
(1989) 07 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 647 of 1984

Tirath Raj and Others

APPELLANT

Vs

H.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 15(1), 15(2), 15(3), 15(4)
Cinematograph Act, 1918 — Section 5(3)
Constitution of India, 1950 — Article 12, 13, 136, 14, 16
Electricity (Supply) Act, 1948 — Section 10, 10(5), 10A, 11, 12
Electricity Act, 1910 — Section 22, 22A, 22B
Industrial Disputes Act, 1947 — Section 10

Citation : (1989) 2 ILR HP 639

Hon'ble Judges : N.M. Kasliwal, C.J.; V.K. Mehrotra, J

Bench : Division Bench

Advocate : Devinder Gupta, for the Appellant; Indar Singh, for the Respondent

Final Decision : Allowed

Judgement

1. A petition was made to the Chief Justice of this Court in September, 1984 by Tirath Raj and some Ors. , employed as daily rated Trade: Mates, (Hereafter, T: Mates") with the H.P. State Electricity Board (for brief, "the Board"). It was entertained on the judicial side. The Court directed notice to issue to the Board and the Petitioners were also permitted to file additional affidavits. An interim order was passed on Decemblers, 1984, saying that no regular appointment shall be made to the posts of clerks by the Board. The grievance of the Petitioners was that though employed as T. Mates, they were required to perform the work of clerks. They claimed that they were entitled to be regularized as clerks and also paid wages in. the same scale of pay as was being paid to regularly employed clerks.

2. The Board filed a reply on December 18, 1984. Art interim order was made by this Court on April 9, 1985, asking the Board to; consider the case of the Petitioners for regularisation of their services and about payment of equal wages

for equal work to them. Compliance was asked for by this Court from the Board by its order of July 10, 1985. The Court also directed that no change be made in the service conditions, including the nature and character of the work of the Petitioners; some orders were made by this Court from time to time until the writ petition was admitted on January 8, 1986, to fuller hearing. The Court permitted the Petitioners to file amended writ petition. This was done in May, 1986.

3. The Himachal Pradesh Administrative Tribunal was established with effect from September 1, 1986, under the provisions of the Administrative Tribunals Act, 1985.

4. When the matter was taken up by this Court on September 22, 1987, the Respondents pressed an objection that after the establishment of the Himachal Pradesh Administrative Tribunal the jurisdiction of the High Court to deal with the case got excluded. The matter should be transferred to the Administrative Tribunal. This Court passed a detailed order but said that the question of jurisdiction shall be decided later. Till then, the case shall remain pending in this Court. The High Court also directed that a detailed affidavit be filed justifying the reason for the distinction made in the matter of payment of wages between daily rated workmen who were performing the duties of clerks and the clerks themselves. The Board filed an affidavit. Thereafter, the matter was heard at some length, by this Court and a detailed order was passed on November 4/9, 1987. Directions were given to the Board in respect of payment of wages to the Petitioners and persons similarly situated, "that is, daily rated workmen who were performing the duties of Clerks, Meter Readers, Meter Ledger Clerks etc. though they were, employed as T. Mates. This order was assailed by the Board before the Supreme Court through a Special Leave Petition. The Supreme Court dismissed the petition but made an observation that the question of jurisdiction be decided by the High Court at an early date. The order of the Supreme Court was made on May 6, 1988.

5. Meanwhile, Civil Misc. Petition No. 1405 of 1987 was filed by the Petitioners in this Court on December 22, 1987. In it, the parties exchanged their affidavits. The objection relating to the maintainability of the petition before this Court on account of the constitution of the State Administrative Tribunal was reiterated on behalf of the Board. In addition, certain facts were also brought on the record by the parties pertaining to the question of payment of equal wages for equal work.

6. In the main writ petition also parties exchanged their affidavits. The Board also raised an objection that the Petitioners had an alternative remedy by way of industrial adjudication and that this Court should, therefore, direct them to avail of that remedy. More so, as there was dispute between the parties on essential facts.

7. The petition kept on being listed before the Court, time and again, on account of miscellaneous applications made by the parties. The interim orders were also

modified from time to time. Eventually, the hearing of the petition commenced on May 22, 1989. It concluded on June 12, 1989, when orders were reserved.

8. Learned Advocate General appeared before us on behalf of the Board. He raised two preliminary objections before us. The first was that this Court had no jurisdiction to entertain the writ petition after the State Administrative Tribunal with effect from September 1, 1986. "file second objection was founded upon availability, of alternative remedy to the Petitioners by way of industrial adjudication, particularly, on account of the wet that parties were seriously at issue on essential facts.

9. The order of this Court dated November 4/9, 1987 is reported as Tirath Raj and Ors. s.-H-.P. State Electricity Board and Ors. in 1988 (1) ShimLC 193; ILR 1987 HP 485. In this order the Court has noticed some decisions of the Supreme Court touching on the question of equal pay for equal work. We will have occasion to deal with that question a title later.

10. The question of the jurisdiction of the High Court to consider the claim of employees like the Petitioners, on account of the establishment of the HP. State Administrative Tribunal was considered by a Division Bench of this Court a few weeks " prior to its order aforesaid. It was in the case of Jagdev Singh and Anr. v. The State of Himachal Pradesh and Ors. , which was decided on April 8, 1987, and is reported as 1988 (1) ShimLC 167; (ILR1987 HP 475). The case pertained to the daily rated Beldars in the Irrigation and Public Health Department of the State Government. The view which this Court took was that a person working on daily wages was not the holder of a post under the Government. As such, the jurisdiction in respect of the termination of his employment and payment of his unpaid wages could not be dealt with by the Administrative Tribunal. i.e. correctness of this decision has been assailed before us by the learned Advocate General.

11. The Administrative Tribunals Act, according to its Preamble, is:

an Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of" persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned-or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto.

Section 15 of this Act deals with the jurisdiction, powers and authority of State Administrative Tribunals. Sub-section (1) of Section 15, in its material part, says that on and from the appointed day, the Administrative Tribunal for a State shall exercise, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court under Article 136 of the Constitution) in relation to:

(a)...

(b) all service matters concerning a person appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation owned or controlled by the State, Government.

(c)...

Sub-section (2) then says that:

the State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities and corporations controlled or owned by the State Government.

12. The proviso to the Sub-section is not material. Sub-section (3) then provides that the Administrative Tribunal for a State shall also exercise all the jurisdiction, powers and authority exercisable immediately before the date with effect from which the provisions of this Sub-section apply to; any corporation, by all courts (except the Supreme Court under Article 136 of the Constitution) in relation to

(a)....

(b) all service matters concerning a person appointed to any service or post in connection with the affairs of such local or other authority or corporation and pertaining to the service of such person in connection with such affairs.

Sub-section (4) need not detain us.

13. Service matter is a term which has been defined in Section 3(q) as meaning all matters relating to the conditions of service of a person in connection with the affairs of any Corporation owned or controlled by the Government, as respects

(i) remuneration (including allowances), pension and other retirement benefits;

(ii).....

(iii).....

(iv).....

(v) any other matter whatsoever.

Clause (k) of Section 3 defines "post" to mean a post within or outside India while Clause (p) defines "service" to mean service within or outside India.

14. It is not in dispute that the requisite Notification applying the provisions Of Section 15(3) to the H.P. State Electricity Board has been issued by the State Government.

15. The submission of the learned Advocate General is that the Board is a Corporation controlled by the State Government and the Petitioners/being

persons appointed to posts in connection with the affairs of the Board were amenable to the. Jurisdiction of the Tribunal and that this Court has ceased to have any jurisdiction in regard to the service, matters concerning them. The case of the Petitioners, as presented by their learned Counsel, is that the. Board is not a Corporation which is controlled by the State Government, nor do the Petitioners hold any post in connection therewith so as to exclude the jurisdiction of this Court, u/s 15 of the Administrative Tribunals Act

16. We will, therefore, consider the question whether the Board is a Corporation controlled by the State Government or not?

17. Two divergent principles have been pleaded before us for determination of the question whether the Board is a Corporation "controlled by the State Government". The tests suggested by the learned Advocate General are that a Corporation should receive financial support from the State Government which should have full control over, the management and policies of the. Corporation so as to make it a Corporation under the control of the State Government. In support of these tests he placed reliance before us upon the comments contained in paragraph 7.18 (at page 218) of Volume I of. Seervajs Constitutional Law of India (Third Edition). In addition, he relied upon the observations of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, contained in paragraph 19 of the Report, where, speaking through Bhagwati J, the Court said that:

It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or instrumentality of Government have referred to some of these factors and they may be summarised as under: whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance, whether there is any other form of assistance, given by the State, and if so, whether it is of usual kind or it is extra-ordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions. This particularization of relevant factors is however not exhaustive and by its very nature it cannot be, Moreover, even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. It is not enough to examine seriatim each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding to that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling.

18. The analysis which the Supreme Court made in Ramana, to come to the

conclusion that the International" Airport Authority of India was an instrumentality or agency of the Central Government and fell within the definition of "State" (in paragraph 33 of the Report), is this:

"It will be seen from these provisions that there are certain features..... which are eloquent and throw considerable" light on the true nature of the 1st Respondent. In the first place, the Chairman and members of the 1st Respondent are all persons nominated by the Central Government" and the Central Government nasals(c) the owner to terminate their appointment as also to remove, them in certain specified circumstances. The Central Government is also vested with the power to take away" the management of any airport from the 1st Respondent and to entrust it to any other person or authority arid for certain specified reasons, the Central Government can also supersede the 1st Respondent. it Central Government has also power to give directions in writing from time to time on questions of policy and these directions are declared binding on the 1st Respondent. The 1st Respondent has no share capital but" the capital needed by it for carrying out its functions is-provided wholly by the Central Government. The balance of the net profit, made by the 1st Respondent after making provision, for various charges, such as reserve funds, bad and doubtful debts deprivation in assets etc. does not remain -with the 1st .Respondent and is required to be "paid, over to the Central Government. The 1st Respondent is also required to submit to the Central Government for its approval a statement of the programme of its activities as also the financial estimate and it must follow as a necessary corollary that the 1st Respondent can carry out only such activities and incur only such expenditure as is approved by the Central Government. The audited accounts of the 1st Respondent together with the audit report have to be forwarded to the Central Government and they are required to be laid Wore both Houses of Parliament. So far as the functions of the Respondent are concerned, the entire department of the Central Government relating to the administration of .airports and air navigation services together with its properties and assets, debts, obligations and liabilities, contracts, causes ?of action and pending litigation is transferred to the 1st Respondent and the 1st Respondent is charged with" carrying out the same functions which were, -until the appointed 4ate, being carried out by the Central - Government. The employees and officers of the 1st Respondent are also deemed to be public servants and the 1st Respondent as well as its members, officers and employees are given immunity for anything which is in good faith done or intended to be done in pursuance of the Act or any rule or regulation made under it. The 1st Respondent is also given power to frame regulations and to provide that contravention of certain specified Regulations shall entail penal consequences.

19. These principles were applied by-the Supreme Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, for examining whether a Society registered under . the Jammu and Kashmir Registration of Societies Act,"1898 which had established the Regional Engineering College, Srinagar, and was carrying on its administration and management, was an instrumentality or the

agency of the State and the Central Governments or not. The Supreme Court held that the Society was an instrumentality or the agency of the State and the Central Governments and was "an authority" within the meaning of Article 12. For coming to this conclusion the Supreme Court noticed (in paragraph 15 of the Report) that:

The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments of Jammu & Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the college are provided entirely by the Central Government and the Government of Jammu & Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The Rules to be made by the Society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a member representing, the State or Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is in-charge of general superintendence, direction and control of the affairs of Society and of its income and property, is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Governments and to use the words of Ray, C.J. in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must therefore, hold that the Society is an instrumentality: or the agency of the State and the Central Government.

20. Following the decision in *Ajay Hasia* the Supreme Court held in *B.S. Minhas Vs. Indian Statistical Institute and Others*, that the Society (Indian Statistical Institute), registered under the Societies Registration Act, 1860, was wholly financed by the Union of India and under the Indian Statistical Institute Act, 1959, its control completely vested in the Union of India. As such, it was an authority within the meaning of Article 12. Likewise, in *Manmohan Singh Jaitla*

Vs. Commissioner, Union Territory of Chandigarh and Others, ,the Supreme Court followed Ajay Hasia and held that an aided school which received a Government grant of ninety-five per cent was an "authority" within the meaning of Article 12. Similarly, in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, it was held by the Supreme Court, following Ajay Hasia, that the Indian Council of Agricultural Research which was a society registered under the Societies Registration Act was an instrumentality of the State falling under the expression "other authority" within the meaning of Article 12 because it was wholly financed by the Government. Its budget was voted upon as part of the expenses incurred in the Ministry of Agriculture. The control of the Government of India permeated through all its activities. Since its inception, v. it was setup to carry put the recommendations of the Royal-Commission on Agriculture.

21. Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, was the latest decision which was brought to our notice where the question whether a Society registered under the Societies Registration Act could be treated to be "State" within the meaning of Article 12 of the Constitution." was considered. In this decision, the Supreme Court noticed almost all of its earlier decisions on the question. The learned Judges felt that the tests which had been laid down by the Supreme Court, from time to time, suggested that before a Society can be treated to be "State there should be a deep and pervasive control of the Government in the functioning of the Society. Such control was not found in the case of the second Respondent before the Supreme Court, namely, Institute of Constitutional and Parliamentary Studies, which was a Society registered under the Societies Registration Act. It was observed in paragraph 20 of the Report that:

We have several cases of societies registered under the Societies Registration Act which have been treated as "State" but in each of those cases it would appear on analysis that either governmental business had been undertaken by the Society or what was expected to be the, public obligation of - % the ". State" had been undertaken to be performed as a part of the Society's function. In a Welfare State, as has been-pointed out on more than one occasion by this Court, Governmental control is very pervasive and in fact touches all aspects of social existence A broad picture of the matter has to be taken and a discerning mind has to be; app lied keeping the realities and human experiences in view so. as to reach a. reasonable conclusion.

22. Way back in the year 1967 a Constitution Bench, of the Supreme Court found the Rajasthan State Electricity Board to be State for purposes of Article 12. This was in the case of, Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, . Speaking for the majority Bhargava J. said (m paragraph 6 of the Report) that:

.....The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of

the word "State" as used in Article 12. On the other hand, there are provisions in the Electricity (Supply) Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence. The Board was clearly an authority to which the provisions of Part III of the Constitution were applicable.

Shah, J. in a separate, but Concurring judgment, said (in paragraphs 9 of Report) that:

The Board is an authority invested by statute with certain sovereign power of the State. It has the power of promoting coordinated development, generation, supply and distribution of electricity and for that purpose to make, alter, amend and carry of scheme under Chap. v. of the Electricity (Supply) Act, 1948 to engage in certain incidental under-taking to issue directions for securing the maximum economy and efficiency in the operation of electricity undertakings; to make rules and regulations for "carrying out the purposes of the Act; and to issue directions under certain provisions of the Act and to enforce compliance with those directions. The Board is also invested by statute with extensive powers of control over electricity undertakings. The power to make rules and regulations to administer the Act is in substance the sphere power of the State delegated to the Board....

And, in paragraph 12 of the Report, that:

These authorities which are invested with sovereign power, power to make rules or regulations and to administer or entrust them to the detriment of citizens and Ors. fall within the definition of "State" in Article 12, and constitutional or statutory bodies which do not share that sovereign power of the State are not, in my judgment, "State within the meaning of Article 12 of the constitution.

23. The judgment in this case shows the nature of, control which the Board has over various matters entrusted to it. The test is whether it was a Corporation controlled by the State Government was not for conservation in it ".

24. A competing test, suggested by the learned Counsel for the Petitioners, for determining the question of "control was stated to be the functional control of a dominant character over the Board by the State Government. What was urged was that for finding out whether the Board was a Corporation "controlled" by the State Government it had to be seen whether in its day to day functioning it was under the control of; the State Government. Borrowing the statement contained in Corpus Juris Secundum, Volume 1.8, at pages 28 and 29 it was said by counsel that control implied complete control which ILR 989 HP 654 (HC) envisaged the authority to direct, recall, supervise, check or restrain the Board on the part of the State Government. That is, it implied that in the matter of management and functioning, the Board should be subject to the supervision, guidance or regulation of the State Government.

25. Our attention was invited to a Division Bench judgment of the Allahabad High

Court in *Bharat Bhushan Vs. Cinema and City Magistrate and Another*, which dealt with the language of Section 5(3) of the Cinematograph Act, 1918: That Section provided that: .

Subject to the foregoing provisions of this section, and to the control of the State Government, the licensing authority may grant licenses under this Act...

The Bench said (in paragraph of the Report) that:

It appears to us that having regard to the dictionary meaning, the Word "control" is not confined to mere regulation. It is more comprehensive and includes domination or command over an inferior. No doubt the State Government can lay down general rules or instructions for the guidance of the District Magistrate in the exercise of his discretion.

But the "control" envisaged in the section is not. Confined to the issuing of mere general directions; it includes an interference on the part of the State Government with the individual decision of a particular case by the District Magistrate.

26. In *The Shamrao Vithal Co-operative Bank Ltd. Vs. Kasargod Pandhuranga Mallya*, the meaning of word "control" as used in Multi-Unit Co-operative Societies Act, 1942 (Central Act) came to be considered by the Supreme Court. Section 2(1) of the Act provided that:

A Co-operative Society to which the Act applied, which had been registered in any State under the law relating to Co-operative Societies in that State shall be subject for all the purposes of registration, control and dissolution to the law relating" to Co-operative Societies in force for the time being in the State in which it was registered except as provided in Sub-sections (2) and (3)

The Supreme Court Said that:

the word "control" is synonymous with superintendence, management or authority to direct, restrict or regulate [See p. 442 of Words and Phrases (Vol.9) Permanent Edition]. Control is exercised by a superior authority in exercise of its supervisory power it would, be unduly, starring the meaning of the word "control" to hold that it also covers the adjudication of disputes between a co-operative society and its members. There is a clear distinction between jurisdiction to decide a dispute which is a judicial power and the exercise of control which is an administrative power and it would be wrong to treat the two as identical or equate one with the other.

27. We find a clearer guidance in a Constitution Bench decision of the Supreme Court in *K.S. Ramamurthi Reddiar Vs. The Chief Commissioner, Pondicherry and Another*, in the matter... The case had arisen under the provisions of the Motor Vehicles Act, 1939. The Chief Commissioner of Pondicherry had taken a decision as Appellate Authority under the Act on September 9, 1960. Against it, Ramamurthy filed an appeal in the Supreme Court with Special leave. What was

urged on, behalf, of the Respondent before the Supreme Court was that at the relevant time Pondicherry was not within the territory of India so that the Appellant" could not seek special leave under Article 136 of the Constitution. Ramamurthy had also filed a petition under Article 32 of the Constitution. When the petition and the appeal came up before the Supreme Court, Pondicherry had become a part of India. The submission which was made on behalf of Ramamurthy was that, the Appellate Authority which had passed the order was a "local or other authority "under the control of the Government of India". It was, therefore, amenable to a writ under Article 32 of, the Constitution.

28. The Supreme Court examined the question in detail. It said that a judicial or quasi-judicial authority could not be said to be under the control of the Government of India. Some of" the observations made by the Supreme Court (in paragraph 12 of the Report) may be quoted:

The contention, however, that this Court could issue a writ under Article 32 against the Appellate Authority even at the time when the order was passed is clearly negated by the majority decision in *N. Masthan Sahib Vs. Chief Commissioner, Pondicherry*, . It follows from the observations in the majority decision in that case that the control envisaged by the words under the control of the Government of India-" in Article 12 is not the control which arises out of mere appointment, payment and the right to take disciplinary action; the control envisaged under Article 12 is a control of the functions of the authorities concerned, and the right of the Government of India by virtue of that control to give directions to the authority to function in a particular manner with respect to such functions. Now if the authorities were administrative or executive the control of the Government of India would not only be by virtue of appointment, payment and disciplinary action., but it would also extend to directing the authority to carry out its functions in a particular manner and a purely executive or administrative authority can always be directed by the Government of India under which it is functioning to act in a particular manner with respect to its functions, It seems to us therefore that the control envisaged under Article 12 is control of the functions of the authorities and it is only when the Government of India can control the function of an authority that it can be said that the authority is under the control of the Government of India. Such control is possible in the case of a purely executive or administrative authority; it is impossible in the case of a. quasi-judicial or judicial authority.

29. The test suggested on behalf of the Petitioners appears, to be a preferable one for determination of the question whether a Corporation is "controlled" by the State Government in the context of Section 15 of the Administrative Tribunals Act. The Act, undoubtedly, deals with disputes, interlaid, about "conditions of service" of persons appointed to public services and posts in connection with the affairs of the Union or the State or of any local or other authority under the control of the Government. A similar kind of control is contemplated in respect of persons appointed to posts in connection with the _ 1

affairs of a Corporation. The control of the Government is envisaged to be of an Over-riding and pervasive character upon the affairs of the Corporation whose employees are to be treated on par, for purposes of the determination of their disputes by the Administrative Tribunal, with the employees of the Government itself. There appears a common thread running in the decisions upon which reliance has been placed by the learned Advocate. General and those upon which counsel for the Petitioners rely. And, the common thread is that the control of the Government which is envisaged, in relation to a Corporation, -, for treating it to be an authority for purposes of Article 12 of the Constitution is a control of pervasive and effective nature. This would further suggest that in the context of the public nature of the functions of a Corporation, the Government should have not only pervasive but effective control. It should, therefore, have effective control over the manner in which those duties or functions are to be performed by the Corporation. This element should be a dominant consideration also for determination the question of control of the Government over a Corporation for purposes of Section 15 of the Administrative Tribunals Act.

30. The submission on behalf of the Petitioners has been that the kind of control envisaged by law to permit treating the Board to be a Corporation "controlled" by the State Government was lacking in the present case. That brings us to an examination of the relevant provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

31. The Indian Electricity Act, 1910, was enacted as "an Act to amend the law relating to the Supply and use of electrical energy". Primarily, it was an Act to regulate the supply of, energy through persons licensed under Part II of this Act. Section 22 casts an obligation on a licensee to supply electrical energy in certain circumstances. Section 22A enables the State Government to give direction to a licensee in regard to the supply of energy to certify class of consumers. Section 22B vests the State Government with power to regulate the supply, distribution and consumption or use of electrical energy if it is of opinion that it is necessary or expedient so to do, for maintaining the supply and security the equitable distribution of energy. This can do by issuance of statutory order.

32. In the year 1948 the Electricity (Supply) Act was enacted. As is clear from its preamble it was enacted to:

provide for the rationalization of the production and supply of, electricity, and generally, for taking measures conducive to electrical development.

The Statement of Objects and Reasons for the Bill relating to this Act said, amongst other things, that the coordinated development of electricity in the country on a regional basis is a matter of increasingly urgent importance for post-war re-construction and development. It has, therefore, become necessary that the State Governments should be vested with legislative powers to link together under one control electrical development by establishment of "Grid System" in contiguous areas. Since it was not possible to legislate for this purpose under the

frame-work of the Indian Electricity Act, 1910, the necessity for a new Central legislation had arisen for uniformity in the organization and development of the "Grid System" and for the constitution of semi-autonomous bodies like Electricity Boards to administer the "Grid Systems!". The Government felt that it is bodies like these which are likely to be more suitable organisations for working the "Grid Systems" on quasi-commercial lines.

33. The Electricity (Supply) Act is divided into various chapters.

34. Chapter II deals with the Central Electricity Authority and consists of Sections 3, 4, 4A, 4B only. It provides for the constitution of the Central Electricity Authority for exercising functions and performing duties, envisaged in it. These are mentioned in Section 3.. Section 4A says that in the discharge of its functions, this Authority shall be guided by such directions in the matter of policy involving public interest as the Central Government may give to "it. Section 4B enables the Central Government to make rules for carrying out the purposes of Chapter II. The Authority has been given the power to frame regulations u/s 4C. Section 4 says that State Electricity Boards, amongst Ors. , will be under an obligation to furnish to the Authority such accounts, statistics, and other information relating to the generation, supply and use of electricity as may be required by the Authority.

35. Chapter III deals with the constitution of the State Electricity Boards, apart from generating Companies etc.

36. Chapter IV relates to the powers and duties of the Electricity Boards and generating companies and comprises of Sections 18 - 27.

37. The works and Trading Procedure of the Boards and the Generating Companies are provided in Chapter v. consisting of Sections 28 - 58.

38. Chapter VI deals with the Boards Finance, Accounts and Audit and comprises of Sections 59 - 69.

39. Chapter VII comprising of Sections 70 - 83 provides for miscellaneous matters.

40. When one looks at some specific provisions of the Electricity (Supply) Act, the nature of the control which the State Government has over the Board becomes clear. The Board is to consist of not less than three and not more than seven members appointed by the Government one of whom is to be appointed as its Chairman by the State Government. Section 8 says that the Chairman and other members of the Board shall. Hold" office for such period, and shall be eligible for reappointment under such conditions, as may be prescribed (by the rules). The members not to have any interest of the nature detailed in Section 9 while he holds office as such. The State Government can suspend or remove a member from office for the various reasons mentioned in Section 10. It also has the power of suspending a member pending an enquiry against him. If a member is removed he shall not be eligible for re-appointment as a member or in any

other capacity to the Board and the State Government may fill up the vacancy caused by removal of a member by appointing any other member. Sub-section (5) of Section 10 says that:

If the Board fails to carry out its functions, or refuses or fails to follow the directions issued by the State Government under this Act, the State Government may remove the Chairman and the members of the Board/and appoint a Chairman and members in their places.

Section 10A gives power to the State Government to declare void any transaction in connection with which a member may have been removed for having so abused his position as to rend his continuance on the Board detrimental to the interest of the general public. The decision of the State Government in this respect is made final and it is also provided that when a transaction is declared void it shall not be enforceable by any party to it. In the event of a temporary absence of a member by reasons" of infirmity or otherwise, the State Government can appoint Anr. person to officiate for him u/s 11.

41. Section 12 contemplates that the Board shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property. u/s 12A the State Government is empowered to direct that the Board shall be a body corporate with such capital, not exceeding ten cores of rupees, as the State Government may specify from time to time, with the approval of the State Legislature. The capital is to be provided by the State Government, after due appropriation made by the State Legislature by law for the purpose and subject to such terms and conditions as may be determined by the State Government.

42. Coming to Chapter IV one finds that the Board is charged with certain general duties in Section 18. u/s 21 the Board may take such measures, with the previous approval of the State Government, as are calculated to advance the development of water-power in the State. u/s 22 the Board can conduct investigations in that regard subject to the previous approval of the State Government. The Board has the powers and obligations of licensee under the Indian Electricity Act, 1910, subject to the provisions of the Electricity (Supply) Act. This is provided u/s 26. u/s 43(2) the Board can enter into arrangements with any Government or person for the purchase or sale of electricity to be generated or used outside the State but the arrangements can be made only - with the consent of the State Government. The Board is also empowered u/s 58 to direct the amortization and tariff policies of any licensee which is regulated by the local authority after giving it reasonable opportunity of being heard. But no direction can be issued under this Section except with the prior approval of the State Government.

43. When we come to Chapter VI we find that the Board is under an obligation, after taking credit for any subvention from the Government, to carry on its operations so as to ensure that the total revenues leave surplus, after meeting

its expenditure etc., as may be provided by the Government. Section 61 requires the Board to submit to the State Government a statement, in the month of February each year, of the deemed capital and revenue; receipts and expenditure for the ensuing year. This statement is to include a statement of the salaries of members and officers of the Board as also such other particulars as may be prescribed. - This statement is to be laid on the table of the House of the State Legislature by the State Government and is open to, discussion therein. The Board is also entitled to submit to the State Government a supplementary statement under this section. The statement is not" subject to vote but the Board is obliged to take into consideration any comments made on the statement in the State Legislature. Section 62 places restriction on unbudgeted expenditure by the Board which is not included in the statement. Where such an expenditure is made in the circumstances of extreme urgency, it is to be made in accordance with the Regulations which may be made by the Board with the previous approval of, the State Government A report indicating the source from which it is proposed to meet the expenditure shall be made by the Board to the State Government. Section 63 says that the; State Government may make subventions to the Board from time to time with the previous approval of the State Legislature. u/s 64 the State Government may advance loans to the Board On such terms and conditions, not inconsistent with the provisions of the Act, as may be provided by it. The power of Board to borrow a sum required for the-" purposes of the Act, subject to the previous sanction of the State Government, is mentioned in Section 65. The payment of principal and interest of loan proposed to be raised by the Board or either of them may be guaranteed by the State Government u/s 66. Where the State Government has given a loan to the Board, the State Government may direct that the amount of the loan or any part thereof may be converted into" "capital provided to the Board where it is necessary in the public interest. On such conversion the capital of the Board shall stand increased. These provisions are contained in Section 66A. u/s 67, which provides for priority of liabilities of the Board, if the revenue receipts in any year are not adequate to meet the expenses of the Board for any reason beyond its-control; the shortfall may be paid by the Board out of its capital receipts with the previous sanction of the State Government. The Accounts of the Board are to be audited by the Comptroller and Auditor-General of India or a person authorized by him as provided in Section 69. State Government may issue necessary .instructions to the Board in respect thereof and the Board is under an obligation to comply with these instructions,- The Accounts and the Audit Report are to be placed by the State Government annually-before the State Legislature.

44. Coming now to Chapter VII we find that the Board is under an obligation, u/s 75, to prepare and submit to the State Government a report giving account of its activities during the previous financial year and the account of the activities proposed in the next financial year. The report is to be laid before the State Legislature. u/s 78 the State Government is empowered to make rules to give effect to the provisions of the Act and particular about the terms and conditions

and powers of the Chairman and other members of the Board, the-form in which annual statements and supplementary statements, are to be prepared by the Board u/s 61 and the particulars to be included there if the- conditions subject to which the Board may borrow u/s 65; the manner in which stock issued by the Board shall be issued, transferred, dealt with and redeemed; the manner in which the accounts of the Board shall be published u/s 69 and the form in which the annual report, statistics and returns shall be submitted u/s 75. Section 78A provides that in the discharge of its functions the Board shall be guided by such directions on questions of policy as are made by the State Government. Section 81 says that members, officers and other employees of the board shall be deemed to be public servants and u/s 82 no suit, prosecution or other legal proceeding shall lie against them for anything which is done in good faith or intended to be done by them under the Act in good faith.

45. These provisions unmistakably show that in the matter of its constitution and finances, the Board is, as it were, bound hand and foot under the control of the State Government. It is also under an obligation to: follow the directions which the State Government may issue to it on matters of policy u/s 78A. The members, officers and other employees of the. Board are public servants while acting or purporting to act in pursuance of any provision of the Act and have been extended the protection available to a public servant for anything done by them under the Act in good faith. In a general sense, [therefore, one can say that the Board is a Corporation under |the control of the State Government.

46. The examination of the provisions of the Act, relating - to its actual functioning, however, show that the Board, which is vested with statutory powers and obligations in the matter of generation, transmission and distribution of electrical energy in the most efficient and economical manner and enjoys full autonomy in that sphere, is under greater control of the Central Electricity Authority envisaged in Chapter II. This becomes apparent from what is found in some of the provisions of the Electricity (Supply) Act, to be noticed presently. The Central Electricity Authority is constituted to develop a sound, adequate and uniform national power policy in relation to the control and utilization of national power resources, to collect and record the data concerning the generation, distribution and utilization of power and to carry out studies relating to cost, efficiency, losses, benefits and such like matters; to promote and assist in the timely completion of schemes sanctioned under Chapter V; to. make arrangements for advancing the skill of persons in the generation and supply of electricity; and to make arrangements for any investigation for the purpose of generating or transmitting electricity as well as to promote research in matters affecting the generation, transmission and supply of electricity This is clear from Section It can require the Board to furnish to it accounts, statistics, return or other information relating to the generation, supply and use of electricity u/s 4. The Board is required to submit a Scheme framed by it under Chapter V. for concurrence by the Authority. The Authority may" give such directions as to the form and contents of a scheme and the procedure to be followed in the matter of

preparation and approval of scheme as it considers necessary. It may also require the Board to supply any information incidental or supplementary. to the scheme. . It may also require (he Board to modify the scheme and agree with it after the, modification. No extension or alteration in the scheme can be: made without intimation to the Authority. These provisions are found contained in Sections 28 - 32. Section 33 says that even where a scheme is prepared by the State Government for the generation, transmission or distribution of electricity it would be subject to these provisions. When one looks at the general duties of the Board u/s 18 one finds that the Board is charged with duty to arrange for the supply of electricity within the State and for its transmission and distribution in the most efficient and "economical manner and to prepare and carry out schemes for transmission, distribution and generation and generally promoting the use of electricity within the State. Section 19 says that the Board may supply electricity to any licensee or person requiring such supply in any area in which a scheme sanctioned in Chapter v. is in force. The framing of the scheme under Chapter V, and its sanction are subject to complete control of the Central Electricity Authority. The Board, as is provided in Section 26 of the Electricity (Supply) Act, has all the powers and obligations of a licensee under the Indian Electricity a set for- the whole of the State subject to the exceptions contained in these provisions. The Act is to be treated the licence of the Board, for the purpose of Indian Electricity Act, 1910.

47. Having regard to the objects with which the Electricity: (Supply) Act, 1948, was enacted and the Boards we're created there under, it seem clear that in its actual functions the Board is under the control of the Central Electricity Authority.

48. We need not pursue this matter any further. We will assume, for purposes of the present case, that the Board is a Corporation controlled by the State Government. Would that assumption be enough to exclude the jurisdiction of this Court in regard to employees of the kind as of the Petitioners, u/s 15 of the Administrative Tribunals Act, 1985. The answer, we feel, is in the negative.

49. We have read the relevant portion of Section 15 earlier. It excludes the jurisdiction of all courts (except the Supreme Court under Article 136 of the Constitution) in relation to all service matters concerning a person appointed to any service or post in connection with the affairs of the Corporation.

50. The Petitioners are daily rated T. Mates who are employed on daily wages. Admittedly, they are not appointed to any service under the Board. The only question is whether they are appointed to a post in connection with the affairs of the Board

51. The view which this Court took in Jagdev Singh is that the daily rated workmen were not appointed to a post within the meaning of that term as used in Section 15. It relied upon the decision of the Supreme Court in State of Assam and Others Vs. Shri Kanak Chandra Dutta,

52. In Kanak Chandra Dutta the Supreme Court was examining the question

whether a Mauzadar in the Assam Valley holds a civil post under the State of Assam. It noticed the facts relating to the appointment of the Mauzadar and his duties, including his primary duty to collect land revenue and other Government dues with the collection of which he was entrusted. The Mauzadar was a holder of a civil post in the State. While examining this question the learned Judges of the Supreme Court took notice of the fact that there was a relationship -of master and servant between the State and a person said to be holding a post under it. The existence of this relationship was indicated by the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages and remuneration. All this is stated in paragraph 9 of the Report. They, however, proceeded to observe (in paragraph 10 of the Report) that:

A post under the State is an office or a position to which duties in connection with the affairs of the State are" attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post, Article 310(2) emphasises (N. M. Kasliwal, C.J. and V.K. Mehrotra,J) the idea of a post existing apart from the holder of the post. A post maybe created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of post.

53. The effort of the learned Advocate General has been to distinguish this decision by saying that it was one rendered in connection with the provisions of Articles 309 - 311 of the Constitution. On this basis the learned Advocate General also sought to distinguish the decision of this Court in *Jagde. v. Singh* founded upon *Kanak Chandam Duita*. It has been urged by the learned Advocate General that the concept of a post u/s 15 of the Administrative Tribunals Act was different from the one under Article 309 of the Constitution which deals with Government servants: He laid stress upon the concept that a post only means "assignment or a job". In that sense, says the Advocate General, the daily rated T. Mate holds a post in connection with the work of the Board. There is "a relationship of master and servant between the Board and the daily rated T. Mate." The Board has the power to direct the manner of functioning of the T. Mates and pays him for it. T. Mate, thus, is appointed to a post in connection with the affairs of the Board.

54. The distinction attempted by the learned Advocate General from what the Supreme Court said in *Kanak Chandra Dutta*, is without any substance. We cannot overlook the fact that the Administrative Tribunals Act, and the various provisions thereof deal with resolution-of disputes relating, inter alia, to service conditions of persons appointed to services or posts in connection with the affairs of the Government, local bodies and other corporations. Apparently, therefore, the concept of a person appointed to a service or post, as understood in the service jurisprudence which has developed over the years by repeated pronouncements of the courts, cannot be ignored. In the service jurisprudence the connotation of a person as holder of a post is understood only in the suffice of

a person who is appointed to a post which exists apart from the holder thereof.

55. In the *The Superintendent of Post Offices and Others Vs. P.K. Rajamma*, the question was whether the Extra Departmental Agents in the post office were holders of a civil post under the Union of India and the orders terminating their services in violation of Article 311(2) of the Constitution were invalid. - Speaking through Gupta J. a three Judge Bench of the Supreme Court reiterated what was stated, earlier in *Kanak Chandra Dutta*, In paragraph 3 of the Report, referring to the decision in *Kanak Chandra Dutta* the learned Judges said that:

A post it was explained, exists apart from the holder of the post. "A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post.

And, in paragraph 4 that:

It is thus clear that an extra departmental agent is no a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under, the State.

56. These observations show that the concept of a post under an employer is distinct from the employment by him of casual workers. A mere assignment of a job, under an employer, has not been accepted to be appointment to a post under him in- the service jurisprudence which has developed in our country.

57. In reply to a specific query the learned Advocate General stated before us (on June 12, 1989) that the Petitioners in the present case were appointed as T. Mates on Muster Roll- basis and not to posts of T. Mates with the Board. This statement is consistent with the stand taken by the Board in paragraph 1 of its reply in the main writ petition In this reply, sworn by a Deputy Secretary of the Board, it has been stated that

the Petitioners were engaged as T. Mates on Muster Roll basis on daily wages at their own verbal request at the time of their employment.

58. Employment on Muster Roll, basis can hardly be treated as employment of a person to a post under the Board.

59. We find ourselves in complete agreement with the decision in *Jagdev Singh*, which has been followed by this Court (N.M. Kasliwal, C.J. and V.K. Mehrotra, J.) in its decision in *Prern Chand and Ors. v. State and Anr.* (ILR 1987 HP 167), that daily rated casual employees were not appointed to a post under the employer. On that account, the jurisdiction to deal with their case regarding a dispute of the nature in the present writ petition is not with the H.P. State Administrative Tribunal but with this Court.

60. The second preliminary objection about the jurisdiction of this Court to consider the claim of the Petitioners in a petition under Article 226 of the Constitution is founded upon the plea pertaining to the availability of the forum of industrial adjudication to them. Shri Devinder Gupta stated before us that he did not dispute that the Himachal Pradesh State. Electricity Board was an industry and that the Petitioners before us are workmen.

61. The grievance in the present petition is that the Petitioners have been denied equal wages, with clerks for the similar work that they were required to perform by the Board. Such, denial has been- held by the Division Bench, which decided the case of Prem Chand (ILR 1987 HP 167), as amounting to unfair labour practice. The learned Advocate General says that a dispute of this nature would undoubtedly be an industrial dispute. He drew our attention to the Third Schedule to the. Industrial Disputes Act which mentions at item (i) wages, including the period and mode of payment. u/s 10(1)(d) of the Industrial Disputes Act ; a dispute about wages can be referred to a Tribunal for adjudication. He also said that from the reply filed before this Court by the Board, it is clear that the Board is disputing seriously the basic facts in regard to the grievance of the Petitioners that" they are not paid equal wages for equal work which they are required to perform even though: they have been employed as T. Mates. The dispute can more appropriately be resolved by the Industrial Tribunal where parties will be able to lead evidence in regard to their respective stand about the nature of work etc.

62. The existence of an alternative remedy does not bar the jurisdiction of this Court under Article 226 of the Constitution. It is always a matter of discretion of the Court under "Article 226 whether to relegate a party approaching it for redress to an alternative remedy available to it or not. The legal position is not in doubt. The question is whether the circumstances of the present case justify an order now in the year 1989 that the Petitioners should seek redress in industrial adjudication.

We feel that it would not be fair to ask them to do so. The petition earned before this Court in the year 1984. It has remained pending for all these years for no fault of the Petitioners. The matter had been taken to the Supreme Court also in connection with an interim order made by this Court in the month of May, 1988. Asking the Petitioners now to approach industrial adjudication for redress and thus decline to go into, the merits of the .claim made by them in these proceedings, we feel, would not be a sound exercise of judicial discretion. Several decisions were brought to our notice on this aspect of the case. They do not lay down any rule of thumb that wherever an alternative remedy by way of industrial adjudication was available to the Petitioners, the High Court should decline to go into the merits. The decisions only say that it is a matter of discretion, based on the facts and circumstances of a particular case, for the High Court whether it would go into the merits of the claim brought before it under Article 226 or direct the Petitioner to seek redress by way of industrial

adjudication. We will notice the decisions cited before us without dealing with them individually. These decisions are: Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, ; Kripa Shankar Diwedi v. Industrial Tribunal and Ors. 1982 LabIC973.; Manohar Lal v. State of Punjab and Anr. 1983 LabIC 1783; Bhanwarlal and Others, etc. y. Rajasthan State Road Transport Corporation arid Anr. 1984 LabIC 1794; Dinesh Prasad and Ors. v. State of Bihar and Ors. 1985 LabIC 287; S.L. Soni v. Rajasthan State Mineral Development Corporation Ltd., Jaipur 1986 LabIC 468 ; Dhari Gram Panchayat Vs. Saurashtra Mazdoor Mahajan Sangh and Another,

63. Coming now to the merits of the claim made in this petition, we may notice, at the outset, that the learned Counsel for the Petitioners stated before us that the present petition is confined to the question of equal pay for equal work only.

64. The question of equal pay for equal work has been engaging the attention of the Supreme Court for the past several years. A number of decisions of the Supreme Court about it were brought to our notice. The first of these was in the case of Randhir Singh Vs. Union of India (UOI) and Others, . There have been various decisions thereafter. The Supreme Court has accepted certain tests on the basis of which this question is to be decided. We may only notice two of the latest judgments of the Supreme Court, where after referring to several of its earlier decisions the Court culled out the tests.

65. In Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others, The Supreme Court observed (in paragraphs 4 and 5 of the report) that:

4. Article 39(b) read, with Articles 14 and 16 of the Constitution enjoins the State that where all things are; equal, persons holding identical posts, performing identical and similar duties under the same employer, should not be treated differently in the matter of their pay. The doctrine of "Equal pay for equal work" is not abstract one, it is open, to, the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of "Equal pay for equal work" is applicable when employees holding the same rank perform similar functions and. discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay. The principle of "Equal pay for equal work" hag been enforced by this Court in Randhir Singh v. Union of India Dhirendra Chamoli V. State of U.P. v. V.J. Tliomas v. Union of India P. Savita v. Union of India Bhagwan Dass v. State of Haryana and Jaipal v. State Of Haryana In all these cases this Court granted relief on the application of the doctrine of "Equal pay for equal work

5. While considering the question of application of principle of "Equal pay for equal work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts

concerned. If the classification has reasonable nexus with

- 1 Randhir Singh Vs. Union of India (UOI) and Others,
2. Dhirendra Chamoli and Another Vs. State of U.P.,
3. V.J. Thomas and Others Vs. Union of India (UOI) and Others,
4. P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others,
5. Bhagwan Dass and Others Vs. State of Haryana and Others,
6. (1988) 3 SCC 354.

the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing, different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality.

The claim for equal pay was negative in the case on the ground that the Petitioner had not placed requisite material before the Court for the application of the principle of equal pay for equal work. The decision was rendered on March 9, 1989, in a petition under Article 32 of the Constitution.

66. About a month later, the Supreme Court again dealt with the matter in V. Maritendeya and Ors. v. State of Andhra Pradesh and Ors. 1989 (3) SLR 37. In paragraphs 7 to 10 of the judgment, their Lordships noticed the principles and the decisions in which relief was granted, They said (in paragraph 10) that:

The principle of equal pay for equal work was enforced on the premise that discrimination was practiced between the two set of employees performing the same duties and functions, without there being any rational classification.

If the classification for prescribing different scales of pay is founded on reasonable nexus the principle will not apply. But if the classification is founded on unreal and unreasonable basis, it would violate Articles 14 and 16 of the Constitution and the principle of equal pay for equal work, must have its way.

67. In paragraphs 11 to 14, the cases in which the relief of equal pay for equal work had been refused by the Supreme Court were noticed. Among other things, it was said (in paragraph 13) that"";

where two class of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay But before such relief is granted the court must consider and analyse the rationale behind the State action in prescribing two different scales of pay Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated, before the Court that invidious

discrimination is practiced by the State in prescribing, two different scales for? The two class of employees without there being any reasonable classification for the same. The question what scale; should be provided, to a particular class, of service must be left to-the Executive, and only when, discrimination is practiced amongst the equals, the Court should intervene to ensure equality among the similarly placed employees.

68. On facts, the Supreme Court refused relief to the Petitioners on the ground, that graduate Overseers (Supervisors) had all" along been,, treated as separate: entity from the non-graduate supervisors and they had been drawing, different pay since long Also, that a Constitution bench in a earlier litigation, had already recorded findings that the two sets of officers, namely, graduate supervisors and non graduate supervisors did not belong to the Same class, of service and unequal treatment relating to promotion, was justified, on the basis, of educational qualification. Therefore, the State Government did not violate Articles 14 and 16 of the Constitution in. prescribing? different scales of pay for them.

69. In the present case the stand which has been taken by the Respondent Board, on facts, is a shifting one, varying from reply to reply. For example, in the reply affidavit dated December 18, 1984, it was stated that the Petitioners had been " employed .on Master-roll basis: as T-Mates; against running and maintenance of consumer billing section against the vacancies due to Shortage of clerical staff in the Sub Divisions and to maintain the tempo of work. and. in the best; interest; of the board"s work.-They had been assigned the work of consumer billing/ help in the regular Meter-Ledger Clerks in their routine duties of billing, maintaining, the consumer accounts and sometimes the work of labour depending on the exigency of the works. Also that the Himachal Pradesh Government had imposed a ban on the filling up of the posts by direct recruitment, the post of meter ledger Clerks, meter reader and Lower Division Clerks etc., which, are filled by direct recruitment, could not be filled on regular basis. In order that the work: did not suffer, the field units, who were competent to recruit T-Mates, deployed some T-mates/Reldars at the rate admissible to such categories and entrusted the job-of Meter Ledger Clerks, Meter Readers and Lower Division Clerk etc. where such regular posts were -vacant. In a subsequent reply sworn on December 31, 1984, it was stated that a T-Mate worked as a Helper not only to the Lineman, Assistant Lineman but he was to assist Clerks in every function wherever he was posted including the maintenance of consumers and billing record/accounts. Further, that the Recruitment and Promotion Regulations of the Board did not permit the deployment of clerks on daily wages. "However in order to meet (with) the shortage of regular clerks due to ban on direct recruitment the HPSEB permitted some posts to be filled up on daily wages". In paragraph 8 of this reply, the averment made is this.

The Petitioners are performing the duties of Clerks/Meter Readers/Cashiers/Meter

Ledger Clerks and other staff in their day to day work relating to work off; Running and Maintenance of Consumers and billing, section in the various Sub-Divisions, which deal with all types of work connected with prospective, and existing electricity consumers. All the seven functions discussed in this para pertain to the consumers and billing section.

70. On September 22, 1987, this Court directed the Respondent-Board to place on record a statement containing the information with respect to the categories of workmen performing the duties of clerks on daily Wages and the period since when such duties were being performed by them and incidental and ancillary information.

71. In pursuance of the order, a chart was filed by the Respondent-Board together with Civil Misc. Petition No. 561 of 1987. Serial No. 3 of the chart shows the number of persons who were deployed as T-Mates etc. but were performing the clerical duties. This clearly shows that clerical work was being taken from the persons like the Petitioners and, that too, for varying periods extending even beyond five years.

72. In the reply, which the Respondent-Board has filed in the main amended petition, as also in Civil Misc. Petition No. 1405 of 1987, it has attempted to draw out a distinction between the Petitioners and the regularly appointed officials for performing -the clerical work. For example, it has been stated in paragraph 11 of the reply, to the amended petition that the Petitioners could not be equated with the regularly appointed Clerks/Meter Readers/Meter Ledger Clerks etc. because of certain distinguishing features. The factors were these: The recruitment of the Petitioners was not according to the Recruitment and Promotion Regulations of the Board, so the Petitioners could not be regularised unless they were selected in accordance with the Regulations ; while making regular recruitments, the Board has to accommodate members of the various categories like Backward classes-etc. to the extent of 52% as per the policy of the Government made applicable to the Board ; the Petitioners" selection not having been made through a duly constituted Selection Committee, their suitability for the post or efficiency in the performance of duty had not been determined ; being daily rated workmen, the Petitioners" could not be transferred from one place to Anr. like the regular employees; and that they were not subject to disciplinary control of the Board as they could snap the relationship of an employee at any time of their own will.

73. These distinctions have, however, been pressed into aid in regard to the prayer for regularisation contained in the, writ petition. We find it stated in paragraph 12 of the reply dated April 4, 1987. It has been stated that:

the daily rated workers are employed generally by the Executive Engineers and the expenses are paid out of the funds for the particular work. As long as they work, they are subject to the control of the Board, which assigns work to them and is responsible for making payment of their wages. The wages paid to them

are debited to the Maintenance and Running Consumer Billing Section or such other department to which they are assigned for service, if any.

Also, (in paragraph 13 of the same reply) it was said that the daily rated workers were treated as employees of the Board and were governed by the Standing Orders framed by the Board under the Industrial Employment (Standing Orders) Act, 1946, which apply to the daily rated workers as well with effect from June 5, 1985.

74. An attempt was made to suggest that the daily rated workmen, like the Petitioners, were like casual employees in the matter of certain service conditions.- The affidavit had been filed, as directed by this Court, to place on record the terms and conditions concerning the appointment of work-charged and daily-rated workmen and the control being exercised by the State on the Respondent-Board. These averments do not detract from the fact that the employees like the Petitioners, who were deployed as daily-rated employees, were required to perform the duties and functions of clerical nature like the Lower Division Clerks, Meter Leger Clerks, Meter Readers. "That too, for varying periods extends, in some cases, to more than five years. The Respondent-Board has been authorising its field officers, from time to time, to employ clerks on daily wages. This is clear from various orders collectively filed as Annexure "K" to the amended writ petition. The field officers had given certificates to the Petitioners, some of which have been filed as Annexures P-1 to P-37, showing that the Petitioners, who were deployed as T-Mates on daily wages, were performing the duties of preparation of bills, maintenance of consumer accounts, Meter Ledger Clerks and the like. The evidence brought on the record of this writ petition, therefore, leaves no doubt in our mind that the Petitioners have been required to perform clerical duties though they were deployed as T-Mates on daily wages. It is not the case of the Respondent-Board that these duties were not being performed properly by the Petitioners on account of any reason like the difference in qualifications, from that prescribed for employment to the post of regular clerks. "Nor, on account of the fact that they were not employed in accordance with the Recruitment and Promotion Regulations of the Board. All that the Board says is that being daily-rated workmen; the work of the Petitioners was not evaluated and could not be compared to the work of regular employees. This is found in the reply affidavit "dated June 27, 1986, which starts by saying in paragraph that:

the Petitioners were engaged as T. Mates on Muster-rolls basis on daily wages at their own verbal requests at the time of their employment. Their services were, however, subsequently utilised as Clerks/Meter Ledger Clerks/Meter Readers, as a stop-gap-arrangements on account of ban for filling up these posts on regular basis.

In the opening part of paragraph 11 of this very reply affidavit, it is averred that:

No request was made by the Petitioners to the Board for payment of

remuneration its Clerks and allow them other service benefits etc, before filing the present writ petition. It is submitted that the Petitioners who are working as MLC/s M Rs/Clerks but appointed as T. Mates have been offered/paid minimum wages of Rs. 365.28 paise per month - Later in this paragraph X 1 it has been said that:

It is further submitted that the question of equal pay for work of equal value being a directive principle Js not enforceable through a Court of law unless it amounts to discrimination. under Article 14 of the Constitution. It is submitted that the Petitioners as daily-rated workers belong to a different class to that of regular employees and, therefore, question of violation of Article 14 of the Constitution does not arise.

(Emphasis Our's)

75. The distinction, to our mind, attempted by the Board does not amount to a legally acceptable ground for holding that, in the facts of the present case; it bears a rational nexus to the classification attempted by the Board. The Petitioners, admittedly, are performing the same work as the clerks and are entitled to equal wages therefore.

76. Information in writing was submitted by the Respondent. Board, under the signature of the deputy Secretary (Estt.), (at page 182 of the paper Book) that after the revision of scales with effect from" January 1, 1978, the pay scale of clerks/Meter Ledger Clerks/Meter Readers was Rs. 400- 600. We are of the opinion .-that the Petitioners are entitled to be paid wages at the minimum of this scale for the period for which they have been required to perform the duties of a clerical nature instead of minimum wages payable to them as T- Mates.

77. Accordingly the Respondent board is liable to pay to the Petitioners the wages at the rate equivalent to the minimum pay in the pay scale of a regularly employed clerk but without any increments, for the period for which they have been replied to perform the duties of a clerical nature. The Petitioners will entitle to the corresponding dearness allowance and additional dearness allowance, if any, payable thereon. Whatever other benefits which are being enjoyed by them as bf today shaft be continued to be extended to them.

78. The petition shall stand allowed to the extent aforesaid with the direction that payment on the aforesaid basis shall, be made to the Petitioners with effect from the date of filling of the petition. It shall be for the period, after the date of the filing of the present writ petition, when the Petitioners^ were required by the Respondent Board to perform the duties of a clerical nature. The wages shall continued to be paid to them at that rate till such time that they are required to perform the duties of clerical nature. The amount, due to the Petitioners for the period ending June 30, 1989, shall be worked out and the payment of the amount of difference shall be made within three months from today.

79. Costs on parties.