

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Uday Kumar

FMA 802 of 2021

WITH

I.A. No. CAN 2 of 2021

The State of West Bengal

Vs.

Ganesh Chandra Samanta and others

For the Appellant/State : Mr. S.N. Mookherjee, Ld. AG
Mrs. Kakali Samajpaty, Adv.
Mr. Yash Singhi, Adv.

For the Respondents nos.1 to 15 : Mr. Subrata Ghosh, Adv.

For the Respondent no.16 : Ms. Suchismita Ghosh, Adv.
Mr. Maloy Kumar Seal, Adv.

Hearing Concluded on : 16th October, 2023

Judgment on : 29th November, 2023

SOUMEN SEN, J: The appeal is arising out of a judgment and order dated 6th March, 2020 in a writ petition preferred by 15 writ petitioners praying, *inter alia*, for necessary direction upon the respondents (the present appellants) to grant scale of Rs.425-1050 with effect from 1st April, 1981 with all consequential benefits

including all allowances and perquisites as are admissible under the Rules together with all arrears with interest calculated at the enhanced rate with effect from 1st April, 1981.

2. Briefly stated, the writ petitioners no.1 to 9 are working as **Workshop Instructors** in Ram Krishna Mission Silpa Mandir and the writ petitioners no.10 to 15 are attached to Ram Krishna Mission Silpa Pith. They were all appointed as **Workshop Instructors**. The writ petitioners have claimed benefits on the principle of Equal pay for equal work as extended to the writ petitioners in **WP 3222(w) 1998 (Sibu Gopal Sadhukhan & Ors. Vs. State of West Bengal and Ors.)**.

3. **Before 1981** the pay scale of the **Workshop Instructors** of **Government Polytechnic** was Rs.230-425 with higher initial start at Rs.250 as per ROPA Rules, 1970 whereas for the **Workshop/Mistri Instructors** of **Government sponsored Polytechnics**, the pay scale was Rs.230-425.

ROPA Rules 1981 was published vide a notification no.5691-F on 28th July, 1981. The said rule was made under proviso to Article 309 of the Constitution of India. Under the said Rule the pay scale of **Workshop/Mistri Instructors** of **Government**

Polytechnics prevailing prior to 1981 was increased from Rs.230-425 to three pay scales according to their qualifications. They are:

- i) Rs.425-1050 (Scale No.11) for **Diploma Holders.**
- ii) Rs.380-910 (Scale No.9) for **Trade Certificate Holders.**
- iii) Rs.340-750 (Scale no.7) for others viz., **Non - diploma holders and non-certificate holders.**

These pay scales were recommended by the then Pay Commission.

4. The appellants on consideration of the recommendations of the pay commission set up on 16th November, 1977 issued memoranda no.392-Edn(B) on July 31, 1981 whereby the pay scale of the **Workshop Instructors** in **State Government Aided Polytechnics** was increased from Rs.230-425 to Rs.360-815. This was similar to scale no.8 of ROPA Rules 1981.

5. In 1985 after ROPA Rules 1981 came into force a group of **Workshop Instructors** filed a writ petition before this Court being **CO No.3021(w) of 1985 (Shib Narayan Chakraborty and 21 others vs. The State of West Bengal)** praying for higher scale of pay of RS.425-1050 (scale no.11) on the ground of equal pay for equal work. At the relevant time they were in the pay scale of

Rs.340-780 (scale no.7) and Rs.380-910 (scale No.9). The writ petitioners were **Workshop Instructors** in **Government Polytechnics**.

6. On 22nd January, 1987, **The West Bengal Services (Recruitment to the post of Workshop Instructor/Mistri Instructor Government and Sponsored Polytechnics in West Bengal) Rules, 1986** (in short, “Workshop Instructors Rules, 1986) was issued vide Notification No.21-Edn.(T.E.T)/10R-3/86, by the Government under the proviso to Article 309 of the Constitution of India. By the 1987 notification in **single scale of pay** of Rs.380-910 (scale no.9 of ROPA 1981) was prescribed for all **Workshop/Mistri Instructors** uniformly including the Government and Government aided polytechnics appointed **after 22nd July, 1987**, the reason being, the educational qualifications prescribed for all posts of **Workshop Instructors/Mistri Instructors** was the same. However, those **Workshop/Mistri Instructors** who were appointed prior to 22nd January, 1987, would continue to draw pay scales in accordance with their respective pay scales under ROPA Rules, 1981.

7. On 7th March, 1990 vide memorandum no.33-Edn(B) the Government as per the recommendations of the Pay Commission constituted on 30th January, 1987, revised the pay scale and the

revised pay scale was given effect from that date. (**“ROPA Rules, 1990”**).

8. In the said memorandum, the pay scale of Rs.380-910/- (Scale No.9) was revised as Rs.1260-2610 (Scale no.9).

9. The separate ROPA Rules of 1981 for the **Government sponsored Polytechnics** was also revised vide Memorandum No.33-Edn(B) and the said scale of pay of Rs.360-815/- (Scale no.8) was revised to Rs.1200/- to 2360/-.

10. In the meantime **Shib Narayan Chakraborty** (supra) (C.O.No.3021(W) of 1995) came up for consideration and on 22nd August, 1990 the rule issued earlier was made absolute ex parte.

11. The writ petitioners in **C.O.No.3021(W) of 1985** were granted the benefits of the revised pay scale of Rs.425 to Rs.1050 and the respondents were directed to give such benefits to the Writ Petitioners within 3 months of the issuance of the writ.

12. It has been recorded in the order that the State did not make any appearance before the Hon'ble Court. The said order was passed without consideration of the Notification dated 22nd January, 1987. The Department of Technical Education and Training, Govt. of West Bengal vide Memo No.618-TET (Poly) dated

30th October, 1995 granted revised scale of pay to the writ petitioners of **C.O.No.3021 (W) of 1985** in accordance with order of the Hon'ble High Court dated 22nd August, 1990 in C.O.No.3021(W) of 1985 with effect from 1st April, 1984.

13. During 1996 and 1997 on the basis of the decision in **C.O.No.3021(W) of 1985**, various petitions were moved before the State Administrative Tribunal viz., T.S.No.18/1996, 1587/1996, etc. and O.A.No.1253 of 1997, and others.

14. On 11th April, 1987 the learned State Administrative Tribunal disposed of **TA No.18 of 1996** directing that the petitioners should receive the benefit of revised pay scale in terms of GO No.618-TET(Poly) dated 30th October, 1995 from 1st April, 1981. The said order was passed on concession of the learned advocate for the State that discrimination was made to the petitioner denying such benefit and following **Shib Narayan Chakraborty** (supra). However, the notification dated 22nd January, 1987 was not placed and hence not considered.

15. The learned Administrative Tribunal disposed of **TA No.1587 of 1996** directing the Director of Technical Education, West Bengal to consider the case of the petitioner within 60 days from the date of communication of the order. This time also the tribunal did not

consider the notification dated 27th June, 1987. Subsequently on 7th November, 1997 the learned State Administrative Tribunal disposed of **TA No.19 of 1996** whereby the Director of Technical Education West Bengal was directed to consider the case of the petitioner within 60 days from the date of communication of the said order. Like the previous matters the notification dated 22nd January, 1987 was not considered. The State Administrative Tribunal on 12th January, 1998 disposed of **OA No.1253 of 1997** directing the Secretary to the Government of West Bengal Technical Education to allow the benefits of revised pay scale to the petitioners in terms of G.O. No.618-TET(Poly) dated 30th October 1995 within 60 days from the date of communication of the order. The Tribunal, however, did not consider the notification dated 22nd January, 1997 while directing consideration.

16. In 1998 a separate writ petition being no.**WP 3222(W) of 1998 (Sibu Gopal Sadhukhan & 21 Ors. Vs. State of West Bengal & Ors)** was filed by the **Workshop Instructors/Mistri Instructors** of the **Sponsored Polytechnic Institutes** claiming the pay scales of Rs.425-1050 (Scale No11 of ROPA Rules 1981).

17. Pursuant to the recommendation of the Pay Commission constituted on 27th November, 1995 the Department of Technical Education and Training revised the scale of pay for the

Government sponsored polytechnics on and from 17th May, 1999. The revised scale of pay fixed for workshop instructors are as follows:

- a. *Workshop instructor (for Diploma Holders) :- Rs.4500-Rs.9700 (Scale No.10)*
- b. *Workshop Instructors (Others) – Rs.4000-Rs.8850 (Scale No.9).*

18. The Finance (Audit) Department Government of West Bengal on 3rd January, 2001 issued a memo no.5-F(Law) in which it was stated that the 4th Pay Commission after considering the matter of the **Workshop/Mistri Instructors** found that there was no merit in the upgradation of the pay scale from scale no.9 to scale no.10 because as per the Recruitment Rules framed vide notification dated 22nd January, 1987, the qualifications and scale of pay for all **Workshop/Mistri Instructors** in Government and **Government sponsored Polytechnics** was stipulated to be the same.

19. In pursuance to the recommendations of the 4th Pay Commission the Governor refixed the pay scale for the post of all **Workshop Instructors/ Mistri Instructors** of different polytechnics under the **Technical and Training Department Government of West Bengal** to be scale no.9. However employees appointed prior to 22nd January, 1987 enjoying scale no.10 would

continue to draw their pay in the revised pay scale no.10 of ROPA 1998.

20. In November, 2001 **Workshop Instructors/Mistri Instructors** of the **sponsored Technical Institutes** filed a writ petition being **WP 18361 (W) of 2001, (Ganesh Ch. Samanta & Ors vs. State of West Bengal)** claiming the pay scale of Rs.425-1050 (scale no.11 of ROPA Rules 1981). In 2002 an application was filed by 27 workshop instructors of **Government Polytechnics** before the learned Administrative Tribunal being **OA No.1228 of 2002 (Dipankar Dey vs. State of West Bengal)** claiming similar benefits of scale no.11.

21. In **Sibu Gopal Sadhukhan & Ors** (supra), the learned Single Judge had passed an order on 9th September, 2003 granting higher pay scale to the petitioners along with arrears within three months. While disposing of the matter learned Single Judge recorded that in spite of giving multiple opportunities the State did not file any affidavit in opposition nor made any appearance before the court. In view of thereof the notification dated 22nd January, 1987 and memo dated 3rd January, 2001 were not considered.

22. In **OA No.1228 of 2002 (Dipankar Dey** (supra)), the learned State Administrative Tribunal passed an order on 30th July, 2004

accepting the contention of the petitioners and observed that they are similarly situated with the workshop instructors on the pay scale of Rs.425-1050 (scale no.11). The Secretary of the Government of West Bengal Technical Education and Training Department was directed to allow the same benefits to the petitioners as had been extended to the petitioners in **TA No.18 of 1996** and **TA No.1253 of 1997** within a period of four months from the date of communication of the order.

23. The State being aggrieved by the aforesaid order filed an appeal in 2005 before the Division Bench of this Court being **WPST No.755 of 2005 (State of West Bengal vs. Dipankar Dey & Ors)**. Subsequently the State in 2006 also filed an appeal being MAT No.4207 of 2006 against the order dated 9th September, 2003 passed in **Sibu Gopal Sadhukhan** (supra) in **WPP No.3222(W) of 1998**.

24. The writ petition filed by **Ganesh Chandra Samanta & Ors** (supra) in November, 2001 was heard and disposed of by the Hon'ble Justice Debasish Kar Gupta (former Chief Justice of this Court) on 4th September, 2006 directing the State respondent to give benefits of revised pay of scale of Rs.425-1050 with effect from 1st April, 1981 to the writ petitions and thereafter in corresponding scale or scale to which the same has been revised from time to

time. The order also records that the State did not make any appearance. As a result whereof the notification dated 22nd January, 1997 and memo dated 3rd January, 2001 were not considered.

25. The appeal preferred against the order dated 9th September, 2003 in **MAT No.4207 of 2006 (State of West Bengal vs. Sibul Gopal Sadhukhan & Ors)** was dismissed by the Division Bench on 22nd August, 2007 on the ground of inordinate delay of 1116 days in filing the appeal.

26. The State filed an application being **CAN No.6273 of 2007** on 23rd July, 2007 for recalling of the judgment dated 4th September, 2006 passed in **WP No.18361(W) of 2001 (Ganesh Chandra Samanta & Ors.)**.

27. The writ petitioners nos.1 to 9 of the present petition, namely **Ganesh Chandra Samanta & Ors**, in **WP 18361(w) of 2001** who initially joined in the post of workshop instructors in **Ram Krishna Mission Silpa Mandir** were given the status of a Government employee by virtue of memo 3576/TET dated 11th December, 2007.

28. In 2008 the State preferred a Special Leave Petition being **SLP No.83 of 2008** before the Hon'ble Supreme Court against the order dated 22nd August, 2007 passed in MAT Nno.4207 of 2006.

The Hon'ble Supreme Court dismissed the SLP on 18th January, 2008 and the order of the Hon'ble Division Bench dated 22nd August, 2007 in **MAT No.4207 of 2006** was affirmed. However, the said order also recorded that the question raised with regard to the application of wrong notification is left open. The said order reads:

"The Division Bench of the High Court in an intra Court appeal did not think it fit to condone gross delay of 1116 days. According to the High Court, it was not properly explained and there was no "sufficient cause" to condone the delay. We find no infirmity in the said order. The special leave petition is dismissed.

Learned counsel for the petitioner submitted that even on merits, the learned Single Judge as well as Division Bench were wrong in applying notification which was not applicable to the respondent-employee. In view of the fact that we are dismissing the petition, only on the ground that Division Bench was not wrong to condone the delay, we express no opinion. That question is left open.: (emphasis supplied).

29. The State on 26th March, 2008 filed an application being **CAN No.2796 of 2008** in **WP No.18361(w) of 2001** , that is, **Ganesh Chandra Samanta & Ors** (supra) praying for appropriate orders after fresh adjudication on the issue of entitlement of the respondents in view of the aforesaid order passed by the Hon'ble

Supreme Court on 18th January, 2008 in **SLP No.83 of 2008**. Subsequently, on 26th November, 2010 the application for recalling of the order along with the application for condonation of delay being **CAN 6276 of 2007** and **CAN No.6273 of 2007** respectively filed in **WP 18361(w) of 2001 (Ganesh Chandra Samanta)** (supra) were allowed and the order dated 4th September, 2006 was recalled without any order as to cost. In view of recall of the order dated 4th September, 2006, the contempt rule issued in WPCRC No.6045 of 2007 in connection with the aforesaid writ petition was discharged.

30. In view of the above order dated 26th November, 2010 passed in the recalling application being **CAN No.6273 of 2007** the Hon'ble Division Bench on 27th July, 2011 dismissed the appeal and the connected application being **MAT No.488 of 2011** and **CAN No.4905 of 2011** filed by the writ petitioners against the order of recall.

31. In the instant writ petition the State filed its affidavit-in-opposition on 4th February, 2013.

32. During pendency of the writ petition the Hon'ble Division Bench on 26th February, 2013 passed an order in **WPST No.7855 of 2005 (State of West Bengal vs. Dipankar Dey & Ors)** setting aside the order dated 30th July, 2004 in **OA No.1228 of 2002**. The

said order directed the tribunal to consider whether the petitioner in **OA No.1228 of 2002** were entitled to the highest scale of pay as the workshop instructors appointed on 2nd November, 1987. The order dated 30th July, 2004 was set aside on the ground that tribunal did not consider the issue whether the petitioners in **OA No.1228 of 2002** were similarly situated as the workshop instructors appointed on 2nd November, 1987, however, the benefits granted would abide by the result of the original application.

33. The learned Advocate General has submitted that all the earlier orders on which reliance have been placed were passed without consideration of the 1987 notification or the memo of 2001 and hence those decisions are *per incurium*. Moreover in view of the order of the Supreme Court on 18th January, 2008 in SLP No.83 of 2008 the issue raised in the writ petition are required to be adjudicated afresh without being influenced by any observation made in the earlier writ proceeding and the said order cannot operate as *res judicata*. It is submitted that after the order of the Hon'ble Supreme Court on 18th January, 2008 no fresh litigation has been filed concerning the issue involved in the present writ. Therefore, there is no impediment on the part of the State of West Bengal to rely on 1987 notification or the 2001 memo.

34. Mr. Mookerjee submits that the decisions relied upon by the learned Single Judge are *per incurium* as they were passed in ignorance of the notification no.21-Edn(TET)/10R-3/86 dated 21st January, 1987, that is, the 1987 notification and memo no.5-F(Law) dated 3rd January 2001, that is, 2001 memo. These notifications are having the force of the statute or an authority which governed the relationship of the parties and required to be considered by the Court concerned in deciding the matter. In view of the non consideration of the aforesaid rules the earlier decisions relied upon by the learned Single Judge are *per incurium* and in this regard the learned Advocate General has relied upon the decision of the Hon'ble Supreme Court in **Municipal Corporation of Delhi. V. Gurnam Kaur** reported in **1989(1) SCC 101 paragraph 11** and **V.Krishna Rao v. Nikhil Super Specialty Hospital & Ors.**, reported in **2010(5) SCC 513 paragraphs 54 and 55**. Therefore, all the orders alluded to above preceding the impugned order dated 06.03.2020 are *per incurium*, as they do not consider the 1987 notification and 2001 memo, even though the 1987 notification has statutory force. Any order passed by the State as compliance of all orders of the court such as notification dated 30.10.1995 cannot stand in the way of the State of West Bengal relying on the 1987 notification or the 2001 memo and

more so, when the court orders are passed *per incurium* and were complied with under the threat of contempt.

35. Merely because State of West Bengal has complied with the directions in the aforesaid orders, on the threat of contempt proceedings against them, does not mean that notification dated 22.01.1987 and 03.01.2001 lose statutory force.

36. The respondents cannot claim equal pay for equal work on the basis of orders that are wholly perverse, and bad in law. It is settled law that Article 14 of the Constitution of India 1950, is not meant to perpetuate any illegality nor does it provide for any negative equality. Therefore, no one can be forced to repeat any wrong action earlier does not confer a legal right on any person for similar treatment as observed in **Vijay Sing & Ors v. State of U.P. & Ors.**, reported in **2004 SCC OnLine All 1856 at paragraphs 92-96** and **State of Haryana & Ors vs. Ram Kumar Mannb** reported in **1997(3) SCC 321 at paragraph 3.**

37. Mr. Advocate General has relied upon the decision of the Hon'ble Supreme Court in **Periyar and Pareekanni Rubbers Ltd vs. State of Kerala** reported in **1991 (4) SCC 195** paragraph 19 to argue that any concession made by advocate appearing for the State Government cannot bind the State unless it is made by the

Advocate General of the State. In view thereof the concessions recorded in the order dated April 11, 1987 allowing the writ petitions on the basis of the concessions by the State Advocate cannot bind the State of West Bengal.

38. It is submitted that all the respondents, barring respondents no.8 and 13, are entitled to draw pay in accordance with the pay scale prescribed in 1987 notification and 2001 memo as they all joined between 1997 and 2000. However, the claims of respondent nos.8 and 13 are not maintainable at all since they were appointed between 1974-1975, and filed the WP 18361 (w) of 2001 only in November, 2001, which is more than 20 years after their appointment. Their claim is to be rejected on the ground of undue delay and latches.

39. The **Workshop/Mistri Instructors** of Government and Government aided Polytechnics can only be allowed to draw pay in accordance with the pay scale prescribed in 1987 notification and 2001 memo. The respondents herein barring respondent nos.8 and 13 are only entitled to scale no.9 and not to existing revised scale no.10.

40. Mr. Subrata Ghosh learned counsel appearing for the respondent submitted that the writ petition was filed in view of

blatant discrimination and denial of equal pay for equal works as enshrined in the Constitution, acknowledged and reiterated in innumerable decisions of the Hon'ble Supreme Court and different Hon'ble High Courts. The learned counsel has referred to the judgment passed in Civil Rule No.3021(W) of 1985, TA 18 of 1996, TA 19 of 1996, TA 1587 of 1996 and OA No.1253 of 1997 and all other similar matters in which the aforesaid principle was reiterated.

41. Mr. Ghosh has submitted that denial of equal pay for equal works has been admitted on behalf of the State appellants in TA 18 of 1996 and TA 19 of 1996. The said decisions are binding on the appellant. The State cannot at this stage turn around and say that the said decisions are not binding. Mr. Ghosh has referred to the affidavit in opposition filed on behalf of the appellants in **WP no.18361(W) of 2001 (Ganesh Chandra Samanta & Ors v. State of West Bengal & Ors.)** and submits that the writ application was heard at length and decided on merits. The issue raised in the writ petition has been dealt with and decided in the judgment under appeal on consideration of all the objections raised on behalf of the State as would be evident from paragraphs 11, 12, 13, 14 and 15.

The said paragraphs are reproduced below:

“11. Prior to promulgation of the ROPA Rules, 1981, all the Workshop Instructors attached to the polytechnics owned by the State Government and to the sponsored polytechnics, were enjoying the same scale of pay. Trouble started when ROPA Rules, 1981 were introduced. The said ROPA Rules provided for three different scales of pay in State Government owned polytechnics and two different scales of pay in sponsored polytechnics. Introduction of such different scales of pay gave rise to resentment among the Workshop Instructors and such classification was successfully challenged by various groups of Workshop Instructors.

12. The main contention of the petitioners is that all the Workshop Instructors of different polytechnics (government and sponsored) are doing same or similar nature of work and as such no discrimination can be introduced amongst them. The petitioners doing same type of job cannot be placed in a lower scale of pay than the others on the basis of the settled principles of the proposition 'equal pay for equal work'. Barring a few i.e. the instant writ petitioners, other Workshop Instructors of Government and sponsored polytechnics are getting the scale of Rs.425/-1050/- irrespective of their qualifications and appointment whether prior to 1987 or thereafter. No distinguishing feature among the petitioners herein and the writ petitioners in WP 3222 (W) of 1998 has been brought to the notice of this Court.

13. The claim raised by the petitioners is premised on the ground that their duties and responsibilities are same as the duties and responsibilities of the petitioners in WP 3222 (W) of 1998. In view of such parity, the petitioners are entitled to the

same benefits as extended to the petitioners in WP 3222 (W) of 1998. The parameters as regards such equality stands satisfied and as such the petitioners cannot be denied similar benefit. The differentiation of pay scales for posts having no difference in degree of responsibility, reliability and confidentiality would not fall within the realm of valid classification. The nature of work of the subject posts is the same and not less onerous than the reference posts. The difference among the petitioners and the petitioners in the earlier writ petition as sought to be argued by Mr. Bandyopadhyay is not based on any legitimate foundation.

14. The writ petition being Civil Rule No. 3021 (W) of 1985 was preferred by the Workshop Instructors of Hooghly Institute of Technology and Malda Polytechnic challenging inter alia memoranda dated 12th May, 1983 and 8th July, 1983 issued by the Deputy Secretary, Education Department, Technical Branch Education and Training clarifying on the eligibility of the revised scale of Rs.380-910/- to the Workshop Instructors (Trade Certificate Holders) of the government polytechnics. By an order dated 22nd of August, 1990, the said memoranda were set aside commanding the respondents to give proper benefit to the petitioners as to the revised scale of pay of Rs.425-1050/-. The said order was complied with by State respondents by issuing a government order no.618 - Tet (Poly) S-7195 dated 30th October, 1995. At that juncture the 1986 Rules were in force. Thereafter in the year 1996 the members of different government polytechnics all over the State of West Bengal approached the State Administrative Tribunal for fixation of their pay scale at Rs.425-1050/-. The said applicants were non-diploma holders. Similar benefits as

was given to others by G.O. no.618 - Tet (Poly) dt.30th August, 1995 were extended by an order dated 11th April, 1997 passed in T.A. 18 of 1996 (S.P. Dey and Others -vs- State of West Bengal and Others). The said order was complied with through a memo dated 3rd January, 2001 issued by the Assistant Secretary, Government of Finance (Audit) Department and a memo dated 22nd March, 2001 was issued by the by the Deputy Secretary, Department of Technical Education and Training. In another application being O.A. No. 1228 of 2002 similar benefits were extended by a memo dated 26th February, 2007 issued by the Deputy Secretary, Department of Technical Education and Training and the annexure to the said memo reveals grant of benefits to Instructors engaged after the 1986 Rules came into force and as such the argument that Instructors engaged after commencement of the 1986 Rules are not entitled is not acceptable to this Court. The respondents cannot take different stands in similar applications upon splitting up their defence.

15. Fairness and reasonableness are paramount issues for administrative action. As a model employer the State Government must conduct itself with high probity and candour and cannot act arbitrarily by withholding the benefits as extended to similarly situated incumbents. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly.”

42. Mr. Ghosh submits that a decision making reference to a judgment earlier binding precedent although may not be correct cannot be said to be *per incurium* as observed by the Hon'ble Supreme Court in **Central Board of Dawoodi Bohra Community & Ors vs. State of Maharashtra and Ors.**, reported in **AIR 2005 SC 752 at 755** (pargraph 7).

43. Mr. Ghosh submits that paragraph 9 of the said decisions it has been clearly stated that the decision ought not to be overruled if to do so would upset the legitimate expectations of people who have entered into contracts or settlements or otherwise regulated their affairs in reliance on the validity of the said decision.

44. It is argued that in the present case the legitimate expectation of criterion of equal pay for equal works of the writ petitioners have been well established and proved. Equal pay for equal works has emerged from interpretation of different provisions of the Constitution. In the instant case the main ground is that the duties and responsibilities of the writ petitioners in WP 3222(w) of 1998 (**Sibu Gopal Sadhukhan & Ors.**) and also of the workshop instructors attached to the polytechnic owned by the State

Government and sponsored institutions, therefore, the writ petitioners cannot be treated differently.

45. Mr. Ghosh submits that in a fairly recent decision on pay parity the Hon'ble Supreme Court in **State of Punjab and others vs. Jagjit Singh & Ors.**, reported in **2017(1) SCC 148** has reiterated that it is also applicable to temporary employees performing the same duties and responsibilities as regular employees. Mr. Ghosh has referred to paragraphs 42, 56, 57 and 58 of the said judgment to emphasis that the artificial parameters cannot be applied to deny fruits of labour and an employee engaged for the same work cannot be paid less performing the same duties and responsibilities of others similarly situated. In view of the facts that the writ petitioners have been performing the same kind of job as the workshop instructors attached to the polytechnic owned by the State Government and sponsored institution they cannot be treated differently. It is submitted that the judgment passed in WP 3222(W) of 1998 on 9th September, 20023 was carried in appeal being MAT 4207 of 2006 by the State and the appeal was dismissed on the ground of delay on 22nd August, 2007 against which SLP was taken out by the State and the SLP was dismissed on 18th January, 2008. The State has complied with the judgment passed in WP 3222(W) of 1998 on 9th

September, 2003 vide order dated 10th March, 2016. The State after eight long years complied with the mandate. Now the State cannot take different stand. In view of the above it is submitted that the judgment passed in WP No.18361 (w) of 2001 need no interference and the instant appeal should not be allowed.

46. Mr.Ghosh has referred to the communication of the Director of Technical Education and Training dated 7th November, 2008 vide Memo No.3181 TET to the Member Secretary, 5th Pay Commission recommending revision of pay structure of different categories of staff under Directorate of Technical Education and Training, West Bengal. Mr. Ghosh has relied upon the following extract of the recommendation:

“Department of Technical Education and Training, W.B. runs its public service through two wings – 1. Directorate of Technical Education & Training. 2. Directorate of Industrial Training. While the former imparts technical education in the state through the Government Polytechnic Institutes, the latter does the same through the Government Industrial Training Institutes. Both the Directorates have one post – Workshop Instructor/similar in all respects except scale of pay. The job profile of the Workshop/Instructor irrespective of the Polytechnic or ITI encompasses supervisory works and technical assistance to the students in the workshops training classes. Job responsibility of a Polytechnic instructor is in fact, equal to, if not more, what an ITI instructor is

assigned to. But it is surprising to note that pay scale of the Workshop-Instructor/Instructor in Polytechnics is Rs.4000-8850/- for the ITI certificate holder and Rs.4500-9700/- for the Engg. Diploma holder but the same for the Workshop-Instructor /Instructor in the ITI is Rs.4500-9700/-. At present almost 85% candidates in the Polytechnics are enjoying the scale of pay of Rs.4500-9700/- through court cases. Recently, a move was made to the department to bring the recruitment qualification for the Workshop-Instructor/Instructor of the Polytechnics at par with what is followed in the Directorate of Industrial Training.

Now the present scale of pay i.e Rs.4000-8850/- admission to a section of Workshop-Instructors/Instructors of the Polytechnics may be elevated to scale of pay i.e. Rs.4500-9700/- in order to maintain parity in all respects.

J.Laboratory Assistant:

There is another post of Laboratory Assistant which, before ROPA-1981 enjoyed one scale of pay similar to Workshop Instructor and Instructor. In fact the post of Laboratory Assistant in the Polytechnic system was always put in the official hierarchy higher than the post of Workshop Instructor & Instructor. But the scale of pay unfortunately was not mentioned in the ROPA-1981 report. However, with two amendments of the Finance Department that followed ROPA-1981, scale of pay of Laboratory Assistant was allotted to Rs.340-7509 (Eqv. To Rs.3600-7050).... Two scales below the scale of pay of the workshop-Instructor/Instructor. At present Laboratory Assistants are enjoying the same scale i.e. Rs.3600-7050/-. Department has recently been approached

for framing recruitment qualification for the post of Laboratory Assistant in line with the Directorate of Industrial Training.

We therefore request to allot scale of pay of Rs.4500-9700/- identical to the post of Instructor of Directorate of Industrial Training, W.B. for both the post of Workshop-Instructor /Instructor and Laboratory Assistants of the Polytechnic System.”

On the basis of the aforesaid recommendation and having regard to implementation of earlier orders it is argued, the parity of pay scale cannot be denied.

47. Mrs. Suchismita Ghosh, learned counsel appearing on behalf of Ramkrishna Mission Shilpa Mandir and Ramkrishna Mission Shilpa Pith, has submitted that under the Government sponsored system vacancies along with corresponding pay scales were to be approved by the Government, Department of Finance. Pursuant to the advertisement published by Ramkrishna Mission Shilpa Mandir, the Selection Committee approved by the Director of Technical Education and consisting of DTE representatives interview was conducted of the candidates and on the basis of their recommendations, appointments were made by the Secretary of Ramkrishna Mission Silpa Mandir after obtaining finance clearance from Government. Salaries of all staff were released from Government Treasury to Shilpa Madir for disbursement. Shilpa Mandir on receiving the said amount remitted the salaries

according to pay scales, increment etc. to the employees as advertised and approved by Government in a timely manner.

48. In the meanwhile, Ramkrishna Mission Shilpa Mandir was transposed from Government Sponsored Polytechnic to a self-financed institute during 2007-2008. During such time, Government of West Bengal Circulated "Option Form" individually among all the then serving teachers and staff. At their express written request, they were absorbed into Government Service.

49. Respondent nos.1 to 9 who initially had joined in the post of Workshop Instructor in Ramkrishna Mission Shilpa Mandir were given the status of Government Employees by virtue of Memo no.3576/TET dated 11.12.2007 as a special measure. In view of the above, proforma respondents have no obligation to implement the scale of pay as funds which are provided by the State Government are disbursed to the concerned teachers/staff in the above manner.

50. In reply Mr. Advocate General has submitted that they pay scale of Govt. sponsored Workshop Instructors/Mistri Instructor and polytechnics was changed and determined by the West Bengal Services(Recruitment to the post of Workshop Instructor/ Mistri Instructor in Government and Government –aided Polytechnics in

West Bengal) Rules, 1986, issued vide notification No.21-Edn(TET)/10R-3/86 dated 22.01.1987 (**“1987 Notification”**) and memo no.5-F(Law) dated 03.01.2001 (**“2001 Memo”**). The 1987 notification and 2001 memo re-fixed the pay for all workshop instructors/mistri instructors in Government and Sponsored Polytechnics appointed after 22.01.1987 for the ease of Administration, that would be applicable to all respondents apart from respondents number 8 and 13. The aforementioned notifications were never challenged. In fact, respondent nos. 8 and 13 were appointed between 1974-1975, and their claims are not maintainable after 20 years, nor did they have the required Diploma Degree qualification. It is settled law that the Courts should not enter upon the task of job evaluation which is conducted by an expert body like the Pay Commission, after taking rigorous exercise for job evaluation, taking into consideration various factors including different qualifications or different statutory rules governing the appointment and conditions and financial limitations of the State, with the object of ease of administration as reiterated in **Union of India vs. Indian Navy Civilian Design Officers Association and another** reported in **2023 SCC Online SC 173 (para 14); 2023 INSC 152.**

51. It is submitted that Memo No.3181/TET dated 7th November, 2008 issued by the Directorate of Technical Education and Training, is in relation to teaching and non-teaching staff and has no relevance to the instant case, as all workshop instructors/mistri instructors are specifically governed by the 1987 notification and the 2001 memo.

52. In the impugned order, the Hon'ble Justice Chakraborty has made an observation in context to the 1987 notification and 2001 memo that "considering such argument and the circular dated 3rd January, 2001, the Hon'ble Division Bench did not interfere with the order dated 9th September, 2003". Therefore, the only reference the Hon'ble Single Bench has made regarding the aforementioned notifications is regarding the Hon'ble Division Bench order dated 22.08.2007 in MAT 4207 of 2006 arising out of order dated 09.09.2003 in WP 3222(w) of 1998. However, without entering into the merits of the case, the Hon'ble Division Bench dismissed the appeal on the ground of delay in filing the appeal. In fact, order dated 09.09.2003 was an *ex-parte* order and did not consider either the 1987 notification or the 2001 Memo. Therefore, the impugned order as well as the orders preceding the same, more elaborately argued earlier is *per incurium*. The writ-respondents cannot take

advantage of the State complying with the High Court orders on the threat of contempt.

53. Moreover, the order date 22.08.2007 in MAT 4207 was challenged in the Supreme Court in SLP No.83 of 2008 in which by an order dated 18.01.2008, the Hon'ble Supreme Court declined to interfere with the order dated 22.08.2007 on the ground of delay. However, it is imperative to note that the Hon'ble Supreme Court of India kept the question of merits open. The writ respondents cannot take advantage of the State complying with High Court orders on the threat of contempt.

54. The writ-respondents knowingly being appointed after 22.01.1987, and accepting the conditions stated in 1987 notification and the 2001 memo, cannot now take advantage of orders that are *per incuriam*. In fact, by agreeing to options in employment relating to terms of service every year, the writ respondents have consented to the terms of agreement every year. Merely because mistake have been committed earlier, does not mean that the respondents should be allowed to take advantage of the same.

55. Mr. Subrata Ghosh, the learned counsel for the writ petitioners have distinguished the decision of Indian Navy Civilian (supra) in contending that the said decision has no nexus to the present case in as much as the posts of Workshop Instructors in all the polytechnics are having same nature of duty and is governed by the same Rule. The aforesaid decision is based on two different sets of rules which is singularly absent in the present case. It is further submitted that the writ petitioners had and have the requisite qualifications as per Notification No.21-Edn(TET)/10R-3/86 dated 22nd January, 1987, in view thereof, the allegation that they are not having the required Diploma Degree qualification is unsustainable.

56. On these narratives the appeal was heard.

57. The issue raised before the learned Single Judge is captured in the first sentence of paragraph 12 of the impugned order which reads:

“12. The main contention of the petitioners is that all the workshop instructors of different polytechnics (government and sponsored) are doing same or similar nature of work and as such no discrimination can be introduced amongst them.”

58. The learned Single Judge in allowing the writ petition had accepted that the petitioners are doing same type of job and on the

basis of the settled principles of equal pay for equal work they cannot be placed in a lower scale of pay than the others. Excepting the writ petitioners other Workshop Instructors of Government and Sponsored Polytechnics are getting the scale of Rs.425-1050 irrespective of their qualification and appointment whether prior to 1987 or thereafter. There is no distinction in the present appeal compared to WP 3222 (w) of 1998. In view of the fact that their duties and responsibilities are same as the duties and responsibilities of the writ petitioner in **WP 3222(w) of 1998** and on a parity of reasoning the petitioners are entitled to the same benefits as extended to the petitioners in **WP 3222(w) of 1998**.

59. It was observed that the parameters as regards such equality stand satisfied and as such the petitioners cannot be denied similar benefits. The differentiation of pay scales for posts having no difference in degree or responsibility, reliability and confidentiality would not fall within the realm of valid classification. The nature of work of the subject posts is the same and not less onerous than the reference posts. The difference among the petitioners and the petitioners in the earlier writ petition as sought to be argued by Mr. Bandyopadhyay is not based on any legitimate foundation.

60. The learned Single Judge has referred to the various memoranda by which the Government in compliance of the order passed in earlier writ proceeding implemented the order and the writ petitioners who are standing on the same and equal footing could not have been denied the similar benefits.

61. The learned Single Judge has also referred to the memoranda dated 12th May, 1983 and 8th July, 1983 issued by the Deputy Secretary, Education Department Technical Branch Education and Training clarifying on the eligibility of the revised scale of pay Rs.380-910 to the Workshop Instructors (Trade Certificate Holders) of the Government Polytechnics challenged by the Workshop Instructors of Hooghly Institute of Technology and Malda Polytechnic in **CO 3021 (w) of 1995**.

62. Both the revised memoranda were set aside by an order dated 22nd August, 1990 with a direction upon the respondents to give benefit to the revised scale of pay of Rs.425-1050 to such Workshop Instructors Hooghly.

63. Learned Single Judge upon noticing that all these orders passed in the earlier proceedings concerning same and similar issues having been accepted and implemented by the State, the writ petitioners are also entitled to get similar benefits and

accordingly the learned Single Judge has directed the appellants to grant the benefits of revised scale of pay of Rs.425-1050 to the writ petitioners with effect from 1st April, 1981 and thereafter in the correspondening scale or scales to which the same has been revised from time to time. The appellants were further directed to disburse the arrears from the date of filing of the writ petition within a period of three months from the date of communication of this order.

64. The state is aggrieved by this order.

65. Thus, the principal issue that has fallen for consideration is the claim of the respondents/writ petitioners with regard to scale of pay extended to Shib Narayan Chakraborty (supra). The basis of the claim appears to be that they are similarly placed and circumstanced as Shib Narayan Chakraborty and 21 others and since the State of West Bengal has conceded to their claim and implemented the order passed by the learned Single Judge, similar benefits are required to be extended to the respondents/writ petitioners.

66. Learned Advocate General has taken us through various government orders and rules in relation to Workshop/Mistri Instructors of Government Polytechnics and Government Aided

Polytechnics. Admittedly, Shib Narayan Chakraborty and 21 others, at the time of their appointment, could not have claimed scale No.11 as they were not diploma holders in terms of ROPA Rules, 1981 published vide Notification No.5691-F dated 28th July, 1981.

67. Before 1981, pay scale for Workshop Instructors of Government Polytechnic was Rs.230-425/- with higher initial start at Rs.250/- as per ROPA, 1970. Whereas, for the Workshop/Mistri Instructors in Government sponsored Polytechnics the pay scale was Rs.230-425/-. The writ petitioners were initially appointed as Workshop Instructors in the Government Sponsored Polytechnics namely Ramkrishna Mission Shilpa Mandir, Belur and Ramakrishna Mission Shilpa Pith, Belgharia, North 24 Parganas.

68. Revision of Pay and Allowances Rules, 1981 issued vide notification No.5691-F dated 28.07.1981, prescribed three qualification linked pay scales for Workshop/Mistri Instructors of Government Polytechnics. Such pay scales were recommended by the-then Pay Commission.

69. Such recommendation of three separate pay scales was absent in case of Government Sponsored Polytechnics, who are governed by separate ROPA Rules and as per ROPA Rules, 1981,

whose pay scale was Rs.360-815/- (Scale 8) in terms of memorandum No.372-Edn(B) dated 31.07.1981 and the same was revised to Rs.1200-2360/- in terms of subsequent ROPA Rules issued vide memorandum No.33-Edn(B) dated 07.03.1990.

70. After coming into force of ROPA Rules, 1981, a group of Workshop Instructors filed writ petition before the Hon'ble High Court (C.R.No.3021(W) of 1985 (Shib Narayan Chakraborty and 21 Ors. Vs. The State of West Bengal) due to their higher qualification on ground of equal pay for equal work. In the writ, the Hon'ble Court had directed State, ex-parte, to grant the revised scale of pay to such petitioners.

71. Thereafter, on 2201.1987 Recruitment Rules, 1986 came into force, regulating the recruitment to the post of Workshop Instructor/Mistri Instructor in Government and Sponsored Polytechnics where a single scale of pay of Rs.380-910/- (Scale-9) was prescribed for all as qualification prescribed for all the posts workshop instructors/mistri instructors are same.

72. Even after coming into force of the Recruitment Rules, 1986, the Hon'ble Court did not consider the difference between the workshop instructors appointed prior to the Recruitment Rules, 1986 and those appointed in terms of Recruitment Rules, 1986.

73. State had complied with the orders passed from time to time by granting higher scale of pay i.e Rs.425-1050 (Scale 11 of ROPA, 1981).

74. Relevant provisions of Recruitment Rules, 1986 has neither been questioned by the writ petitioners nor has it been struck down by any Court of law and the order of learned Single Judge in the earlier proceeding was contrary to such Rules, 1986.

75. However, this fact was not brought to the notice of the learned Single Judge at the time when the writ petition was disposed of. In fact the State did not make any representation and the learned Single Judge did not have the occasion to consider the said notification.

76. The order of the learned Single Judge dated 22nd August, 1990 also recorded that the State did not make any representation. It was an *ex parte* order. Although the said order was given effect to by the State of West Bengal, however, at a later point of time, when similar issue came up for consideration and relevant circulars/notifications were brought to the notice in some of the proceedings, the earlier *ex parte* order in such matters extending benefits to the writ petitioners on the basis of the decision in Shib Narayan Chakraborty (supra) was recalled.

77. Mr. Ghosh laid much stress on the decision of the Hon'ble Supreme Court in Ganesh Chandra Samanta (supra) and the decision in Jagdish Singh and others (supra) to claim benefits extended to Shib Narayan Chakraborty and 21 others.

78. As noticed earlier, indisputably, the Hon'ble Division Bench dismissed the appeal of the State on the ground of delay and the Special Leave Petition was dismissed without interfering with the order of the Hon'ble Division Bench with the observation that the matter decided by the learned Single Judge as well as the Hon'ble Division Bench in applying wrong notification are "left open".

79. This observation has clearly left the issue open for review and reexamination on consideration of the relevant notifications and government orders that would be applicable to the writ/respondents.

80. The learned Single Judge has proceeded on the basis that the State having accepted the order in Shib Narayan Chakraborty and 21 others and Ganesh Chandra Samanta and others (supra) as a model employer is required to extend such benefits to the writ petitioners on an assumption that the writ petitioners are similarly placed.

81. The writ petitioners are all appointed between 1997 and 2000. The applicable rules under notifications in the case of the writ petitioners would be 1987 notification and 2001 memo. By virtue of the notification of 1987, a single pay of scale of pay Rs.380-910 (scale No.9 ROPA 1991) was prescribed for all Workshop/Mistri Instructors uniformly including the government and government aided polytechnics appointed after 22nd June, 1987.

82. In terms of the recommendation of the pay commission constituted on 27th November, 1995, the Department of Technical Education and Training revised the scale of pay for the Government sponsored Polytechnics on and from 17th May 1999. For the Workshop Instructors with diploma, the revised pay scale was Rs.4500-9700 (Scale No.10) and for other categories, it was fixed at Rs.4000-8850 (scale No.9). This was followed by a government order dated 3rd January, 2001 in which it was stated that the 4th Pay Commission after considering the matter of the Workshop/Mistri Instructors found that there was no merit in the upgradation of the pay scale from scale no.9 to scale no.10 because as per the recruitment rules framed vide notification dated 22nd January, 1987 the qualification and scale of pay for all

Workshop/Mistri Instructors in Government and Government sponsored Polytechnic was stipulated to be the same.

83. The basis of the writ petition is the order passed in Shib Narayan Chakraborty and 21 others (supra). The learned Single Judge has proceeded on the basis of the orders passed in Shib Narayan Chakraborty and Ganesh Chandra Samanta (supra) that were passed in ignorance of Notification No. 21-Edn(TET)/10R-3/86 dated 21st January, 1987, that is, the 1987 notification and memo No.5-F(Law) dated 3rd January, 2001, that is, 2001 memo. These notifications are having the force of the statute and govern the relationship between the parties are relevant and crucial to the issue.

84. The power of judicial review of the High Courts in the matter of classification of the posts and determination of pay scale is no more *res integra*. Plethora of decisions have suggested that equation of posts and equation of salaries is a complex matter which should be best left when expert body unless there are cogent materials on record to come to a definite and firm conclusion that a grave error had crept in while fixing the pay scale for a given post and the interference of the Court is absolutely necessary to undo the justice.

85. The recommendation of the IVth Pay Commission as noted in the government memo dated 3rd January, 2001 is an opinion by a body of expert which cannot be lightly interfered with as the pay commission is supposed to undertake rigorous exercise for job evaluation after taking into consideration of several factors like:

- Nature of work
- Duties
- Accountability and responsibility attached to the posts.
- Extent of powers conferred on the persons holding a particular post.
- Promotional avenues
- Statutory rules governing the conditions of service.
- Horizontal and vertical relativities with similar jobs etc.

[See: Union of India vs. Indian Navy Civilian Design Officers Association and another reported in 2023 SCC OnLine SC 173; State of Bihar vs. Bihar Secondary Teachers Struggle Committee reported in (2019) 18 SCC 301 and State of Haryana vs. Charanjit Singh reported in (2006) 9 SCC 321].

86. The Courts have consistently held that even if the nature of the work involved in two posts may sometime appear to be more or less similar, however, if the classification of the posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, the pay commissions would be justified in recommending and the State would be justified in prescribing different pay scale for the seemingly similar posts.

87. The power of judicial review in the matter involving financial implications are also very limited. The Courts have over the years given due credence to the wisdom of the pay commission and not interfered with such policy matters involving financial implications unless a gross case of arbitrariness or unfairness are established.

88. The principle of equal pay for equally work has no mechanical application in every case and Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together as against those who have left out. A classification based on difference in educational qualifications and processes of recruitment justify a difference in pay scale.[see *State of Bihar (supra)*].

89. The 1987 notification has clearly determined the basis of the scale of pay which was ignored by two decisions to which we have referred mainly due to the faults and latches on the part of the State in not apprising the Court of the existence of the said two circulars. The reference to the said circulars were in fact taken into consideration by Justice Kar Gupta in recalling His Lordship's order. The initial order was based on the orders passed in the aforesaid two matters where the 1987 notification and 2001 memo were not considered. In fact, the later decisions of the Tribunal

where the State has contested had declined to follow the earlier two decisions and kept the matter reserved for decision on merits.

90. The decision in Jagdish Singh (Supra) also does not assist the writ petitioner as it was considering the claim of the temporary/casual employees for equal pay scale which is not the case here. In Jagdish Singh (supra), the Hon'ble Supreme Court directed payment of minimum wages/pay scales applicable to regular employees holding same posts in department. A pay structure is normally to be evolved keeping in mind factors such as method of recruitment and employers capacity to pay.

91. The qualification for appointment and mode of recruitment, training, the duties and responsibilities are some of the factors required to be taken into consideration for deciding the relief of equal pay, in fact, it has been answered by the 4th Pay Commission in its recommendation restoring the notification of 1987 for the purpose of scale of pay decided on the criteria laid down therein. The petitioners are bound by the said notification and the government orders. These notifications are not under challenge.

92. Moreover, they could not have claimed the benefit of the pay scale prior to 1987 as all of them have been appointed during 1997 and 2000. The respondents writ petitioners no.8 and 13 are only

entitled to such benefits of the scale of pay existing prior to 1987 and hence the writ petition so far as the said respondents are concerned stand allowed. The ground of delay cannot operate as a bar to their legitimate claim of which they were denied without any justification. The state as a model employer cannot be heard to defeat a legitimate claim. The state having accepted their service is bound to pay the scale of pay to which they were entitled since their engagement. We are not convinced with the argument of Mr. Advocate General that on the ground of delay the claims of the writ petitioner nos.8 and 13 are required to be rejected.

93. Even otherwise in absence to the relevant provisions of the Recruitment Rules, 1986 and relying on orders that are *per incurium* parity of payment cannot be claimed. Even it is accepted that some of the writ petitioners in two matters having been extended the revised scale of pay that cannot aid all the writ petitioners as two wrongs do not make a right. It is clear that neither Shib Narayan Chakraborty and 21 others or Ganesh Chandra Samanta and others were entitled to higher scale of pay as their cases were decided without considering the 1987 notification and 2001 memo and on concession in TA No.18 of 1996. A party cannot claim that since something wrong has been done in another case, direction should be given for doing another

wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is no discrimination involved, *Per Arijit Prasad, J.* in **Union Of India (UOI) & Anr. vs International Trading Co.**, reported in **2003 (5) SCC 437 (paragraph -43)**. Moreover, the respondents cannot strengthen their case on negative equality. They have to establish and succeed on the strength of their case on some other basis and not by claiming negative equality.

94. This view has been reiterated in umpteen number of judgments including **G.Sadasivan Nair vs. Cochin University of Science and Technology** reported in **2022(4) SCC 404 paragraph 19**; **Chebrolu Leela Prasad Rao & Ors. Vs. State of A.P. & Ors. reported in 2021(11) SCC 401 paragraph 95**, to name a few.

95. In Chebrolu Leela (supra) it has been reiterated that the concept of equality cannot be pressed to commit another wrong. The concept of equality enshrined in Article 14 of the Constitution is a positive concept. It is not a concept of negative equality. It cannot be used to perpetuate an illegality. The doctrine of equity would not be attracted when the benefits were conferred on the basis of illegality,

96. In the instant case, the decisions relied upon by the learned Single Judge are *per incurium*. Extension of benefit conferred on others based on an error cannot form the basis of an enforceable

legal right. (See **Rwmwi Borgoyary vs. Union of India** reported in **2020 (15) SCC 546** para 13).

97. In view of the fact that the learned Single Judge has overlooked the 1987 notification and memo of 2001 that were applicable to the writ petitioners and decided the writ petitions solely on the basis of the orders which are *per incuriam*, the order under challenge is required to be set aside with modification.

98. We thus partially modify the order of the learned Single Judge by allowing the reliefs to the writ petitioners/respondents 8 and 13 only and set aside as against the rests. The time to comply with the order passed by the learned Single Judge in relation to writ petitioners/respondent nos.8 and 13 is extended by three weeks from date.

99. The appeal is allowed in part. CAN 2 of 2021 accordingly stands disposed of in terms of this order.

100. However, there shall be no order as to costs.

[**SOUMEN SEN, J.]**

I agree.

[**UDAY KUMAR, J.]**