IN THE HIGH COURT OF TRIPURA
A G A R T A L A

WP(C)No.34 of 2018

Balai Ch. Das

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.35 of 2018

Goutam Deb

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.36 of 2018

Liton Saha

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.37 of 2018

Debabrata Roy

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.38 of 2018

Lalfamkima Darlong

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.39 of 2018

Subir Bhowmik

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.40 of 2018

Ranjit Dey

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.41 of 2018

Sanjib Chakraborty

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.42 of 2018

Gopal Rudra Paul

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.43 of 2018

Abhijit Kr. Ghosh

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.44 of 2018

Amit Chakraborty

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.45 of 2018

Ray Kamaljit Bhowmik

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.46 of 2018

Roben Zaithangvela Darlong

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.610 of 2018

Narul Islam and Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.622 of 2018

Biplab Shil and Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.623 of 2018

Partha Das & Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.624 of 2018

Prabir Datta & Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.62V of 2018

Santosh Das & Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.626 of 2018

Ajoy Chakraborty & Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.627 of 2018

Raju Saha & Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.628 of 2018

Pranay Saha & Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

WP(C)No.1453 of 2019

Samir Saha & Others

…….Petitioner(s)

Versus

The State of Tripura & Others

…….Respondent(s)

For Petitioner(s)	:	Mr. Somik Deb, Adv. Mr. Raju Datta, Adv
For Respondent(s)	:	Mr. D. Sharma, Addl. G.A. Mr. Arijit Bhowmik, Adv.
Date of Hearing	:	25.02.2020
Date of delivery of Judgment & Order	:	31.07.2020
Whether fit for reporting	:	YES: √ / NO:

BEFORE
HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER

All these writ petitions being WP(C)No.34 of 2018 [Balai Ch. Das versus State of Tripura & Others], WP(C)No.35 of 2018 [Goutam Deb versus State of Tripura & Others], WP(C)No.36 of 2018 [Liton Saha versus State of Tripura & Others], WP(C)No.37 of 2018 [Debabrata Roy versus State of Tripura & Others], WP(C)No.38 of 2018 [Lalfamkima Darlong versus State of Tripura & Others], WP(C)No.39 of 2018 [Subir Bhowmik versus State of Tripura & Others], WP(C)No.40 of 2018 [Ranjit Deb versus State of Tripura & Others], WP(C)No.41 of 2018 [Sanjib Chakraborty versus State of Tripura & Others], WP(C)No.42 of 2018 [Gopal Rudra Paul versus State of Tripura & Others], WP(C)No.43 of 2018 [Abhijit Kr. Ghosh versus State of Tripura & Others], WP(C)No.44 of 2018 [Amit Chakraborty versus State of Tripura & Others], WP(C)No.45 of 2018 [Ray Kamaljit Chakraborty versus State of Tripura & Others], WP(C)No.46 of 2018 [Roben Zaithangvel Darlong versus State of Tripura & Others], WP(C)No.610 of 2018 [Narul Islam and Others versus State of Tripura & Others], WP(C)No.622 of 2018 [Biplab Shil and Others versus State of Tripura & Others], WP(C)No.623 of 2018 [Partha Das and Others versus State of Tripura & Others], WP(C)No.624 of 2018 [Prabir Datta and Others versus State of Tripura & Others], WP(C)No.625 of 2018 [Santosh Das and Others versus

State of Tripura & Others], WP(C)No.626 of 2018 [Ajoy Chakraborty and Others versus State of Tripura & Others], WP(C)No.627 of 2018 [Raju Saha and Others versus State of Tripura & Others], WP(C)No.628 of 2018 [Pranay Saha and Others versus State of Tripura & Others], and WP(C)No.1453 of 2019 [Samir Saha and Others versus State of Tripura & Others] are clustered for disposal by a common judgment and order inasmuch as the reliefs as prayed in this writ petition are common in the identical perspective-facts.

2. There is no dispute that the petitioners were appointed as the Auditor under Directorate of Audit pursuant to the notice for employment dated 25.02.2010 [Annexure-1 to the writ petition being WP(C)No.34 of 2018]. At the relevant point of time, the essential educational qualification for direct recruitment to the post of Auditor borne in Group-C [non-gazetted] in the scale of pay of Rs.5,310-24,000/-(pay band-2) with grade pay of Rs.2,100/-, was Commerce graduate of a recognized university. The cadre strength as reflected in the recruitment rules is 200. It appears from the notice for employment dated 25.02.2010 that the said recruitment was for all 200 posts, distributed in various categories as per the reservation policy. By the order dated 03.08.2012 [Annexure-3 to the writ petition being WP(C)No.34 of 2018] the petitioners were appointed in the post of Auditor. Initially, they were appointed on fixed pay basis in the monthly pay of Rs.7,058/- in the scale of pay of Rs.5,310-24,000/- as

per terms and conditions mentioned in the offer of appointment issued under the memorandum No.F.2(71)/AUD-DR/ESSTT/2010 dated 19.06.2012. On completion of five years service on fixed pay basis by the memorandum under No.F.2(71)/AUD-DR/ESSTT/2010/PART/ 3510-4010 dated 20.09.2017, the petitioners were given the regular pay scale i.e.Rs.5,700-24,000/- with grade pay of Rs.2,800/- and scale-1 of level-9 as per schedule-1 of Tripura State Pay Matrix, 2017. But the date of regularization may be different on considering the date of joining but this aspect is not material in the present controversy, inasmuch as by the memorandum dated 20.09.2017, all the petitioners were given the regular pay scale [Annexure-4 to the writ petition being WP(C)No.34 of 2018].

3. A group of auditors were appointed pursuant to the employment advertisement dated 16.09.2002 [Annexure-5 to the writ petition being WP(C)No.34 of 2018] on fixed pay basis at monthly pay of Rs.2,730/-. In terms of the employment advertisement dated 16.09.2002, the basic educational qualification required for selection in the said post of auditor was M.Com./B.Com Honours from any recognized university. The difference in the qualification is noted. From the said selection process, 20 auditors were appointed. By the notification No.F.2(43)/AUD-DIR/ESTT/2006 dated 31.12.2007, Tripura Audit and Account Service Rules, 2007 was published creating a separate cadre service named Tripura Audit and Accounts Service

providing the authorized permanent strength of the service, method of recruitment, determination of seniority, promotion and other service conditions. The total strength of the various grades of Tripura Audit and Account Service is shown in the table below:

Grade	Duty post	Strength
TAAS-V	Asst. Audit Officer/Asstt. Accounts Officer	298
TAAS-IV	Audit Officer/Accounts Officer	72
TAAS-III	Sr. Audits Officer/Sr. Accounts Officer	24
TAAS-II	Deputy Director	8
TAAS-I	Joint Director	02
	Total Strength	404

4. As per Rule-3 of Tripura Audit and Accounts Service Rules, 2007, Grade-V is divided into two levels viz.(i) Entry Level, Group-C non-gazetted and (ii) Senior Level, Group-D non-gazetted. For purpose of initial constitution Rule-V(1) of the Tripura Audit and Accounts Service Rules, 2007 provides as follows :

> **"V. Appointment to the service shall be made by the following methods, namely :**
> **(1) Direct Recruitment :**
>
> **(a) Intitial Constitution : All Asstt. Audit Officer/Asstt. Accounts Officer who were recruited directly in the Audit Directorate as Asstt. Audit Officer/Asstt. Accounts Officer and have been serving in the posts of Asstt. Audit Officer/Asstt. Accounts Officer on the date of commencement of these Rules shall be absorbed in the bottom Pay scale of Grade-V as members of the Service subject to rejection of unfit(s) as per recommendation of the Selection Committee as provided in Rule 14(2) of Part-V.**
>
> **(b) Following initial constitution all posts within authorized permanent strength of Grade-V of the Service shall be filled by direct recruitment only from candidates who have a Bachelors Degree with Honours in Commerce, Economics and Pure Science subject from a recognized University. Regulatin with details syllabus will be notified by the Department in consulation with the Commission.**

> **(c) 15% of the posts in the authorized permanent strength of Grade-IV of the service shall be filled by direct recruitment from candidates who have a Bachelors Degree in Commerce/Economics/Pure Science subjects from a recognized University who have qualified in professional courses like Chartered Accountancy/ICWAI (Institute of Cost and Works Accountants of India) and have four years of experience in the respective field. The candidates who are already in Government service having educational qualification required for directe recruitment in Grade-V and at least 5(five) years of service experience under the Government will also be eligible to apply for the posts."**

Before the said Rules came into being, 37 Assistant Audit Officer/Assistant Accounts Officer were recruited in the month of November,2005 and 33 Assistant Audit Officer/Assistant Accounts Officer were recruited on 17.11.2007 on a consolidated fixed pay of Rs.4000/- per month for a period of one year on contract basis. Subsequently, those 70 Assistant Audit Officer/Assistant Accounts Officers along with 34 Auditors who were appointed in 2004 were all appointed in the entry level of the Tripura Audit and Accounts Service (TAAS-V) w.e.f. 02.01.2008 in the initial constitution of the said service. All of them have been upgraded to the senior level on completion of their four years of service at the entry level.

5. The petitioners have averred that they were also similarly appointed in the year 2012 as Auditor in the fixed pay of Rs.7,058/- against the regular pay scale attached to the post of Auditor. Their fundamental contention in the writ petition is that the duty of the Auditor whether appointed in 2004 or in 2012 remains the same. They have further averred that the duties attached to the post of Auditor

and the duty attached to the post of Assistant Audit Officer/Assistant Accounts Officer (AAO) are also the same. The petitioners were qualified for appointment to the post of AAO inasmuch as they were having the Bachelors degree with honours in Commerce. It is evident from the table above that there were 298 posts in TAAS-V (duty post: Assistant Audit Officer/Assistant Accounts Officer). During the initial constitution, only 104 posts out of 298 posts were filled up. According to the petitioners, there are as many as 202 posts of AAOs left vacant in the said service, but the petitioners were not considered.

6. The petitioners have contended that the petitioners were all qualified for the post of AAO when they were selected and recruited in the post of Auditor. They have contended that the petitioners have bachelors degree with Honours in Commerce and some of them have the post graduate degree in Commerce as well. Thus, by means of educational qualification, no distinction can be made between the Auditors appointed in the year 2004 and those were appointed in the year 2012 like the petitioners. The petitioners have admitted that they have been appointed in the ex-cadre post of auditors having no opportunity of promotion throughout the entire service career. Hence, the petitioners be absorbed in TAAS-V or any other appropriate grade in the said cadre service to avert serious injustice to them.

7. Some of the petitioners in this batch of the writ petitions have further contended that from the job chart [Annexure-10 to the

writ petition being WP(C)No.610 of 2018] as prepared by the Directorate of Audit, the duties and responsibilities of the AAOs will be available. According to the petitioners, there is no difference in their duties and responsibilities if compared with AAOs. The petitioners were all duly qualified for appointment to the post of AAOs as all of them were having bachelors degree with Honours in Commerce. The petitioners do not have any avenue for promotion as those post of auditors against which the petitioners were appointed are not in the cadre. There is no difference between the duties and responsibilities between the Auditors appointed in the year 2004-05 and the Auditors who were appointed in the year 2012. Hence, according to the petitioners, they have been unfairly discriminated in the matter of 'induction in the cadre service'.

8. According to the petitioners, all the auditors are working under the Directorate of Audit but the petitioners were recruited outside the cadre for no assigned reasons and therefore they have been seriously disadvantaged in the matter of promotion or upgradation which are available in the cadre. In this back-drop, the writ petitioners have urged this court that since the petitioners do possess the requisite qualification for appointment to the post of Assistant Audit Officer/Assistant Accounts Officer at the time of their appointment in the post of Auditor since they are discharing the similar duties and responsibilities vis-à-vis the AAOs, they shall be

absorbed or recruited in TAAS-V from the date of their appointment on 06.08.2012.

9. The respondents by filing their reply have sought to repel the plea as raised by the writ petitioners by stating that a bare reading of Rule-5(1)(a) of TAAS Rules, 2007 [as reproduced above] would show that the Assistant Audit Officers/Assistant Account Officers (AAOs) who are recruited directly in the Audit Directorate on the date of commencement of the TAAS Rules were to be absorbed in the designated pay scale on the recommendation of the selection committee. They have categorically asserted that 31 Auditors who were recruited in the year, 2004 under the Audit Directorate were designated as AAOs by the government order No.F.2(21)-AUD/DIR/ESTT/2004/PART/3946-85 dated 16.09.2005. Thereafter, 37 AAOs were recruited in the year 2005 and further, 33 AAOs were recruited on 17.11.2007. 102 AAOs were recruited before the TAAS commenced. As per rule 5(1)(a) of TAAS Rules, 2007, the intitial constitution was carried out. The petitioners were not in service under Audit Directorate at the time of initial constitution. Thus, there cannot be any discrimination vis-a-vis the petitioner when 102 AAOs were absorbed in the service by way of initial constitution. The petitioners were recruited in the year 2012 after TAAS Rules, 2007 came into force. None of the auditors recruited in the year 2012 have been made AAOs as yet, the petitioners have asserted.

10. The respondents have further stated that the duties and responsibilities of the auditor cannot be equated with the duties and responsibilities of AAOs. An auditor is supposed to assist AAOs. There is no parity in the position, duties and responsibilities etc. Therefore, the claims of the petitioners are frivolous. The writ petitions do merit no consideration at all. That apart, after the initial constitution, the direct recruitment shall be carried out in terms of Rules 15 of the TAAS Rules, 2007. A substantial change has been brought about in the Cadre Service Rules the very rule has come under change by way of Tripura Audit and Accounts Service (the 1st Amendment) Rules, 2018. A new grade has been introduced namely Grade-VI (duty post: auditor). For purpose of reference, clause-b of sub-rule (1) of Rule-5 be extracted hereunder :

> **"(b)A new Grade namely Grade-VI '(Auditor)' will be included under the Tripura Audit and Accounts Service (First Amendment) Rules, 2018. The existing Auditors, who are presently serving under the Directorate of Audit, shall be absorbed in the Grade-VI as members of the service by giving them one time relaxation of eligibility criteria except educational qualification and service experience. For the purpose of Sub-rule (5) of Rule 15 of the Principal Rules, in computing the period of 5(five) years of continuous service in the Grade-VI, the period of service rendered by such employees in a similar grade or post before constitution of this proviso shall be counted in their cases."**

11. In view of the change in the rules, the respondents have asserted in their reply filed in WP(C)No.610 of 2018 as follows :

> **"By way of 1st amendment of TAAS Rule, a new sub Rule has been inserted under Rule 15 wherein it has been mentioned that Grade-V posts shall be filled from officers holding Grade-VI posts and have rendered not less than 5 years continuous service in the grade and cleared the Department examination conducted by the**

> **Commission. Further the amended provision of Rule 5(1)(d) states that 50% of the post of Grade-V of TAAS shall be filled up by direct recruitment. Therefore it is evident that out of the total posts of AAOs 50% of the posts is to be filled up by direct Recruitment and remaining 50% of the posts shall be filled up from amongst Auditors who are in Grade-VI of TAAS Rules, subject to the condition that they have rendered not less than 5 years continuous service in the Grade and have also passed the Departmental examination conducted by the Commission. Since there is scope of promotion fromr auditor to AAOs, the petitioners cannot be automatically absorbed in the post of AAOs by passing the said rules."**

12. The respondents have also stated as corollary as under :

> **"The amended provision of TAAS Rules clearly provide for promotion of Auditors (Grade-VI) to AAOs (Grade-V). The petitioners claim for automatic absorption as Assistant Audit Officer/Assistant Accounts Officer (AAOs) cannot be allowed in view of the existing rules and at present there is ample scope under the service rules for the petitioners to be promoted as AAOs. No recruitment can be made dehors the rules as the same would be a backdoor entry."**

13. In para-8(E) of the reply filed in WP(C)610 of 2018, the respondents have categorically stated that duties and responsibilities of AAOs and Auditors have clearly been describved in the Audit Manual. It is evident therefrom that the nature of duties and responsibilities attached to the post of Auditors whether appointed in 2004, 2005 or in 2012 though remain the same and identical, but the responsibilities of AAOs and Auditors are described differently in the Audit Manual. They have also clarified that for shortage of AAOs, in some posts in different DDOs' offices including in the major Direcorates, all Blocks and PWD Divisions at District level and in the offices of Deputy Director of Agriculture/Education/SPs, the auditors have been posted in the officiating capacity. They have also pointed

out in their reply the post of auditors were created to be filled up by the persons having essential educational qualification of graduation in Commerce from a recognized university, whereas the qualification for the post of AAOs as prescribed in TAAS Rules is bachelor's degree with Honours in Commerce/M.Com/Economics. The petitioners, even though possessed higher qualification, had applied for the post of auditors in response to the notice for employment and got selection. Now they cannot claim any advantage for their higher qualification as they had entered in the service being aware of the future prospects of the said post.

14. In WP(C)No.34 of 2018, the petitioner has filed the rejoinder by disputing some averments of the respondents in their reply. By the said rejoinder, some additional facts which are not available with the writ petition have been averred. But the petitioners have admitted that 34 posts of auditors were redesignated as AAOs before their completion of five years in the post of Auditors. All those redesignated AAOs were absorbed in the cadre service at the time of the initial constitution.

15. According to the petitioners, as the post of the auditor was not in the TAAS, the respondents cannot, by way of amendment, create a further grade namely TAAS-VI (duty post: Auditors) affecting "the vested rights" of the petitioners. But in the rejoinder, the petitioners have not elaborated how such vested rights have been

created in their favour. Since the petitioners have all the requisite qualifications for the post of AAOs they have claimed that they should be absorbed in the TAAS-V. According to them, since the auditors were redesignated as AAOs and absorbed in TAAS-V under Rule-5(1)(a), the petitioners can also be absorbed in TAAS-V. The petitioners have reasserted that there is no distinction in the duties and responsibilities of auditors appointed before or after the TAAS Rules, 2007. They have reiterated their plea of unfair discrimination, as they have not been absorbed in TAAS-V. It has been stated that after the TAAS-VI has been created by means of the 1st Amendment of the Service Rules, the petitioners have become a member of the service w.e.f. 31.12.2018 and according to the petitioners, they ought to have been so absorbed from the date of their appointment in the post of Auditor. Even their plea of equal work for equal pay has been reasserted by stating that there is no material or significant distinction in the duties and responsibilities of Auditors and the AAOs. The other averments in the rejoinder are of least relevance and hence, no reference have been made. It is to be further noted that though the petitioners have stated that by creating TAAS-VI, the respondents have affected their vested rights adversely, but there is no challenge against the Rule-5(1)(b) of the TAAS Rules as incorporated by the 1st Amendment as stated before.

16. Counsel for the petitioners has seriously challenged the classficiation made between the Auditors and AAOs. According to them, the said classification is grossly superficial without intelligible differentia. That apart, the relevant factors were not taken into consideration when curving out a class out of the same class. According to the counsel for the petitioners, since the Auditors and the AAOs are discharging the similar duties and responsibilities, they are entitled to get the similar pay. In support of such contention, they have relied on the decision of **Randhir Singh vs. Union of India and Others** reported in **(1982) 1 SCC 618** where the apex court has observed that it is well known that there can be and there are different grades in a service with variying qualification for entry into a particular grade, the higher grade often being a promotional avenue for officers in lower grade. The higher qualification for the higher grade which may be either academic qualification or experience based on length of service, reasonably sustained the qualification of the officers into two grades into different scales of pay. The principle for equal pay for equal work would be an abstract doctrine not attracting Article 14 if sought to be applied to them. It has been also observed in **Randhir Singh**(supra) as follows :

> **"8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women" as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between**

the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean some thing to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robberbarons and smuggler kings, or for dealing with tax evaders is discriminatory, whether a particular Governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word 'Socialist' must mean something. Even if it does not mean 'To each according to his need', it must atleast mean 'equal pay for equal work'. The principle of 'equal pay 27-02-2020 (Page 4 of 5) www.manupatra.com Judges Library for equal work' is expressly recognized by all socialist systems of law, e.g. , Section 59 of the Hungarian Labour. Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too. Under provisions in Section 31(g.No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance (vide: International Labour Law by Istvan Szaszy p.265). The preamble of the Constitution of the International Labour Organisation recognises the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers

> **of people as to produce unrest so great that the peace and harmony of the world are imperiled". Construing Articles 14 and 16 in the light of the Preamble and Article 39(d) we are of the view that the principle 'Equal pay for Equal work' is 'deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do identical work under the same employer."**

17. Reliance has been placed on **Central Inland Water Transport Corporation Ltd. and Another versus Brojo Nath Ganguly and Another** reported in **AIR 1986 SC 1571** where the apex court has observed that the party which enter in the contract with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all, such contracts which affect a large number of persons or a group or a groups of persons if they were unconscienable, unfair and unreasonable are injurious to the public interest. It has been observed thereafter that such a contract is only voidable, would be to compel each person with whom the party with superior bargaining power had contracted to go to court to have the contract adjudged voidable. Such contract or such a clause in a contract ought, therefore, to be adjudged void instead of voidable. Thereafter in **Brojo Nath Ganguly**(supra), it has been observed as follows :

> **"These letters of appointment are in a stereotype form. Under these letters of appointment, the Corporation could without any previous notice terminate their service, if the Corporation was satisfied on medical evidence that the employee was unfit and was likely for a considerable time to continue to be unfit for the discharge of his duties. The Corporation could also without any previous notice dismiss either of them, if he was guilty of any insubordination, intemperance or other misconduct, or of any breach of any rules**

> **pertaining to his service or conduct or non performance of his duties. The above terms are followed by asset of terms under the heading "Other Conditions". One of these terms stated that "You shall be subject to the service Rules and regulations including the conduct rules". Undoubtedly, the contesting Respondents accepted appointment with the Corporation upon these terms. They had, however, no real choice before them. Had they not accepted the appointments, they would have at the highest received some compensation which would have been probably meagre and would certainly have exposed themselves to the hazard of finding another job."**

18. In the present case also the petitioners have accepted the appointments with terms fundamentally, detrimental to their interest, inasmuch as keeping the vacancies in TAAS-V, the respondents have created an ex-cadre posts of Auditors with less pay scale and with further condition of keeping them on monthly fixed pay basis for a period of five years even though, they had all the qualifications of AAOs, the duty post or TAAS-V. But the petitioner had no real choice. Had they not accepted the appointments they would have been unemployed and thus they have exposed themselves to the uneven bargain.

19. On the aspect of equal pay for equal work, a few decisions of the apex court have been relied on by the counsel for the petitioners - viz. **State or Haryana and Others versus Rajpal Sharma and Others** reported in **(1996) 5 SCC 273**, **Nehru Yuva Kendra Sangathan versus Rajesh Mohan Shukla and Others** reported in **(2007) 9 SCC 9**, **State of Kerala versus B. Renjith Kumar and Others** reported in **(2008) 12 SCC 219**, and **Union of India and Others versus Rajesh Kumar Gond** reported in **(2014)**

13 SCC 588. In those cases it has been generally held that once the employees are discharging the same duties there cannot be any reason to deny the same benefits to those who are discharging the same duties and function. In one of the cases, the employees were discharging the same function and duties but for no intelligible reason the similar benefits was not given to them. The apex court had occasion to hold that there is no reason not to grant them the same scale of pay.

20. In **B. Renjith Kumar** (supra) it has been observed as follows :

> **"The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the Directive Principles of State Policy in Article 39(d) of the Constitution. Thus, having regard to the Constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, <u>in service jurisprudence, the doctrine of "equal pay for equal work" has assumed the status of fundamental right</u>. (see Randhir Singh v. Union of India : (1982) 1 SCC 618 and D.S. Nakara v. Union of India : (1983) 1 SCC 305".**
>
> **[Emphasis added]**

21. In **Rajesh Kumar Gond** (supra) the apex court has approvingly referred **Randhir Singh**(supra) in respect of principle for equal pay for equal work. The relevant passage is as under :

> **"8. Before we conclude, we may profitably refer to the observations of Chinnappa Reddy, J., in paragraph 8 of the judgment in Randhir Singh (supra) which reads as follows:**
>
> > **8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional right. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a**

> **Directive Principe of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for every one and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."**

22. The counsel for the petitioners has stated that the purpose of developing the doctrine of equal pay for equal work is to minimize the monitory inequalities by providing for adequate wages so as to ensure an appropriate standard of life. The following passages from **State of Punjab and Others versus Senior Vocational Staff Masters Association and Others** reported in **(2017) 9 SCC 379** are relevant for our purpose and therefore reproduced hereunder :

> **"25) Further, since the very inception, the educational qualification for appointment as Vocational Masters had been a degree or a diploma with three years' experience as both the qualifications were placed at par. All persons were appointed by a common process of selection and they teach the same classes, performing the same work. No distinction can be brought about between the persons so appointed. It is only subsequently that the appellants designated some of the Vocational Masters as Vocational Lecturers and brought about an artificial distinction between the two. Even on account of re-designation of the degree holders and post graduates as vocational lecturers, there was no change in the responsibilities and the financial matters as**

between the degree holders and diploma holders before the alleged Notification which fact is duly admitted by the State. There is no distinction between the vocational lecturers and vocational masters and they form one unified cadre and class. There cannot be any discrimination between similarly situated persons, whether by way of a government notification or any amendment in the Rules. As far as nature of work is concerned, it is stated that the vocational masters are discharging their duty in the Senior Secondary Schools in the Engineering/non-Engineering trades and have the technical qualifications while the vocational lecturers are also discharging the same duties in the same schools. Both vocational masters and lecturers are teaching the same classes, i.e., 10+1 and 10+2 and hence the nature of work, responsibilities and duties being identical and the pay scales were also kept identical since 1978 onwards.

26) The principle of equality, is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39A, 43 and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice- social, economic and political, by inter alia, minimizing monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of 4 th pay commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eyes of law if no reasonable justification is offered for the same.

27) <u>We are conscious of the fact that a differential scale on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of employees are treated</u>

> **as equal initially, they should continue to be so treated unless a different treatment is justified by some cogent reasons. In a case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continued to be identical as they were initially laid down, then the Court shall be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed. Thus, the decisions relied upon by learned senior counsel are clearly distinguishable and are not applicable to the facts of the present case."**
>
> **Emphasis added]**

23. Then, the counsel for the petitioners has urged this court that the provisions of the subordinate legislature which are ultra vires are bound to be ignored by the courts when the question of their enforcement arises. This submission has been made by the rejoinder. The petitioner have stated that incorporation of new grade - TAAS grade-VI for the post of Auditor and absorption of the petitioners and the other Auditors who were appointed in the year 2012 en bloc have seriously distressed the right of the petitioners to be absorbed in TAAS-V in the post of AAOs. It has been observed in **Shree Bagwati Steel Rolling Mills versus Commissioner of Central Excise and Another** reported in **(2016) 3 SCC 643** as follows :

> **"29. It would be seen that Shri Aggarwal is on firm ground because this Court has specifically stated that rules or Regulations which are in the nature of subordinate legislation which are ultra vires are bound to be ignored by the courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the court's way of not enforcing them. We also feel that since this is a**

> **question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not to allow Shri Aggarwal to make this submission."**

24. Learned counsel for the respondents in order to repel the submission built up by the counsel for the petitioners have submitted that the question whether a particular piece of delegated legislation, whether a rule or regulation or any type of statutory instrument is in excess of the power of subbordiate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in relevant statute conferng the power to make the rule, regulation etc., and also having regard to the object and purpose of the Act, as can be gathered from the various provisions of the enactment. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can be best implemented and what measures, substantive as well as procedural, would have to be incorporated in the rules or regulations for the achievement of the object and the purposes of the Act. It is not for the court to examine the merit or demerits of a policy laid down by way of rule or regulation. Its scrutiny, if is called upon to make, has to be limited to the question as to whether the impugned regulation fall within the scope of the regulation-making power conferred on the delegate by the statute. Any drawback in the policy, incorporated in a rule or regulation, will not render it ultra vires and the court cannot strike it

down on the ground that in its opinion it is not a wise or a prudent policy but is even a foolish one, and that will not really serve to effectuate the purpose of the Act. In **Maharashtra State Board of Secondary and Higher Secondary Education and Another versus Paritosh Bhupesh Kurmar sheth, etc. etc.** reported in **AIR 1984 SC 1543** has identified three-fold test to evaluate the constitutionality of any rule or regulation being piece of subordinate legislation, would be evident from the following passage :

> **"18. In the light of what we have stated above, the constitutionality of the impugned regulations has to be adjudged only by a three-fold test, namely, (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parents enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution. We have already held that the High Court was in error in holding that the provisions of Clause (3) of Regulation 104 do not serve the purpose of carrying into effect the provisions of the Act and are ultra vires on the ground of their being in excess of the regulation-making power conferred by Section 36. The Writ Petitioners had no case before the High Court that the impugned clauses of the regulations were liable to be invalidated on the application of second and third tests. Besides the contention that the impugned regulations were ultra vires the power conferred Under Section 36(1) the only other point urged was that they were in the nature of bye-laws and were liable to be struck down on the ground of unreasonableness."**
>
> **[Emphasis added]**

25. It is well settled that equation of posts and determination of pay scale are the primary functions of the executive, not of the

judiciary and therefore, ordinarily the court will not enter upon the task of job evaluation which task is generally left to the expert bodies like the pay commission etc. That, however, does not imply that the jurisdication of the court is absolutely barred or the aggrieved employees cannot have any remedy, if they are unjustly or arbitrarily treated in the matter of pay and allowances. It has been observed by the apex court in **Secretary, Finance Department and Others versus West Bengal Registration Service Association and Others** reported in **AIR 1992 SC 1203** as follows :

> **"11. The appellants contend that the High Court committed a serious error in revising the pay-scale of Sub-Registrars in exercise of its extraordinary jurisdiction under Article 226 of the Constitution in total ignorance of the settled legal position that pay fixation is essentially an executive function ordinarily undertaken by an expert body like a Pay Commission whose recommendations are entitled to great weight though not binding on the Government and are not justiciable in a court of law since the court of law is not well equipped to take upon itself the task of job evaluation which is a complex exercise. In support of this contention a catena of decisions beginning with the case of Parbhat Kiran Maithani and Ors. v. Union of India and Anr. : [1977] 2 SCR 911 and ending with the case of State of U.P. and Ors. v. J.P. Chaurasia and Ors.: AIR 1989 SC 19 was relied on. The appellants also contest the contention that the Sub-Registrars are a part of the constituted State Service which is awarded scale No. 17. They contend that there is no such service as 'Constituted State Service' and therefore, the question of granting them scale No. 17 never arose. On the contrary they point out that the employees are categorised as belonging to Group A, Group B, Group C, and Group D and are placed in one group or the other on the basis of evaluation of their work and the recruitment policy adopted by the Government. By placing the Sub-Registrars in scale No. 17 the High Court has given them a jump which is likely to give a severe jolt to the pay structure and would destroy the vertical hierarchical relativities carefully built-up by the Pay Commission. The appellants, therefore, contend**

that the High Court had acted in haste in placing the Sub-Registrars in scale No. 17 without realising its impact on the pay structure. For examination purposes the State Public Service Commission has placed the Sub-Registrars in Group D whereas those in scale No. 17 fall in Group A. Those belonging to Group A are required to sit for six papers whereas those belonging to Group D are required to answer four papers only. While those belonging to Group A are allowed to take one or more optional papers not exceeding three and have to appear for a compulsory personality test of 200 marks, those belonging to Group D are allowed only one optional paper and have not to appear for the personality test. Thus the examination for Group A employees is far more stringent than for those belonging to Group D employees and, therefore, contend the appellants, they are not comparable and cannot be placed in the same pay-scale invoking the equality clause in Article 14 of the Constitution. Lastly, it is said that the financial burden which will fall on the State Government on the implementation of the impugned judgment will be in the vicinity of Rs. 1.45 crores which is not justified since the High Court has failed to appreciate the issues in their proper perspectives. We find considerable force in the submissions made on behalf of the appellants.

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

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

> **pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."**
>
> **[Emphasis added]**

26. The counsel for the respondents have further submitted that it is the right of the state to change its policy from time to time under the changing circumstances and that cannot be questioned. The wisdom of the policy cannot be judicially scrutinized, even though the court can consider whether the policy is arbitrary or violative of law or the Constitution. In this regard, the decision of the apex court in **State of Punjab versus Ram Lubhaya Bagga and Others** reported in **(1998) 4 SCC 117** has been relied upon as it has been espoused in the said decision as follows :

> **"25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion, it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive."**

[Emphasis added]

27. The counsel for the respondents have also asserted that even a cut-off date can make out a difference. To bring about a new classification, in **United Bank of India versus United Bank of India Retirees' Welfare Association** reported in **(2018) 7 Scale 572,** the apex court in respect of payment of dearness allowance on different rate on the basis of a cut-off date has observed as follows :

> **"25. In our view any attempt to tinker with either the formula or the rate would make the whole scheme unworkable as was cautioned by this Court in the case of P.N. Menon and Ors. (supra). As held in the case of Indian Ex-Services League and Ors. (supra) the decision of this Court in D.S. Nakara (supra) is one of limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement. The reliance on the resolutions/circulars issued by Reserve Bank of India was also misplaced. It is true that the tapering formula was done away with by Reserve Bank of India but that by itself cannot entitle the retirees prior to 01.11.2002 either to be conferred the advantage at the same rate made applicable by Reserve Bank of India or at the flat rate of 0.24% as was sought to be projected.**
>
> **In our considered view, the assessment made by the Division Bench of the Madras High Court was absolutely correct. The settlement has to be taken as a package deal and it would be impossible to hold certain parts good and acceptable while finding other parts to be bad. Moreover, the recitals D, E and F in the Bipartite settlement dated 02.06.2005 (quoted hereinabove) show that a package deal was entered into and Rs. 1288 crores per annum towards all the benefits was set apart for the benefit of the employees. Any stepping up of benefit for a Section of employees is bound to inflate the figure of Rs. 1288 crores per annum though that by itself is not a ground that weighs with us. <u>In our view both the categories of</u>**

> **retirees, namely, pre November 2002 and post November, 2002 stand on different footing, the parameters which govern the computation of dearness relief are also on a different level. The decisions rendered by the Single Judge as well as by the Division Bench of the High Court failed to appreciate these aspects and in our view, the said decisions are completely erroneous."**
>
> **[Emphasis added]**

28. A few decisions habr been pressed into service in order to contend that psrity in the pay scaled cannot always be given simply on the basis of similarity in some of the assigned works. The psrity of pay scale is factored by the hierechical position, qualification etc. In **S.H. Baig and Others versus State of Madhya Pradesh and Others** reported in **(2018) 10 SCC 621,** the apex court had occasion to observe as follows :

> **"18. Parity of pay-scales cannot be given to the Appellants even on the principle of equal pay for equal work. The Appellants contend that some of the Ministerial employees were assigned work in the Executive Police Force. Some persons in the Ministerial (E) branch have been appointed to the Police Force as Deputy Superintendent of Police also. The Ministerial (E) staff is also assigned duties of Executive Police Force during elections. The Government maintains that the members of the Ministerial (E) branch do not discharge executive functions. It is well settled law that even if persons are holding same rank/designation and having similar powers, duties and responsibilities they can be placed in different scales of pay and cannot claim the benefit of the principle of equal pay for equal work. [See: Randhir Singh v. Union of India: (1982) 1 SCC 618 andS tate of Punjab v. Jagjit Singh Ors.: (2017) 1 SCC 148] In this case the qualifications for appointment, mode of recruitment, training, the duties and responsibilities not being similar, the Appellants are not entitled for the relief of equal pay."**

29. It has been asserted by the counsel for the petitioners that the State has the exclusive authority relating to the constitution, pattern, nomenclature of the posts, cadre, categories, their creation/abolition, prescription of qualification and other conditions of service including avenues of promotion etc. In **P.U. Joshi and Others versus Accountant General, Ahmedabad and Others** reported in **(2003) 2 SCC 632,** the apex court has unambiguously enunciated the law in the following terms :

> **"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered**

> **service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."**
>
> **[Emphasis added]**

30. If the challenge against the rule is not accepted by the court, the court cannot issue any direction against the authority to act in contravention with the rules. In **State of West Bengal versus Subhas Kumar Chatterjee and Others** reported in **AIR 2010 SC 2927** it has been enunciated as under :

> **"No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law. In the instant case, the impugned order of the High Court virtually compelled the State to give pay scales contrary to statutory rules under which pay scales of the employees are fixed. The decision of the Chief Engineer being contrary to ROPA Rules, 1998, cannot be enforced even if such a decision was taken under the directions of the Administrative Tribunal. The orders of the Tribunal as well as of the High Court suffer from incurable infirmities and are liable to be set aside."**

31. In **Punjab State Electricity Board and Another versus Thana Singh and Others** [judgment and order dated 08.01.2019 delivered in Civil Appeal No.193 of 2019] the apex court has observed as follows:

> **"11. It is fairly well settled that equation of pay scales must be left to the Government and on the decision of the experts and the Court should not interfere with it. Observing that equation of pay scales of posts must be left to the Government and the experts, in Steel Authority of India Limited and Others v. Dibyendu**

Bhattacharya (2011) 11 SCC 122, this Court held as under:-

> **"26. In Union of India and Others v. S.L. Dutta and Another (1991) 1 SCC 505, Union of India and Others v. N.Y. Apte and Others (1998) 6 SCC 741, State of U.P. and Others v. J.P. Chaurasia and Others (1989) 1 SCC 121 and Kshetriya Kisan Gramin Bank v. D.B. Sharma and Others (2001) 1 SCC 353, this Court held that the determination that two posts are equal or not, is a job of the Expert Committee and the court should not interfere with it unless the decision of the Committee is found to be unreasonable or arbitrary or made on extraneous considerations. More so, it is an executive function to fix the service conditions, etc. and lies within the exclusive domain of the rule-making authority. (See also T. Venkateswarulu v. Executive Officer, Tirumala Tirupathi Devasthanams and Others (2009) 1 SCC 546.)"**

12. In S.C. Chandra and Others v. State of Jharkhand and Others (2007) 8 SCC 279, observing that the grant of pay scales is a purely executive function and the court should not interfere with the same, this Court held as under:-

> **"33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408. .....**
>
> **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 wholesome 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).”**
>
> **13. Observing that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts, this Court, in SAIL, held as under:-**
>
> > **“30. ……. the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.”**

32. Thus, it is apparent that the following factors are held to be determinative for the equation of posts :

> 1) The nature and duties of a post
> 2) The responsibilities and powers exercised by the officer holding a post, extent of territorial or other charge held or responsibilities discharged.
> 3) The minimum qualification, if any prescribed for the recruitment to the post.
> 4) The salary of the post [see Union of India and Another versus P.K. Roy and Others : AIR 1986 SC 850].

33. In **Senior Vocational Staff Masters’ Association** (supra) as pointed out by the counsel for the respondents, it has been

observed that in a catena of cases the doctrine for equal pay for equal work have been applied, but at the same time, there is no recognition for mechanical application. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together as against those who are left out. For claiming the benefit under the doctrine of equal pay for equal work, the employee concernd has to establish that the qualification, eligibility, mode of selection/recruitment, nature and quality of work and duties, reliability, confidentiality, dexterity, functional need and responsibilities, and status of both the post are identical. In support of this claim **Shyam Babu Verma versus Union of India** reported in **(1994) 2 SCC 521** and **State of West Bengal versus Tarun Kumar Ray** reported in **(2004) 1 SCC 347** have been referred. In **Senior Vocational Staff Masters' Association** (supra) the apex court has stated that the fact that the state government had decided not to extend the benefit of higher pay scales to those vocational masters who did not acquire the qualification of post graduate or a degree in engineering by the cut-off date i.e. 08.07.1995. The apex court had held that the decision of the government was in consonance with the statutory rules and has been made bonafide, reasonably and observing the intelligible criteria which has a rational nexus with the object of differentiation.

34. Having scrutinized the records produced before this court along with the averments, relevant in the context and also the rival pleas advanced by the counsel for the petitioners and the respondents, this court finds the following questions are material for determining the controversy as raised in this writ petition :

> 1) Whether the Auditors appointed in the year 2004 can be differentiated from the Auditors appointed in the year 2012 like the petitioners under the Directorate of Audit ?
>
> 2) Whether the doctrine for equal pay for equal work has any ramification in relation to the post of AAOs and the ex-cadre Auditors who have been now absorbed in TAAS-VI as newly created by the Tripura Audit and Accounts Service (First Amendment) Rules, 2018 ?
>
> 3) Finally whether the petitioners can be absorbed in TAAS-V in terms of TAAS Rules, 2007 or otherwise by treating the petitioners as equal in all manner to AAOs who had been incorporated in the cadre service w.e.f. 02.01.2008 in the initial constitution and that to with retrospective effect from the date of their joining in the post of Auditors under the Directorate of Audit ?

Whether the Auditors appointed in the year 2004 can be differentiated from the Auditors appointed in the year 2012 like the petitioners under the Directorate of Audit ?

35. The petitioners have admitted that minimum qualification that was required for appointment as Auditor under the Directorate of Audit in the year 2004 or prior to 2007 was bachelor with Honours in Commerce, in short B.Com. Honours. The said qualification is also the

essential qualification for Assistant Audit Officers/Assistant Accounts Officers who have been mentioned as AAOs. It is also admitted by the petitioners that as per the recruitment rules, the essential educational qualification for the Auditors [ex-cadre] was Commerce graduate. No Honours degree was required for appointment to the post of Auditors against the total strength of 200. In the employment advertisement, the applications were invited from the intending candidates who were Commerce graduate. Thus, it is clear that the Auditors, who were appointed in the year 2004, were so appointed for their having higher essential educational qualification than the qualification as required for the recruitment of Auditors, [ex-cadre] who were appointed in the year 2012. That apart, by the Government Order No.F.2(21)-AUD/DIR/ESTT/2004/PART/3946-85 dated 16.09.2005, all 31 Auditors who were recruited in the year 2004 under the Directorate of Audit were designated as AAOs. In the year 2005, 37 AAOs were recruited and thereafter, 33 AAOs were recruited on 17.11.2007. All 102 AAOs as recruited before the commencement of TAAS were absorbed in the initial constitution of the service w.e.f. 02.01.2008. The petitioners have further asserted that they do have bachelor's degree with Honours in Commerce, even, some of them do possess post-gradutate degree in Commerce. The petitioners, in this context, urged to consider their qualification for purpose of equation of posts.

36. Even the petitioners have not laid materials in respect of the duties and responsibilities attached to the post of Auditors [ex-cadre] and AAOs [intra-cadre] so that atleast there could be the comparative evaluation of duties and responsibilities for purpose of equation of post. Even though, usually, the courts donot embark on such comparative evaluation between two posts for applying the principle of equal pay for equal work, unless there is complete wholesome identity between the two posts or two group of posts. Usually, such exercise is left to the expert committee. The function may be the same but the skills and responsibilities may be really and substantially different. The other posts may not require any higher qualification, seniority or other like factors. In the case in hand, for recruitment in the post of Auditors(ex-cadre) and the Auditors who had been redesignated as AAOs, different essential educational qualifications had been prescribed. So far the recruitment of Auditors in the year 2004 is concerned, the qualification was higher than the qualification which was required for appointment of Auditors [ex-cadre] in the year 2012. That apart, by filing the reply, the state-respondents have categorically stated that even there is difference between the work schedule of those two posts. As such, the differentiation as creatred by the respondents can not be held irrational, discriminatory or arbitrary.

Whether the doctrine for equal pay for equal work has any ramification in relation to the post of AAOs and the ex-cadre Auditors who have been now absorbed in TAAS-VI as newly created

by the Tripura Audit and Accounts Service (First Amendment) Rules, 2018 ?

37. On the face of inference, as drawn above in respect of differentiation, this question has to be answered in the negative. For claiming the benefit under the doctrine of equal pay for equal work, the employee concerned has to establish that the qualification, eligibility, mode of selection/recruitment, nature and quality of work and duties and efforts, reliability, confidentially, dexterity, functional need and the responsibilities, and status of both the posts are identical. The petitioners have failed to establish the equality in respect of those elements as catalogued above. First of all, equality of qualification would mean qualification as required by the respective recruitment rules or by the policy of the government, not the qualification as possessed by the employees. In **V. Markendeya versus State of A.P.** reported in **(1989) 3 SCC 191** the apex cout having referred to **Randhir Singh**(supra) has observed that in some cases, the apex court implemented the principle of equal pay for equal work. The court granted relief on the principle of equal pay on the basis of the same and similar works performed by two classes of employees under the same employer. Even though, the two classes of employees did not constitute the same service. But in all those cases, relief was granted only after it was found that discrimination was a practice in giving different scales of pay in violation of equality clause, enshrined in the Articles 14 and 16 of the Constitution. The principle

of equal pay for equal work was enforced on the premise that discrimination was practiced between two sets of employees performing exactly the same duties and functions without any rational classification. The principle or doctrine of equal pay for equal work is not an abstract one, it is open to the state to prescribe different scales of pay for diferent cadres having regard to nature of duties and responsibilities and educational qualification. Different grades are laid down in the service with varying qualification for a particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing different pay scales for the different cadres. The application of the doctrine arises where the employees are equal in every respect, in educational qualifications, duties, functions and measure of responsibilities and yet they denied equality of pay. If the classification for prescribing different scales of pay is founded on reasonable basis, the principle will not apply. But if the classification is founded on unreal and unreasonable basis, it would violate Articles 14 and 16 of the Constitution and the principle of equal pay for equal work must have its way. Thus, the classification has to be tested on the basis of the rationale. Apart other factors, such as the respondents clear assertion that the post of AAO is superior post to the post of Auditor as an Auditor is obligated to assist one AAO, there appears a clear distinction between the required educational qualifications and as such, having regard to the said

principle as so unambiguously asserted in ***Senior Vocational Staff Masters' Association (supra)***, this court does not have any hesitation to hold that the principle of equality as founded on Article 38, 39A, 43 and 46 cannot be applied in the present case to declare that the petitioners are equal in status vis-à-vis AAOs and they are discharging their equal duties and hence, no benefit would flow to the petitioners under the said doctrine.

Finally, whether the petitioners can be absorbed in TAAS-V in terms of TAAS Rules, 2007 or otherwise by treating the petitioners as equal in all manner to AAOs who had been incorporated in the cadre service w.e.f. 02.01.2008 in the initial constitution and that to with retrospective effect from the date of their joining in the post of Auditors under the Directorate of Audit ?

38. The petitioners are claiming absorption at per with 102 AAOs who were absorbed in the initial constitution of the service in terms of Rule-5(1)(a) of the Tripura Audit and Accounts Service Rules, 2007 which has clearly provided that all AAOs who were directly recruited in the Audit Dirctorate and serving in that posts as AAOs on the date of commencement of the said service, they shall be absorbed in the bottom pay scale of Grade-V subject to the recommendation of the selection committee as provided in Rule-14(2)of Part-V of the said Rules. Rule-5(1)(b) has categorically provided that following the initial constitution, all posts with their authorized permanent strength of Grade-V of the service shall be filled up by direct recruitment only from the candidates who have a bachelors degree with Honours in Commerce, Economics Honours and Pure Science with Honours from a

recognized University. Obviously, the employment advertisement in persuance of which the petitioners were appointed was not for direct recruitment under Part-VI of the TAAS Rules, 2007. From 02.01.2008, Tripura Audit and Accounts Service has been constituted. The petitioners are supposed to have taken notice of such development and they were supposed to be fully aware that the said employment advertisement against which they applied for the recruitment, was not for the recruitment in the said cadre. The relief now they are claiming would amount to directing the respondents to act against the TAAS Rules which has provided a definite manner of direct recruitment.

39. This court is constrained to observe the court does not weild any power even under Article 226 of the Constitution to issue mandamus against the respondents to act in contravention of the rules as it would amount to compelling the authorities to violate the law. In **Subhash Kumar Chatterjee** (supra) the apex court has observed that such direction may result in destruction of rule of law.

40. In the course of the argument, a veiled challenge has been thrown against creation of TAAS-VI by the Tripura Audit and Accounts Service (First Amendment) Rules, 2018 by referring to a judgment of the apex court in **Shree Bahgwati Steel Rolling Mills** (supra) where it has been held that if the subordinate legislation or any provision thereof is found ultra vires the court should ignore those provision. But the counsel for the petitioners have not made any

submission based on the three-fold tests viz. (i) Whether the provision of such rule [for this case, proviso to Article 309 of the Constitution] fall within the scope and ambit of the power conferred by the statute on the delegate; (ii) Whether the rules framed by the delegate are to any extent and cossistant with provisions of the parent enactment and lastly; (iii) Whether the infringement of any of the fundamental rights or other restrictions or limitations imposed by the constitution [see **Paritosh Bhupesh Kurmaer Sheth** (supra)]. On the contrary, the contention of the counsel for the respondents in respect of the State's prerogative is well entranched in the law. The court can evaluate the constitutionality of such legislative change on the ground whether the policy is arbitrary or violative of the parent law or it stands in contravention to Article 14 of the Constitution [see **Ram Lubhaya Bagga** (supra)].

41. On scrutiny, this court does not find that the Tripura Audit and Accounts Service (First Amendment) Rules, 2018 suffers from vice of unconstitutionality. On the contrary, the new rules as incorporated by the respondents are beneficial to the petitioners. By the amendment, Rule-5(1)(b) has been incorporated to accommodate all existing auditors who were serving under the Directorate of Audit. It has been clearly provided that such auditors shall be absorbed in Grade-VI as members of the service by giving them one time relaxation of eligibility criteria except the educational qualification and

the service experience. For purpose of sub-rule 5 of Rule 15 of the Principal Rules, in computing the period of five years in continuous service in Grade-VI the period of service rendered by such employees in a similar grade or post shall be counted. Further, it has been provided by the amended rules being Rule-15(5) as follows :

> **"Grade-V posts shall be filled by officers who hold Grade-VI posts and have rendered not less than 5 years continous service in the grade and passed the Departmental Examination conducted by the Commission."**

42. From a conjoint reading of amended Rule-5(1)(b) and Rule-15(4) of the TAAS Rules, it would be apparent that the petitioners or any other Auditor of the same status who have been absorbed or will be absorbed in the Grade TAAS-VI, they would get benefit of their past service for consideration of their appointment in TAAS-V.

43. Having observed thus, this court does not find any merit in these writ petitions and accordingly, those are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

JUDGE

Sabyasachi B