasonable conditions have been made applicable, e.g. one that after having completed three years of service, their services had to be terminated and their new appointment was to be considered only after assessing their suitability. Similarly, though the petitioners are required to be available there all the time and have actually to work for the whole day. yet on paper the condition continues to be that of two and a half hours. It is submitted that this is a blatant example of unfair labour practice and exploitation. The petitioners being the weaker side of the contracting parties have no option but to accept every condition however unreasonable and illegal it may be. In this connection, it is submitted that such conditions are not to be read as part of the contract or in any case, they have to be ignored or brushed aside. In respect of the arbitrary conditions of employment, the learned counsel has placed reliance upon (1986) 3 SCO 156 Central Inland Water Transport Corporation v. Brojonath Ganguly, where an arbitrary condition of service of termination of employment of a permanent on three months notice was set aside. In fact the petitioners work for more than two and a half hours. This has been the plea of the petitioners which is substantiated by the facts and the documents they have produced. It is, therefore, in my view rightly submitted on behalf of the petitioners that the employment of the petitioners under a contract with certain conditions is only a matter of form whereas in substance, it is an employment for whole time. Form has no efficacy where ID reality, the things are otherwise. It would, therefore, be better to see the substance rather than the form.

20 We may next switch over to the other grounds taken by the opposite parties for holding disparity in the employments of parttime tubewell operators and full time tubewell operators. It is submitted that since the services of full time tubewell operators are transferable and that the parttime tubewell operators are from the village or from the neighbouring village it makes out a difference between their conditions of service, by reason of which full time tubewell operators are entitled for higher emoluments. Transferability of job can hardly be a ground for such a vast disparity between the two who perform the same job. This distinction sought to be drawn on the basis of transferability hardly provides

any nexus with the object sought to be archived. This cannot be at ground for discrimination. In this connection, a case reported ? AIR 1990 SC 2178, Food Corporation of India Workers Union v. Food Corporation of India and others, can usefully be referred to, more particularly para 15 where it has been clearly held that nontransferability cannot be put forward as a ground for denying parity in wage structure.

21. The next ground taken for paying less to the petitioners is that they are free to take up any other business, profession or avocation and can do any work in free time. The fulltime operators being Government servants have restrictions against taking up any other job, work or profession In connection with the above, it may be observed that no doubt such a condition "s there but in view of the findings recorded by me above, it is clear that the parttime tubewell operators perform full time duties. The facts in reality are different from the condition contained in the contract of service. At a matter of fact the other condition that the parttime tubewell operators have to be available at the tubewells during duty hours and for the rest of the time, within the command area, nullifies the fact of alleged freedom given to them to take up any other job or profession during offduty hours Such condition certainly places restriction on taking up any other job or profession. It is not at all necessary that one must get a job beyond duty hours as parttime tubewell operators within the village or so to say the command area. It also cannot be said that if one decides to take UP some profession, he must practice it within the command area. One may get a job outside the village or the command area and it may be necessary to outside the said area for the purposes of profession or avocation taken up by him Even if one has to open a shop, the village itself may not provide him any market for it; he may have to go to any other centre place of the town or highway crossing or tahsil market etc. If one wants to sell his wares roaming about in different villages, even that is not possible. Thus the alleged freedom given to do some other job or to take up other provision is too limited i e it has to be confined within the village or the command area which may provide little scope of taking up any profession or avocation or any particular job. The tubewells are to be operated even beyond the said duty hours from 9 30 a. m. to 12 in the noon on the own showing and affidavit filed on behalf of the opposite parties. The pantime tubewell operators are also required to be available all the time within the command area. The inference that they will be called upon to operate tubewells any time and for any length of time is as plain as two plus two makes it four. The pretext that beyond the working hours, farmers themselves operate the tubewells is unworthy of credence. A lot of paper work appears to be involved in operating the tubewells including filling up of registers and preparing of receipts etc. as well. It is not thinkable that everybody and anybody would be able to do it any time of the day. For all these reasons, in my view, the alleged freedom of taking up any job or profession is a mere farce and a device adopted to deprive the petitioners of their lawful emoluments, by calling them as parttime tubewell operators and now as tubewell assistants.

22. The petitioners, in various writ petitions filed in 1992, have impugned the Notification, dated February 20, 1992. It has been submitted that the order has been issued with mala fides. Learned counsel for the petitioners has stressed upon the background in which the order has been issued. It is submitted that by means of Annexure3 (to Writ Petition No. 3558(S/S) of 1992), dated 681984, the Labour Department notified minimum wages for labours including that of the Irrigation Department. It was at the rate of Rs. 299 per month or Rs. 11.50 per day. On 1171990, vide Annexure4 (to Writ Petition No. 3558 (S/S) of 1992), the rates were revised and they became Rs. 35 per day or Rs. 910 per month for a skilled labour whereas the wages of unskilled labour were fixed as Rs. 26 per day or Rs. 676 per month. Helpers/Assistants were placed under the category of unskilled labour whereas tubewell operators fell in the skilled labour category. Writ Petition No. 12079 of 1990. Om Prakash and others v. State of U. P. and another, was filed claiming higher scale of pay of skilled labour. An interim order was passed on 1331991 for payment of wages to the parttime tubewell operators in the same scale as was paid to regular tubewell operators at the rate of Rs. 950 per month. It is submitted that this interim mandamus has never been complied with. Thereafter it was in November, 1991 that the parttime tubewell operators, after due notice, went on strike and resorted to peaceful demonstration before the residence of Irrigation Minister. They were, however, arrested and sent to jail. After ten days, all of them were released without taking any bailbonds or initiating any kind of proceedings against them. After they came out of jail, they reported for duty, but they found that their services were terminated. Against this highhandedness of the opposite parties, parttime tubewell operators filed Writ Petition No. 8093 (S/S) of 1991 which was allowed on 20121991 by a learned Single Judge of this Court. A copy of the judgment has been annexed as Annexure6 (to Writ Petition No. 3558 (S/S) of 1992). This Court quashed the impugned orders of termination of their services.

23. It is submitted that in the above background where the opposite parties went to the extent of lodging the peaceful agitators into jail for ten days for no rhyme or reason and thereafter making an effort to dispense with their services and during the operation of interim mandamus, not to make payment of salary to parttime tubewell operators at the rate of Rs. 950 per month as well as in spite of the orders of the prescribed authority against which writ petition filed by them was dismissed, and the order passed in the labour dispute raised by Makrand Singh and others before the labour court, the opposite parties issued the impugned Notifications, dated February 20, 1992 changing the nomenclature of the parttime tubewell operators to that of tubewell assistants, for the simple reasons that the assistants were categorized as unskilled labour whose per month emolument was fixed at Rs. 676, otherwise there was no reason to change their nomenclature when they perform the functions and duties of tubewell operators. This has been done with a view to bring them in the category of unskilled labour, since tubewell operators are otherwise covered as machinemen etc. in the skilled category.

24. The circumstances indicated above certainly cast a shadow of doubt on the bona fides in issuing the Notification, dated February 20, 1992. Yet another argument advanced, which has also substance, is that the rights which have already accrued to the tubewell operators under the judgment of the labour court, the order of the prescribed authority which was upheld by the High Court and the interim mandamus, dated 1331991 issued by this Court, could not be taken away and the Notification, dated 2021992 could not be issued as it could not divest the rights already vested under the orders of this court. In this connection, reliance has been placed on the case reported in AIR 1992 SC 522 in the matter of Cauvery Water Dispute Tribunal, more particularly para 17 of the report. The notification, it was held, cannot have the effect of nullifying the orders of the Court.

25. The learned counsel appearing on behalf of the State submits that in pursuance of the State's policy relating to fiscal matters, the notification, dated 2021992 was issued, fixing honoraria payable to the tube well assistants at the rate of Rs. 550 per month. It is also submitted that it is in consonance with the scheme of the World Bank. After 1981, no appointment of tubewell operators has been made on regular basis and the work is being taken by giving contractual appointments on payment of honoraria as indicated above. It is also the case of the opposite parties that the revenue earned from one tubewell is Rs. 7000 per year and it will not be a wise proposition if the opposite parties are made to pay a sum of Rs. twenty thousand to each tubewell operator every year. First of all, reliance has been placed on a case reported in 1992 Labour and Industrial cases 353, Union of India and others v. T. P. Bombhate and others, for the proposition that the Courts may not interfere in the matters relating to financial policies of the State.

26. First of all, it may be indicated that no scheme of the World Bank or policy decision, if any, which may have been taken by the World Bank, has been filed or placed before the Court showing any policy decision for engaging parttime tubewell operators, in pursuance whereof the opposite parties may have stopped appointments of regular tubewell operators. The plea, therefore, raised about the scheme of the World Bank is neither here nor there. It may also be observed that it does not appear that fiscal policy of the State is involved in any manner. The matter of payment of wages and taking of work from the tubewell operators cannot be termed as a policy decision of the State or a matter relating to fiscal policy. As a matter of fact, minimum wages of such workmen have already been fixed under the provisions of the Minimum Wages Act. Wages of skilled and unskilled labour are also fixed. There seems to be substance in the arguments advanced on behalf of the petitioners that intention for changing the nomenclature of parttime tubewell operators to that of tubewell assistants is only with a view to put them in the category of unskilled labour so that they may not claim minimum wages of skilled labour in which category tubewell operators fall. Such kind of practice on the part of the State cannot be appreciated. A discussion on this aspect of the matter has already been made earlier and with a

view to emphasize again, it may be observed that how far it is justified to change the nomenclature when the same work is being taken from them which was being taken earlier without any difference at all. Such a device adopted can hardly be a matter of fiscal policy of the State, nor, in my view, the stand of the State in this regard on the ground of earning less from tubewells as compared to the expenditure to be incurred as demanded, can be justified. Ways and means can be adopted to raise income from the tubewells to economize other expenditure and, to some extent, subsidise the irrigation facilities which are being made available to the farmers, rather than to cut the wages of labour and not that alone, to pay more to some of them who were appointed earlier and less to those appointed later without there being any difference in regard to their qualification and nature of work. So far the question of amount and other distinctions is concerned, the matter has already been discussed at length in the earlier part of this judgment. It is true that question of amount invested and the return, may be a relevant factor, but paying less to the labour is no solution to the problem, if it is there. Minimum wages and payment thereof have already been regulated by statutory provisions. If under the Minimum Wages Act, a tubewell operator falls under the category of skilled labour and is entitled to the minimum wages as fixed, he cannot be paid less by changing his nomenclature or on the ground that it would be uneconomical. Fiscal or economic policies of the State cannot be against, or defeat the provisions of the law, more particularly as in this case, the provisions of the Minimum Wages Act. No such policy can be formulated or implemented keeping aside the principle of equality before law and equal protection of laws to all.

27. Learned counsel appearing on behalf of the petitioners in different writ petitions have placed reliance upon certain decisions of Hon"ble Supreme Court as well as of other High Courts, in support of their case of equal pay for equal work. First such case is reported in AIR 1982 SC 879, Randhir Singh v. Union of India and others. My attention has been drawn more particularly to last part of para 8 of the judgment, which reads as under :

"The preamble of the Constitution of the International Labour Organisation recognises the principle of "equal remuneration for work of equal value" as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled." Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

28. AIR 1988 SC 1291 Federation of All India Customs and Central Excise Stenographers (Recognised) and others v. Union of India and others, was also referred to. It was held in the abovenoted case that if the inequality has a

rational nexus, it would not amount to discrimination. Five principles were laid down in para 8 of the judgment and in principle (e), it was held that ".....the principle of equal pay for equal work.....may be properly applied to 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."

29. The next case referred by the learned counsel for the petitioners is reported in 1993 Labour and Industrial Cases, 2364, Vijay Kumar and others V. State of Punjab and others. In this case, it was held that parttime lecturers who were not gainfully employed elsewhere and not working for less hours, are entitled to be paid according to minimum payscale prescribed for regularly appointed lecturers. Learned counsel for the petitioners emphasized on the fact that by calling them as parttime lecturers did not make any difference.

30. Yet another case, which has been relied upon, is reported in ATR 1990 SC 2178, Food Corporation of India Workers' Union v. Food Corporation of India and others. This case has been cited particularly to meet the argument raised on behalf of the opposite parties that since the regular tubewell operators were liable to be transferred from one place to another, therefore they were paid in higher scale of pay and that since the petitioners were not transferable, they were paid less. It has been clearly held in this case that transferability of worker cannot be a ground to discriminate in the matter of payment of his wages.

31. The petitioners have also relied upon a case reported in 1991 (I) SOC 31, K. C. Rajeevan and 15 others v. State of Kerala and others, in support of their prayer that they are entitled for regularisation since they have been working for a long time.

32. In writ petition No. 1502 (S/S, of 1992 filed by the State) Engineer in Chief Irrigation Department, V. P. and others v. Makrand Singh and others. it has been urged on behalf of the employees that finding of fact recorded by the industrial tribunal on the basis of evidence whatever may have been adduced before it, cannot be challenged in writ proceedings, and in support thereof, reliance has been placed upon a case reported in AIR 1990 SC 371, Bhagwati Prasad v. Delhi State Mineral Development Corporation. The proposition cannot perhaps be disputed that certain findings of fact arrived at by the labour court on the basis of evidence before it cannot be subject matter of challenge in writ proceedings. In exercise of jurisdiction under Article 226 of the Constitution, the Court can but proceed on the basis of evidence so arrived at by the labour court.

33. Some other decisions which have also been cited on behalf of the petitioners are, AIR 1988 SC 1504. Jaipal and others v. State of Haryana, where it has been held that the fact that there was some difference in mode of selection, will not justify unequal pay for equal work. In this case, however, no different mode of recruitment or selection has been established or substantiated. For the same proposition, reliance has also been placed upon the case reported in AIR 1937 SC 2049, Bhagwan Das and others v. State of Haryana and others.

34. What we have found in the earlier part of the judgment, is that the tubewell operators and erstwhile parttime tubewell operators, now called as tubewell assistants, perform same nature of duties. It is though provided that duty hours of the tubewell assistants are from 930 a. m. to 12 noon, but is only on paper while in fact they have to work whenever electricity is available during any time of the day and it has also been found that they work much more than two and a half hours, in respect of which in different writ petitions, the petitioners have placed material to indicate that they work for more than two and a half hours. The condition that their services are not transferable is of no consequence, nor the fact that their mode of recruitment is different. There is no denial of the fact that tubewell operators getting higher emoluments are still there very much in service, whereas for the same work the petitioners are being paid less. The plea that it is uneconomical to pay them full wages is not a valid ground and in favour of some of the petitioners, orders passed for payment of wages to them under the Minimum Wages Act have been upheld by the High Court. It is highly improper to change the nomenclature of the parttime tubewell operators to that of tubewell assistants without there being anyone to whom they could render the assistance and there being no change in the nature of their work, it was not done with bonafide intentions. In view of the [above the petitions deserve to be allowed.

35. In the result, I allow all the writ petitions except Writ Petition No. 1502 (S/S) of 1992 and quash the, Notification dated 2021992 (as contained in Annexure1 to Writ Petition No. 3558 (S/S) of 1992) by which nomenclature of the petitioners has been changed to that of tubewell assistants and honoraria of Rs. 550 per month has been fixed. The opposite parties are directed to pay all the petitioners the same emoluments i. e. in the same scale of pay in which other regularly appointed tubewell operators are being paid.

Writ petition No. 1502 (S/S) of 1992 filed by the State, EngineerinChief, Irrigation Department, U. P. and others v. Makrand Singh and others, is dismissed.

There would, however, be no order as to costs.