

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.40 of 2021

Samir Ranjan Debbarma & 310 Ors.	Versus	---Petitioners
The State of Tripura and 10 Ors.		---Respondents

WP(C) No.769 of 2021

Puranjoy Reang & 309 Ors.	Versus	---Petitioners
The State of Tripura and 10 Ors.		---Respondents

WP(C) No.770 of 2021

Pradip Das & 349 Ors.	Versus	---Petitioners
The State of Tripura and 10 Ors.		---Respondents

WP(C) No.771 of 2021

Sadhan Chandra Nama & 214 Ors.	Versus	---Petitioners
The State of Tripura and 10 Ors.		---Respondents

WP(C) No.772 of 2021

Purulal Chakma & 349 Ors.	Versus	---Petitioners
The State of Tripura and 10 Ors.		---Respondents

PRESENT

In all the writ petitions

For the petitioner (s)	: Mr. P. Roy Barman, Sr. Advocate Mr. Samarjit Bhattacharjee, Advocate. Mr. Kawsik Nath, Advocate.
For the respondent (s)	: Mr. S.S. Dey, Advocate General Mr. D.C.Saha, Advocate. Mrs. A. Chakraborty, Advocate. Mr. R.G.Chakraborty, Advocate.

Date of hearing : 10.05.2023

Date of delivery of Judgment
& Order : 08.09.2023

Whether fit for reporting : Yes

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER

Since common questions of facts and law are involved, these writ petitions were heard together on consent of learned counsel appearing for the parties to the *lis* and these are taken up for disposal by this common judgment.

2. Facts:

The brief facts involving all these writ petitions are that the petitioners had been engaged as Special Police Officers (for short, here-in-after referred to as SPOs) in terms of Sections 17 of the Police Act, 1861 and Section 18 of the Tripura Police Act, 2007 by District Magistrates of various districts on recommendation of Superintendent of Police of the respective districts to assist the regular police forces in every Districts of the State starting from the year 2001 to 2007 as alleged in these writ petitions. Petitioners asserted that they are now discharging the duties and responsibilities similar to the regular Constables of Tripura Police, but, on monthly wage basis @ Rs.6156/- per month as on the date of filing of these writ petitions. It is the contention of the petitioners that in discharging their duties as SPOs, the petitioners are enjoying the powers and privileges as like as the regular Constables of Tripura Police Services. They assist the police force of Tripura in maintaining the law and order throughout the State and even play their vital role in strengthening the police camps posted at remote areas of the State. They fearlessly faced the challenge of insurgency problem of the State at different points of time by assisting the

regular police constables right from the year 2001. Petitioners claimed that they are armed constables as they have been entrusted to operate with rifles. It is further contended that the petitioners perform their duties 24(twenty four) hours when they are detailed/attached in any remote police camp and 8(eight) hours when they are in any police station. They do not get any allowances like rifle allowance, kit allowance and ration allowance as the police constables are provided. More so, it is pleaded in the writ petitions that in some of the Districts of the State a few numbers of SPOs are engaged as Drivers of govt. vehicles along with the petitioners in pursuance of the approval given by the government vide letter dated 25.06.2020. They all are similarly situated. But, the petitioners are getting remuneration @ Rs.6156/- per month, whereas 398 nos. of SPOs who are engaged as Drivers, are getting remuneration @Rs.9000/- per month. The petitioners mainly emphasized that so far the duties and responsibilities are concerned there are no difference between them and the regular police constables.

3. On the above facts, the petitioners of the above batch of writ petitions have prayed for the following reliefs:

“(i) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to regularize the service of the Petitioners in the post of Constables.

(ii) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to provide the Petitioners monthly wages which comes to minimum of the pay to which the Police Personnel of the State are entitled to till the regularization of the Petitioners.

(iii) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to provide the Petitioners

Kit allowances, Ration and other allowances which are admissible to the Constables.”

4. Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee and Mr. Kawsik Nath, learned counsel appearing for the petitioners in all the writ petitions.

Also heard Mr. S. S. Dey, learned Advocate General assisted by Mrs. A. Chakraborty, Mr. D. C. Saha and Mr. R.G.Chakraborty learned counsel appearing for the respondents.

5. **Submissions on behalf of the petitioners:**

5.1. At the time of hearing Mr. Roy Barman, learned senior counsel appearing for the petitioners submitted that the petitioners being appointed as Special Police Officers(for short, SPOs) under Section 17 of the Police Act, 1861[here-in-after referred to as the ‘Act of 1861’] have been discharging their duties and responsibilities as similar to the regular constables of Tripura Police Services. But, they are getting their remuneration on daily wage basis. It is his submission that all the powers and privileges of the regular police and the petitioners are assigned under the disciplinary control of the respondents. The petitioners are the part and parcel of the police force who have been performing their onerous duties with similar responsibilities like the police constables, but, they are not getting minimum facilities/allowances which are provided to the regular constables. Mr. Roy Barman, learned senior counsel further contended that the petitioners are entitled to be absorbed into the services of the State Police on permanent basis keeping in view the nature of service like the other State police constables. Their services have been utilized for many years round the clock. They have been burdened with hazardous duties where they sometime have to perform challenging tasks to save the

lives and properties of the people. They do not have any security as there are no protective measures in case of any accident or death. Their family members suffer from uncertainty. Mr. Roy Barman, learned senior counsel reiterated that the appointment of the petitioners is a statutory appointment for which they are entitled to parity of pay scales with the Constables on the principle of equal pay for equal work *vis-à-vis* regularization of the services of the petitioners.

5.2. To bolster his submission, Mr. Roy Barman, learned senior counsel has placed reliance upon the following decisions:

- i. Narendra Kumar Tiwari Vrs. State of Jharkhand & Ors., (2018) 8 SCC 238.*
- ii. State of Punjab & Ors. Vrs. Jagjit Singh & Ors., (2017) 1 SCC 148.*
- iii. Nihal Singh & Ors. Vrs. State of Punjab & Ors., (2013) 14 SCC 65.*
- iv. Grah Rakshak, Home Guards Welfare Association Vrs. State of Himachal Pradesh & Ors., (2015) 6 SCC 247.*

6. Submission on behalf of the State-respondents:

6.1. Per contra, Mr. Dey, learned Advocate General assisted by Mr. D.C. Saha, Mr. R.G.Chakraborty and Mrs. A. Chakraborty, learned counsel appearing on behalf of the respondents-State with all vehemence opposed the submissions of Mr. Roy Barman, learned senior counsel that the SPOs are equal to regular police constables in performance of their duties and responsibilities. Learned Advocate General emphatically contended that the pleadings made in the writ petitions do not contain any comparative statement to justify the submissions advanced on behalf of the petitioners that SPOs are equal to regular constables. No comparative statement is found in the pleadings of the petitioners to show as to how the SPOs are similar to regular police constables. It was urged that Section 18 of the Tripura Police Act, 2007,

a *pari materia* provision of Section 17 of the Act of 1861 does not envisage that the SPOs have been equated with constables. As per Section 18 of the Tripura Police Act, 2007, SPOs shall perform the same duties “as an ordinary police officer” and they shall “assist the Police Service”. Neither the rank of the Police Officers nor responsibilities of SPOs has been specified in the Tripura Police Act, 2007. It was submitted that at the time of appointment SPOs never undergone any such basic training which can equate them with that of the regular police personnel, be it constables, or any other officer or cadre. SPOs were imparted some basic training only on ad-hoc basis. The duration of such training is related to the extent it requires to aid and assist the functioning of the police officers at any point of time. Therefore, such training cannot be equated with rigorous training courses meant for permanent cadres of police force. Again, it was reiterated by Mr. Dey, learned Advocate General that the SPOs were appointed by the Superintendents of Police of the respective districts without any uniform selection process or benchmark and retained as per local requirements for assisting the police force. But, the constables are appointed to Tripura police following a centralized recruitment procedure through competitive evaluation, subject to educational qualifications, physical standards and age limitations, etc. Mr. Dey, learned Advocate General heavily stressed upon the order dated 4th October, 2001, passed by the Director General of Police, Govt. of Tripura [Annexure-R/2 to the counter affidavit in WP(C) No. 40 of 2021] and had drawn attention of this court as to the mode of appointment of SPOs and their deployment at Special Police Posts. In respect of the remuneration of the drivers @ Rs.9000/- per month who were engaged as SPOs, learned Advocate General pointed out that such SPOs who had driving experience having driving license, on

consideration of their special skill, they had engaged as Drivers temporarily with higher remuneration than those of the other SPOs.

6.2. In the line of above submissions and on the question of applicability of equality clause including pay parity as enshrined in Articles 14 and 16 of the Constitution of India, learned Advocate General had relied upon the following authorities:

- i. Union of India Vrs. Indian Navy Civilian Design Officers Association & Anr., 2023 SCC OnLine SC 173.*
- ii. State of Madhya Pradesh through Principal Secretary & Ors. Vrs. Seema Sharma, 2022 SCC OnLine SC 809.*
- iii. State of Punjab & Anr. Vrs. Surjit Singh & Ors., (2009) 9 SCC 514.*
- iv. State of Bihar & Ors. Vrs. Bihar Secondary Teachers Struggle Committee, Munger & Ors., (2019) 18 SCC 301.*

7. In the backdrop of aforesaid facts, in my opinion, following questions arise for consideration in this batch of writ petitions:

- I. Whether the petitioner-SPOs hold “civil post”?
- II. Whether the SPOs are entitled to get an order of regularization/absorption? and
- III. Whether the SPOs are entitled to parity of pay scale as that of the Police Officers/Constables under the State following the principle of equal pay for equal work?

8. Keeping in mind the rival contentions advanced by learned counsel appearing on behalf of the parties, having perused the pleadings and documents thereof, I have proceeded to decide the above formulated points for decision.

9. Discussions on whether SPOs hold “civil post”:

9.1. While deciding this point, I have kept in mind that the petitioners were appointed by the District Magistrates of the respective districts on

recommendation of the Superintendents of Police of the respective districts who had sent their names according to their own choice in exercise of its power under Section 17 of the Act of 1861. So, such appointments cannot be said to be in consonance with the established norms of public employment as embodied in Articles 14 and 16 of the Constitution of India.

9.2. Furthermore, persons engaged in exigencies of situation temporarily against non-sanctioned posts cannot be said to be the holders of “civil post” even if they are appointed/engaged through a recruitment process. Act of 1861 has only conferred a statutory power upon the Superintendent of Police of a District to recommend the names of persons in exigencies of a situation to assist police administration, and District Magistrate of the District is empowered to issue appointment/engagement letter to such persons as SPOs. But their service conditions are not guided or regulated by any Act or Rules or Regulations governing the methodology of their recruitment. Here, their selection through a Superintendent of Police of a district would not render the SPOs thereof the holders of civil post, which has already been settled by a Division Bench of this Court in ***Sri Jiban Kar vs. State of Tripura & Ors.***[D/O 23.11.2015]. Thus, the SPOs appointed in exigencies of certain situations are *sui generis*, that is, they form a class of their own kind. In the context, I may gainfully refer the decision in ***State of Karnataka & Ors. vs. Ameerbi & Ors.*** reported in (2007) 11 SCC 681, wherein the Hon’ble Supreme Court almost in a similar nature of case held thus:[SCC, pp. 690, 691 para 29]

“29. Appointments made under a scheme and recruitment process being carried out through a committee, in our opinion, would not render the incumbents thereof holders of civil post. Our attention has not been drawn to any rule or regulation governing the mode of their recruitment. Some

statements in this behalf have been made by the interveners but for the reasons stated hereinbefore, we cannot enter thereinto. A distinction must be made about a post created by the Central Government or the State Governments in exercise of their power under Articles 77 or 162 of the Constitution of India or under a statute vis-à-vis cases of this nature which are sui generis. Terms and conditions of services of an employee may be referable to Acts of appropriate legislature. The matter may also come within the purview of Article 309 of the Constitution of India as proviso appended thereto confers power upon the President or the Governor of a State or other authority, who may be delegated with such power, to make rules during the interregnum.”

9.3. In my opinion, the appointments made in exercise of power under Section 17 of the Act of 1861 or under Section 18 of the Tripura Police Act, 2007 should not be compared with the posts created by the State Government in exercise of its power under Article 77 or 162 of the Constitution of India or under a statute.

9.4. Added to it, the State Government has no direct control over the appointment of the petitioners as SPOs. So, there is no employer-employee relationship between the State and the SPOs. Moreso, the State has no role to select or dismiss the SPOs.

9.5. It would be relevant to refer the case of *State of Assam vs. Kanak Chandra Dutta* reported in *AIR 1967 SC 884:(1967) 1 SCR 679*, in which the Hon'ble Supreme Court held that “a post is an employment but every employment is not a post.” In the context of the present case also, the employment of SPOs is not made against any prescribed or sanctioned post. It is a kind of employment made temporarily in exigencies of any threat to law and order situation. So, considering the nature of employment of SPOs, I am unable to suggest that SPOs hold civil post. This view of mine is reinforced in the judgment passed by Division Bench[Justice Deepak Gupta, the Chief Justice as he then was and Justice S. Talapatra, the Judge as he then was] of

this Court in **WP(C) No.14 of 2014** along with other connected writ petitions titled as *Sri Jiban Kar (supra)*, where it was held that “*the Special Police Officers are to be appointed as and when need arises. There is no cadre of Special Police Officers and it is not a civil post*”. [Para 9 of the judgment]

9.6. In view of above discussions in the opinion of this Court, the SPOs do not hold the civil post and the question no.1 set out here-in-above is accordingly answered.

10. Discussion on claim of Regularization:

10.1. It is no more *res integra* that regularization or absorption is not a matter of right and it is a right to be considered. It is also well-settled that to claim regularization one must substantiate that he has been appointed in duly sanctioned vacant post. In other words, to get a direction for regularization, regular sanctioned vacant post must exist. Added to it, the petitioners claiming regularization must show that they are appointed following established norms of public employment as enshrined in Articles 14 and 16 of the Constitution of India. Furthermore, the posts exist must be the creation of Act or Rules or statute. The Government or its instrumentalities has every right to consider financial implications involved in the process of regularization of a group of employees. In addition, each and every posts, and vacancies thereof must have been backed by budgetary provisions. In my opinion, incumbents seeking regularization must come up with clear data that their engagements were against the sanctioned vacant posts and they had/have the requisite qualification as prescribed in the relevant Recruitment Rule for the concerned post.

10.2. To comprehend the matter in its entirety, it would be useful to take note of the order dated 04.10.2001 under reference no.48301-

343/F.VDP(1)-Police 2000 issued by the Director General of Police, Tripura,
for employment of SPOs which is reproduced hereunder, *in extenso*:

**“OFFICE OF THE DIRECTOR GENERAL OF POLICE
TRIPURA”**

No 48301-343/F VDP(1)-Police 2000

Dated October 4, 2001

ORDER

Sub- Appointment of SPOs and their deployment at Special Police Posts.

To meet the present challenging situation in certain posts in Tripura, it has been decided that SPOs may be appointed u/s 17 of the Police Act on an experimental basis and they will be deployed at Special Police Posts. The number of SPOs and Special Police Posts will be communicated to you separately.

The SPOS may be paid a fixed honorarium of Rs. 1500/- per month.

The following guidelines may be followed by the District SPs in this matter-

RECRUITMENT:

- a) The persons to be recruited should be residents of neighbourhood of posts.*
- b) The qualifications of recruitment will be the same as that of a Police Constable as far as possible.*
- c) Ex-servicemen and members of the families of victims of insurgency may be encouraged-to-join as SPOs.*
- d) The serving members of VR parties who have done good work should also be considered for selection.*
- e) The character and antecedents of the persons may be verified before appointing them.*
- f) They may be appointed for a period of 4 months initially, to be reappointed as and situation demands.*

Whenever the recruitment process is completed, the lists should be sent to IGP(L/O). After receiving the clearance from him, the District Magistrates should be requested by the SPs to appoint these persons as SPOs under the Police Act for a period of 4 months. At the time of appointment they should be given Sl. No. with the name of the District For example a person at Sl.No. 5 may be given number, as District North/SPO/5 and a record should be kept of such appointments, numbers etc. separately by the District SPs. They will also be given Photo Identity cards by the District SPs.

DISCHARGE:

In case of unsatisfactory service, indiscipline or any other conduct unbecoming of an SPO, he may be discharged by DM, on a report by SP.

They may also be discharged whenever their services are not required.

UNIFORM:

All those SPOs will be given the following uniform by the District SP-

- a) Two sets of Khaki cotton Shirt/Pant with words SPO embroidered on shoulders.*
- b) One khaki berret cap.*
- c) One web belt.*
- d) One pair of hunter shoes with 2 pairs of khaki socks.*

The average life of these uniform items will be the same as prescribed for policemen.

TRAINING:

- a) After appointment, all those SPOs will be given a training of three weeks in normal drill and firing of 303 rifles.*
- b) The modalities of training will be finalised by IGP(L/O).*

WAGES ETC:

- a) SPOs will be paid a fixed honorarium of Rs.1500/- per month which will be paid from the govt. budget by the District SPs.*
- b) For this purpose additional budget will be provided by the State Govt. wherever required.*
- c) SPOs will be given one day's off per month subject to the stipulation that they will not be away for more than 3 days at a time.*

DEPLOYMENT:

- a) SPOs will be deployed at some Special Police Posts at the locations indicated from time to time.*
- b) Their areas of responsibility will be decided by the District SPs.*
- c) Formal camps will be opened at these locations by the District SPs and these will be called Special Police Posts.*
- d) District SPs will construct required accommodation, benches, bunkers, sentry posts and provide lighting, fencing etc. etc. As far as possible accommodation will be of tubular structure.*
- e) At each location, there will be a strength of 30 SPOs. In addition there will be 1 HC/ASI with AK-47 Rifle and minimum 2 Constables with SLRs at each picket to be provided by the District SPs. This strength of Civil Police may be augmented by the District SP whenever he considers it necessary.*
- f) The ASI/HC will be the post commander.*

- g) These SPOS will work under the OCs of the concerned PSs.*
- h) The nearest security camp will take care of the Special Police Posts. All concerned forces may be briefed accordingly including BSF at the borders.*
- i) Each Special Police Post will have a wireless set to be in touch with the nearest security camp PS.*
- j) The required number of registers, records, G.D. Book, standing orders etc, should be kept at each picket which may be decided by IGP(L/O) and orders issued accordingly.*

DUTIES:

The duties of these Special Police Posts will be:

- a) to protect and defend the areas of responsibility.*
- b) to apprehend the culprits when they enter their area of responsibility.*

The performance of these posts will be reviewed from time to time.

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For Director General of Police
Tripura”*

10.3. From the above order, it transpires that the Government of Tripura had taken a policy decision to appoint SPOs keeping in view the challenging situations in certain posts/areas in the State of Tripura. The Inspector General of Police had decided to appoint SPOs on an experimental basis under Section 17 of the Act of 1861. Section 17 reads as under:

“17. When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any police-officer, not below the rank or Inspector, to apply to the nearest Magistrate, to appoint so many of the residents of the neighbourhood as such police-officer may require, to act as special police-officer for such time and within such limits as he shall deem necessary, and the Magistrate to whom such application is made shall, unless he sees cause to the contrary, comply with the application.”

10.4. From the above provision, it is evident that the police officer even at the rank of Inspector may apply to the District Magistrate of the district for appointment of SPOs to maintain peace and tranquility in the area within his jurisdiction to protect and secure life and property of the inhabitants and to prevent subversive activities.

10.5. In the instant case, in exercise of power under Section 17 of the Act of 1861, the Inspector General of Police had empowered the Superintendents of Police of the districts to appoint SPOs in certain posts within his area of operation, according to his requirement with a view to deploy them at some special police posts at the locations, which would be indicated from time to time and specific responsibility to be performed by the Special Police Officers would be decided by the district SPs.

10.6. Again, from the order dated 04.10.2001 as regards the method of recruitment, it becomes apparent that the SPOs would be recruited should be the residents from the neighbourhood of the posts that means and connotes that SPOs are not appointed through the established norms of public employment envisaged under the Constitution of India. Furthermore, strict compliance of recruitment rule prescribed for recruitment of regular constable under the Government of Tripura is not the requirement for appointment of SPOs.

10.7. It is apparent that persons from any age may be recruited as SPOs. There is no fixed number of posts of SPOs, and it depends upon the requirements of the district SPs.

10.8. SPOs are only given honorarium which has been increased time to time. There is no regular wage or time scale of pay and the rate of honorarium is decided by the Government of Tripura. The petitioners were not

appointed as SPOs through a statutory selection process. There is no time limit for continuation of the service of the SPOs and the tenure of the services of the SPOs depends upon the requirements of the district SPs.

10.9. From the appointment order dated 01.12.2001(Annexure 1 to the writ petition no.40/2021) issued by the District Magistrate, North Tripura, Kailashahar it is revealed that the petitioners as SPOs were engaged for utilization of their services as Village Resistance Parties(VRP).

10.10. Tripura Police Act, 2007 came into force w.e.f. 09.04.2007 where it is stated that SPOs shall perform the same duties “as an ordinary police officer” and they shall “assist the Police Service”. So, it can easily be said that the SPOs are engaged in aid and to assist the police force. In the light of above, in the opinion of this Court, the SPOs were not appointed under any statutory rule framed under Section 309 of the Constitution of India. There is no specific recruitment rule prescribed for appointment/engagement of the SPOs. They are appointed under some emergent situations to maintain peace in the locality and to assist the police officers to protect and secure the life and property of the people residing in such an area where law and order problem exists or there is apprehension of a breach of peace in the area. Further, persons who would be appointed as SPOs are to be hailed from that area or neighbouring police post itself.

10.11. Section 18 of the Tripura Police Act, 2007 is to be reproduced hereunder:

“Special Police Officers:

(1) When the police force ordinarily employed in any area is not sufficient to deal with a situation threatening peace and security the Superintendent of Police or any officer, specially empowered in this behalf by State Government, in charge of that area may, at any time by a written order

issued under the hand and seal of such officer, appoint, for a period as specified in the appointment order, any able-bodied and willing person between the age of 18 and 40 years, whom he considers fit to be a Special Police Officer to assist the Police Service.

(2) Every Special Officer so appointed shall-

(h) on appointment, undergo prescribed training and thereafter receive a certificate in a form approved by the State Government in this behalf; and

(i) shall have the same powers, privileges and protection and be liable to perform same duties and amenable to the same penalties and be subordinates to the same authorities, as an ordinary police officer.”

10.12. That apart, Recruitment Rules of Constable of Tripura Police(Men & Women) Rules, 2021 framed by the Government of Tripura under notification dated 10.09.2021 submitted by the learned Advocate General on consent of learned senior counsel appearing for the petitioners, is reproduced here-in-below in *verbatim*, for convenience:

“NO.F.42 (5)-PD/2004(P)/2555

GOVERNMENT OF TRIPURA

HOME DEPARTMENT

Dated, Agartala, the 10th September, 2021.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the constitution of India, and in supersession of the existing Recruitment Rules for the Post of Constable (Men & Women), 2019, the Governor is hereby pleased to make the following Rules regulating the method of common Recruitment Rules to the Post of Constable of Tripura Police, namely:-

1. Short title and commencement-

- (i) These rules may be called Recruitment Rules of Constable of Tripura Police (Men & Women) Rules, 2021.*
- (ii) They shall come into force from the date of their publication in the official Gazette.*

2. Name of the post-

The name of the post shall be as specified in Column No.1 of the Schedule at Annexed hereto.

3. Number of posts, classification & Scale of Pay

The number of the said post, its classification and Scale of pay attached thereto shall be as specified in Column No.2 to 4 of the Schedule Annexed hereto.

4. Method of Recruitment, age limit and qualifications etc.-

*The method of recruitment to the said post, age limit, educational and other qualifications matters relating to the said post shall be as specified in **Column No.5 to 13** of the schedule.*

5. Disqualification: - No person-

(a) Who has entered into or contracted a marriage with a person having a spouse living, or

(b) Who having a spouse living has entered into or contracted a marriage with any person shall be eligible for appointment to the said posts.

Provided that the State Government may, if satisfied that such marriage is permissible under the personnel law applicable to such person and the other party to the marriage that there are other ground for so doing, exempt any person from the operation of this Rule.

6. Power to relax-

Where the State Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in the writing and in consultation with the TPSC, relax any of the provisions of these Rules with respect to any class or category of persons.

7. Repeal-

The existing Recruitment Rules to the post of Constable (Men & Women) hereby stand repealed with immediate effect and are replaced by this Recruitment Rules according to the Schedule enclosed herewith.

8. Saving-

Nothing in these Rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the SCs, STs, Ex-Servicemen and other special categories of persons in accordance with the orders issued by the State Government from time to time in this regard.

By order of the Governor

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(S. Chaudhuri)

Secretary to the

Government of Tripura

10.13. A comparison to above Recruitment Rules of Constable of Tripura Police and the method of recruitment of SPOs under order dated 04.10.2001, clearly establishes the distinction between the said posts, that is, “SPOs” and “Constable” to be manned by two separate classes of people, the appointment/engagement of SPOs is left, in the instant case, at the discretion of the Superintendent of Police of the districts considering the law and order situation, that is, in exigencies of certain situations, in a particular area to aid and assist the police officers appointed by the Government. It is pertinent to mention herein that these police officers are appointed by the Government under a specific Recruitment Rule framed under Article 309 of the Constitution of India.

10.14. Added to it, if we compare the recruitment criteria of “SPOs” and “Constables” it reveals that, for appointment of SPOs there is no hard and fast rule as regards educational qualification, whereas, Recruitment Rule framed under Article 309 of the Constitution of India for “Constables” under the State Government prescribes a specified educational qualification. Added to it, the SPOs can be appointed from persons of any age while the age limit for appointment of Constables of Tripura Police must be between 18 and 24 years.

10.15. At this juncture, it is pertinent to mention here-in that keeping in mind the services rendered by the SPOs, the Government of Tripura has framed Recruitment Rules under the title “*Recruitment Rules of Constables of Tripura Police(Men & Women) Rules, 2021*”(here-in-after referred to as Recruitment Rules, 2021), whereby and whereunder provisions have been made for recruitment of SPOs to the post of Constable. At column no.6 of the Schedule of the said Recruitment Rules, 2021, it is prescribed that such SPOs

must be between the age group of 18 to 30 years as on 1st day of January in which selection is held. It is also noticed that under the Recruitment Rule, 2021 educational qualification for direct recruitment of Constables of Tripura Police is Madhyamik or equivalent board examination for unreserved(UR) category; candidates from SCs/STs category have to pass Class VIII. At column no.7 of the said Recruitment Rules, 2021, a special provision has been made for recruitment to the post of Constables from SPOs having educational qualification of “Class VIII pass for all categories UR/SCs/STs candidates”.

10.16. Noticeably, under the Recruitment Rules, 2021, provisions have been made to recruit SPOs as Constables of Tripura Police giving some relaxation as regards the age and educational qualification. As it appears from the Schedule of the Recruitment Rule, 2021, there are altogether 8413(Men 7351 & Women 1062) sanctioned posts of Constables at present under the Government of Tripura. Furthermore, the posts of SPOs are not permanent in nature although their services are allowed to be continued for a long time.

10.17. In the instant case, the petitioners have not come up with a case that they were appointed against any posts, to say the least, sanctioned posts. The posts of constables are created by the Home Department, Government of Tripura and the recruitment procedure is quite different than that of SPOs. The constables of the Government hold “civil post”, which SPOs do not, as I have already held in deciding question no.1. The recruitment of constables under a specified Recruitment Rule by the State Government and SPOs recruited under the Act of 1861 completely stand on two different pedestals, and create two separate and distinct classes in themselves.

10.18. Learned senior counsel has placed heavy reliance on the decision of the Apex Court in *Nihal Singh & Ors. vs. State of Punjab & Ors.*, reported

in (2013)14 SCC 65. I have given conscious consideration to the said judgment and the circumstances under which two-Judge Bench of Hon'ble Supreme Court issued directions for regularization of SPOs by creating necessary posts within a certain period. After perusal of the said judgment, in my opinion, in the said case, the Hon'ble Supreme Court did not decide any ratio, but, directed the Government of Punjab to regularize the services of the SPOs on consideration of the fact that requisition for engagement of SPOs was given by the bank authorities to guard and protect the banks operating in the State and expenditures including their salaries which would be borne by those banks only, and not by the State Government.

Added to it, the Hon'ble Supreme Court in *Nihal Singh(supra)* categorically held that “the creation of posts” necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However, in the instant case, creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden”. [SCC p.80, para 36].

A plain reading of *Nihal Singh(supra)* makes it clear that their Lordships consciously avoided to burden the State financially and had passed the direction for regularization of the appellants only in that event the concerned banks of Punjab had agreed to bear the burden of paying salary to the appellants. Here, the case is entirely different. Accordingly, the decision in the cited case relied upon by learned senior counsel will not be of any help to the petitioners/SPOs in the case in hand.

10.19. I have also taken note of the case of *Divisional Manager, Aravali Golf Club & Anr. Vs. Chander Hass & Anr.*, reported in (2008) 1 SCC 683, where the Hon'ble Supreme Court has settled the proposition that the courts cannot direct for creation of posts. It was held as under:

"5. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside."

In a later case, in *Maharashtra State Road Transport Corporation & Anr. vs. Casteribe Rajya Parivahan Karmchari Sanghatana* reported in (2009)8 SCC 556, the Hon'ble Supreme Court held thus:

"41. Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the courts."

10.20. I have also kept in mind the case of *Amarkant Rai vs. State of Bihar & Ors.*, reported in (2015) 8 SCC 265, where the Hon'ble Supreme Court directed the Government of Bihar to regularize the services of the petitioner, Amarkant Rai. In the said decision the Hon'ble Supreme Court had found that the petitioner/appellant Amarkant fell in exception carved out in *Secretary, State of Karnataka & Ors. Vs. Uma Devi(3) & Ors.*, (2006) 4 SCC 1. The Hon'ble Supreme court in *Amarkant(supra)* came to a finding that the engagement of Amarkant was irregular but not illegal. He served for 29 years. There were two sanctioned vacant posts of Class IV employees in the concerned college and Amarkant was appointed against the same. It was found

that the Human Resources Development, Department of Bihar Government, vide its Letter dated 11.7.1989 intimated to the Registrar of all the Colleges that as per the settlement dated 26.4.1989 held between Bihar State University and College Employees' Federation and the Government, it was agreed that the services of the employees working in the educational institutions on the basis of prescribed staffing pattern are to be regularized. Besides, in terms of Resolution No. 989 dated 10.5.1991 issued by the Human Resources Development Department, employees working up to 10.5.1986 had to be adjusted against the vacancies arising in future. It was noticed that the petitioner was appointed in 1983 temporarily. In the context of the said case, the Hon'ble Supreme Court held that though the initial engagement of the appellant was not against a sanctioned post, but, he was entitled to regularization pursuant to said resolution.[SCC p. 269, para 9].

10.21. In the *State of M.P. and others vs. Yogesh Chandra Dubey and others*, reported in (2006) 8 SCC 67, the Hon'ble Supreme Court while dealing with a claim of regularization and minimum of pay scale has held that the State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing Rules. A person who had been appointed by a State upon following the Recruitment Rules, enjoys a status. A post must be created and/or sanctioned before filling it up. As the respondents did not hold any post, they are not entitled to any scale of pay. It has further been held that regularization is not a mode of appointment. If any recruitment is made by way of regularization, the same would mean a back door appointment, which does not have any legal sanction [Ref. paras 9, 11 and 14].

10.22. In the *M.P. State Coop. Bank Ltd. Bhopal vs Nanuram Yadav and others*, reported in (2007) 8 SCC 264, the Hon'ble Supreme Court held that: [SCC pp. 274, 275, Para 24]

“24) It is clear that in the matter of public appointments, the following principles are to be followed:

- 1) The appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Arts. 14 & 16 of the Constitution of India.*
- 2) Regularisation cannot be a mode of appointment.*
- 3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.*
- 4) Those who come by back door should go through that door.*
- 5) No regularization is permissible in exercise of the statutory power conferred under Art. 162 of the Constitution of India if the appointments have been made in contravention of the statutory Rules.*
- 6) The Court should not exercise its jurisdiction on misplaced sympathy.*
- 7) If the mischief played so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.*
- 8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”*

10.23. Again, I am not unoblivious of the decisions and directions of the two-Judge Bench of the Hon'ble Supreme Court in *Narendra Kumar Tiwari and Ors. vs. State of Jharkhand and Ors.*, reported in (2018) 8 SCC 238, where the Hon'ble Supreme Court directed the State of Jharkhand to take necessary steps for regularization of the irregularly appointed employees in the spirit of the decisions of the Constitution Bench in *Uma Devi(3) (supra)*. In the case of *Narendra Kumar Tiwari (supra)*, the Hon'ble supreme Court had referred and discussed the cases of *Uma Devi (3)(supra)* and *State of Karnataka vs. M.L. Kesari, (2010) 9 SCC 247*.

To evaluate the distinguishing features of the case in hand, than that of the case of *Narendra Kumar Tiwari (supra)*, it is necessary to

reproduce the relevant paragraphs from the case of **Narendra Kumar Tiwari**

(*supra*) :- [SCC.pp.240, 241,242, paras 5,6,7,8,9,10,11 & 12]

“5. The decision in *Umadevi* (3) was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily wage workers and continuing with them indefinitely. In fact, in paragraph 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

6. The concept of a one-time measure was further explained in *Kesari* in paragraphs 9, 10 and 11 of the Report which read as follows: (SCC pp.250-51, paras 9-11)

“9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi* (3), each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in *Umadevi* (3), cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in *Umadevi* (3), will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of *Umadevi* (3) has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of *Umadevi* (3), but did not consider the cases of some employees who were entitled to the benefit of para 53 of *Umadevi* (3), the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of *Umadevi* (3), are so considered.

11. The object behind the said direction in para 53 of *Umadevi* (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim

orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure.”

7. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10 th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.

11. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within

four months from today on regularisation of the status of the appellants. 12. We may add that that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.”

10.24. On meticulous reading of the above paragraphs, it is clear that the two-Judge Bench of the Hon’ble Supreme Court in *Narendra Kumar Tiwari (supra)* has approved the interpretation of the term “**one-time measure**” as explained in *M.L. Keshari (supra)* that the State or its instrumentalities had to undertake one-time exercise for regularization of all casual, daily wages or ad hoc employees who had been working for more than ten years without the intervention of the courts or tribunals and subject to a process of verification as to whether such employees were working **against sanctioned vacant posts**, and **possess requisite qualification** for the post they were holding. In the process of such regularization, if any employer had held the ‘one-time exercise’ in terms of para 53 of *Uma Devi (3) (supra)*, but did not consider the cases of some employees who were entitled to the benefit of para 53 of *Uma Devi (3) (supra)*, the employer concerned should consider their cases as a continuation of ‘one-time exercise’. Furthermore, the said ‘one-time exercise’ would be concluded only when all the employees who were entitled to be considered in terms of para 53 of *Uma Devi (3) (supra)* were considered.

10.25. In my opinion, the object behind the directions passed by the Constitution Bench in *Uma Devi (3)(supra)* was to save all daily-wage, ad hoc, casual employees from exploitations by the State and their instrumentalities and to bind the States and their instrumentalities to stop irregular appointments ignoring the established norms of employment as enshrined in Articles 14 and 16 of the Constitution of India. There are conditionalities. *Firstly*, the employees must have completed at least 10 (ten)

years of continuous service as on 10.04.2006 [the date of decision in *Uma Devi (3) (supra)*] without the protection of any interim orders of courts or tribunals; *Secondly*, those appointments, though irregular, but not illegal; *Thirdly*, the appointments must be against **sanctioned vacant posts**; and, *Fourthly*, they must possess requisite qualification commensurate the posts they held.

10.26. In the case of *Narendra Kumar Tiwari (supra)*, the Hon'ble Supreme Court had observed that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision of *Uma Devi (3)(supra)*. It was further observed that the State of Jharkhand had taken it granted that it is all right to continue with irregular appointments, and whenever required they could terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed, and in that context, it was held that the said process was nothing but a form of exploitation of the employees by not giving them the benefits of regularization and by placing the sword of Damocles over their head, contrary to the object, the Hon'ble Supreme Court wanted to achieve in the case of *Uma Devi (3)(supra)* and *M.L. Keshari (supra)*. In that circumstances, the Hon'ble Supreme Court in *Narendra Kumar Tiwari (supra)* had directed the State to take decision on regularization of the status of the appellants.

10.27. I have also taken care of the judgment passed in *Pandurang Sitaram Jadhav and Ors. vs. State of Maharashtra, (2020) 17 SCC 393*, where the Apex Court had confirmed the direction passed by an Industrial Court, Maharashtra for regularization of the contractual workers in the wake of clear finding that the employers were involved in unfair labour practice. In *Pandurang(supra)*, the Supreme Court held that the powers of the Industrial

and Labour Courts to take affirmative action under Section 30(1)(b) of the relevant State Act are very wide, which includes the issuance of a direction of permanent employment affected by unfair labour practice and exercise of such powers ingrained in the Act itself was not to be curtailed in any manner whatsoever interpreting the law laid down in *Uma Devi(3)(supra)*. So, the underlying facts of the case of *Pandurang(supra)* cannot be related to the factual aspects of the instant case to grant the relief of regularization to the petitioners.

10.28. Again, the Hon'ble Supreme Court in *Vibhuti Shankar Pandey vs. State of Madhya Pradesh & Ors.*, reported in (2023)3 SCC 639 had set aside the order of learned Single Judge of Madhya Pradesh High Court directing the State to regularize the service of the petitioner who was appointed on daily rated basis under a project and not against any sanctioned post as it was noticed that the initial appointment of the petitioner/appellant was not made by the competent authority and the appointment was not made against a sanctioned post. The Hon'ble Supreme Court in *Vibhuti Shankar(supra)* has reiterated the principle laid down in *Umadevi(3) (supra)*. [SCC. p. 640 para 4]. As I said earlier, in the case in hand, there is no evidence that the petitioners were appointed against regular sanctioned vacant post.

10.29. I have also gone through the decision of the Hon'ble Supreme court in *Raman Kumar & Ors. vs. Union of India & Ors.* [decided on July 03, 2023 in SLP(C) No.7898/2020], where the Supreme Court has directed the regularization of 35 Group-D employees considering the fact that the Chief Commissioner of Income Tax had found that 65 persons were entitled to be regularized, but, the act of regularizing the services of only 35 employees and not regularizing the services of other employees including the petitioners was

blatantly discriminatory or violative of Article 14 of the Constitution of India on the ground that some of the Group-D posts had been abolished.

In a recent decision, the Hon'ble Supreme Court in *Government of Tamil Nadu & Anr. vs. Tamil Nadu Makkal Nala Paniyalargal & Ors.*, **2023 SCC Online SC 393**, relying upon the judgments of the Supreme Court in *Chander Hass(supra)* and *Maharashtra State Road Transport Corporation(supra)* reiterated the principles that the creation of posts is not within the domain of judicial functions and it pertains to the executive or legislature. In the case of *Government of Tamil Nadu(supra)*, the Hon'ble Supreme Court has categorically held that in absence of sanctioned posts, the State cannot be compelled to create the post and absorb the persons who are continuing in service of the State.

10.30. Applying the aforesaid principles in the context of the case in hand, I may hold that when there is no clear sanctioned vacant post, the Court should not pass a direction for regularization. Furthermore, when the Court cannot pass any direction upon the State for creation of posts to regularize/absorb or to make the persons permanent in exercise of its discretionary power under Article 226 of Constitution of India, any direction for regularization against non-existent posts would be an exercise in futility. However, as I said earlier, it is noticed that the Government of Tripura under the Recruitment Rules, 2021 has provided relaxation in respect of certain essential conditions so that SPOs can participate in the recruitment process to fill up the posts of Constables. So, the State Government has duly considered the issues of the SPOs in the matter of their appointment in the line of the established norms of public employment. In the instant case, since the employments of the petitioner-SPOs have not been made against any post, to

say the least, sanctioned post, I refrain myself to pass any direction upon the respondents-State to regularize/absorb or make the SPOs permanent.

11. Discussions on claim of parity of pay scales:

11.1. I have given my anxious thought to the submissions of learned senior counsel referring to Section 18 of the Police Act, 2007 that the SPOs are the police officers/constables and they perform the same duties as that of the police officers appointed by the State Government.

11.2. In my opinion, the phraseology used by the framers of the Police Act, 2007 that the SPOs shall perform the same duties ‘as an ordinary police officer’ should not be read in an isolated manner, and it should be read in conjunction with the words embodied in the said provision that they shall ‘assist the police service’. The object of the Police Act, 2007, according to this Court, is that SPOs would be appointed to assist the police force where deployment of such police force appears to be not sufficient to maintain peace and to protect and secure the life and property of the residents of an area. Mere giving a nomenclature of police officers would not in any way mean and connote that SPOs are the police officers.

11.3. Section 18 of Tripura Police Act, 2007, a *pari materia* provision of Section 17 of the Police Act, 1861, clearly embraces a different object the State Government intended to achieve which has already been discussed in the preceding paragraphs. I am fortified by a decision in *Dulal Samanta vs. The District Magistrate, Howrah & Ors.*, reported in *1958 SCC OnLine Cal 3: AIR 1958 Cal 365* whereunder the Calcutta High Court delineating the object of Section 17 of the Act of 1861 held that *the preamble of the Police Act says that it was expedient “to re-organise the police and to make it a more efficient instrument for the prevention and detention of crime”*. The Act gives power to

employ additional police officers at the cost of individuals under Section 13 of the Act. Learned Judge at para 11 held thus:

“11. Section 17 of the Police Act provides:

“When it shall appear that any unlawful assembly or riot disturbance of the peace has taken place, or may be reasonably apprehended, and that the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace was occurred, or is apprehended, it shall be lawful for any police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police officers may require to act as special police officers for such time and within such limits as he shall deem necessary, and the Magistrate to whom such application is made shall, unless he sees cause to the contrary, comply with the application”.

It is plain on the language of that section that power to appoint special police officers is circumscribed by certain conditions. The first is whether there is actual or apprehended (a) any unlawful assembly or (b) riot or (c) disturbance of the peace. It is significant that not all crimes are mentioned nor all offences, but only three are specified by name and they being unlawful assembly, riot and disturbance of the peace. The second condition under this section is that the police force ordinarily employed for preserving the peace is not sufficient. The third condition is that the appointment is limited to the residents of the neighbourhood where the unlawful assembly or riot or disturbance of the peace has occurred or is apprehended. The fourth condition is that such appointment is thought to be necessary for the preservation of peace and for the protection of the inhabitants and the security of property in the particular place. When these conditions exist a police officer not below the rank of an Inspector has to make an application to the nearest Magistrate to appoint as many of the residents of the neighbourhood as such police officer thinks necessary. The application is to be made to the Magistrate who may not comply with the application if he sees cause to the contrary, but if he does not, then he has no other option but to comply with the application made to him for making the residents special police officers under section 17.”

(emphasis supplied)

11.4. Earlier to the case of *Dulal Samanta(supra)*, a Division Bench of the Calcutta High Court in *Gopinath Paryah & Ors. v. The Empress, (1905-06) 10 Cal WN 82* came to a conclusion that the only legitimate object for appointing Special Police under the Section 17 of the Police Act is to strengthen the ordinary police force by the addition of suitable persons to their

number when the ordinary force finds itself too few to meet an emergency. Again, in *Radhakanta Lal v. Emperor, (1907-08) 12 Cal WN 727: 1908 SCC OnLine Cal 200*, the Division Bench of the Calcutta High Court emphasized that the disturbance of the peace and inadequacy of the ordinary police force are necessary conditions for invoking Section 17 of the Police Act.

11.5. The above analysis crystalises that the objectives of the creation of posts of Police Constables by the State Government in conformity with the Recruitment Rules framed under Article 309 of the Constitution of India and the employment of Special Police Officers(SPOs) by the District Magistrate of the district on recommendation of the Inspector/Superintendent of Police of the same district are completely different and this difference forms a separate and distinct class and it would not be correct to contend that they form a homogenous group. In that eventuality, difference of pay structures between the two groups is inevitable and does not offend Articles 14 and 16 of the Constitution of India.

11.6. In the present case, I have already discussed in the preceding paragraphs that the mode of recruitment to the post of SPOs and the post of Constables of Tripura Police is quite different. At the cost of repetition, I reiterate that the SPOs are appointed from the residents of the neighbourhood where the Superintendents of Police of the districts feel it expedient for such appointment to protect and secure the life and property of the residents of that particular area. There is no age bar, even the persons who have voluntarily retired from service can be appointed as SPOs. Police Act, 2007 does not lay down any rigid criteria as regards educational qualification for recruitment of SPOs.

11.7. On the issue of bringing parity of pay scales on the principles of equal pay for equal work, I may profitably refer a decision of a two-Judge Bench of the Hon'ble Supreme Court in *State of Punjab & Ors. vs. Jagjit Singh & Ors.*, (2017) 1 SCC 148 where their Lordships have summarized the ratio on the subject as under:[SCC. pp.205, 206, 207, 208 para 42]

“42.1. The “onus of proof” of parity in the duties and responsibilities of the subject post with the reference post under the principle of “equal pay for equal work” lies on the person who claims it. He who approaches the court has to establish that the subject post occupied by him requires him to discharge equal work of equal value, as the reference post (see Orissa University of Agriculture & Technology case [Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188 : 2003 SCC (L&S) 645] , UT Chandigarh, Admn. v. Manju Mathur [U.T. Chandigarh, Admn. v. Manju Mathur, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348] , SAIL case [SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] and National Aluminium Co. Ltd. case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353]).

42.2. The mere fact that the subject post occupied by the claimant is in a “different department” vis-à-vis the reference post does not have any bearing on the determination of a claim under the principle of “equal pay for equal work”. Persons discharging identical duties cannot be treated differently in the matter of their pay, merely because they belong to different departments of the Government (see Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] and D.S. Nakara case [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145]).

42.3. The principle of “equal pay for equal work”, applies to cases of unequal scales of pay, based on no classification or irrational classification (see Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982 SCC (L&S) 119]). For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see Federation of All India Customs and Central Excise Stenographers case [Federation of All India

Customs and Central Excise Stenographers v. Union of India, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] , *Mewa Ram Kanojia case* [*Mewa Ram Kanojia v. All India Institute of Medical Sciences*, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] , *Grih Kalyan Kendra Workers' Union case* [*Grih Kalyan Kendra Workers' Union v. Union of India*, (1991) 1 SCC 619 : 1991 SCC (L&S) 621] and *S.C. Chandra case* [*S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943]).

42.4. *Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay and cannot claim the benefit of the principle of “equal pay for equal work” (see Randhir Singh case* [*Randhir Singh v. Union of India*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] , *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* [*State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72 : 2002 SCC (L&S) 822] and *Hukum Chand Gupta case* [*Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]). Therefore, the principle would not be automatically invoked merely because the subject and reference posts have the same nomenclature.

42.5. *In determining equality of functions and responsibilities under the principle of “equal pay for equal work”, it is necessary to keep in mind that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see Federation of All India Customs and Central Excise Stenographers case* [*Federation of All India Customs and Central Excise Stenographers v. Union of India*, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] and *SBI case* [*SBI v. M.R. Ganesh Babu*, (2002) 4 SCC 556 : 2002 SCC (L&S) 568]). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of “equal pay for equal work” (see *State of U.P. v. J.P. Chaurasia* [*State of U.P. v. J.P. Chaurasia*, (1989) 1 SCC 121 : 1989 SCC (L&S) 71] and *Grih Kalyan Kendra Workers' Union case* [*Grih Kalyan Kendra Workers' Union v. Union of India*, (1991) 1 SCC 619 : 1991 SCC (L&S) 621]).

42.6. *For placement in a regular pay scale, the claimant has to be a regular appointee. The claimant should have been selected on the basis of a regular process of recruitment. An employee appointed on a temporary basis cannot claim to be placed in the regular pay scale (see Orissa University of Agriculture & Technology case [Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188:2003 SCC (L&S) 645]).*

42.8. *If the qualifications for recruitment to the subject post vis-à-vis the reference post are different, it may be difficult to conclude that the duties and responsibilities of the posts are qualitatively similar or comparable (see Mewa Ram Kanojia case [Mewa Ram Kanojia v. All India Institute of Medical Sciences, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] and State of W.B. v. Tarun K. Roy [State of W.B. v. Tarun K. Roy, (2004) 1 SCC 347 : 2004 SCC (L&S) 225]). In such a case the principle of “equal pay for equal work” cannot be invoked.*

42.9. *The reference post with which parity is claimed under the principle of “equal pay for equal work” has to be at the same hierarchy in the service as the subject post. Pay scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see Union of India v. Pradip Kumar Dey [Union of India v. Pradip Kumar Dey, (2000) 8 SCC 580 : 2001 SCC (L&S) 56] and Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).*

42.10. *A comparison between the subject post and the reference post under the principle of “equal pay for equal work” cannot be made where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see Harbans Lal case [Harbans Lal v. State of H.P., (1989) 4 SCC 459 : 1990 SCC (L&S) 71]). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see Official Liquidator v. Dayanand [Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943]).*

42.12. *The priority given to different types of posts under the prevailing policies of the Government can also be a relevant factor for placing*

different posts under different pay scales. Herein also, the principle of “equal pay for equal work” would not be applicable (see State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822]).

42.13. *The parity in pay, under the principle of “equal pay for equal work”, cannot be claimed merely on the ground that at an earlier point of time the subject post and the reference post, were placed in the same pay scale. The principle of “equal pay for equal work” is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see State of W.B. v. Minimum Wages Inspectors Assn. [State of W.B. v. W.B. Minimum Wages Inspectors Assn., (2010) 5 SCC 225 : (2010) 2 SCC (L&S) 1]).*

42.14. *For parity in pay scales under the principle of “equal pay for equal work”, equation in the nature of duties is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see U.T. Chandigarh, Admn. v. Manju Mathur [U.T. Chandigarh, Admn. v. Manju Mathur, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348]).*

42.15. *There can be a valid classification in the matter of pay scales between employees even holding posts with the same nomenclature i.e. between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]), when the duties are qualitatively dissimilar.”*

11.8. Having regard to the legal parameters with reference to the application of the principle of equal pay for equal work the two- judge bench of the Supreme Court in **Jagjit Singh(supra)** had taken into account the sole

factor as to whether the temporary employees concerned were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/ corresponding posts. While determining the said sole factor the Hon'ble Supreme Court found that the State of Punjab had admitted that the employees of those bunch of appeals were appointed against posts which were also available in the regular cadre/ establishment. It was not the case of State of Punjab that the temporary employees concerned did not possess the qualifications prescribed for appointment on regular basis. It was not the case of the State of Punjab that any of the temporary employees would not be entitled pay parity on any of the principles summarized by their Lordships in para 42 here-in-above. In *Jagjit Singh(supra)* all the legal parameters laying down the principles of equal pay for equal work had been established by the clear admission of State of Punjab as regards the duties and responsibilities discharged by the temporary employees alike in all respects to that of the regular employees. But, in the context of the instant case, in the opinion of this Court, the State of Tripura has categorically denied that SPOs perform similar duties and responsibilities to that of Constables under the Government of Tripura. The SPOs have failed to establish that they were appointed through the same recruitment process as the Constables had undergone. Moreso, this court has already held that the source of recruitment of constables and the SPOs are different and distinct to each other. There is clear difference in the degree of responsibility, reliability and confidentiality. There is also clear qualitative difference between the two posts. Ultimate analysis is that, none of the parameters as set out in *Jagjit Singh(supra)* are met by the SPOs, that is, the petitioners of this bunch of writ petitions.

11.9. Again, following the aforesaid ratio, it can un-hesitantly be said that mere similarity of designation would not entail one to claim parity in pay scales. In *State of Madhya Pradesh vs. Ramesh Chandra Bajpai* reported in (2009) 13 SCC 635, the Hon'ble Supreme Court has categorically held that 'mere similarity of designation' will not be a determinative factor to consider the claim of equality in the matter of granting pay scales in favour of a person or a group of person.

11.10. In *Ramesh Chandra Bajpai(supra)*, the Hon'ble Supreme Court held that it was well-settled that the doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced in every way. "*Mere similarity of designation or similarity or quantum of work was not determinative of equality in the matter of pay scales. The Court had to consider all the relevant factors such as the mode of recruitment, qualifications for the post, the nature of work, the value of work, responsibilities involved and various other factors*".

11.11. Again, dealing with the issue of claim of pay parity, the Hon'ble Supreme Court recently in the case of *State of Madhya Pradesh through Principal Secretary & Ors. vs. Seema Sharma*, reported in 2022 SCC Online SC 809 discussed the issue in detail with reference to its earlier decisions, which are as under:[SCC Online SC paras 24, 25, 26]

"24. The fixation of scales of pay is a matter of policy, with which the Courts can only interfere in exceptional cases where there is discrimination between two sets of employees appointed by the same authority, in the same manner, where the eligibility criteria is the same and the duties are identical in every aspect.

25. Our attention has been drawn by Mr. Saurabh Mishra, learned counsel appearing on behalf of the Appellants to a recent judgment of this Court rendered on 07.04.2022 in Civil Appeal No. 2661/2015

(*State of Uttarakhand v. Sudhir Budakoti*), where this Court held as under:—

“14. A mere differential treatment on its own cannot be termed as an “anathema to Article 14 of the Constitution”. When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one.

15. Such a discrimination would not be termed as arbitrary as the object of the classification itself is meant for providing the benefits to an identified group of persons who form a class of their own. When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. Social, revenue and economic considerations are certainly permissible parameters in classifying a particular group. Thus, a valid classification is nothing but a valid discrimination. That being the position, there can never be an injury to the concept of equality enshrined under the Constitution, not being an inflexible doctrine.

16. A larger latitude in dealing with a challenge to the classification is mandated on the part of the Court when introduced either by the Legislature or the Executive as the case may be. There is no way, courts could act like appellate authorities especially when a classification is introduced by way of a policy decision clearly identifying the group of beneficiaries by analysing the relevant materials.

17. The question as to whether a classification is reasonable or not is to be answered on the touchstone of a reasonable, common man's approach, keeping in mind the avowed object behind it. If the right to equality is to be termed as genus, a right to non-discrimination becomes a specie. When two identified groups are not equal, certainly they cannot be treated as a homogeneous group. A reasonable classification thus certainly would not injure the equality enshrined under Article 14 when there exists an intelligible diffrentia between two groups having a rational relation to the object. Therefore, an interference would only be called for on the court being convinced that the classification causes inequality among similarly placed persons. The role of the court being restrictive, generally, the task is best left to the concerned authorities. When a classification is made on the recommendation made by a body of experts constituted for the purpose, courts will have to be more wary of entering into the said arena as its interference would amount to substituting its views, a process which is best avoided.

18. A long as the classification does not smack of inherent arbitrariness and conforms to justice and fair play, there may not be any reason to interfere with it. It is the wisdom of the other wings which is required to be respected except when a classification is bordering on arbitrariness, artificial difference and itself being discriminatory. A decision made sans the aforesaid situation cannot be tested with either a suspicious or a microscopic eye. Good-faith and intention are to be presumed unless the contrary exists. One has to keep in mind that the role of the court is on the illegality involved as against the governance.”

26. This Court cannot interfere with the policy decision taken by the Government merely because it feels that another decision would have been fairer; or wiser as held by this Court in State of Madhya Pradesh v. Narmada Bachao Andolan reported in (2011) 7 SCC 639 and relied upon and re-affirmed in Sudhir Budakoti (supra).

11.12. Again, I may gainfully refer the case of ***Union of India vs. Indian Navy Civilian Design Officers Association & Anr.***, reported in **2023 SCC Online SC 173** where the principle of equal pay for equal work has been dealt with quite elaborately, which may be reproduced hereunder, for convenience, in *extenso*: [SCC Online SC 173 paras 9, 10, 11, 12, 13, 14]

“9. Before advertng to the rival contentions raised by the learned counsels for the parties, it deserves to be noted that the power of judicial review of the High Courts in the matter of classification of posts and determination of pay scale is no more res integra. It has been consistently held by this Court in plethora of decisions that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and the interference of the Court was absolutely necessary to undo the injustice.

10. In State of U.P. v. J.P. Chaurasia¹, while answering the questions as to whether the Bench Secretaries in the High Court of Allahabad were entitled to pay scale admissible to the Section Officers and whether the creation of two grades with different scales in the cadre of Bench Secretaries who were doing the same and similar work was violative of the right to have “equal pay for equal work”. This Court observed as under:—

¹ (1989) 1 SCC 121

“18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.”

11. The afore-stated ratio was followed by this Court in Union of India v. Makhan Chandra Roy². Again, in Secretary, Finance Department v. West Bengal Registration Service Association³, the claim of Sub-Registrars of West Bengal Registration Service claiming parity in pay scale with Munsiffs on the basis that Sub-Registrars were conferred gazetted status, was examined by this Court. It was elaborately observed in para 12 as under:—

“12. We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time-consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may

² (1997) 11 SCC 182

³ 1993 Supp (1) SCC 153

include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v.) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v.) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."

12. *In State of Haryana v. Charanjit Singh*⁴, a three-judge Bench in a referred matter considered whether the doctrine of “equal pay for equal work”, was an abstract doctrine, and observed thus:—

“19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of *Jasmer Singh* [(1996) 11 SCC 77 : 1997 SCC (L&S) 210 : AIR 1997 SC 1788 : (1997) 2 LLJ 667], *Tilak Raj* [(2003) 6 SCC 123 : 2003 SCC (L&S) 828], *Orissa University of Agriculture & Technology* [(2003) 5 SCC 188 : 2003 SCC (L&S) 645 : (2003) 2 LLJ 968] and *Tarun K. Roy* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] lay down the correct law. Undoubtedly, the doctrine of “equal pay for equal work” is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of “equal pay for equal work” has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of “equal pay for equal work” requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the

⁴ (2006) 9 SCC 321

same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.”

13. In *Union of India through Secretary, Department of Personnel, Public Grievances and Pensions v. T.V.L.N Mallikarjuna Rao*⁵, this Court reiterated the said position:—

“26. The classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Tribunal cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service.”

14. In view of the afore-stated legal position, it clearly emerges that though the doctrine “equal pay for equal work” is not an abstract doctrine and is capable of being enforced in a Court of Law, the equal pay must be for equal work of equal value. The equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the

⁵ (2015) 3 SCC 653

administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service.”

12. Applying the aforesaid principles enunciated by the Hon’ble Supreme Court, I can safely hold that there may be an occasion where the nature of the work in two posts appears to be more or less similar, but the character of said two posts or employment are classified in different manner having different pay structures considering the reasonable nexus to legislative intention the Government sought to achieve. In that situation, it would be wrong to allege differential treatment between the persons holding the two more or less similar posts having different pay structures.

13. In the instant case, I reiterate that SPOs are not governed by any Recruitment Rule, whereas, the Constables of Tripura Police are governed by a specific recruitment rule framed by the Government of Tripura in exercise of power under Article 309 of the Constitution of India. The services of Constables are protected by Article 311 of the Constitution of India where SPOs do not. Mode of recruitment is wholly different as I discussed in the preceding paragraphs, which clearly establishes that they do not belong to the same homogenous group, but, a class *sui generis*. Entire scheme of appointment of SPOs clearly suggests that there is qualitative difference as regards the reliability and responsibility. Therefore, in my opinion, to compare

the employment of SPOs with the regularly appointed “Constables” under the Government will amount to comparing the unequals.

14. One of the basic principles of pay fixation is that the salary must reflect the nature of duties and responsibilities attached to the post, meaning thereby that the pay scale must be commensurate with the task to be performed and the responsibility to be undertaken by the holder of the post. [Ref.: *Secy. Finance Deptt. v. W.B. Registration Service Association, 1993 Supp(1) SCC 153, p. 167 para 13*]

15. In addition, the petitioners to discharge their duties as SPOs would have no power to take any decision like that of the police officers appointed by the State Government. The police officers appointed by the Government of Tripura would take an appropriate decision in an appropriate circumstance and the SPOs would only implement the instructions given by the police officers appointed by the Government. In other words, the state police officers form a part of decision making process while the SPOs are the implementers of the said decision. The phraseology of the words embodied in Section 17 of Act of 1861 and Section 18 of the Tripura Police Act, 2007 clearly envisage that the SPOs are employed only to assist the police officers of the State Government. So, the responsibilities and the functionalities of the SPOs and the police officers, the Constables herein under the State Government are quite dissimilar and distinguishable.

16. I do not find any such comparative statements in the pleadings made in the writ petitions filed by the petitioners to justify as to how the duties and responsibilities the SPOs discharge commensurate to the duties and responsibilities shouldered upon the State police officers. It is no longer *res integra* that quantity of work would not be the determinative factor to apply

the cause of equality without considering the most important and relevant factors like mode of recruitment, qualifications for the post, the value of work, the quality of works involved and various other factors.

17. In the instant case, the factors, or to say it otherwise, the conditionalities, that i) petitioners were appointed as SPOs should hail from the same neighbourhood area, ii) no age limit, iii) flexibility in educational qualification, (iv) they may be the persons who went on voluntary retirement, (v) recruitment in exigencies of situations in exercise of Section 17 of the Act of 1861, a different statute, simply makes the petitioners unequal to the Constables or the police officers appointed under the State Government disentitling them to claim pay parity as that of Constables appointed by and working under the Government of Tripura. In contra thereto, the source of recruitment of Constables is quite different. The Constables under Home Department, Government of Tripura are recruited under a Rule framed under Article 309 of the Constitution of India, which prescribes different method of recruitment. It provides specific criteria as regards the educational qualification, age, etc. Written examination is a must under the Recruitment Rule. Physical standard is one of the essential conditions for selection of Constables. Candidates who fulfill the criteria under the rule are eligible to participate in the selection process. It applies to persons of all over the State, and does not only limit to the persons hailing from neighbouring police post or area of jurisdiction of Inspector of Police or District Superintendent of Police or the District Magistrate. These are the apparent distinctive features, which create reasonable classification between the petitioners-SPOs and the Constables.

18. In *State of Andhra Pradesh and Ors. vs. G. Sreenivasa Rao and Ors.*, reported in (1989) 2SCC 290, Hon'ble Supreme Court in para 15 and 16 held thus:

“15. “Equal pay for equal work” does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal.

16. In *Federation of All India Customs & Central Excise Stenographers v. Union of India* [(1988) 3 SCC 91 : 1988 SCC (L&S) 673 : (1988) 7 ATC 591] Sabyasachi Mukharji, J. considered earlier judgments of this Court on the point and observed: (SCC p. 100, para 7)

“Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the work done, it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide,

reasonably on an intelligible criteria which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right.”

19. At this juncture, I am immensely benefitted from the judgment passed in ***S.H. Baig & Ors. vs. State of Madhya Pradesh & Ors., (2018) 10 SCC 621***, where Supreme Court denied the pay parity of the Ministerial employees of the Police Department in the State of Madhya Pradesh with those of officers of corresponding ranks in the executive branch of the same Police Department. The facts emanated in ***S.H. Baig’s*** case are that the recruitment to the posts of ministerial employees i.e. head clerk, assistant clerk, accountant, assistant accountant, record keeper, daftari, etc. was governed by the Madhya Pradesh Police Regulations, which were framed under the Police Act, 1861. Inspectors, Sub-Inspectors, Subedars, Assistant Sub-Inspectors, etc. were appointed as per the provisions governed by Part II of the Madhya Pradesh Police Regulations. On 05.11.1967, the State Government created new Police Ranks (Ministerial) in the State Police Force under Section 2 of the Police Act, 1861. The Ministerial employees who opted to be enrolled under the Police Act, 1861 would continue to draw emoluments in their existing pay scales or as may be revised from time to time. There was a difference in pay scales between the Ministerial and Executive branches of the police from the beginning. After unsuccessful attempts in both writ petitions and writ appeals before the Madhya Pradesh High Court as regards their claim of pay parity with that of the members of the Executive branches of Police Force, the Ministerial employees preferred SLP challenging the judgments passed by Madhya Pradesh High Court.

19.1. The main contention of the Ministerial staff was that they became members of Police Force as per memorandum dated 05.11.1967 and after their enrolment under the Police Act, 1861, they could not be discriminated against in any manner. They further urged that there should not be any difference between the Ministerial employees and the members of the Executive Force as they were also provided with facilities like uniform grant and uniform maintenance allowance and there were re-designation of their posts. A peon/farash was given the rank of Constable(M), daftari/jamadar was given the rank of Head Constable(M). Likewise Ministerial employees in the categories of LDC, UDC and Stenographer were re-designated as Assistant Sub-Inspector(M), Sub-Inspector(M) and Subedar(M). The Hon'ble Supreme Court ultimately held that merely because Police ranks were given to Ministerial employees, they cannot claim parity of pay. It was further held that similar and identical pay scales cannot be given to the Ministerial staffs of the Madhya Pradesh Police Department even on the principle of equal pay for equal work.

On the aforesaid facts, the Hon'ble Supreme Court in **S.H. Baig(supra)** had laid down the principle of *equal pay for equal work* as under: SCC p. 627 para 18.

“18. Parity of pay scales cannot be given to the appellants even on the principle of equal pay for equal work. The appellants contend that some of the Ministerial employees were assigned work in the Executive Police Force. Some persons in the Ministerial (E) branch have been appointed to the Police Force as Deputy Superintendent of Police also. The Ministerial (E) staff is also assigned duties of Executive Police Force during elections. The Government maintains that the members of the Ministerial (E) branch do not discharge executive functions. It is well-settled law that even if persons are holding same rank/designation and having similar powers, duties and responsibilities they can be placed in different scales of pay and cannot claim

the benefit of the principle of equal pay for equal work. [See Randhir Singh v. Union of India⁶ and State of Punjab v. Jagjit Singh⁷] In this case the qualifications for appointment, mode of recruitment, training, the duties and responsibilities not being similar, the appellants are not entitled for the relief of equal pay.”

20. To re-iterate, in the instant case also, it is the plea of the petitioners that they being SPOs have been discharging their duties alike the Constables of the State Government and some of the SPOs have been engaged as drivers of the Police Department. It was further argued with vehemence that some of the SPOs were provided with arms and discharging similar duties and responsibilities as that of the Constables appointed by the State Government.

21. To re-appreciate the above pleas of the petitioners, I have substantially benefitted to read a recent decision of the Apex Court in ***State of Gujarat & Ors. vs. Dr. P.A. Bhatt & Ors., 2023 SCC OnLine SC 503***, where their Lordships while disallowing the claim of parity of pay scales raised by the doctors possessing a degree of BAMS(Bachelor of Ayurved in Medicine and Surgery) had placed strong reliance upon the case of ***The State of Mysore & Anr. vs. P. Narasinga Rao, (1968)1 SCC 407: AIR 1968 SC 349***, which is one of the earliest cases considered by a Constitution Bench laying down the ratio that the classification of two grades of Tracers, one for matriculates with a higher pay scale and the other for non-matriculates with a lower pay scale, was held to be not violative of Articles 14 and 16 of the Constitution of India. In fact, it was a case where both matriculates as well as non-matriculates were drawing same scale of pay in the erstwhile State of Hyderabad but, after the reorganization of States in 1956, two different scales of pay came to be given

⁶ (1982) 1 SCC 618 : 1982 SCC (L&S) 119

⁷ (2017) 1 SCC 148 : (2017) 1 SCC (L&S) 1

to those who were allotted to the new Mysore State. Yet the Constitution Bench of Hon'ble Supreme Court upheld the classification.

22. Bearing in mind the pleas raised by the petitioners and the ratio on the subject, I may hold that it is settled that though Article 14 forbids class legislation, it does not forbid reasonable classification. It is settled proposition of law that reasonable classification, based on intelligible criteria having rational nexus with the object the legislatures sought to achieve, is permissible, and should not be branded as discrimination. In the case in hand, creation of posts of Constables and appointment thereof framing a Recruitment Rule under Article 309 of Constitution of India, and the employment of SPOs under Section 18 of Tripura Police Act, 2007, a *pari materia* provision to Section 17 of Act of 1861 being a statute aptly suggests that Government intended to achieve two different objectives under two different exigencies. These two different situations clearly demonstrate a reasonable relation to the object sought to be achieved by the rule and statutory provision in question. In other words, there is rational nexus between the basis of classification and the object intended to be achieved by the Recruitment Rule framed for Constables and the statute for employment of SPOs. This is the reason to treat the SPOs differently and at the cost of repetition, in my considered view, such differentiation will not amount to discrimination because, as I said earlier, SPOs form a class *sui generis*.

23. Conclusion:

23.1. In the line of afore-stated authoritative judicial pronouncements and in view of my answers to the questions set out here-in-above and applying the aforesaid principles in the instant case, I may un-hesitantly conclude that the SPOs in no way be equated with the Constables appointed by the State

Government because, as I have stated earlier, their qualifications for appointment, mode of recruitment, training, the degree of duties and responsibilities are visibly different from that of SPOs. It is no longer *res integra* that even if persons hold similar rank/designation and almost perform similar duties and responsibilities; even exercise certain powers as those of the police constables recruited against the regular sanctioned posts cannot claim the benefit of the doctrine of equal pay for equal work. Added to what have been stated and decided here-in-above, two different sources of recruitment, under two different statute and rule also make SPOs and regular police constables unequal disentitling parity in pay scales. The SPOs as a group denote an independent legal classification and thus, are neither entitled to regularization nor parity of the pay scales prescribed for Constables.

23.2. For the reasons expressed and the legal issues involved in the present batch of writ petitions being discussed here-in-above, I do not find any merit in the claim of the petitioners/SPOs to grant the relief of regularization and parity of pay scales with those holding the rank of Constables under the State Government.

23.3. However, before I conclude, I direct the respondents to examine whether the services of any of the SPOs are utilized against any permanent or sanctioned regular posts, in that event, such SPOs would be entitled to draw wages at the minimum of the pay scale,(at the lowest grade, in the regular pay scale), extended to regular constables or drivers, keeping in mind the principles set out here-in-above and such exercise shall be completed within 6(six) months from the date the petitioners shall furnish a copy of this order to their competent authorities.

23.4. Subject to aforesaid directions mentioned in para 23.3, the above batch of writ petitions stands dismissed.

Pending application(s), if any, also stands dismissed.

JUDGE

SAIKAT
KAR
Snigdha

Digitally signed
by SAIKAT KAR
Date: 2023.09.22
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