Supreme Court of India
Dr. (Mrs.) Sushma Sharma Etc. Etc vs State Of Rajasthan & Ors on 12 March, 1985
Equivalent citations: 1985 SCR (3) 243, 1985 SCALE (1)523
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
DR. (MRS.) SUSHMA SHARMA ETC. ETC

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT12/03/1985

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1985 SCR (3) 243 1985 SCALE (1)523

ACT:
Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Act 1979, Section 3 Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Ordinance 1978, Clause 3 & The Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974.

Temporary Lecturers in the service of the University for long years-June 25, 1975 fixed as the date of appointment, to be eligible for absorption in permanent service-Choice of date-Whether arbitrary and discriminatory.

Constitution of India 1950 Articles 14 & 16.

June 25, 1975 fixed as the date of appointment for temporary lecturers to be eligible for permanent appointment-Presciption of date-Whether has a prescribed rational nexus or arbitrary.

HEADNOTE:
The Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974 provided for an elaborate procedure for recruitment of teachers and officers in the universities but no selection had been made on the basis of that Act and all appointments were made on a temporary basis. Section 3 of the Act provided that no stop gap or part-time arrangement can be made for more than six

months. The temporary appointments of lecturers by the Vice-Chancellor could not be made for more than one academic year. It further provided that notwithstanding anything contained in any other law, no teacher or officer in any University in Rajasthan should be appointed except on the recommendation of the Selection Committee constituted under section 4.

For a long time since the inception of the University, there had been no regular selections and appointments of lecturers in the University and the teachers' organisations were pressing for absorption on substantive posts, of temporary lecturers who were working for long years. The Government of Rajasthan therefore promulgated the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Ordinance, 1978. Clause 3 of the said Ordinance had an English version as well as a Hindi version. Hindi version in Roman script read as follows:

> "Samast asthai pradhyapko ke sambandh me jo is roop me 25 June, 1975 ko ya usse purve niyukat kiye gaye the aur jo Rajasthan Vishvavidhyalay Adhyapak (Asthai Pradhyapki Ka Amelan)
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> Adhyadesh, 1978 (1978 ka Adhyadesh s. 5) ke prarambh ke samaya is roop me karya kar rahe hein, unki apni, apni.....

The English version of the Ordinance reads as follows:-

> "All temporary lecturers as were appointed as such on or before the 25th day of June, 1975 and are continuing as such at the commencement of the Rajasthan Universities Teachers (Absorption of Temporary Lecturers Ordinance, 1978 Ordinance No. 5 of 1978)."

On 18th April, 1978 the Ordinance was replaced by an Act namely the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Act, 1979 in which identical language was used.

The appellants in the appeals who were temporary lecturers and teachers, were appointed temporarily by the Vice-Chancellor by virtue of section 20A of the Universities of Rajasthan Act, 1946.

It was the contention of the appellants in their writ petitions that lecturers had been temporarily appointed and continued from time to time but there were no rules for their absorption into permanent cadre. The services of the lecturers were terminated from time to time before vacation and they were reappointed so as to deprive them of the continuity of service which would have entitled them to Permanent absorption or regularisation of their service.

The Single Judge allowed the writ petitions holding that (1) the judgment in Yogendra Kumar Tiwari v. University of Rajasthan and Others had become final as no appeals bad been preferred therefrom, and (2) clause 3 of the 1978 Ordinance means that in order to be eligible for screening for absorption a lecturer must be in the appointment of the

University any time or for any period before 25-6-1975 and must be a temporary teacher on 12-6-1978 even though in between he or she might not have been at all in service.

The Single Judge followed the interpretation of Section 3 as made in Tiwari's case and, was of the opinion that a clear differentiation had been made between pre-emergency and post-emergency appointees of teachers and there was no basis or nexus for such differentiation with the object of the Act and such differentiation amounted to discrimination and violated Articles 14 and 16 of the Constitution. The Single Judge struck down the consequential part of Sections 6 and 7 of the Act.

The Universities of Rajasthan preferred appeals against the aforesaid judgment. The State Government did not. The Division Bench was of the opinion that what was required was continuous employment from prior to 25th June, 1975 to 12th June, 1978 to be eligible for screening for absorption and that 25th June, 1975 was chosen such as any other date and there was no differentiation between pre-emergency and post-emergency appointees for absorption as lecturers. The Division Bench set aside the decision of the Single Judge.
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In the Appeals to this Court on the question: (i) what is the true meaning of Section 3 of the Act of 1979, and (ii) whether by choice of the date of 25th June, 1975, an invidious distinction has been made between pre-emergency and post-emergency appointees, which has no nexus with the purpose of the Act, and as such that Act is violative of Articles 14 and 16 of the Constitution.

Dismissing the Appeals,

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HELD: 1. The object of the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Ordinance, 1978 which was replaced by the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Act 1979 was to provide for absorption of temporary lecturers of long standing. So therefore experience and continuous employment were necessary ingredients. The Hindi version of the Ordinance used the expression " Ke prarambh ke samaya is roop me karya kar rahe hein" is capable of meaning "and are continuing" to work as such at the time of the commencement of the Ordinance Keeping the background of the purpose of the Act in view that would be the proper construction and if that is the proper construction which is in consonance with the English version of the Ordinance and the Act as well as with the object of the Act, then the Act and the Ordinance should be construed to mean that only those would be eligible for screening who were appointed prior to 25.6.1975 and were continuing at the time of the commencement of the Ordinance i.e. 12.6.1978 i.e. approximately about three years. [259B-D]

2. The English version of clause (3) presents no difficulty. Those who are appointed before 25.6.1975 and

"are continuing" on the date when the Ordinance came into effect i.e. 12.6.1978. So therefore "were continuing as such.... " in the Act must mean that to be eligible for absorption these temporary lecturers should have been in continuous employment from a date prior to 25.6.1975 to the date of the commencement of the Ordinance of 1978 i.e. 12.6.1978. [258H; 259A]

3. The interpretation of clause (3) of the Ordinance of 1978 in Tiwari's case could not in the facts and circumstances be treated to be such an authoritative pronouncement which will bind the courts in subsequent decisions in the interpretation of an Act which was passed soon thereafter, if on a proper construction of the subsequent enactment, it appears that the expression had not been correctly interpreted. [258G-H]

The criterion fixed for screening for absorption was not an irrational criteria a criterion not having any nexus with the purpose of the Act. Therefore, the criticism that a teacher who was working even for two or three months only before 25.6.1975 and then with long interruptions was in employment of the University at the time of the commencement of the Ordinance would be eligible but a teacher who had worked continuously from 26.6.1975 i.e. after the date fixed i.e. 25th June, 1975 for three years would be in-eligible and as such that will be discrimination against long experience, cannot be accepted. Such a construction would be an unreasonable construction unwarranted by the language used in the provisions concerned. [260A-C]

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5(i) If a particular period of experience is fixed for screening or for absorption, it is within the wisdom of the legislature, and what period should be sufficient for a particular job or a particular employment is not subject to judicial review. [260C]

(ii) Improper application of law in certain cases does not make the law had per se. Useless law similarly is not always arbitrary law. [261A]

(iii) Wisdom or lack of wisdom in the action of the Government or legislature is not justifiable by court. To find fault with a law is not to demonstrate its invalidity. Mere errors of Government are not subject to judicial review. What is best is not always discernible.

Metropolis Theater Company v. City of Chicago and Ernest J. Magerstadt, 57 Lawyers' Edition 730., Prag Ice & Oil Mills & Anr. Etc. V. Union of India, [1978] 3 SCR 293 at 333., D.S. Nakara and Others v. Union of India [1983] 2 SCR 305=[1983] 2 SCR 165 referred to.

6. If 25th June, 1975 was taken in order to differentiate between pre emergency and post-emergency appointees for consideration for absorption then there cannot be any doubt that such a differentiation would amount to are arbitrary discrimination. Because the fact whether one was pre-emergency appointee and another a post-emergency

was wholly irrelevant to the object of the Act and the Ordinance i.e absorption of temporary lecturers of long standing working in the university. Therefore to the question of absorption of temporary lecturers of long standing imposition of emergency in the country and appointment prior or subsequent thereto is wholly irrelevant and has no nexus. Differentiation on a ground which is irrelevant amounts to discrimination.

[261B-D]

In Re The Special Courts Bill 1978, [1979] 2 SCR 476 Gopalan vs. State of Madras [1950] SCR 88.,State of Travencore Cochin vs. Bombay Company Limited, [1052] 1112., State of West Bengal vs. Union of India, [1964] l SCR 371, referred to.

7. According to the Statement of Objects and Reasons of the Ordinance and bearing in mind the preamble of the Act, the main object was to make a specific provision for the selection of teachers and officers in the universities which had not been done for a long time. Temporary appointments against vacant posts had been made by the universities and such posts had been continuing in some cases for ten years. The preamble to the Act of 1979 is a key to unfold the intention of the legislature to make this law. It lays down that the Act was to provide for the absorption of temporary lecturers of long standing working in the universities of Rajasthan. [264C-D]

8.A certain tenure of service for the purpose of absorption was the object to be achieved and this has a rational nexus with the object. The prescription of the date from which the period should begin and the date on which it should end were merely incidental to the purpose. Any date perhaps could
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have served the purpose which took into consideration long tenure. What was intended by the use of the expression 'appointed on or before 25.6.1975' and must have continued until 12.6.1978 being the date of coming into force of the Ordinance indicated that there should have been near-about three years experience for being eligible for absorption. The date was a handy date. Handy in the sense it came quickly in the minds of some people. At least there is no evidence that there was any attempt to separate or penalise pre-emergency appointee and no decision was taken by any appropriate authority and no such evidence is there to make a distinction between pre-emergency and post-emergency appointees. Being in the employment at the time of coming into operation of the Ordinance was the pre-condition i.e. 12th June, 1978. Naturally some day anterior to that date had to be indicated to ensure long tenure of experience and 25th June, 1975 was chosen because it was as good a date as any other. [266B-D]

9. It may be that 25th June, 1975 has some odour to some people. It may be that it revised many attitudes but

this is wholly irrelevant. Any other date might have been chosen.A particular period was taken to make a person eligible for being screened for absorption and regularisation and if the beginning date happens to coincide with a particular date about which some people have some memories, the law would not become bad. That would be taking too sensitive a view of human expressions. [267B-C]

10. For the regularisation of teachers, experience was the object to be found out. Certain period of experience was necessary for the basis for making the regularisation. The period of experience would be how much and the date of experience should begin from what time are within the legislative wisdom and there is nothing in this case to indicate that the starting point i.e. to be in service on or before 25.6.1975 was an arbitrary choice, [269D-E]

State of Mysore & Anr. v. S.V. Narayanappa, [1967] 1 SCR 128, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3285, 3284, 3286 & 3287-89182 From the Judgment dated 17.2.1982 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.R- Special Appeal Nos. 192/81, 191/81, 196/81, 194/81, 193/81, 195/81 respectively.

Dr. Y.S. Chitale, Sobhagmal Jain and S.K Jain for the Appellants.

G.L. Sanghi, R.K. Garg, Manoj Swarup, Ms. Lalita Kohli, B.D. Sharma and Aruneshwar Gupta for the Respondents.

The Judgment of the Court was delivered by:

SABYASACHI MUKHARJI, J. These appeals by special leave arise out of the judgment of the Division Bench of the Rajasthan High Court. The appeals are by the original petitioners before the learned single judge of the Rajasthan High Court and who having succeeded before the learned single judge became respondents in the appeals filed by the University before the Division Bench. The appellants in these appeals and other connected appeals were temporary lecturers and teachers on various subjects. They were appointed temporary lecturers by the Vice-Chancellor by virtue of section 20A of the University of Rajasthan Act, 1946.

Section 4 of the Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974 hereinafter referred to as 1974 University Act provides for regular selection by Selection Committees. Section 3 of the 1974 Act provides that no stop gap or part-time arrangement can be made for more than six months. The temporary appointments of lecturers by the Vice-Chancellor cannot be made for more than one academic year. Further sub section (1) of section 3 of the said Act provides that notwithstanding anything contained in the relevant law as from the commencement of the said Act, no teacher or officer in any University in Rajasthan should be appointed except on the

recommendation of the Selection Committee constituted under section 4. Section 4 of the Act provided for the constitution of the Selection Committee for selection of lecturers and officers in the University, and dealt with certain other aspects and section 5 provides for the procedure to be followed by the Selection Committee. The other provisions of the said Act are not necessary to be referred to. It appears that for along time, indeed since the inception of the University, there have not been regular selections and appointments of lecturers in the University and as such the teachers' organisations were pressing for absorption on substantive posts of temporary lecturers who were working for long years. It is not necessary to deal in detail on this position, One Shri Y.K. Tiwari filed a writ petition before the Rajasthan High Court. The case was disposed of by a learned single judge of the Rajasthan High Court on 30th August, 1978 being Civil Writ Petition No. 446 of 1978-Yogendra Kumar Tiwari v. University of Rajasthan and Others. The petitioner in that case was appointed as a lecturer in Law on temporary basis after being selected by the Selection Committee by an earlier order dated 10th of January, 1975. The said petitioner had worked upto 19th June, 1975 but he was allowed his salary upto 29th May, 1975 as his term was not extended there after. He was not allowed any salary for vacation also as he had not completed six months' service on the last day of the session. The petitioner was reappointed as a lecturer on a temporary basis by an order dated 13th September, 1975. As mentioned hereinbefore, there was long standing grievance of the temporary lecturers and therefore the Government of Rajasthan promulgated The Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Ordinance, 1978 which is hereinafter referred to as the Ordinance of 1978. It was the case of the petitioner that he was eligible for screening. It was further contended that the previous Vice-Chancellor before handing over charge of his office had passed an order dated 2nd July, 1977 condoning the break in service of about 25 temporary lecturers in University belonging to the various departments including the faculty of law-Para or clause 3 of the said Ordinance of 1978 had an English version as well as Hindi version. In view of the fact that certain controversy is there, it is necessary to set out both these versions. Hindi version written in Roman script reads as follows:

> "Samast asthai pradhyapko ke sambandh me jo is roop me 25 June, 1975 ko ya usse purve niyukat kiya gaye the aur jo Rajasthan Vishvavidhyalay Adhyapak (Asthai Pradhyapko Ka Amelan) Adhyadesh, 1978 (1978 ka Adhyadesh S 5) ke prarambh ke samaya is roop me karye kar raha hein, unki apni apni asthai niyukatiyo ki tarikho ko lagoo susangat vidhi ke adhin sambandhit vishvavidhyalaya dwara vihit nuntam ahartaon ko sammilit karte hue patrta ki sharto ki unke dwara purti ke adhyadhin aur sambandhit vibhag me pradhyapko ki adhishthai riktiyon ki uplabhyata ki bhi adhyadhin rehte hue, dhara 4 ke anhin gathit anuveekshan samiti ki sifarish per unke amelan aur adhishthai niyukti per sambandhit vishvidhyalay dwara vichar kiya jayega."

(underlined by us) English version of the Ordinance reads as follows :- "All temporary lecturers as were appointed as such on or before the 25th day of June, 1975 and are continuing as such at the commencement of the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Ordinance, 1978 (Ordinance No. 5 of 1978) shall be considered by the University concerned for their absorption and substantive appointment on the recommendation of the Screening Committee

> constituted under section 4 subject to their fulfilling the conditions of eligibility including minimum qualifications prescribed by the University concerned under the relevant law as applicable on the respective dates of their temporary appointments and subject also to the avail ability of substantive vacancies of lecturers in the department concerned."
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> (underlined by us) The learned single judge in his judgment out of which appeals were taken to the Division Bench and from which appeals arise came to the conclusion that (i) the judgment in Tiwari's case had become final as no appeal had been preferred therefrom and (ii) clause 3 of the 1978 Ordinance means that in order to be eligible for screening for absorption a lecturer must be in the appointment of the University any time or for any period before 25.6.1975 and then again she or he must be a temporary teacher on 12.6.1978 even though in between he or she might not have been at all in service.

The learned judge found that if Hindi version of clause 3 be given effect to then, to be eligible one must have been appointed before 25th June, 1975 and must have been in the employment as such at the commencement of the Ordinance- In the English version of this Ordinance, the words used are "and are continuing." This, according to the learned judge, was not the correct translation of the Hindi version and according to his reading, instead of the words used as "and are continuing as such", words such as "and are continuously in service or have been continuously in service" should have been used if continuous employment from prior to 25th June, 1975 to the 12th of June, 1978 was required. The learned judge came to the conclusion that in the Hindi version of the Ordinance, only two conditions were required to be fulfilled for absorption i.e. appointment before 25th June, 1975 and continuing as such at the time of the commencement of this Ordinance i e. 12th June, 1978. Taking that in view, the learned judge made the rule absolute and directed the respondents to appoint the petitioner to his substantive post as the screening had already been done. This decision was not appealed from and it has been contended on behalf of the appellants before us that 106 lecturers who were working temporarily have all become permanent. On 18th of April, 1978 the Ordinance was re placed by an Act namely The Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Act, 1979 in which identical language was used. It was contended that interpretation given in Tiwari's case was accepted by the legislature as correct. We shall deal with this contention later. But the fact that there was no appeal preferred by the State from judgment in Tiwari's case might be that the judgment was delivered by the learned single judge on 30th August, 1978 and the Ordinance expired on 31st August, 1978. On 18th of April, 1979 however the Ordinance was replaced by 1979 Act.

So far as the present appeals before us are concerned, the following questions fall for our consideration:

(1) whether, fixing of the date here namely 25.6.1975 which happens to be the date on which emergency was clamped, for considering the lecturers of the University as eligible for screening under section 3 of the Rajasthan Universities Teachers (Absorption of temporary Lecturers,) Act, 1979 makes the Act invalid on the ground of differentiation between pre-emergency and

post-emergency appointments, in other words whether the date 25th June, 1975 when the emergency was clamped on the country had any nexus with the purpose of this Act ?

(2) what is true meaning of the expression used in section 3 of the Act ?

The short facts are that there were irregular appointments in the Rajasthan University as lecturers for a very long time. In other words, lecturers had been temporarily appointed and continued from year to year but there were no rules for their absorption into permanent cadre. Furthermore it is undisputed that the services of the lecturers were terminated from time to time before vacation and they were reappointed so as to deprive them of the continuity of service which would have entitled them to permanent absorption or regularisation of their services.

The Rajasthan Universities' Teachers and Officers (Special Conditions of Service) Act, 1974-hereinafter referred to as the 1974 Act had provided elaborate procedure for recruitment of teachers and officers in the universities. But no selections had been made on the basis of that Act and all appointments were made on temporary basis. In 1978 as noted before the Ordinance of 1978 was promulgated with the object to provide for the absorption of temporary lecturers of long standing working in the universities of Rajasthan. According to the University only those who had been appointed before 25th June, 1975 and continued to be in service on the date of the coming into operation of the Ordinance i.e. 12th June, 1978 were eligible. As the practice of the University, it was alleged, was to break the service, one Tiwari moved the High Court and the decision of the High Court and the basis of the said decision have been set out hereinbefore The learned single judge in this case on examination of the materials came to the conclusion that the original petitioners, the appellants herein had succeeded in establishing the fact that the date of 25th June, 19 5 was arbitrarily fixed which had no nexus with the object or the purpose of the said Act. Therefore he made the rules absolute. The learned single judge came to the conclusion that under the said Ordinance and under the said Act, the date of 25th June, 1975 offended Articles 14 and 16 of the Constitution.

The learned single judge had dealt in his judgment with the petition of Dr. Rukmani. He has set out the facts in detail It is not necessary to set these out in detail but briefly these are: She passed her M.A. in Hindi in 1969, she did her Ph D. in Hindi in 1973 from the University of Rajasthan. On 28th June, 1976 she was appointed tutor in Hindi on a temporary basis for a period of three months in the University of Rajasthan. She was permitted to work as tutor on account of various extensions and ultimately she became lecturer.A Selection Committee of the University selected her for lecturer. She was appointed as such with effect from 9th October. 1977. Her services were terminated with effect from 5th August, 1979 by an order of the Vice- Chancellor.

The screening done as per order of the High Court in Tiwari's case resulted in absorption of about 106 lecturers who were working temporarily. Orders to this effect were issued on 17th August, 1978. Since the present appellants being the petitioners before the High Court were not appointed as lecturers on or before 25th June, 1975, they were treated as ineligible for being screened under the provisions of the Ordinance of 1978. It may be mentioned that some of them appeared in the selection subsequently and were found eligible except two of them, who have been absorbed as

lecturers. The said Ordinance of 1978 as mentioned hereinbefore expired on 31st August, 1978 and a Bill was introduced and which after having undergone some amendments became the Act Of 1979 and is known as Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Act, 1979 (hereinafter referred to as the Act of 1979). Having received the assent of the Governor on 17th April, 1979 it was published in the Rajasthan Gazette on 18th April, 1979. The main alteration and amendment was that whereas the entire process of screening of appointment had to be finished by 31st August, 1978, the time was thereafter extended till 31st August, 1979.

Dr. Rukmani and others applied in pursuance of the advertisement issued by the University. The Selection Committee held the interviews on 16th and 17th July, 1979. She was considered by the Selection Committee. The Selection Committee did not select the said petitioner and she was accordingly rejected by the Selection Committee. Dr. Rukmani had challenged the Ordinance of 1978 and the Act of 1979 on the one hand and also the Selection Committee's decision by which she was assessed on the other and the respondents were selected under the Act of 1974.

The point that was canvassed mainly on behalf of the petitioners before the learned single judge related to the validity of the Ordinance of 1978 and the Act of 1979, since both the Ordinance as well as the Act had got common feature of making a teacher eligible for consideration by the Screening Committee, only if he or she was in the service of the University on or before 25th June. 1975 and further that he or she was also in the service of the University on 12th June, 1978, the date when the Ordinance became effective by publication in the Gazette.

Section 3 of the Act of 1979 reads as follows:- "3. Substantive appointment of temporary lecturers.- All temporary lecturers as were appointed as such on or before the 25th day of June, 1975 and were continuing as such at the commencement of the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Ordinance, 1978(Ordinance No. 5 of 1978) shall be considered by the University concerned for their absorption and substantive appointment on the recommendation of the Screening Committee constituted under section 4 or section 5, as case may be subject to their fulfilling the condition of eligibility including minimum qualifications prescribed by the University concerned under the relevant law as applicable on the respective dates of their temporary appointments and subject also to the availability of substantive vacancies of lecturers in the department concerned." Sections 5 and 6 were as follows:-

"5- Re-Screening.(1) Notwithstanding any-thing contained in section 7 or any other provision of the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Ordinance, 1978 (Ordinance No. 5 of 1978), the services of temporary lecturer, who was considered for substantive appointment by a Screening Committee but was not found suitable, shall be deemed not have terminated and he shall continue to be a temporary lecturer till he is again considered for substantive appointment under section 3 after his rescreening under sub-section (2) of this section. (2) A temporary lecturer who was considered for substantive appointment by the Screening Committee referred to in section 4, but was not found suitable shall be again considered by the Screening Committee reconstituted in the same manner as is provided in that section.

6. Appointment to be under the Act No. 18 of 1974.- The lectures appointed to the substantive posts in pursuance of the provisions of the Rajasthan Universities Teachers (Absorption of Temporary Lectures) Ordinance, 1978 (Ordinance No. 5 of 1978) or of this Act shall be deemed to have been appointed under the provisions of the Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974 (Act No. 18 of 1974)."

Section 8 provides for the termination of the services of the temporary lecturers not substantively appointed and stated that the services of a temporary lecturer who was considered for substantive appointment under sections 3, 4 and 5 but was not substantively appointed on or before the 31st day of August, 1979 would, stand terminated on the expiry of that day.

The learned single judge was of the view that the Act had application to all the temporary lecturers who were working in the various universities in Rajasthan on the relevant dates and unless they were selected by the screening committee under the said Act, their services were to be terminated by 31st August, 1978. The object of the Act, according to the learned judge, was to regularise the services of those who were found suitable after screening and to fulfil the conditions of section 3 and then terminate the services of all other temporary teachers on expiry of 31st August, 1978.

The main controversy raised before the learned single judge of the High Court related to the fixation of the two dates namely 25th June, 1975 and secondly the date of the commencement of the Ordinance namely 12th June. 1978. But what was pressed was about the validity of the date fixed as 25th June, 1975 as the date on or before which the teacher should have been functioning as a teacher in a particular University. Was this date arbitrary ?

It is stated by the learned judge that the court enquired from the Advocate-General who appeared on behalf of the State and from the learned counsel of the Rajasthan University as to what had prompted the fixing of the date as 25th June, 1975.

It may be mentioned as it is well-known that 25th June, 1975 was the date on which last emergency was introduced in the country. The learned Advocate-General had submitted before the learned single judge that it was at the instance of the Rajasthan University and the Vice Chancellor that The date was so selected. The standing counsel, the learned judge recorded, took the stand that so far as the University was concerned, it had never suggested the above date and he had got no reason to justify the fixing of that date. The learned judge summoned the secretariat file. It was revealed that the date was fixed precisely on account of the suggestion of the Vice-Chancellor of the Rajasthan University. The learned judge extracted from a portion of a letter dated 30th January, 1978 from the file of the University which reads as follows:-

> "It is proposed that all the temporary lecturers appointed on or before 25.6. 1975 be screened by a Screening Committee appointed by the University concerned and on the recommendation of screening committee they be absorbed subject of course to the availability of the vacancies in the department and the candidate fulfilling the prescribed qualifications. 25th day of June, 1975 has been suggested as crucial date taking into account the fact that we could take care of all appointments made before

the national emergency which was clamped with effect from 25.6.1975."

The two drafts of the Ordinance which were sent with the letter also contained the alteration in the date which had been changed from 1st day of September, 1973 to 25th June, 1975. This was also noted by the learned single judge. It was submitted before the learned single judge that certain representations were made by the University teachers and their associations to change the date from 1973 to 1975 and to substantiate that allegation, the above file was placed before the Court. However, the recommendations contained in the file, according to the learned Single judge, nowhere contained 25th June, 1975 as the date of the Ordinance. In their representations there was a demand that the earlier Government decision to fix the date of eligibility as 1st of September, 1973 should be altered to a date so as to cover cases of all other lecturers who had been appointed later on also. It is evident, therefore, in view OF the history of appointment of temporary lecturers, that the intention was to regularise the appointments taking into consideration certain tenure of experience or office into consideration, It was initially suggested that 1973 should be taken as the date to begin with i.e. who should be on the roll of lecturers on that date in 1973 but due to representations on behalf of the associations of teachers so as to include subsequent appointees, it was changed. Why this particular date was chosen, there is no specific answer but there is a letter from the Vice-Chancellor which indicated that such date should be taken, because 25th June, 1975 was the date of emergency, that date should be taken as he said ' we should take care of all appointments before the national emergency". In order to appreciate the problem of regularisation, the learned single judge noted that the University of Rajasthan had been adopting a practice of appointing temporary lecturers for a fixed period and after a gap to reappoint. It had created a controversy and several teachers were found ineligible on account of this break in service and this had led to the earlier writ petition which we have mentioned hereinbefore.

The earlier writ petition (Tiwari's) had interpreted clause (3) now section 3 of the Act to mean that continuity of service between 25.6.1975 to 12.6.1978 was not necessary and all that was required was that one must be in service on or before 25.6.1975 and then again on 12 6.1978 This is a point on which we would have to express our opinion as to whether the learned single judge was correct in his interpretation.

On the basis of the interpretation of section 3 of the Act as made by Tiwari's case (supra) by which the learned single judge felt himself bound and with which the learned single judge agreed, he accordingly made the rule absolute The learned single judge was of the opinion that a clear differentiation had been made between pre-emergency and post-emergency appointees of teachers and there was no basis or nexus for such differentiation with the object of the Act and such differentiation amounted to discrimination and violated Articles 14 and 16 of the Constitution. The learned single <: judge also struck down the consequential part of section 6 and 7 of the Act as mentioned hereinbefore.

The universities of Rajasthan preferred appeals against the judgment and order of the learned single judge. The State Government did not. The Division Bench was unable to accept the interpretation of section 3 of the Act as made by the learned single judge and was of the opinion that what was required was continuous employment from prior to 25th June, 1975 to 12th June, 1978 to be eligible

for screening for absorption and the Division Bench was of the view that 25th June, 1975 was chosen such as any other date and there was no differentiation between pre-emergency and post-emergency appointees for absorption as lecturers. The Division Bench therefore set aside the decision of the learned single judge.

Being aggrieved by the said decision, the original petitioners have preferred these appeals by special leave to this Court.

As mentioned hereinbefore two points require consideration by us - (i) what is the true meaning of section 3 of the Act of 1979 and (ii) whether by choice of the date of 25th June, 1975, an invidious distinction has been made between pre-emergency appointees and post- emergency appointees, which has no nexus with the purpose of the Act and as such the Act is violative of Articles 14 and 16 of the Constitution.

As mentioned hereinbefore, the learned single judge of the Rajasthan High Court in these appeals had relied heavily on the interpretation made in Y. K Tiwari's case (supra) of clause (3) of 1978 Ordinance. Before us also in these appeals this was reiterated.

It was contended that that was the only possible construction of clause (3) of 1978 Ordinance and necessarily of section 3 of 1979 Act. We shall presently deal with this contention. It was further contended that this clause (3) of 1978 Ordinance having received judicial interpretation and when the legislature enacted the 1979 Act, the legislature had before it this interpretation and when a particular form of legislative enactment had received authoritative interpretation whether by judicial decision or by a long course of practice is again adopted in framing of a later statute, it is sound rule of construction to hold that the words so adopted were intended by the legislature to bear the meaning which had been so put upon them. (See Craies on Statute Law, Seventh Edition p. 139).

This argument, however, cannot in this case be accepted. As we have noted before, the fact that there was no appeal perferred from the learned single judge's decision in Y.K Tiwari's case is of not much significance in the facts and circumstances of this case because the Ordinance which was the subject matter of interpretation by the judgment expired within two days of the delivery of the judgment and perhaps on this ground it was not thought necessary to pursue this matter. Secondly, the new Act came very soon thereafter within a period of about six months. Therefore it could not be said that there was any long practice or of any judicial interpretation of long standing, Indeed this aforesaid rule of interpretation which we have noted hereinbefore should be used in a careful manner It was observed by Lord Scarman in the case of R v. Chard (1984 A.C. p. 295) that the theory which has been noted hereinbefore was not a canon of construction of absolute obligation but only a presumption in the circumstances to be taken in judicial interpretation. This proposition, according to Lord Scarman, is well-settled.

In the aforesaid view of the matter, we are of the opinion that the interpretation of clause (3) of the Ordinance of 1978 in Tiwari's case could not in the facts and circumstances be treated to be such an authoritative pronouncement which will bind the courts in subsequent decisions in the interpretation of an Act which was passed soon thereafter, if on a proper construction of the

subsequent enactment, it appears that the expression had not been correctly interpreted. We have noted the Hindi version of clause (3) as well as the English version. The English version presents no difficulty namely those who are appointed before 25.6.1975 and "are continuing" on the date when the Ordinance came into effect i.e. 12.6.1978.

So therefore "were continuing as such .. " in the Act must mean that to be eligible for absorption these temporary lecturers should have been in continuous employment from a date prior to 25.6.1975 to the date of the commencement of the Ordinance of 1978 i.e. 12.6.1978.

The object of this legislation was to provide for absorption of temporary lecturers of long standing. So therefore experience and continuous employment were necessary ingredients. The Hindi version of the Ordinance used the expression "ke pratambh ke samaya is roop me karya kar rahe hein" is capable of meaning "and are continuing" to work as such at the time of the commencement of the Ordinance. Keeping the background of the purpose of the Act in view that would be the proper construction and if that is the proper construction which is in consonance with the English version of the Ordinance and the Act as well as with the object of the Act then in our opinion the Act and the Ordinance should be construed to mean that only those would be eligible for screening who were appointed prior to 25.6.1975 and were continuing at the time of the commencement of the Ordinance i e. 12.6.1978 i.e. approximately about three years. If that is the correct reading, then we are unable to accept the criticism that those who were for a short period appointed prior to 25.6.1975 then again with interruption were working only at the time of the commencement of the Ordinance i.e. 12.6.1978 would also be eligible. In other words people with very short experience would be eligible for absorption. That cannot be the purpose of the Act. It cannot be so read reasonably. Therefore on a proper construction it means that all temporary lecturers who were appointed as such on or before 25.6.1975 and were continuing as such at the commencement of the Ordinance shall be considered by the University for screening for absorption. The expression "were continuing is significant. This is in consonance with the object of the Act to ensure continuity of experience and service as one of the factors for regularising the appointment of the temporary lecturers. For regularising the appointment of temporary lecturers, certain continuous experience is necessary. If a legislature considers a particular period of experience to be necessary, the wisdom of such a decision is not subject to judicial review. Keeping the aforesaid reasonable meaning of clause (3) of the Ordinance and section 3 of the Act in view, we are of the opinion that the criterion fixed for screening for absorption was not an irrational criterion not having any nexus with the purpose of the Act Therefore, the criticism that a teacher who was working even for two or three months only before 25.6.1975 and then with long interruptions was in employment of the University at the time of the commencement of the Ordinance would be eligible but a teacher who had worked continuously from 26.6.1975 i.e. after the date fixed i.e. 25th June, 1975 for three years would be ineligible and as such that will be discrimination against long experience, cannot be accepted. Such a construction would be an unreasonable construction unwarranted by the language used in the provisions concerned. It is well-settled that if a particular period of experience is fixed for screening or t`or absorption, it is within the wisdom of the legislature, and what period should be sufficient for a particular job or a particular employment is not subject to judicial review. We need not refer to a large number of decisions on this point.

Another contention was urged before us that if it was held that the proper interpretation of section 3 of the Act of 1979 is that in order to be eligible for screening for absorption one should be appointed before the 25th June, 1975 and continued to be a teacher on the day of the coming into operation of the Ordinance i.e. 12.6.1978 i.e. continuously for a period of about three years then the Act cannot apply to anyone. It was submitted that in Rajasthan universities there was the practice to keep temporary teachers with breaks and nobody could continuously hold the post for a continuous period of three years indeed not more than six months. It was urged that the practice prevalent in the universities was to break the service of the temporary lecturers and not to allow them continuously to work. The proper interpretation would be that these breaks i.e. a break for a month or so during vacation should be considered as 'functional gaps' and temporary teachers who had functional gaps but were in fact in continuous service should be treated for all practical purposes to be in continuous service. It was submitted on behalf of the universities as well as the State Government before us that the universities as well as the State Government had always taken the stand that continuous service was covered by the Act and continuous service included those temporary teachers who had 'functional gaps' but were in fact in continuous service. Looked at from that point of view there was no question of the Act not being of any use. It was further submitted that none of the respondents who had been absorbed had that qualification If that is so, the appointments may be bad and these facts may be looked into if appropriate applications are made by the appellants and others. Improper application of law in certain cases does not make the law b ad per se. Useless law similarly is not always arbitrary law.

Next comes the question whether the choice of 25th June, 1975 as the date prior to which temporary teachers must have been in employment to be eligible for screening is bad as such. If 25th June, 1975 was taken in order to differentiate between pre-emergency and post-emergency appointees for consideration for absorption then there cannot be any doubt that such a differentiation would amount to an arbitrary discrimination. Because the fact whether one was a pre-emergency appointee and another a post-emergency appointee was wholly irrelevant to the object of the Act and the Ordinance i.e. absorption of temporary lecturers of long standing working in the university. Therefore to the question of absorption of temporary lecturers of long standing, imposition of emergency in the country and appointment prior or subsequent thereto is wholly irrelevant and has no nexus. Differentiation on a ground which is irrelevant amounts to discrimination. This is well-settled by numerous decisions of this Court. It is not necessary to refer to these decisions. It is sufficient if we mention the decision of this Court In Re The Special Courts Bill. 1978(1) where at page 534 the learned Chief Justice inter alia laid down the following principles to judge validity under Article 14 of the Constitution:-

> 1. The first part of article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on (1) [1919] 2 S.C. R. 476.

different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

3. The Constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. There fore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.

5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial or equal protection on the ground that it has no application to other persons. Classification thus means segregation classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are let out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and. (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

In support of the contention that 25th June, 1975 was chosen because of the emergency. reliance was placed on certain communications from the Vice-Chancellor which have been noticed by the

learned single judge. The learned single judge came to the conclusion that was the basis i.e to differentiate between pre and post emergency appointees. The Division Bench did not accept this view. We are in agreement with the views of the Division Bench.

It appears to us that the primary object of the Ordinance as well as of the Act was to provide for the absorption and regularisation of temporary lecturers of long standing in the universities in Rajasthan. What was intended was that the temporary teachers of long standing should be screened and 25th June, 1975 was taken r because it was as convenient a date as any other. While interpreting the provisions of any Act, what is necessity is the intention of the, legislature and that has to be found out from the language used, it is not the view of the Vice-Chancellor or of an officer or authority who might or might not have put a note to the Bill. Was there anything to spell out the intention of the legislature in fixing a particular date? It Is well-settled that speeches of the Members of the House could at best be indicative of the subjective intention or the speaker but would not reflect the inarticulate mental processes lying behind the majority of those who voted which carried the bill to become an Act. The objective must be seen. The objective was to fix some tenure to make temporary teachers eligible for screening for absorption. In this connection reference may be made to the observations of this Court in Gopalan v. State of Madras. (1) The same view was also reiterated in the case of (2) State of Travancore Cochin v. Bombay Company Limited and State of West Bengal v. Union of India.(3) It appears to us that according to the statement of objects and reasons of the Ordinance and bearing in mind the preamble of the Act, the main object was to make a specific provision for the selection of teachers and officers in the universities which had not been done for a long time. Temporary appointments against vacant posts had been made by the universities and such posts had been continuing in some cases for ten years. The preamble to the Act of 1979 is a key to unfold the intention of the legislature to make this law. It lays down that the Act was to provide for the absorption of temporary lecturers of long standing working in the universities of Rajasthan. The objects and reasons of the Ordinance of 1978 read as follows:-

> "An Ordinance to provide for the absorption of temporary lecturers of long standing working in the Universities in Rajasthan.

In the Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974 (Rajasthan Act No. 18 of 1974) specific provisions have been made for the selection of teachers and officers in the Universities. But for one reason or the other, regular selection committees in the Universities should not meet to hold regular selections before and after the commencement of the Act. Therefore, temporary appointments against such vacant posts were made by the Universities. Such appointments have been continuing in some cases for the last ten years with a view to solve this long standing problem, (1) [1950] S.C.R. 88.

(2) [1952] S.C.R. 1112.

(3) [1964] 1 S.C.R. 371.

it was considered necessary to regularise the appointments through specially constituted Screening Committees-

Since, the academic session was about to commence and since the Rajasthan Legislative Assembly was not in session and the Governor was satisfied that circumstances existed which rendered it necessary for him to take immediate action, he made and promulgated the Rajasthan University Teachers (Absorption of Temporary Lecturers) Ordinance, 1978 on 8th day of June, 1978."

If the intention of the legislature in fixing 25th June, 1975 in the impugned section of the Act was to make differentiation on the basis of pre-emergency and post- emergency temporary lecturers then there was no difficulty in agreeing with the view taken by the learned single judge of the Rajasthan High Court and accepting the submissions advanced on behalf of the appellants before us. However, as noted before, the division Bench of the High Court could not spell out such an intention from any of the provisions of the Ordinance as well as the Act. We respectfully agree. The Court can only search for the objective intent of the legislature primarily in the words used in the enactment aided by such historical material as reports of the statutory committees, preamble etc. It was laid down in the case of Stale of West Bengal v. Union of India (supra) that a statute, as passed by the Parliament, is the expression of the collective intention of the legislature as a whole. It may be borne in mind that in this case there was no particular point of view in mind of the University. We have noted the objects and reasons of the Ordinance.

The problem, for the solution of which this Ordinance was passed and this Act was enacted, was to regularise the appointments through specially constituted Screening Committees for temporary teachers of long standing. There is a further fact which is important that initially it was proposed to cover the cases of temporary lecturers appointed on or before June, 1973 but representation was made by the temporary lecturers that would deprive many subsequent appointees and therefore the benefit was extended to those temporary teachers who were appointed on or before 25-6- 1975. It appears that the intention was that those who had continued from a date prior to 1975 upto June 1978 should get the benefit. Such benefit had to be fixed giving a particular period and from, the mere fact that 25th June, 1975 was fixed which also happens to be the date on which emergency was clamped on the country, it cannot be said that emergency was the nexus.A certain tenure of service for the purpose of absorption was the object to be achieved and this has a rational nexus with the object. The prescription of the date from which the period should begin and the date on which it should end were merely incidental to the purpose. Any date perhaps could have served the purpose which took into consideration long tenure. What was intended by the use of the expression 'appointed on or before 25-6-1975' and must have continued until 12-6-1978 being the date of coming into force of the Ordinance indicated that there should have been near about three years experience for being eligible for absorption. The date was a handy date. Handy in the sense it came quickly in the minds of some people. At least there is no evidence that there was any attempt to separate pre- emergency appointees and no decision was taken by any appropriate authority and no such evidence is there to make a distinction between pre-emergency and post-emergency appointees. Being in the employment at the time of coming into operation of the Ordinance was the pre-condition that is 12th June, 1978. Naturally, some day anterior to that date had to be indicated to ensure long tenure of experience and 25th June, 1975 was chosen because it was as good a date as any other.

It may be borne in mind that wisdom or lack of wisdom in the action of the Government or legislature is not justiciable by court. See in this connection the observations of the U.S. Supreme Court in the case of Metropolis Theater Company v. City of Chicago and Ernest J. Magerstadt.1 To find fault with a law is not to demonstrate its invalidity. There the learned judge Mr. Justice Mckenna observed as follows:-

> "It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough recommendations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government (1) 57 Lawyers' Edition 730.
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> are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void...." This passage has been quoted with approval by Chief Justice Chandrachud in Prag Ice & Oil Mills & Anr. Etc. Vs. Union of India.

We must bear in mind that mere errors of Government are not subject to judicial review. What is best is not always discernible. It may be that 25th June, 1975 has some odour to some people. It may be that it revised many attitudes but this is wholly irrelevant. Any other date might have been chosen.A particular period was taken to make a person eligible for being screened for absorption and regularisation and if the beginnings date happens to coincide with particular date about which some people have some memories, the law would not become bad. It seems that would be taking too sensitive a view of human expressions.

Great deal of reliance was placed on a five judges' Bench decision of this Court in the case of D.S. Nakara and Others v. Union of India.(1) There it was found that the Central Government servants on retirement from service were entitled to receive pension under the Central Civil Services (Pension Rules, 1972. Under the earlier pension scheme the pension was related to the average emoluments during 36 months just preceding retirement. On 25th May, 1979, the Government of India, Ministry of Finance issued Office Memorandum whereby the formula for computation of pension was liberalised but made it applicable to government servants who were in service on or after that specified date. By another Memorandum of the Ministry of Defence dated 28th September, 1979, the liberalised pension formula introduced for the government servants governed by the 1972 Rules was extended to the Armed Forces personnel subject to limitations set out in the memorandum with a condition that the new rules of pension would be effective from 1st April, 1979 and might be applicable to all service officers who become/became non-effective or on after that date. The liberalised scheme introduced a slab system for computation of pension, raised pension ceiling and provided for average emoluments with reference to last ten months' service. Consequently, the pensioners who retired prior to the specified date had to earn pension on the average emolu- (1) [1978] 3 S.C.R. 293 at 333.

(2) [1983] 1 S C.C. 305=[1983] 2 S.C.R. 165.

ments of 36 months' salary just preceding the date of retirement. Thus they suffered triple jeopardy viz. lower average emoluments absence of slab system and lower ceiling, and being so aggrieved they filed the writ petitions in this Court contending that the memoranda were in violation of Article 14. Petitioners I and 2 were retired pensioners of the Central Government who had retired prior to the specified date and petitioner 3 was a society registered under the Societies Registration Act, 186(), formed to ventilate the legitimate public problems and consistent with its objective it was espousing the cause of the petitioners all over the country.

This Court held that pension was neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It was a payment for the past service rendered. The most practical raison d'etre for pension is the enability to provide for one self due to old age It created a vested right and was governed by the statutory rules such as the Central Civil Services (Pension) Rules which were enacted in exercise of power conferred by Articles 309 and 148(5) of the Constitution.

The expression 'pensioner' was generally understood in contradistinction to the one in service. In that case Article 14 was wholly violated inasmuch as the pension rules being statutory in character, the amended rules, since the specified date, accord differential and discriminatory treatment to equals in the matter of commutation of pension. Pensioners being all. equal, no date could be chosen to separate one group getting more benefit than other. If a particular benefit is to be given to all then making a classification between them is discriminatory. Pension was the right of all retired persons.A particular date was chosen by the Government and that date had no nexus with the purpose of the Act i.e. give relief to them.

There are some cases where choice of date has not been questioned. For instance Union of India & Anr. v. M/s. Parameswaran Match Works Ltd, (1) wherein by notification dated 21st July, 1967, benefit to a concessional rate of duty was made available if a manufacturers of matches made a declaration that the total clearance of matches from a factory would not exceed 75 million during a financial year. There the date chosen was 21st July, 1967. It was contended before this Court by the Union of India that the (1) [1975] 2 S.C.R. 573, concessional rate of duty was intended for small bona fide units who were in the field when the notification dated 4th September, 1967 was issued. The concessional rate of duty was not intended to benefit the large units which had split up into smaller units to earn the concession. There this Court observed at a page 579 as follows:-

> "The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark."

But as we have mentioned hereinbefore; Nakara's case (supra) dealt with the problem of benefit to all pensioners. The choice of the date of 1st April, 1979 had no nexus with the purpose and object of the Act. The facts in the instant case are, however, different. For the regularisation of teachers,

experience was the object to be found out. Certain period of experience was necessary for the basis for making the regularisation. The period of experience would be how much and the date of experience should begin from what time are within the legislative wisdom and there is nothing in this case to indicate that the starting point i.e., to be in service on or before 25.6.1975 was an arbitrary choice.

Reliance in this connection may also be placed on the case of State of Mysore & Anr. v. S.V. Narayanappa.(1) For the purpose Of the instant case it is not necessary to set out in detail all the facts of that case. The facts of that decision have a ring of familiarity with the facts of the present case. There also choosing a particular date did not make the Act bad for the purpose of regularisation of the appointments in the Mysore Government.

Various submissions and some other decisions were placed before us in aid of rival submissions. In the view we have taken as indicated hereinbefore, it is not necessary to refer to these.

(1) [1967] 1 S.C.R. 128.

For the reasons aforesaid, we are of the opinion that the learned judges of the Division Bench of the Rajasthan High Court were right. The appeals therefore fail and are dismissed. There will be no order as to costs in the facts and circumstances of the case.

We are told that except two, all other appellants have already been absorbed. It has also to be borne in mind that in considering whether lecturers are eligible or not those who are functioning since prior to 25.6.1975 until 12.6.1978, functional gaps as we have indicated hereinbefore should be ignored and if possible some arrangements be made where after appropriate screening or selection as the case may be, those who have been functioning as temporary teachers for long period might be absorbed including the appellants, subject to the rules of the University.

N.V.K. Appeals dismissed