

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.377 of 2024
W.P.(C) No.378 of 2024
W.P.(C) No.379 of 2024
W.P.(C) No.380 of 2024
W.P.(C) No.381 of 2024
W.P.(C) No.382 of 2024
W.P.(C) No.383 of 2024

In W.P.(C) No.377 of 2024

Sri Supantha Paul,

son of Sri Sailendra Paul, Jail Ashram
Road, Agartala-799007, P.S. East
Agartala, District-West Tripura

..... **Petitioner(s)**

- V e r s u s -

1. **The State of Tripura,**
represented by the Commissioner
cum Secretary, Higher Education
Department, Government of Tripura,
having its office at New Capital
Complex, Agartala-799010, P.S. New
Capital Complex, District- West Tripura
2. **Commissioner cum Secretary,**
Finance Department, Government of
Tripura, having its office at New Capital
Complex, Agartala-799010, P.S. New
Capital Complex, District- West Tripura
3. **The Director,**
Higher Education Department,
Siksha Bhawan, Office Lane,
Agartala-799001, P.S. West
Agartala, District- West Tripura
4. **Tripura Institute of Technology,**
Represented by its Principal,
Narsingarh, Agartala-799009, P.S.
Airport, District- West Tripura

..... **Respondent(s)**

In W.P.(C) No.378 of 2024

Sri Sujoy Das,

son of Sri Jaharlal Das, Sekerkote
Purba Para, Bikramnagar, P.S. Amtali,
PIN-799130, District- West Tripura

..... **Petitioner(s)**

- V e r s u s -

1. **The State of Tripura,**
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2. **Commissioner cum Secretary,**
Finance Department, Government of
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Capital Complex, District- West Tripura
3. **The Director,**
Higher Education Department, Siksha
Bhawan, Office Lane, Agartala-799001,
P.S. West Agartala, District- West
Tripura
4. **Tripura Institute of Technology,**
Represented by its Principal,
Narsingarh, Agartala-799009, P.S.
Airport, District- West Tripura

..... **Respondent(s)**

In W.P.(C) No.379 of 2024

Sri Piyush Singh,

son of Sri Ram Jiyavan Singh, resident
of Ranipur, Khajagipur, Mirzapur, P.S.
Mirzapur, Uttar Pradesh, 231304

..... **Petitioner(s)**

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4. **Tripura Institute of Technology,**
Represented by its Principal,
Narsingarh, Agartala-799009, P.S.
Airport, District- West Tripura

..... Respondent(s)

In W.P.(C) No.380 of 2024

Sri Prasenjit Debnath,
son of Sri Nanigopal Debnath, resident
of 88, Ghosh Para, Aralia, Agartala-
799004, P.S. East Agartala, District-
West Tripura

..... Petitioner(s)

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P.S. West Agartala, District- West
Tripura
4. **Tripura Institute of Technology,**
Represented by its Principal,
Narsingarh, Agartala-799009, P.S.
Airport, District- West Tripura

..... Respondent(s)

In W.P.(C) No.381 of 2024

Sri Tamar Das,
son of late Sudhan Das, Bhagat Singh
Para, Shantirbazar-799144, P.S.
Shantirbazar, District-South Tripura

..... Petitioner(s)

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1. **The State of Tripura,**
represented by the Commissioner
cum Secretary, Higher Education
Department, Government of Tripura,
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Complex, Agartala-799010, P.S. New
Capital Complex, District- West Tripura
2. **Commissioner cum Secretary,**
Finance Department, Government of
Tripura, having its office at New Capital
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3. **The Director,**
Higher Education Department, Siksha
Bhawan, Office Lane, Agartala-799001,
P.S. West Agartala, District- West
Tripura
4. **Tripura Institute of Technology,**
Represented by its Principal,
Narsingarh, Agartala-799009, P.S.
Airport, District- West Tripura

..... Respondent(s)

In W.P.(C) No.382 of 2024

Sri Manoj Kumar Triveni,
son of Sri Devendra Prasad Sah,
resident of High School Road, Borio,
Sahibganj, Jharkhand-816120

..... **Petitioner(s)**

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Finance Department, Government of
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3. **The Director,**
Higher Education Department, Siksha
Bhawan, Office Lane, Agartala-799001,
P.S. West Agartala, District- West
Tripura
4. **Tripura Institute of Technology,**
Represented by its Principal,
Narsingarh, Agartala-799009, P.S.
Airport, District- West Tripura

..... **Respondent(s)**

In W.P.(C) No.383 of 2024

Sri Abhishek Bhattacharjee,
son of Sri Ajoy Nrisingha
Bhattacharjee, resident of Ramnagar,
Road No.8, Agartala-799002, P.S. West
Agartala, District- West Tripura

..... **Petitioner(s)**

- V e r s u s -

1. **The State of Tripura,**
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Capital Complex, District- West Tripura

- 2. **Commissioner cum Secretary,**
Finance Department, Government of Tripura, having its office at New Capital Complex, Agartala-799010, P.S. New Capital Complex, District- West Tripura
- 3. **The Director,**
Higher Education Department, Siksha Bhawan, Office Lane, Agartala-799001, P.S. West Agartala, District- West Tripura
- 4. **Tripura Institute of Technology,**
Represented by its Principal, Narsingarh, Agartala-799009, P.S. Airport, District- West Tripura

..... Respondent(s)

For the Petitioner (s) : Mr. B. R. Bhattacharjee, Sr. Adv.
Mr. S. Datta, Adv.
Mr. S. Saha, Adv.
Mr. S. Banik, Adv.

For the Respondent (s) : Mr. K.N. Bhattacharya, G.A
Mr. M. Debbarma, Addl. G.A
Mr. D. Sarma, Addl. G.A
Mr. K. De, Addl. GA

Date of hearing : 20.06.2025

Date of delivery of Judgment & order : **12.08.2025**

Whether fit for reporting :

YES	NO
√	

HON’BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

Common and identical issues being involved, all the writ petitions were heard together and are being disposed of by this common judgment.

[2] In W.P(C) No.377 of 2024, the petitioner, namely, Supantha Paul in pursuance of the advertisement dated 27.10.2017 issued by the National Project Implementation Unit

(for short, NPIU) for engagement of Assistant Professor for Engineering Colleges under the Technical Education Quality Improvement Program (for short, TEQIP) Project, was engaged as Assistant Professor (Civil Engineering) on contractual basis for a period of 3 years 9 months vide order No.F.1(4)/TEQUIP-III/TIT/2017/596 dated 04.01.2018 [Annexure-4 to the writ petition of W.P.(C) No.377 of 2024] with a consolidated monthly remuneration of Rs.70,000/-. It was also indicated in the offer of engagement that such engagement would be for a period till 31.03.2020 or till the project period whichever occur first. The petitioner states that his salary was Rs.76,491/- and project ended on 30.09.2021. This case is being treated as the lead case.

[3] The said project was introduced for improving the quality of Technical Education in the States/Union Territory and in this regard, a Memorandum of Understanding [for short, MoU] was signed on 02.02.2017 [Annexure-2 of the lead case] between the focus States/Union Territory and Ministry of Human Resource Development, Govt. of India (for short, MHRD). As per Section I of the said MoU, the participating States/UT agrees to some terms and condition and one of such terms is extracted hereunder:

Section I-

a).....

b).....

.....

.....

p) Ensure the constitution of a suitably empowered Faculty/Department/College Management Committee in the participating faculties/departments/ non-autonomous constituent colleges of university in the STATE/UT. The Faculty/Department/College Management Committee will be responsible for the overall strategic direction to the department/faculty/non-autonomous constituent college. The composition and powers of the Department/College Management Committee are set out in the PIP.

In section III of the MOU, following condition was also set forth-

The MHRD will provide University/Institutional Development Grants to participating institutes in the STATE/UT through a Direct Benefit Transfer System. The Finance Manual describes the functioning of the Direct Benefit Transfer System, the rules and procedures governing its use, and the roles and responsibilities of the MHRD and STATE/UT.

The state of Tripura was a signatory in the MOU.

[4] In W.P(C) No.378 of 2024, the petitioner Sujoy Das, also in pursuance to the same advertisement dated 27.10.2017 was engaged as Assistant Professor (Electrical Engineering) on a contractual basis for a period of 3 years 9 months vide order bearing No.F.1(4)/TEQUIP-III/TIT/2017/585 dated 01.01.2018 with similar terms and conditions, like the petitioner of W.P(C) No.377 of 2024.

[5] In W.P(C) No.379 of 2024, the petitioner, Sri Piyush Singh was also engaged in pursuance to the same advertisement dated 27.10.2017 as Assistant Professor (Electronics & Communication Engineering) vide offer of engagement bearing No.F.1(4)/TEQUIP-III/TIT/2017/1452-1453

dated 15.10.2018 with similar terms and conditions like above said two petitioners.

[6] In W.P(C) No.380 of 2024, the petitioner, namely, Sri Prasenjit Debnath, was engaged as Assistant Professor (Civil Engineering) under the same advertisement on contractual basis vide order bearing No.F.1(4)/TEQUIP-III/TIT/2017/1390-1391 dated 28.09.2018 with similar terms and conditions.

[7] In W.P(C) No.381 of 2024, the petitioner, namely, Sri Tamar Das was engaged as Assistant Professor (Computer Science & Engineering) under the same advertisement on contractual basis vide offer of engagement No.F.1(4)/TEQUIP-III/TIT/2017/1392-1393 dated 28.09.2018 with similar terms and conditions.

[8] In WP(C) 382 of 2024, the petitioner, namely, Sri Manoj Kumar Triveni, was engaged in pursuance to the same advertisement dated 27.10.2017 as Assistant Professor (Mechanical Engineering) on contractual basis vide offer of engagement No.F.1(4)/TEQUIP-III/TIT/2017/589 dated 02.01.2018 with similar terms and conditions.

[9] In W.P(C) 383 of 2024, the petitioner, namely, Sri Abhishek Bhattacharjee, was engaged as Assistant Professor (Electronics Engineering) under same advertisement on a contractual basis vide offer of engagement No.F.1(4)/TEQUIP-

III/TIT/2017/650 dated 05.01.2018 with similar terms and conditions.

[10] According to all the petitioners, the project ended on 30.09.2021 and on 01.12.2021, another order [Annexure-5 of the lead case] was issued by the Education (Higher) Department, Government of Tripura, whereby the engagement of all the petitioners were extended for 6[six] months w.e.f. 06.12.2021. Thereafter, again vide order dated 12.07.2022 [Annexure-6 of the lead case], their such engagement was further extended from 12.07.2022 to 11.01.2023. Again, vide order dated 10.01.2023 [Annexure-7 of the lead case], the engagement of the petitioners were further extended from 16.01.2023 to 15.07.2023. Thereafter, vide order dated 24.08.2023 [Annexure-8 of the lead case], their engagement was again extended from 17.07.2023 to 31.12.2023. *It was also mentioned in the said order that no further extension may be undertaken from State Fund from 31.12.2023.* But thereafter also vide order dated 16.02.2024 [Annexure-9 of the lead case], the engagement of all the petitioners were extended further from 20.02.2024 to 20.07.2024. In Annexures-6, 7, 8 & 9 it was also mentioned that the appointee should have to submit an undertaking agreeing to the said mode of engagement and that he/she would not claim any future benefit of regularization, accruing out of these engagements.

[11] While the project was in force, the Central Project Advisor of National Project Implementation Unit wrote a letter on 25.03.2019 [Annexure 10 of the lead case] to the Principal Secretary, Higher Education Department of Tripura mentioning that there were huge vacancies in the institutes in Tripura and therefore, the Principal Secretary was requested to decide the action plan for filling up such huge vacancies after project period, with further comment that ideally the qualified TEQIP faculty (Assistant Professor) should be absorbed in the institutions through appropriated procedure as they moving to other institutes shall defeat the purpose of entire process. It was also further noted that it was agreed in the MOU signed between the State and MHRD, that well-performing faculty hired using project funds would be retained/absorbed post project, or else unchanged, and the faculty retained would be paid exclusively from the state funds.

[12] The Principal, TIT, Narsingarh also wrote one letter dated 09.11.2022 [Annexure-11 of the lead case] to the Director, Education (Higher) Department regarding absorption of the petitioners alongwith some other Assistant Professors engaged under TEQIP-III in regular Government service. It was stated by the Principal that all these faculties were well qualified, as per AICTE norms of Degree Engineering Faculty and were rendering their dedicated service to the institute till

date. Their period of contractual service would expire on 11.01.2023. These faculties were engaged in periodical R & D activities and were contributing to the Institute in teaching learning activities and other administrative activities. Their presence in the institute would help to obtain better score in NBA evaluation for accreditation and in NIRF ranking. Based on these, it was requested by the Principal to consider absorption of the said faculties in regular government service, if possible, by creating supernumerary post so that the students in particular and the Institute in general may be benefitted.

[13] Learned senior counsel, Mr. B.R. Bhattacharjee referring to the advertisement under Annexure-1 submits that due process of recruitment was followed in the case of the present petitioners and after successfully qualifying the interview, they were provided with the job. Learned senior counsel also referring to the MoU executed between the State and the Union of India further submits that it was an understanding between both the State of Tripura and the Central Government to implement the project with the objective of improvement of technical educational quality in the State with the financial aid from the World Bank and it was also instructed by the NPIU to the Principal Secretary of Higher Education Department of the State of Tripura vide letter dated 25.03.2019 [Annexure-10] requesting him to decide the action plan for

filling up huge vacancies in the institutions of the State after the project period by absorbing the Assistant Professors engaged under the project through appropriate procedure as their moving out to the other institutes would defeat the purpose of entire process. It was also stated that as per the MoU signed between the State and MHRD, the well performing faculty hired using project funds would be retained/absorbed post project by the State from its own fund.

[14] Learned senior counsel, Mr. Bhattacharjee also relies on the said letter issued by the Principal, Tripura Institute of Technology, Narsingarh to the Director of Higher Education Department dated 09.11.2022 [Annexure-11 of lead case] as indicated earlier. Learned senior counsel on the basis of above said two communications submits that the petitioners were engaged through a selection process after issuing due advertisement and they were rendering their valuable service to the institution to the full satisfaction of the authority and even contributed for betterment of the teaching standard in the said institution which even yielded better result of the students and therefore, it was the intention of both the Central Government in MHRD Department as well as the institutional head of the Tripura Institute of Technology for their absorption in the regular service but despite the same, the State Government has not taken any step in this regard. Mr. Bhattacharjee, Learned

senior counsel addresses in his argument that the selection of the petitioners were against duly sanctioned post and after the project period was over, the engagement of the petitioners are being continued from time to time with an artificial break of small period after every spell to defeat the claim of regularization of the petitioners which itself is indicative of exploitative nature of their engagement by the State. Finally, learned senior counsel, Mr. Bhattacharjee, to buttress his submission for regularization of the petitioners in their services, relies on the following decisions of the Hon'ble Supreme Court:

[i] Mr. B.R. Bhattacharjee, learned senior counsel relies on paragraph No.27 of **State of Gujarat and others. vs. PWD Employees Union & ors., (2013) 12 SCC 417**. In this case, some trade unions and labour unions made representation to the Government of Gujarat for regularization of daily-wage workers, working since long. The State Government then constituted a committee under chairmanship of one Minister to make recommendation after studying the demands, issues and question of labour unions. After thorough examination of the wages, work related services and facilities provided to the daily wage workers who were engaged in the building maintenance and repairing work in different departments of the State, such as Road and Building Department, Water Resources Department, Forest Department, Agriculture Department etc.,

the Committee made recommendations favoring the regularization. Government accepted the said recommendations and published the same with the clearance of the Finance Department. In spite of that, the benefit was not provided to the daily wage workers of Forest Department. The aggrieved workers then filed writ petition before the High Court and Ld. Single Judge held that said resolution of the Government was applicable to the employees of the Forest Department. Then LPA was filed by the State which was dismissed by the Division Bench. State then approached the Apex Court which was also dismissed and the matter reached finality. In another case, when some of the daily wage-workers of the Forest Department moved before the High Court, the matter was referred to the larger Bench and the three-Judge Bench by its judgment held that the above said resolution was applicable only to the daily-wage workers of the Forest and Environment Department engaged in the work of maintenance and repairing of constructions in that Department and not to the other daily-wage workers engaged in other type of works. Meanwhile, State Government also passed another resolution dated 22.12.1999 that previous resolution dated 17.10.1988 based on one recommendation of the Committee was not applicable to the daily-wagers of the Forest Department. In that backdrop, Hon'ble Supreme Court observed the followings:

24. The daily-wage workers who were engaged in building maintenance and repairing work in different departments were already entitled for their work related facilities. Therefore, what we find is that the Committee has not limited the recommendation to the daily-wage workers working in building maintenance and repairing work in different departments of the State. The State Government vide its Resolution dated 17-10-1988 has not limited it to the daily-wage workers working in building maintenance and repairing work. What we find is that the Resolution dated 17-10-1988 is applicable to all the daily-wage workers working in different departments of the State including the Forest and Environment Department performing any nature of job including the work other than building maintenance and repairing work. The decision of the Full Bench of the Gujarat High Court in *Gujarat Forest Producers, Gatherers and Forest Workers Union [Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat, (2004) 2 GLH 302 : (2004) 2 Guj LR 1488]* and the subsequent Resolution dated 22-12-1999 issued from the Forest and Environment Department of the State, in our opinion are not sustainable, as the intent of the Resolution dated 17-10-1988 was not properly explained therein and, therefore, the aforesaid decision of Full Bench [Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat, (2004) 2 GLH 302 : (2004) 2 Guj LR 1488] and Resolution dated 22-12-1999 cannot be made applicable to the daily-wage workers of the Forest and Environment Department of the State of Gujarat.

25. In view of the aforesaid observation, we find that the Full Bench of the Gujarat High Court in *Gujarat Forest Producers, Gatherers and Forest Workers Union [Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat, (2004) 2 GLH 302 : (2004) 2 Guj LR 1488]* proceeded on erroneous premises to hold that the Resolution dated 17-10-1988 is applicable only to the daily-wage workers of the Forest Department engaged in building maintenance and repairing work. The conclusions in the said judgment are not sustainable otherwise also. We have already noticed that the Resolution of the State Government dated 17-10-1988 is not limited to any particular department, it applies to all the departments including Road and Building, Forest and Environment Department, Water Resources Department, etc. We have also noticed that the Committee headed by the Minister of Road and Building Department looked into the wages of daily-wage workers and work related facilities provided to the daily-wage workers engaged in building maintenance and repairing work in different departments, only for the purpose of its recommendations. The Committee has not limited the recommendations amongst the daily-wage workers engaged in building maintenance and repairing work in different departments by its aforesaid Resolution. It is applicable to all daily-wage workers including semi-skilled workers performing any nature of job, working in different departments of the State including the daily-wage workers of the Forest Department

performing work other than building maintenance and repairing work.

26. The impugned order passed by the learned Single Judge and the Division Bench arise out of the final order and judgment dated 29-10-2010 passed in *PWD Employees Union v. State of Gujarat* [PWD Employees Union v. State of Gujarat, Special Civil Application No. 8647 of 2008, order dated 29-10-2010 (Guj)] and connected matters. The said order has reached finality in absence of any challenge before the higher court and hence became binding between the parties i.e. the appellant State of Gujarat and the respondent Employees' Union. Therefore, none of the parties including the appellant State of Gujarat can rely on the Full Bench decision in *Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat*, (2004) 2 GLH 302 : (2004) 2 Guj LR 1488] to scuttle the decision and direction given by the Gujarat High Court in *PWD Employees Union v. State of Gujarat* [PWD Employees Union v. State of Gujarat, Special Civil Application No. 8647 of 2008, order dated 29-10-2010 (Guj)] and connected matters.

27. The decisions in *Umadevi* [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and *A. Umarani* [A. Umarani v. Registrar, Coop. Societies, (2004) 7 SCC 112 : 2004 SCC (L&S) 918] were regarding the question concerning regularisation of employees entered by back door method or those who were illegally appointed encouraging a political set up, in violation of Articles 14 and 16 of the Constitution of India. We are of the opinion that both the aforesaid decisions are not applicable in the present case i.e. to the members of the respondent Employees' Union for the following reasons:

(i) The Secretary, Forest and Environment Department of the State of Gujarat by his order dated 3-5-2008 held *that initially the entry of the daily wagers do not suffer from any illegality or irregularity but is in consonance with the provisions of Minimum Wages Act. Therefore, the question of regularisation by removing the procedural defects does not arise.*

(ii) The Gujarat High Court by its judgment dated 29-10-2010 passed in *PWD Employees Union v. State of Gujarat* [PWD Employees Union v. State of Gujarat, Special Civil Application No. 8647 of 2008, order dated 29-10-2010 (Guj)] while noticing the aforesaid *stand* taken by the State also held that the nature of work described in the order dated 3-5-2008 shows that the daily wage-workers are engaged in the work which is perennial in nature.

(iii) The case of *A. Umarani* [A. Umarani v. Registrar, Coop. Societies, (2004) 7 SCC 112 : 2004 SCC (L&S) 918] related to

regularization of services of irregular appointees. In the said case this Court held that: (SCC p. 112g)

"when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed [therein] and in ignorance of essential qualifications, the same would be illegal and cannot be regularized by the State."

Finally, the Hon'ble Supreme Court held that considering the finding of the Gujarat High Court dated 29-10-2010 in **PWD Employees Union v. State of Gujarat** [Special Civil Application No. 8647 of 2008] and the connected matters and also the fact that the said judgment was binding between the parties, the appellants should be directed to grant the benefit of the scheme as contained in the Resolution dated 17-10-1988 to all the daily-wage workers of the Forest and Environment Department working for more than five years. Why the ratio of **Umadevi (3)** (*supra*) was not applicable in the above said case, was clearly discussed by the Hon'ble Supreme Court in said case and as extracted hereinabove.

[ii] Mr. Bhattacharjee also relies on **Amarkant Rai vs. State of Bihar and others, (2015) 8 SCC 265**. In this case, the appellant was appointed temporarily in Class-IV post of night-guard, on daily wages vide an appointed letter issued on 04.06.1983 by the Principal of a college namely, Ramashray Baleswar College affiliated to Lalit Narayan Mithila University, Bihar. The University took a decision on 04.07.1985 to regularize the persons who worked for more than 240 days and

as per the letter dated 30.03.1987, the employees who were working for a period for more than one year needed to be regularized. Thereafter, the Additional Commissioner cum Secretary, Bihar also passed a settlement dated 11.07.1989 and forwarded the same to the Vice Chancellors of the Universities, stating that the services of the employees working in educational institutions as per the staff pattern can be regularized but new appointments against the vacancies present and in future should not at all be done. The Principal thereafter requested the Registrar of the University for regularization of service of the petitioner but the Registrar passed an order of his termination. One writ petition was preferred by few similarly situated persons in the High Court and as per direction of the High Court, the Registrar of the University allowed all the daily wages workers to resume their jobs from 3.1.2002 and the appellant also joined the duty. The Principal of the College again by two letters recommended for absorption of the appellant against the two vacant posts. He was then given opportunity to appear before the three-member Committee constituted by the Vice-Chancellor for consideration of his claim for regularization of service, but the same was rejected as it was not in consonance with the Recruitment Rules laid down by the Constitution Bench judgment in **Secretary, State of Karnataka & others vs. Umadevi (3) and others, (2006) 4 SCC 1** and the same was informed to the appellant by the

Registrar vide letter dated 25.11.2007. The appellant approached the High Court by way of Writ Petition (Civil) No. 545 of 2009 and the same was dismissed vide order dated 26.08.2011 observing that it was a clear case of violation of Section 10(6) and Section 35 of the Bihar State Universities Act, 1976 and there was no illegality in the order passed by the three-member Committee. The Division Bench also affirmed the judgment of learned Single Judge. In the aforesaid background, Hon'ble Supreme Court held as follows:

"8. Insofar as contention of the respondent that the appointment of the appellant was made by the Principal who is not a competent authority to make such appointment and is in violation of the Bihar State Universities Act and hence the appointment is illegal appointment, it is pertinent to note that the appointment of the appellant as night guard was done out of necessity and concern for the College. As noticed earlier, the Principal of the College vide letters dated 11-3-1988, 7-10-1993, 8-1-2002 and 12-7-2004 recommended the case of the appellant for regularisation on the post of night guard and the University was thus well acquainted with the appointment of the appellant by the then Principal even though the Principal was not a competent authority to make such appointments and thus the appointment of the appellant and other employees was brought to the notice of the University in 1988. In spite of that, the process for termination was initiated only in the year 2001 and the appellant was reinstated w.e.f. 3-1-2002 and was removed from services finally in the year 2007. As rightly contended by the learned counsel for the appellant, for a considerable time, the University never raised the issue that the appointment of the appellant by the Principal is ultra vires the rules of the BSU Act. Having regard to the various communications between the Principal and the University and also the educational authorities and the facts of the case, in our view, the appointment of the appellant cannot be termed to be illegal, but it can only be termed as irregular.

9. 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 regularised. As per sanctioned staffing pattern, in Ramashray Baleshwar College, there were two vacant posts of Class IV employees and the appellant was appointed against the same. Further, Resolution No. 989 dated 10-5-1991 issued by the Human Resources Development Department provides that employees working up to 10-5-1986 shall be adjusted against the vacancies arising in future. Although, the appellant was appointed in 1983 temporarily on the post that was not sanctioned by the State Government, as per the above communication of the Human Resources Development Department, it is evident that the State Government issued orders to regularise the services of the employees who worked up to 10-5-1986. In our considered view, the High Court ought to have examined the case of the appellant in the light of the various communications issued by the State Government and in the light of the circular, the appellant is eligible for consideration for regularisation.

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11. Elaborating upon the principles laid down in *Umadevi (3)* case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] and explaining the difference between irregular and illegal appointments in *State of Karnataka v. M.L. Kesari* [(2010) 9 SCC 247] this Court held as under:

"7. It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

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13. In our view, the exception carved out in para 53 of *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.

14. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of the Registrar)."

In this case, the petitioner was working for about 29 years on daily wages basis and he was working against sanction post from a particular date of 2002. The Human Resource Department of Bihar also intimated that the services of employees working in the educational institution on the basis of staffing pattern should be regularized.

[15] Mr. K. De, learned Addl. GA addresses his argument that the engagement of the petitioners were temporary in nature which was reflected in the advertisement itself. Their engagement as per the advertisement was purely on contractual basis up to the period of 03 years or up to the end of project period whichever is earlier and was non-renewable. Even after

expiry of such project period when their engagement were extended from time to time, Mr. De, learned Addl. G.A argues that in every such engagement letter, it was specifically mentioned that they would not claim any future benefit of regularization in connection with these engagements. Mr. De, learned Addl. GA also relies on one written undertaking given by each of the petitioners that their engagement was purely project related engagement and it did not constitute any kind of employment or creation of additional teaching post. Mr. De, learned Addl. GA therefore, submits that the petitioners are now estopped from claiming regularization of their services when by an agreement they entered into such engagement consciously and knowing fully well that their engagement was purely for a temporary period. Learned Addl. GA also submits that the letter of MHRD dated 25.03.2019 was neither directory nor mandatory, rather it was simply a request made to the State Government for absorption of the petitioners in the service and it is the prerogative of the State to decide asto whether they are to be absorbed against regular post or not. Learned Addl. GA also submits that the petitioners are similarly not entitled to get the emoluments at par with the regular Assistant Professors on the principle of "equal pay for equal work" inasmuch as their selection process was totally different from the selection process of regular Assistant Professor. According to Mr. De, learned Addl. GA, all the petitioners were engaged on the basis of only

oral interview whereas for recruitment against regular post, one is required to qualify the written examination conducted by Tripura Public Service Condition. Mr. De, to support his contentions, rely on the following decisions:

[i] S.C. Chandra and others vs. State of Jharkhand and others, (2007) 8 SCC 279- In this case, it was held that fixing of pay scale by applying the principle of equal pay for equal work upsets the constitutional principle of separation of power unless there is complete and wholesale identity between two groups. The relevant paragraph No.35 is extracted hereunder:

"35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, *unless there is complete and wholesale identity between the two groups* (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay)."

[ii] Govt. of West Bengal vs. Tarun Kumar Roy and others, (2004) 1 SCC 347- In this case, it was reiterated that only because the nature of work is same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply.

[iii] Orissa University of Agriculture & Technology and another vs. Manoj K. Mohanty, (2003) 5 SCC 188- In

this case, the principle laid down in **State Bank of India vs. M.R. Ganesh Babu, (2002) 4 SCC 556** was referred in the following paragraph to hold that equal pay must depend upon the nature of work done and not mere volume of work:

"13. Yet, in another decision in *State Bank of India v. M.R. Ganesh Babu* [(2002) 4 SCC 556 : 2002 SCC (L&S) 568] a Bench of three learned Judges of this Court, while dealing with the same principle, in para 16 has expressed that : (SCC p. 563)

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

It was also further observed in paragraph No.15 that in absence of necessary averments and materials placed on

record, there was no scope to apply the principle of equal pay for equal work and to issue direction in this regard.

[iv] State of Punjab and others vs. Jagjit Singh and others, (2017) 1 SCC 148 – Mr. De, learned Addl. G.A. to strengthen his submission, that for placement in a regular pay scale, the employee concerned should be a regular appointee, and an employee appointed on temporary basis cannot claim regular pay scale, relies on this decision and the relevant paragraph No. 42.6 of this decision is taken out below:

"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]*)."

In this case, it is also held that the temporary employees are also entitled to get the benefit of "equal pay for equal work" provided they are to establish that they are rendering similar duties and responsibilities as are being discharged by regular employee. The relevant paragraph no.45 of the judgment is relevantly reproduced thus:

"45. We shall now attempt an analysis of the judgments, wherein this Court declined to grant the benefit of "equal pay for equal work" to temporary employees in a claim for pay parity with regular employees:

45.1. In *Harbans Lal case [Harbans Lal v. State of H.P., (1989) 4 SCC 459 : 1990 SCC (L&S) 71]*, daily-rated employees were denied the claimed benefit under the principle of "equal pay for equal work", because they could not establish that the duties and responsibilities of the post(s) held by them were similar/equivalent to

those of the reference posts under the State Government.

45.2. In *Grih Kalyan Kendra Workers' Union case [Grih Kalyan Kendra Workers' Union v. Union of India, (1991) 1 SCC 619 : 1991 SCC (L&S) 621]*, ad hoc employees engaged in the Kendras were denied pay parity with regular employees working under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India, because of the finding returned in the report submitted by a former Chief Justice of India that duties and responsibilities discharged by employees holding the reference posts were not comparable with the posts held by members of the petitioner Union.

45.3. In *State of Haryana v. Tilak Raj [State of Haryana v. Tilak Raj, (2003) 6 SCC 123 : 2003 SCC (L&S) 828]*, this Court took a slightly different course, while determining a claim for pay parity raised by daily wagers (the respondents). It was concluded that daily wagers held no post, and as such, could not be equated with regular employees who held regular posts. But herein also, no material was placed on record to establish that the nature of duties performed by the daily wagers was comparable with those discharged by regular employees. Be that as it may, it was directed that the State should prescribe minimum wages for such workers and they should be paid accordingly.

45.4. In *State of Punjab v. Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696]*, this Court held that for the applicability of the principle of "equal pay for equal work", the respondents who were daily wagers, had to establish through strict pleadings and proof that they were discharging similar duties and responsibilities as were assigned to regular employees. Since they had not done so, the matter was remanded back to the High Court for a redetermination on the above position. It is therefore obvious, that this Court had accepted that where *duties, responsibilities and functions were shown to be similar*, the principle of "equal pay for equal work" would be applicable even to temporary employees (otherwise the order of remand would be meaningless, and an exercise in futility).

45.5. It is, therefore, apparent that in all matters where this Court did not extend the benefit of "equal pay for equal work" to temporary employees, it was because the employees could not establish that they were rendering similar duties and responsibilities as were being discharged by regular employees holding corresponding posts."

In this case, it is also observed that the ratio rendered in **State of Haryana v. Jasmer Singh, (1996) 11 SCC 77** was irreconcilable and inconsistent with the large

number of judgments, some of which were of larger Benches, where the benefit of the principle of “equal pay for equal work” was extended to temporary employees including daily wager.

[16] Mr. K.N. Bhattacharya, learned GA in addition to the submissions made by Mr. K. De, learned Addl. GA, contends that if the petitioners are required to be absorbed in regular service, a scheme has to be framed by the State and Court cannot direct the State to frame such scheme or policy as the examination of financial involvement of such regularization is within the State domain. Learned G.A. submitting that Courts generally do not interfere with the policy decision of the Government, relies on a decision of Hon’ble Supreme Court in case of **State of Kerala and another vs. Naveena Prabhu and others, (2009) 3 SCC 649**. In this case, direct payment system was introduced by the State Government for the staff of the College but not for the staff of the attached hospital. In that perspective, the Hon’ble Supreme Court observed as under:

“14. The above said order, therefore, makes it crystal clear that while introducing the direct payment system by the Government in respect of Padiar Medical College, such benefit was extended to the members of the staff of the College whereas the staff of the hospital attached to the College was specifically excluded from the applicability of the aforesaid benefit. This order was never challenged by any of the respondents herein since such benefit of direct payment system was not extended to the staff of the hospital attached to the College. They did not acquire any status and consequently they acquired no right being specifically excluded from the benefit thereof.

15. The decision of the Government to exclude the staff of the hospital attached to the College from the

purview of the aforesaid orders was made specifically stating that direct payment system is not introduced by the Government so far as the College hospital is concerned. The same being a policy decision of the Government and having not been challenged as either arbitrary or discriminatory at any stage by the respondents, thus we are not called upon to scrutinize the legality and validity of the aforesaid decision. Besides, the same being a policy decision of the Government, the same stands as this Court generally does not interfere with the policy decision of the Government..”

This decision was rendered completely in a different factual background and contexts.

[17] Learned G.A. also relies on another decision of Division Bench of Delhi High Court in case of **Sumit Solanki v. Energy Efficiency Services Limited, 2023 SCC OnLine Del 3847**. In this case, the appellant was appointed on tenure basis following a selection process after qualifying both written examination and interview. Thereafter, process of regularization of their services was initiated by the respondents and the appellant was also informed about the date of interview. Meanwhile, the Vigilance Department started enquiry regarding regularization of outsourced employees and on receiving inputs from the Vigilance Department, the process of regularization was stopped and fresh advertisement was issued for recruitment of regular employees for 235 posts. Then the writ petition was filed by the appellant which was dismissed by learned Single Judge. Finally, the Division Bench observed the following at paragraph No.58:

“58. In light of the aforesaid judgments it can be safely gathered that the Appellant is not entitled for any relief of whatsoever by raising the plea of promissory estoppels. On the contrary, they are stopped from claiming regularization keeping in view

the terms and conditions of their appointment orders which categorically provided that their employment is for a period of 4.5 years and they will not be entitled to claim absorption/regularization in the services of EESL. In the considered opinion of this Court, Learned Single Judge was justified in dismissing the writ petition."

[18] Learned G.A. further argues that being conscious about the offer of consolidated pay of Rs.70,000/- to the petitioners, they accepted it and now, they cannot turn around and claim equal pay for equal work. In this contexts, he relies on another decision of Hon'ble Supreme Court in case of **Shri Metongmeren AO (IAS Retd.), State Vigilance Commissioner, Govt. of Nagaland vs. the State of Nagaland through the Chief Secretary, Government of Nagaland and another**, (Civil Appeal No. 10034 of 2011 decided on 29.08.2024), wherein the appellant was appointed as the State Vigilance Officer in the State Vigilance Commission, Nagaland in pursuance of the Notification dated 21.06.2006 for a period of 05 years, which was subsequently extended for one year. In the said notification, it was clearly mentioned that the appellant being a retired IAS officer would be granted salary equivalent to the last pay drawn by him as an IAS officer in the super-time scale minus the pension being drawn by him. Later on, he started claiming pay scale equivalent to the rank of Chief Secretary of the State. The Apex Court in that context observed the followings:

"7. The only argument advanced on behalf of the appellant in support of the plea for being accorded the pay scale equivalent to that of the Chief Secretary of State is that some predecessor State Vigilance Commissioners were paid the same pay scale as the Chief Secretary. We feel that merely because at some point in time, the State Vigilance Commissioners were paid the same pay scale as the Chief Secretary, that by itself would not form a precedent so as to entitle the appellant to claim the same pay scale. The appellant unreservedly accepted the pay scale offered to him vide Notification dated 21.06.2006. Having voluntarily accepted the above offer with open eyes, it does not lie in the mouth of the appellant to claim that he should be offered a higher pay scale equivalent to the pay scale of the Chief Secretary of the State. The appellant was not obliged to join the post if the pay scale being offered was not acceptable to him."

[19] Learned Addl. G.A., Mr. D. Sarma, representing the State Respondents in some of the cases, gives much emphasis on the 'undertaking' executed by the petitioners and argues that in deviation of such undertaking, the petitioners cannot claim the benefit of regularization in service. Mr. Sarma, learned Addl. GA also relies on the following decisions of the Hon'ble Supreme Court to apply the principle of promissory estoppel:

[i] High Court of Punjab & Haryana and others vs. Jagdev Singh, (2016) 14 SCC 267. This case is related to recovery of amount overdrawn by a Judicial Officer who went on compulsory retirement. Said Officer furnished one undertaking when his pay was initially revised that any payment found to have been made in excess would be liable to be adjusted. In that context, Hon'ble Supreme Court observed that the principle enunciated in proposition (ii) in **State of Punjab vs. Rafiq**

Masih, (2015) 4 SCC 334 would not apply to the situation of that case.

[ii] Mr. D. Sharma, Ld. Addl. G.A. also refers another decision of Hon'ble Supreme Court in case of **State of U.P. and others vs. Virendra Kumar and others, 2022 SCC OnLine SC 1628**. This case relates to employees of Uttar Pradesh Avas Evam Vikas Parishad (for short 'the Board'). On 21st February, 1995, the Board resolved to extend the pensionary benefits to its employees by replacing the existing Contributory Pension Scheme (for short 'the old pension scheme') with a pension/family pension/gratuity scheme (for short 'the new pension scheme'). On 16th May, 1996, the State Government accorded its consent to the new pension scheme subject to the condition that the Board would not be entitled to seek any financial assistance for the implementation of the new pension scheme. Thereafter, by a Resolution dated 5th November, 1997, the Board approved the new pension scheme. Thereafter, on 26th November 1997, State Government passed an order staying the implementation of the new pension scheme. The State Government also appointed a committee of experts to examine the new pension scheme of the Board. After considering the report of the committee of experts, the State Government vide order dated 14th September 1999 vacated the stay granted earlier by imposing a condition that the scheme should be funded from the contribution to provident fund made

by the Board and that neither the State Government nor the Board shall incur financial liability by implementing the new pension scheme. In that background, Hon'ble Supreme in concluding paragraph of the judgment observed that those officers and employees of the Board who had accepted the benefit under the old scheme before 7.9.2012 after giving an undertaking in terms of the office order dated 16.1.2004 would not be entitled to the benefit of new pension scheme made applicable as per notification dated 19.5.2009. As it appears, this decision was rendered in a different contexts.

[20] Learned Addl. G.A. M. Debbarma who is also representing the State in some cases argues in the same line like Mr. K. De, learned Addl. G.A.

[21] Mr. Bhattacharjee, learned senior counsel in reply thereto, submits that any such so called undertaking is illegal and not binding on the petitioners on the ground of lack of reasonableness or fairness in the contract between the employee and the employer, as there was inequality of bargaining power between the petitioner and the State. When one is so strong in his bargaining capacity and other is so weak like the unemployed petitioners, craving for a job facing severe hardship in the era of unemployment, Mr. Bhattacharjee, learned senior counsel submits, any such undertaking obtained

by the state instrumentalities taking advantage of their helplessness, does not pass the taste of fairness in the contract pushing the weak to the wall. He also in this regard, relies on a decision of the Hon'ble Apex Court in a case of **Central Inland Water Transport Corporation Limited and another vs. Brojo Nath Ganguly and another, (1986) 3 SCC 156** wherein at Paragraph No.89, the followings were observed:

"89.....This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction....."

[22] Learned senior counsel, Mr. Bhattacharjee, regarding engagements of the petitioners with small gaps in every spell of engagement, also relies on **Karnataka State Private College Stop-gap Lecturers Association vs. State of Karnataka and others, (1992) 2 SCC 29**. In this case, teachers were

appointed temporarily for a period of 3 months and continued to serve for 8 to 10 years on Ad-hoc and fixed pay basis in the privately managed degree colleges receiving cent percent grant in aid, controlled administratively and financially by the Education Department of the state of Karnataka. During said long period of service, every time they would be given engagement for a short spell of 3 months with a break of one or two days after every such spell. Such procedure was followed by the Management Committee of the colleges based on an administrative order issued by the Education Department that any appointment for a period of three months or less, in a College shall be made, subject to approval of the Director within one month from the date of appointment by the Management or such authority as the Management by order, may specify and that such appointment might be continued for a further period of not more than three months, with one day's break when selection through the Selection Committee was likely to take time. These teachers sought for regularization of service and also regular pay scale like other regular teachers. While dealing with the aspect of one day gap after every three months, Hon'ble Supreme Court held the same to be arbitrary. The relevant portion of the observation is as follows:

".....But the direction to re-appoint with one day's break is not understandable. If the intention was to differentiate between appointments for more than three months and others it was a futile exercise. That had already been achieved by providing two different methods of selection one by Selection Committee and

other by management. Distinction between appointment against temporary and permanent vacancies are well known in service law. It was unnecessary to make it appear crude. If the purpose was to avoid any possible claim for regularisation by the temporary teachers then it was acting more like a private business house of narrow outlook than government of a welfare State. Such provisions cannot withstand the test of arbitrariness....”

[23] Regarding the emoluments of fixed amount less than what the regular teachers were paid, at paragraph No.5 of the judgment, Hon'ble Apex Court further observed thus:

“5. Another obnoxious part is the emoluments that have been paid to the temporary teachers. The order provides that the teacher shall be paid a fixed salary which is ten rupees less than the minimum payable to regular employee. This method of payment is again beyond comprehension. An appointment may be temporary or permanent but the nature of work being same and the temporary appointment may be due to exigency of service, non-availability of permanent vacancy or as stopgap arrangement till the regular selection is completed, yet there can be no justification for paying a teacher, so appointed, a fixed salary by adopting a different method of payment than a regular teacher. Fixation of such emoluments is arbitrary and violative of Article 14 of the Constitution. The evil inherent in it is that apart from the teachers being at the beck and call of the management are in danger of being exploited as has been done by the management committees of State of Karnataka who utilised the services of these teachers for 8 to 10 years by paying a meagre salary when probably during this period if they would have been paid according to the salary payable to a regular teacher they would have been getting much more. Payment of nearly eight months' salary, by resorting to clause 5, and, that too fixed amount, for the same job which is performed by regular teachers is unfair and unjust. A temporary or ad hoc employee may not have a claim to become permanent without facing selection or being absorbed in accordance with rules but no discrimination can be made for same job on basis of method of recruitment. Such injustice is abhorrent to the constitutional scheme.”

[24] In the above said case, some of such teachers also appeared in the regular selection process and obtained higher marks but were not regularized on the ground that the posts

were reserved posts. Further, the State of Karnataka also started regularizing of services of ad-hoc teachers in other Institutions. In this regard, the Apex Court observed that regularization in other departments might not furnish any basis for petitioners to claim that the State would be directed to issue similar order regularizing the petitioners but all the same such policy decisions of the government in favour of one or the other set of employees of sister department were bound to raise hopes and expectations in employees of other departments. High Court also passed the order of regularization on agreement with the state respondents in this case. Taking note of all these factors, the Hon'ble Supreme Court passed the order that services of such temporary teachers, who had worked as such for three years, including the break, should not be terminated and they should be absorbed as and when regular vacancies arise.

Discussions and Decision

[25] The petitioners have come forward with two prayers- firstly, for regularization of their services as Assistant Professor and secondly or alternatively, for their pay at par with regular Assistant Professor on the principle of equal pay for equal work. The first prayer i.e. regularization in service is being examined first. In these cases, the advertisement issued for engagement as Assistant Professor [Annexure-1 of lead case] clearly

demonstrates that such engagement was under the TEQIP project for improving the quality of technical education in the focus states like North-eastern region, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh and some other states and such engagement was purely on contractual basis for a period up to 03 years or up to the end of the project period whichever is earlier, and was non-renewable. Selection procedure was based on interview which includes teaching demonstration. One undertaking by the selected candidate(s), as per the advertisement, was required to be submitted on stamp paper of Rs.100/- as per Annexure-3a of the Advertisement. The petitioners submitted such undertaking and one of such condition undertaken by them was that their engagement in service by the institution was purely project related arrangement and it did not constitute any kind of employment or creation of additional teaching post and/or engagement on any post, existing or otherwise, by the institute. It is also stipulated therein that all services rendered by them would be on Principal to Principal basis and it would not create an Employer-Employee relationship between the temporary faculty and institute and they would have no right to receive any employee benefits including but not limited to, health and accident insurance, life insurance, sick leave and/or vocation etc. Further, it was fixed that the engagement was purely on temporary basis and the temporary faculty would not be entitled

to any other benefit of regular/permanent employee and they would not make any claim of permanency or regularization. According to the petitioners, their project period expired on 30.09.2021 and the writ petition bearing No. W.P (C) 377 of 2024 was filed on 29.05.2024 i.e. only after 2 years and 8 months or so, there from.

[26] The law relating to regularization in service is explained and settled by the Constitution Bench of the Hon'ble Supreme Court in Umadevi (3) (supra). The prelude of the said judgment (Para No.3) contains the observation that the Government considering its economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. But a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. It is also observed that the regular appointment must be the rule.

[27] Mr. Bhattacharjee, learned senior counsel though submits that all the petitioners were engaged against sanctioned post but said assertion has been denied by the respondents in their argument. Neither any such claim was made in the writ petitions that such engagements were against the sanctioned

post nor any document is placed in this regard. In the engagement letters, there is no indication that such engagements were against any sanctioned post rather same appears to be purely project based engagement. Even the undertaking submitted by the petitioners also indicates that it was purely project related arrangement. At Para-45 of **Umadevi (3)** (*supra*), the followings were further observed by the Hon'ble Supreme Court:

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."

These observations in **Umadevi (3)** answers the point raised from the side of the petitioners about the unequal bargaining powers of the petitioners. In fact, such plea of one sided bargaining power was also not raised in the writ petitions.

[28] At Para-47 of **Umadevi (3)** (*supra*), it is also clarified that principle of legitimate expectation cannot be applied when a person enters a temporary employment or gets

engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, moreover, when the person concerned was aware of the consequence of the appointment being temporary, casual or contractual in nature.

[29] In the present cases in hand, though the petitioners were engaged through a selection process by issuing advertisement and holding interview, but such selection process is not the same selection process as framed by the State under Article 309 of the Constitution for regular appointment of Assistant Professors against sanctioned post.

[30] In **PWD Employees Union** (*supra*), as relied on by Mr. Bhattacharjee, learned senior counsel, the claim was regarding regularization of daily wages worker and the government itself accepted the recommendation of the Committee constituted by the State favouring their regularization. Similarly, in **Amarkant Rai** (*supra*) the concerned person was temporarily appointed as Class-IV employee on daily wages basis in a college and the university which was the controlling authority of the said college itself took the decision to regularize the persons who were working more than 240 days. Therefore, both the cases stand on different footings. The present cases are also not of such a nature where

the petitioners' services are being derived by the State for decade(s) in the nature of exploitative employment. The petitioners being highly educated person cannot be said that without knowing the nature of the employment they consented to be engaged as temporary faculty.

[31] The Project Implementation Plan [PIP] under caption "2.6 Sustainability of the project institution" mentions that the faculty recruitment envisaged for each focus state would build a system for recruiting and retaining adequate numbers of high-quality faculty and the plan would be expected to provide a long term solution to the problem of faculty recruitment and retention (not just during the project period). Perhaps, based on such clause, the Central Project Advisor vide his letter dated 25.03.2019 [Annexure-10 to the writ petition] requests the Principal Secretary, Higher Education Department, Government of Tripura to decide the action plan for filling huge vacancies in the institutes in the State after the project period and that ideally the temporary faculty shall be absorbed in such institutions through appropriate procedure as they moving out to other institutes shall defeat the purpose of entire process. It is also further noted in that letter that well- performing faculty hired using project funds will be retained/absorbed post project or else unchanged and the faculty retained will be paid exclusively from state funds. The Central Project Advisor also

requests the Principal Secretary of Higher Education to send a concrete action plan/state government policy in this regard.

[32] What appears from above said communication, it is for the State now to decide the action plan, if any, for absorption of well-performing temporary faculties as regular Assistant Professor. It is a matter of policy of the State Government now to chalk out their action plan based on the understanding between them and National Project Implementation Unit. When no such assurance was placed by the employer in the Advertisement while engaging the petitioners in the service, the petitioners have not accrued any legal right to claim regularization only based on the inter-departmental correspondence.

[33] Art.16 of the Constitution catalogues the right of equal opportunity in public employment as fundamental right. Similarly, Art.39 of the Constitution obliges the State to secure that all the citizens have their adequate means to livelihood. Therefore, it is also required to be kept in mind that regularization of few persons in the service who have not come through the regular channel of employment following the rules and procedure as framed under Art.309, deprives other job aspirants in participating in the selection process, who have their right of equal opportunity in public employment. In

Umadevi (3) (*supra*), this aspect has also been dealt with in the following language in paragraph No.51:

"It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens."

Considering all aspects, the claim of the petitioners for their regularization in service cannot be accepted and therefore, the prayer for regularization is decided in the negative.

[34] Now, dealing with the issue of claim for 'equal pay for equal work', it is no longer *res-integra* that to apply the principle of equal pay for equal work', there should be a complete wholesale identity between the two groups. Such wholesale identity depends on different factors and it cannot be adjudicated by mere volume of work. The functions of two groups may be the same but the responsibility may be different. There may also be differences regarding reliability as well as their selection process.

[35] In **Jagjit Singh** (*supra*) as relied on by Mr. De, learned Addl. G.A., it was also observed that for placement in

regular pay scale, the claimant has to be a regular appointee and the claimant should have been selected on the basis of a regular process of recruitment and further to apply the principle of equal pay for equal work, the petitioners are required to establish the same through their pleadings and prove that they were discharging similar duties and responsibilities as were assigned to regular employee.

[36] A three-Judge Bench of Hon'ble Supreme Court in **State of Haryana and others. vs. Charanjit Singh and others, (2006) 9 SCC 321** observed that 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. It cannot be judged by the mere volume of work. There may also be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities may be different. The relevant paragraph No.19 of the said decision also excerpted hereunder:

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 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.

[37] Another, three-Judge Bench of Hon'ble Supreme Court in **State of Madhya Pradesh and others vs.**

Ramesh Chandra Bajpai, (2009) 13 SCC 635 also held as under:

15. In our view, the approach adopted by the learned Single Judge and the Division Bench is clearly erroneous. It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

[38] The pleadings of the petitioners, in the present cases in hand, are bereft of sufficient particulars to compare them with the regular Assistant Professor for the purpose of applying the principle of equal pay for equal work. There are only few bald statements made in the pleading that the duties and nature of work petitioners are indistinguishable from permanent posts and they also possess similar qualification like regular Assistant Professors. But such assertions are not sufficient enough to apply principle of equal pay for equal work and to grant them regular pay scale of a Assistant Professor recruited through a regular process of selection as per the recruitment rules. Moreover, it also appears at the first blush that the recruitment procedure of the present petitioners and the recruitment procedure of regular Asstt. Professors are quite different.

Therefore, the principle of equal pay for equal work also cannot be applied here.

[39] In view of the above discussions, the writ petitions are dismissed being devoid of any merit. However, this order will not stand as a bar in case the State Government takes initiatives for the regularization of the services of the petitioners by framing any scheme in the light of their understanding with the NPIU or the Union of India, of course within the parameters of the constitutional framework of public employment.

All the writ petitions are accordingly disposed of.

Interim application(s), if any, also stands disposed of.

JUDGE

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