

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF OCTOBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION NO.50039/2015 (L -- RES)

R

BETWEEN

1. SRI GURURAJ R.,
S/O A.K.RAICHUR,
AGED ABOUT 39 YEARS,
STAFF NO.213272 NO.122,
BEL COLONY, JALAHALLI POST,
BENGALURU – 560 013.
2. SRI JAYASHANKAR B.MOGER
S/O BALINDRA G. MOGER,
AGED ABOUT 37 YEARS,
STAFF NO.213306 NA- 330,
BEL COLONY, JALAHALLI POST,
BENGALURU – 560 013.
3. SRI RAJESHA S M
S/O MALLIKARJUNAPPA
AGED ABOUT 32 YEARS
STAFF NO. 213228
NA - 293 BEL COLONY,
JALAHALLI POST,
BENGALURU – 560 013.
4. SRI RAMESH KUMAR P
S/O M.PRAKASH,
AGED ABOUT 36 YEARS,
STAFF NO. 213240,
NEAR GAYATHRI TEMPLE,

KUPPUSWAMY MUDALIAR L O.,
BANGARPET – 563 114.

5. SRI RAJESH KUMAR R
S/O RAMACHANDRAN R
AGED ABOUT 29 YEARS
STAFF NO. 213239
98 NEAR GANGAMMA TEMPLE,
JALAHALLI POST,
BENGALURU – 560 013.
6. SRI SATHISH KUMAR S
S/O SHANMUGAM C
AGED ABOUT 32 YEARS
STAFF NO. 213253 # NA 358,
BEL COLONY, JALAHALLI POST,
BENGALURU – 560 013.
7. SRI ANIL KUMAR H P
S/O PRAKASH H R
AGED ABOUT 32 YEARS
STAFF NO. 213262 # B -141,
BEL COLONY,
JALAHALLI POST,
BENGALURU – 560 013.
8. SRI RAGHU B
S/O BEERAPPA
AGED ABOUT 32 YEARS
STAFF NO. 213254 # 3 , 1ST CROSS,
ANUBHAVA NAGAR,
NAGARABHAVI MAIN ROAD,
BENGALURU – 560 072.
9. SRI SURESH KUMAR G
S/O GANAPATHY S
AGED ABOUT 32 YEARS
STAFF NO. 213231 # 9,
UMA NILAYAM 12TH 'D' CROSS,

II MAIN AMARAVATHI NAGAR,
BANGARPET – 563 114.

10. SRI MANJUNATHA K
S/O KALYANA GOWDA
AGED ABOUT 31 YEARS
STAFF NO. 213259
NO. 156 SANNAKKI BAYALU VRUSHABAVATHI
NAGAR KAMAKSHIPALYA BENGALURU – 560079
11. SRI NAGESHA S S
S/O SUBBANNA S R
AGED ABOUT 30 YEARS,
STAFF NO. 213256 # NA – 206,
BEL COLONY, JALAHALLI POST,
BENGALURU – 560 013.
12. SRI CHIDAMBARA R
S/O RAMAKRISHNAIAH PATEL
AGED ABOUT 34 YEARS
STAFF NO. 213273 # B 04 BEL COLONY
JALAHALLI POST BENGALURU – 560 013.
13. SRI RAGHAVENDRA S VERNEKAR
S/O SHRIKANTH VARNEKAR
AGED ABOUT 34 YEARS
STAFF NO. 213304
NA-165 BEL COLONY,
JALAHALLI POST,
BENGALURU – 560 013.
14. ROHINI R P
D/O PUTTARAJU,
AGED ABOUT 29 YEARS,
STAFF NO. 213227
M 21 3RD FLOOR, 3RD MAIN ROAD,
8TH CROSS, L N PURAM,
BENGALURU – 560 021.

15. SRI RAGHAVENDRA H M
S/O MAHARUDRAPPA H
AGED ABOUT 36 YEARS
STAFF NO. 213248 # NA 258 BEL COLONY
JALAHALLI POST BENGALURU – 560 013.
16. MAMATHA V
D/O VENKATAPPA Y C
AGED ABOUT 31 YEARS
STAFF NO. 213232 # NA -291,
BEL COLONY, JALAHALLI POST,
BENGALURU – 560 013.
17. VIMALA Y
W/O VIJAY KUMAR H M
AGED ABOUT 30 YEARS
STAFF NO. 213279 # 26 9TH A CROSS
BASAVESHWARNAGAR NEAR GARDEN VILLAS
NAGARABHAVI ROAD BENGALURU – 560 072.
18. CHETHANA S R
S/O RAMACHANDRA SETTY
AGED ABOUT 29 YEARS
STAFF NO. 213276 # B - 19 BEL COLONY JALAHALLI
POST BENGALURU – 560 013.
19. SRI YALLALINGA
S/O AMBARAYA
AGED ABOUT 31 YEARS
STAFF NO. 213242 # B-10 BEL COLONY JALAHALLI
POST BENGALURU – 560 013.
20. SRI SELVA KUMAR M
S/O MANI P T AGED ABOUT 32 YEARS
STAFF NO. 213257 # B -07 BEL COLONY
JALAHALLI POST BENGALURU – 560 013.

21. POORNIMA B.R.,
D/O RAMACHAR B P
AGED ABOUT 28 YEARS
STAFF NO. 213265 # B -114,
BEL COLONY, JALAHALLI POST,
BENGALURU – 560 013.
22. SWETHA B N
W/O NAGENDRA SWAMY B N
AGED ABOUT 30 YEARS
STAFF NO. 213247
150 BASAVESWARA NILAYA
11TH CROSS 3RD MAIN,
BAPUJI NAGAR, MYSURU ROAD,
BENGALURU – 560 026.
23. SRI CHANDRASEKHARA REDDY G
S/O VENKATARAMANA REDDY
AGED ABOUT 33 YEARS
STAFF NO. 213263
NA 204 BEL COLONY JALAHALLI POST
BENGALURU – 560 013.
24. SRI ALI HUSSAIN
S/O BABU MIYA
AGED ABOUT 30 YEARS
STAFF NO. 213251
B - 138 BEL COLONY,
JALAHALLI POST,
BENGALURU – 560 013.
25. MAHESHWARI D
W/O SHRIKANTH S
AGED ABOUT 28 YEARS
STAFF NO. 213244
8/D 1ST MAIN ROAD
BRINDAVAN NAGAR
BENGALURU – 560 013.

26. DEEPA D
D/O DHANASINGH
AGED ABOUT 30 YEARS
STAFF NO. 213235
1632 ESWARI NILAYAM BEML LAYOUT,
R R NAGAR, BENGALURU – 560 098.
27. SRI GIRISH KUMAR K A
S/O KRISHNAMURTHY A K
AGED ABOUT 31 YEARS
STAFF NO. 213237 # 237 GURUDUTTA LAYOUT
HOSAKEREHALLI, BENGALURU – 560 085.
28. SRI APPAJI C
S/O CHANNAIAH
AGED ABOUT 32 YEARS
STAFF NO. 213275 # B -120 BEL COLONY,
JALAHALLI POST, BENGALURU – 560 013.
29. SRI MANU Y N
S/O NARAYANA S N
AGED ABOUT 28 YEARS
STAFF NO. 213252
VASUNDARA NO. 64 LAST A CR RD
BYATARAYANAPURA NEW EXTN GEF POST
BENGALURU – 560 026.
30. SRI KRISHNA L
S/O LAKSHMAPPA
AGED ABOUT 31 YEARS
STAFF NO. 213307 NO. 70/B BRINDAVAN NAGAR
THAVAREKERE DRL P
BENGALURU - 560029
31. SRI VIJAYA KUMARA V
S/O VAIRAMUDI AGED ABOUT 29 YEARS
STAFF NO. 213280 # NA - 538 BEL COLONY
JALAHALLI POST,
BENGALURU – 560 013.

32. PADMAVATHI K
W/O M V SREENIVASA MURTY
AGED ABOUT 38 YEARS
STAFF NO. 213249
B- 31 BEL COLONY JALAHALLI POST,
BENGALURU - 560 013.
33. SRI GANGADHAR BADDI
S/O SIDDAPPA G BADDI
AGED ABOUT 29 YEARS
STAFF NO. 213268 # B-59 BEL COLONY
JALAHALLI POST,
BENGALURU - 560 013.
34. SRI KULDEEP SINGH RANA P
S/O PREM SINGH RANA
AGED ABOUT 29 YEARS
STAFF NO. 213277 NO. 7 SRI RAMA REDDY BLDG
BHAVANI ROAD HEBBAGODI,
BENGALURU - 560 099.
35. SUDHA R
W/O ELUMALAI
AGED ABOUT 29 YEARS
STAFF NO. 213236
NA 542 BEL COLONY
BEL NAGALAND CIRCLE,
JALAHALLI POST,
BENGALURU - 560 013.
36. SRI ARUN KUMAR N
S/O K NAGARAJU
AGED ABOUT 33 YEARS
STAFF NO. 213278 NO. 3,
9TH MAIN CHENNIGAPPA,
L/O KAMAKSHIPALYA,
BENGALURU - 560 079.

37. SRI CHANDYA NAYAK L
S/O SAKRA NAIK AGED ABOUT 34 YEARS
STAFF NO. 213274 # NA 455 BEL COLONY
JALAHALLI POST,
BENGALURU - 560 013.
38. SRI MAHESH N S
S/O SUDHAKAR
AGED ABOUT 27 YEARS
STAFF NO. 213271 # 38 OM SHIVASHAKTHI NAGAR
1ST CROSS KONANAKUNTE POST
BENGALURU - 560 062.
39. SRI SANTHOSH KUMAR S S
S/O SHIVANNA
AGED ABOUT 28 YEARS
STAFF NO. 213264 # B - 36,
BEL COLONY, JALAHALLI POST,
BENGALURU - 560 013.
40. SRI SRINIVASA T N
S/O T G NAGARAJA RAO
AGED ABOUT 30 YEARS
STAFF NO. 213234 # NA -110 BEL COLONY
JALAHALLI POST BENGALURU - 560 013.
41. GODAVARI BAI
D/O JAIRAJ BAI
AGED ABOUT 29 YEARS
STAFF NO. 213245
NA - 785 BEL COLONY JALAHALLI POST
BENGALURU - 560 013.
42. SRI MANJUNATHA K
S/O KRISHNAPPA R AGED ABOUT 36 YEARS
STAFF NO. 213270 # 32/2 2ND CROSS BEHIND
VINAYAKA TEMPLE MADIWALA,
BENGALURU - 560 068.

43. SRI UMESH B G
S/O LATE T GOVINDA NAYAKA
AGED ABOUT 35 YEARS
STAFF NO. 213243
7, 2ND MAIN, 3RD CROSS,
BHOVI COLONY, RMV 2ND STAGE,
NAGASHETTY HALLI,
BENGALURU – 560 094.
44. SRI SHESHADRI N
S/O P N NARAYANAPPA
AGED ABOUT 36 YEARS
STAFF NO. 213255
NA 818 BEL COLONY,
JALAHALLI POST,
BENGALURU – 560 013.
45. SRI SRIKRISHNA M A
S/O ADIVAI AH
AGED ABOUT 41 YEARS
STAFF NO. 213305 NO. 159/2,
4TH BLOCK BYRAPPA GARDEN,
R C PURAM, BENGALURU – 560 013.
46. SRI UMAKANTHA B
S/O RAMANNAY NAYAK
AGED ABOUT 31 YEARS
STAFF NO. 213233
B- 61 BEL COLONY, JALAHALLI POST,
BENGALURU – 560 013.
47. SRI MOHAMMAD IMRAN
S/O ABDUL MUZEEB
AGED ABOUT 29 YEARS
STAFF NO. 213258
#NA 32 BEL COLONY
JALAHALLI POST,
BENGALURU – 560 013.

48. SRI KENCHAPPA T @ VINAYAKA
S/O THIRUKAPPA T AGED ABOUT 34 YEARS
STAFF NO. 213261 # NA 489 BEL COLONY
JALAHALLI POST,
BENGALURU - 560 013.
49. SRI SRINIVASA M
S/O MUNISWAMY M
AGED ABOUT 29 YEARS
STAFF NO. 213308
NA - 331 BEL COLONY JALAHALLI POST
BENGALURU - 560 013.
50. SMT. THARA V
W/O SRIKANTAPRASAD G
AGED ABOUT 27 YEARS
STAFF NO. 213230
#6/2 6TH CROSS, SIRSI ROAD,
CHAMARAJPETE, BENGALURU - 18.
51. SRI. CHIDANANDA M.C
S/O. CHANDRAIAH N
AGED ABOUT 33 YEARS,
STAFF NO.. 213309,
#B-09, BEL COLONY,
JALAHALLI POST,
BENGALURU - 560 013.
52. SRI. RANGASWAMY K
S/O. KARIYAPPA,
AGED ABOUT 29 YEARS,
STAFF NO.. 213260,
#NA-103, BEL COLONY,
JALAHALLI POST,
BENGALURU - 560 013.

... PETITIONERS

(BY SRI M.VEERABHADRAIAH, ADVOCATE
(PHYSICAL HEARING))

AND

1. THE UNION OF INDIA
REPRESENTED BY ITS
PRINCIPAL SECRETARY,
MINISTRY OF HEAVY INDUSTRIES AND PUBLIC
ENTERPRISES,
DEPARTMENT OF PUBLIC ENTERPRISES,
BLOCK NO.14, CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110 003.
2. THE PRINCIPAL SECRETARY
GOVT. OF INDIA,
MINISTRY OF LABOUR AND EMPLOYMENT,
SHRAM SHAKTI BHAWAN,
RAFI MARG,
NEW DELHI - 110 001.
3. THE ASST. LABOUR COMMISSIONER (CENTRAL)
OFFICE OF THE DY. CHIEF LABOUR COMMISSIONER
(CENTRAL),
GOVT. OF INDIA, MINISTRY OF LABOUR AND
EMPLOYMENT,
YESHWANTHPUR, INDUSTRIAL SUB URB,
2ND STAGE, GORAGUNTEPALYA,
TUMAKURU ROAD,
BENGALURU - 560 022.
4. BHARATH ELECTRONICS LTD
(A GOVT. OF INDIA ENTERPRISES, MINISTRY OF
DEFENCE),
JALAHALLI POST,
BENGALURU-560 013,
REPRESENTED BY ITS MANAGING DIRECTOR.
5. THE MANAGER
(PERSONNEL/CENTRAL),
BHARATH ELECTRONICS LTD.,

(A GOVT. OF INDIA ENTERPRISES, MINISTRY OF
DEFENCE)
JALAHALLI POST,
BENGALURU – 560 013.

... RESPONDENTS

(BY SRI B.S.VENKATNARAYANA, CGC FOR R1 AND R2;
SRI R.SRINIVASA GOWDA, AGA FOR R3;
SRI PRADEEP S. SAWKAR AND SRI KASHIF, ADVOCATE
FOR SRI SUNDARSWAMY AND RAMDAS, ADVOCATE FOR
R4 AND R5 (VIDEO CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING
TO DIRECT THE R-4 & R-5 TO PAY WAGES, AND OTHER
FINANCIAL BENEFITS INCLUDING ADDITIONAL
INCREMENT, FITMENT BENEFIT AND SPECIAL PAY,
GROUP-IV TO GROUP-VII [NOW WAGE GROUP-VIII]
MAINTAINING THE BASIC PAY AS PER THE NOTIFICATION
DTD.5.10.05 FROM THE DATE APPOINTMENT LETTER i.e.,
3.4.2006 TO ALL PETITIONER WITHOUT ANY
DISCRIMINATION ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY
HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

The petitioners in this writ petition have sought
for omnibus reliefs, which read as follows:

*"a) Issue writ in the nature of
mandamus directing the 4th and 5th
respondent to pay wages, and other
financial benefits including additional*

increment, fitment benefit including additional increment, fitment benefit and special pay, Group – IV to Group – VII (NO. wage Group – VIII) maintaining the basic pay as per the Notification Dt.05/10/05 from the date appointment letter i.e., 03/04/2006 to all petitioner without any discrimination.

b) Issue writ in the nature of mandamus directing the 1st respondent to issue proper direction to the 4th and 5th respondent to implement the revised pay scale without affecting the right of the individual work man, maintaining the equity, and without reducing the basic salary and other financial benefit.

c) Declare that, for all practical purpose petitioner's date of appointment is 03/04/2006, i.e., from the date of reporting the duty for the permanent post of Engineering Assistant. Further declare that, the training period of one year shall be treated as on duty for the purpose of

scale of pay, increments and other consequential benefits. Consequently declare that, 4th and 5th respondent action as far as in implementing the revised pay scale affected the individual petitioner rights and interest, and same is contrary to the judgment of the Hon'ble Supreme Court in Civil Appeal NO.2018/2000, DD Dt.30/01/2002 in case of State of Kerala & Others vs. N.V.George.

*d) Issue writ of certiorari and quash the impugned order Dt.07/12/2012 & 28/02/2013 passed by the 3rd respondent as per **ANNEXURES – R & S to S – 51** respectively.*

2. Brief facts of the case leading to filing of the present writ petition are that, fourth and fifth respondents – Bharat Electronics Limited (hereinafter referred to as 'BEL' for short) issued a notification on 05.10.2005, calling for applications from eligible candidates to fill up two posts, one is Engineering

Assistant and the other Technical – C, with different qualifications and different pay scales.

3. The petitioners herein finding themselves eligible to be appointed to the posts of Engineering Assistant, applied and were selected and appointed on 13.03.2006, as Engineering Assistant Trainee and were placed on training for a period of one year which could be altered or reduced after completion of two months of training on an interim assessment.

4. The fifth respondent herein on gradation Orders dated 09.04.2007 and 09.05.2007 graded the petitioners as Engineering Assistant (Electronics / Mechanical) in a Wage Group - VII on a pay scale of Rs.4620-135-5970-140-8350/- along with admissible allowances from time to time at Career Path – VI.

5. The first respondent – Union of India in terms of Official Memorandum dated 26.11.2008, directed to

all PSUs to implement pay revision in terms of report submitted by Justice M. Jagannadha Rao, with effect from 01.01.2007 in terms of the aforesaid Official Memorandum, wage revision in the 4th and 5th respondents was made effective from 01.01.1997 for a period of 10 years. The Pay Revision Committee had recommended the revision of pay and allowances for all the categories of employees. The revision insofar as the petitioners were concerned, i.e., career path – VI was at Rs.2,460/- which was revised from 01.01.1997 to Rs.4,620/- which was the pay scale granted to the petitioners. The BEL issued an Office Order on 06.07.2007, notifying that additional increments to the non-executives who were on regular rolls of the Company as on 01.01.2007 and continued to be on the rolls of the Company on the date of the issuance of the Office Order, will be granted additional increments.

6. By another Office Order dated 21.05.2010, the BEL notified revision of pay scales to the non-executive employees of the Company with effect from 01.01.2007, in wage group - VII in which the petitioners were put in the pay scale of Rs.10,050-3%(increment)-25,450/- plus admissible allowances from 06.04.2007. Pursuant to the implementation of the revision of pay scales, the petitioners herein were given wage revision with effect from 01.01.2007, by grant of the additional increments.

7. In the year 2010, wage settlement was arrived at between the Management and the Employees Union. After which, the pay of the petitioners came down from Rs.15,536/- to Rs.14,841/-, resulting in employees with lesser qualification getting higher pay scale. This was ostensibly on the ground that the petitioners were not

on the rolls of the Company on 31.12.2006 but their services were confirmed with effect from 03.10.2007 and 05.10.2007.

8. The petitioners caused a legal notice upon the respondents - BEL which came to be replied by rejecting the claim of the petitioners. The petitioners raised an industrial dispute before the Conciliation Officer contending that they were paid less than their entitlement and people with lower qualification i.e., ITI are paid higher than the petitioners who have completed full time three years diploma. The 3rd respondent refused to conciliate on the ground that an individual dispute can be raised only on three circumstances, namely, retrenchment, dismissal and termination as the dispute brought for conciliation did not concern any of the three, holding thus, rejected the conciliation application giving liberty to the applicants/petitioners to raise an industrial dispute

through an existing Union of which the petitioners were members.

9. It is after the rejection by the 3rd respondent, the petitioners have filed the present writ petition seeking a direction to the 4th and 5th respondents – BEL to determine all the service benefits in terms of the notification dated 05.10.2005 from the date of their appointment i.e., 03.04.2006 without any discrimination.

10. Heard Sri M. Veerabhadraiah, learned counsel for the petitioners, Sri B.S.Venkatnarayana, learned Central Government Counsel for respondent Nos.1 and 2, Sri R. Srinivasa Gowda, learned Additional Government Advocate for respondent No.3 and Sri Pradeep S. Sawkar and Sri Kashif, learned counsel for Sri Sundaraswamy and Sri Ramdas,

learned counsel for respondent Nos.4 and 5 and perused the materials on record.

11. Learned counsel for the petitioners would vehemently argue and contend that, though they were appointed as Engineering Assistant Trainees on completion of the training period they were issued with orders of confirmation without there being any further selection process. Therefore, they are entitled to count their service from the date on which they were appointed as trainees i.e., 03.04.2006. Excluding the said period has resulted in persons having lower qualification of ITI in comparison to the qualification of the petitioners having three years Diploma in Engineering getting lesser pay than persons having lower qualification. He would further contend that a wage revision can never result in reduction in a pay scale/salary.

12. Learned counsel would further contend that they are left with no remedy as the dispute they raised before the Conciliation Officer was rejected on the ground that their application was not maintainable and the Union is refusing to espouse the cause of the petitioners as they are meager in number.

13. On the other hand, the learned counsel appearing for the 4th and 5th respondents – BEL would at the outset contend that the writ petition is not maintainable as the petitioners are having alternative remedy by raising a dispute under Industrial Disputes Act, 1947, (hereinafter referred to as 'the said Act' for short) as they are Workman within the definition of Section 2(s) of the said Act. Without prejudice to the aforesaid contention, the learned counsel would further submit that, though the petitioners were appointed on 03.04.2006, as Engineering Assistant Trainees, they were paid only a stipend and not a regular pay scale.

All of them were confirmed on 05.04.2007 onwards. Hence, for determination of all service benefits, the service of the petitioners has to be reckoned only from 05.04.2007 and not on any date earlier to that.

14. It is further contended by the learned counsel that the petitioners cannot accept that part of the settlement which is convenient to them and challenge this part of the settlement which every other Workman has accepted, as being discriminatory.

15. I have given my anxious consideration on the submission made by the learned counsel for the parties and on analysis thereof, the following points arise for my consideration:

- i. Is the writ petition maintainable in the light of the petitioners coming under the definition of Workman under Section 2 (s) of the said Act?*

- ii. *Whether the 4th and 5th respondents were justified in taking the date of appointment of the petitioners from 05.04.2007 as against 03.04.2006, the date on which they were appointed as Engineering Assistant Trainee?*
- iii. *To what relief the petitioners would be entitled to?*

16. RE. POINT NO.i: *Is the writ petition maintainable in the light of the petitioners coming under the definition of Workman under Section 2 (s) of the said Act?*

16.1. Section 2(s) of the said Act defines the term 'Workman' and reads as follows:

"Section 2(s) - "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes

of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison, or*
- (iii) who is employed mainly in a managerial or administrative capacity, or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem*

or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Thus, the petitioners are all Workman under the 4th and 5th respondents - BEL.

The term 'Industrial Dispute' under Section 2(k) of the said Act, reads as follows:

"Section 2(k) - "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

An industrial dispute in terms of the afore-extracted statute, is a dispute between employers and

employers or between employers and workman and between workmen and workmen.

Section 2A of the said Act deals with the dismissal or otherwise of an individual workman to be deemed to be an industrial dispute, which reads as follows;

"Section 2A – Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other

workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall

apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section(1)."

In terms of the afore-extracted statute, when an employer discharges, dismisses or retrenches or otherwise, terminates the services of an individual Workman in connection with any dispute between the Workman and his employer, the dispute is termed as 'industrial dispute' and it would be maintainable.

16.2. A bare reading of Section 2(k) of the said Act would make it clear that an individual dispute would not be maintainable under the statute, which further makes it clear that an Organization or Union may maintain a dispute but the choice is of the Organisation or Union to take up the dispute or otherwise. An individual Workman does not have a right to pursue his remedy under Section 2(k) of the said Act. The only remedy for individual industrial dispute is under Section 2A of the said Act which is confined to discharge, dismissal or retrenchment or termination. Thus, the petitioners have no remedy in terms of either under Section 2(k) or Section 2A of the said Act.

16.3. It is a trite law that a citizen cannot be rendered remediless if a statute does not provide a remedy against infringement of his right. The controversy becomes maintainable before this Court in

such a situation under Article 226 of the Constitution of India as **"the Constitution of India is not a statute, but a fountainhead of all statutes"**. The Apex Court in the case of **COMMON CAUSE V. UNION OF INDIA** reported in **(1999) 6 SCC 667**, has held as follows:

*"39. Under Article 226 of the Constitution, the High Court has been given the power and jurisdiction to issue appropriate writs in the nature of mandamus, certiorari, prohibition, quo warranto and habeas corpus for the enforcement of fundamental rights or for any other purpose. Thus, the High Court has jurisdiction not only to grant relief for the enforcement of fundamental rights but also for **"any other purpose" which would include the enforcement of public duties by public bodies.** So also, the Supreme Court under Article 32 has the jurisdiction to issue prerogative writs for the enforcement of fundamental rights*

guaranteed to a citizen under the Constitution.

*40. Essentially, under public law, it is the dispute between the citizen or a group of citizens on the one hand and the State or other public bodies on the other, which is resolved. This is done to maintain the rule of law and to prevent the State or the public bodies from acting in an arbitrary manner or in violation of that rule. **The exercise of constitutional powers by the High Court and the Supreme Court under Articles 226 and 32 has been categorised as power of "judicial review". Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of fundamental rights guaranteed by the***

Constitution. With the expanding horizon of Article 14 read with other articles dealing with fundamental rights, every executive action of the **Government or other public bodies, including instrumentalities of the Government, or those which can be legally treated as "Authority" within the meaning of Article 12, if arbitrary, unreasonable or contrary to law,** is now amenable to the writ jurisdiction of this Court under Article 32 or the High Courts under Article 226 and can be validly scrutinised on the touchstone of the constitutional mandates.

41. In a broad sense, therefore, it may be said that those branches of law which deal with the rights/duties and privileges of the public authorities and their relationship with the individual citizens of the State pertain to "public law", such as constitutional and administrative law, in contradistinction to "private law" fields which are those branches of law which deal with the rights and

liabilities of private individuals in relation to one another.

59. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. **The arm of the Court is long enough to reach injustice wherever it is found.** The Court as sentinel on the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, a constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by a catena of decisions of this Court starting from *Indira Nehru Gandhi v. Raj Narain* [1975 Supp SCC 1 : AIR 1975 SC 2299] to *Bommai* case [(1994) 3 SCC 1]. **It would,**

therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law."

60. The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In *LIC v. Escorts Ltd.* [(1986) 1 SCC 264] this Court (in SCC para 102, p. 344) had pointed out that the difficulty will lie in demarcating the frontiers between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is

engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact-situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in M.C. Mehta v. Union of

India [(1987) 1 SCC 395 : 1987 SCC (L&S) 37] .

61. *The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law — be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044 : 1962 Supp (3) SCR 1] (AIR para 5) that if the legal right of a manager of a company is denuded on the basis of recommendation by*

the Board of Management of the company, it would give him right to enforce his right by filing a writ petition under Article 226 of the Constitution. In *Mulamchand v. State of M.P.* [AIR 1968 SC 1218 : 1968 Mah LJ 842] this Court had held that even though the contract was void due to non-compliance of Article 229, still direction could be given for payment of the amount on the doctrine of restitution under Section 70 of the Act, since the State had derived benefit under the void contract. The same view was reiterated in *State of W.B. v. B.K. Mondal & Sons* [AIR 1962 SC 779] (AIR at p. 789) and in *New Marine Coal Co. (Bengal) (P) Ltd. v. Union of India* [(1964) 2 SCR 859 : AIR 1964 SC 152]. In *Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.* [(1983) 3 SCC 379] a direction was issued to release loan to the respondent to comply with the contractual obligation by applying the doctrine of promissory estoppel. In *Mahabir Auto Stores v. Indian Oil Corpn.* [(1990) 3 SCC 752] contractual obligations were

enforced under public law remedy of Article 226 against the instrumentality of the State. In *Shrilekha Vidyarthi v. State of U.P.* [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] contractual obligations were enforced when public law element was involved. Same judicial approach is adopted in other jurisdictions, namely, the House of Lords in *Gillick v. West Norfolk and Wisbech Area Health Authority* [1986 AC 112 : (1985) 3 All ER 402 : (1985) 3 WLR 830, HL] wherein the House of Lords held that though the claim of the plaintiff was negated but on the anvil of power of judicial review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in *Roy (Dr) v. Kensington and Chelsea and Westminster Family Practitioner Committee* [(1992) 1 AC 624 : (1992) 1 All ER 705 : (1992) 2 WLR 239, HL] the House of Lords reiterated that though a matter of private law is enforceable by ordinary actions, a court also is free from the

constraints of judicial review and that public law remedy is available when the remuneration of Dr Roy was sought to be curtailed. In LIC v. Consumer Education and Research Centre [(1995) 5 SCC 482] this Court held that each case may be examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law remedy has now become thin and practically obliterated.

16.4. The Apex Court again in the case of **PUBLIC SERVICES TRIBUNAL BAR ASSN. V. STATE OF U.P.** reported in **(2003) 4 SCC 104**, which reads as follows:

"39. xxxxx An employee is not left without any remedy. Judicial review of an order regarding which the jurisdiction of the Tribunal is barred would be available by approaching the High Court by filing petition under

Article 226 or 227 of the Constitution of India.”

(Emphasis supplied)

In terms of the law laid down by the Apex Court in the afore-extracted judgment, the facts obtaining in the case at hand will have to be noticed to arrive at a conclusion with regard to maintainability of the petition.

16.5. It is a fact, that the petitioners are Workmen and they have a dispute with regard to their wages. The petitioners – Workmen did file applications before the Conciliation Officer seeking redressal of their grievance. The Conciliation Officer having rejected the applications for want of maintainability, the Workmen have filed the present writ petition in terms of the afore-extracted mandate of the statute. An individual dispute for redressal of the grievance of the Workmen is not available and the grievance of the

Workmen cannot be left to the mercy of the Union as the Union may or may not espouse the cause. Therefore, in the light of the law laid down by the Apex Court in the afore-extracted judgments, the writ petition filed by the Workmen under Article 226 of the Constitution of India is maintainable and the Workmen - petitioners cannot be left remediless.

Therefore, I answer point No.1 holding that writ petition is maintainable in the facts and circumstance of the case.

17. RE. POINT NO.ii: *Whether the 4th and 5th respondents were justified in taking the date of appointment of the petitioners from 05.04.2007 as against 03.04.2006, the date on which they were appointed as Engineering Assistant Trainee?*

17.1. The respondents - BEL issued an advertisement calling for applications from eligible persons to two categories of posts, namely,

Engineering Assistant and Technician – C, in terms of the notification dated 05.10.2005. The notification indicated the qualification and the pay scale and is extracted here under.

"BHARAT ELECTRONICS LIMITED

(A Govt. of India Enterprise Under the Ministry of Defence)

Requires the following personnel for its Bangalore Complex

Sl. NO.	Post	Qualification	Trade/Discipline	Grade/Pay scale
1	Engineering Assistant	3 years full time Diploma in Engineering+1 year apprenticeship training	- Mechanical - Electronics	WG VII/CPVI Rs.4620-135-5970-140-8350+admissible allowances
2	Technician 'C'	ITI + 1 Year apprenticeship training or 3 years National Apprenticeship Certificate Course.	- Electronic - mechanic - Fitter	WG IV/CPV Rs.4020-100-5020-105-7435+admissible allowances

In terms of the afore-extracted chart, the two posts that were notified had two different

qualifications, one is the higher qualification insofar it concerned to Engineering Assistant and the other is lower qualification, i.e., ITI for the post of Technician Grade 'C'. The pay scale was also different as the post of Engineering Assistant was fixed in the pay scale of Rs.4,620/- and the post of Technician Grade 'C' was fixed with following pay scale:

"Rs.4020-100-5020-105-435+admissible allowances."

(emphasis supplied)

The petitioners underwent a regular selection process and were appointed by an appointment order dated 13.03.2006. Certain clauses of the appointment order which are germane for the consideration of the subject *lis* is extracted for ready reference:

"1.0 With reference to your application against our advertisement / candidature sponsored by the District Employment Exchange, Bangalore / registration as DDE and subsequent Test interview you had with us, we

are pleased to inform you that you have been provisionally selected as **ENGINEERING ASSISTANT TRAINEE** on the following terms and conditions:

2.0 XXXXX

3.0 On being found medically fit by our Medical Authorities and on appointment, you will be required to undergo training for a period of ONE Year in CTD or in any other SBU / CSG as decided by the Company. This period may be reduced or extended at the discretion of the Management. On completion of the first two months of training, you will be subjected to a break-in-period test, you will be discharged from training without NO.tice and NO. further opportunity to appear for the test again will be given.

4.0 XXXX

5.0 During the training period, you will be paid a stipend of Rs.4000/- per month.

6.0 XXXX

7.0 XXXX

8.0 On successful completion of training and on passing the Gradation Test you may be absorbed as ENGINEERING ASSISTANT in WG-VII, Career Path-VI in the scale of Rs.4620-135-5970-140-8350/-plus allowances admissible.

9.0 During your training period, you will be governed by the rules and regulations of CTD and the Company, as applicable.

10.0 XXXX

11.0 XXXX

12.0 XXXX

13.0 In the case of candidates belonging to SC/ST/OBC Community, this appointment is provisional and is subject to the Cast/Tribe/OBC Certificate being verified and if the verification reveals that the claim that you belong to Scheduled Caste or Scheduled Tribe/OBC or not to belong to non-creamy layer, as the case may be, is false, your services will be terminated forthwith without assigning any reason and without prejudice to such further action as may be taken under the provision of the Indian Penal Code for production of false Certificates. Candidates claiming reservation under OBC category, will be required to submit the enclosed declaration".

(emphasis supplied)

The afore-extracted clauses would make a few facts clear that the petitioners were all appointed pursuant to the regular selection process and the medical fitness of the petitioners was assessed.

During the training period, the petitioners were governed by rules and regulations of the Company. In case of candidates belonging to Scheduled Castes / Scheduled Tribes or Other Backward Classes, the certificates were sent for scrutiny and verification of their caste.

17.2. All the aforesaid factors would indicate that the petitioners were all appointed strictly in terms of the norms of regular selection. The only fact that was lacking was the grant of regular pay scale and allowances admissible to them. The petitioners were getting stipend of Rs.4,000/- p.m. It is also to be noticed that in terms of Clause 3.0 of the order of appointment, the period of training could be reduced or extended at the discretion of the employer on an interim assessment or on completion of two months of training. All these clauses in the order of appointment would clearly indicate that the petitioners were

appointed to do regular work that regular employees performed, except the fact that they were on training.

17.3. It is apposite to refer to the judgment of the learned Division Bench of the High Court of Kerala in the case of **LAKSHMANAN VS. STATE OF KERALA** reported in **CDJ 1994 KER HC 288**, wherein it has held as follows:

"5. The relevant statutory provision relating to what is meant by "appointed to a service" and what is meant by "duty" would be available in the Kerala State and Subordinate Services Rules 1958 - Rule 2(1) and (6) respectively. Rule 2(1) makes it clear that a person who is appointed to a service when he commences the probation, instruction or training prescribed for the members thereof. Equally well R.2(6) tells us what is understood by a person said to be on duty'. A person is said to be on duty when he is performing the duties on the post or he is undergoing the probation, instruction or training prescribed for such service.

6. As stated above, factually it is clear that the petitioner is appointed as a Sub Inspector of Police, after his recruitment on the advice of the Public Service Commission as Sub Inspector on the stated scale. Apart from

the statutory provision, it is crystal clear, while being required to consider the length of service in the post of a Gram Sevak for eligibility for recruitment to the post of Block Development Officer, in the decision reported in 1965 KLT 1282 - Louis v. Kerala Public Service Commission - this Court had an occasion to consider this question with regard to the period of training and it is ruled therein that a person is said to be appointed to the service when in accordance with the rules 'or in accordance with the rules applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on such cadre or commences the probation, instruction or training prescribed for the members thereof: In reaching the conclusion, this Court placed reliance on R.2(1) of the Rules referred to above.

7. This Court also had an occasion to consider the nature of the training in the matters of recruitment and subsequent service of the Government servants. Referring to the situation, this Court had an occasion to consider the aspects of the requirement of training. In certain situations training could be a condition precedent, in other words, a qualification for appointment, whereas other situations could also be under consideration that it is the appointment that precedes first in point of time and thereafter an employee is referred to a period of training with the purpose of shaping the selected employee to make him more suitable for the services required of him. In such situations, the

training is not considered as a part of a qualification for appointment, but is considered necessary and essential for the requirements of the services to which he is appointed. In this situation, the training is not a condition or qualification, but a further situation thought necessary by the appointing authorities to make the candidates more suitable to the services to which he is appointed. It is in this context that this Court (1987 (2) KLT 466 - Haridasan v. State of Kerala) had an occasion to consider the question of advice as well as the question of training. **If after training no advice is called for under the relevant rules and none is given under any provision, the person who is appointed subsequently can only rest his claim for seniority with reference to the date of appointment under Rule 27(a) of the said Rules, 1958.** What is required to be considered is whether it is an advice for training when it cannot be considered as advice for appointment. It has to be considered as to whether training is an eligibility for appointment, as a qualification to be acquired before appointment and is not the same as a requirement of training for equipment after appointment. Much depends on the factual position as to whether the selection was to a course of training rather than to an office or post."

(emphasis supplied)

Later in the year 2017, when the High Court of Kerala reiterated the view expressed in the aforesaid judgment in the case of **STATE OF KERALA AND ANOTHER VS. N.V.GEORGE** in **W.A.No.2744/1998 D.D. on 17.02.1999**. This was carried in appeal before the Apex Court in Civil Appeal No.2018/2000. The civil appeal was dismissed by the Apex Court vide its order dated 30.01.2002, which reads as follows:

"The High Court has consistently taken the view that the period of training undergone by the respondent should be treated as period spent on duty for the purpose of scale of pay, increments and other consequential benefits. This view was expressed by the High Court in the case of lekshmann Vs. State of kerala - 1995 (1) KLT@ 115 and that decision in turn follows other decisions in Louis Vs. Kerala Public Service Commission - 1965 KLT@1282 and Haridasan Vs. State of Kerala - 1987 (2) KLT@ 466. As this has been the consistent

view and the orders in those cases not having been challenged before this Court, we do not think that it is a fit case for our interference under Article 136 of the Constitution. The appeal is therefore, dismissed."

In the afore-extracted judgment, the Apex Court has clearly indicated that the High Court of Kerala has consistently taken a view that the period undergone in training has to be taken as 'spent on duty' for the purposes of applying scale of pay, increments and other consequential benefits. Thus, in terms of the judgment of the learned Division Bench of the High Court of Kerala in the aforestated case of **LAKSHMANA** (supra), which has found affirmation in the case of **STATE OF KERALA VS. N.V.GEORGE** (supra), I have no hesitation to hold and direct that the training period spent by the petitioners shall be

counted for the purposes of pay and increments as and when they become available.

17.4. The material on record clearly indicates that though the 4th and 5th respondents – BEL have selected the petitioners as trainees with payment of stipend during the training period, they were given a guarantee of absorption as that of regular employees with time scale of pay and governed by the Rules and Regulations of the Company from time to time.

17.5. The fact that they were selected and not granted time scale of pay and for all practical purposes absorbed them after training period. It can be said that the petitioners were selected against the regular posts carrying time scale of pay. They were only paid payment of stipend of Rs.4,000/- p.m. and were later paid time scale of pay when their services came to be confirmed. The fourth and fifth respondents – BEL

have not placed anything on record to show that on completion of training period, there was any other process of selection. The training and absorption into regular service, is preceded by a single selection process. Mere fact of the petitioners being trainees and being given stipend instead time scale of pay cannot take away the rights of the trainees in the facts and circumstances of this case, to count the period that they spent during training as 'spent on duty' for all purposes.

17.6. The Apex Court in the case of **HARYANA POWER GENERATION CORPORATION LIMITED AND OTHERS VS. HARKESH CHAND AND OTHERS** reported in **(2013) 2 SCC 29**, has held as follows:

"29. Having dealt with the rights of an apprentice, we may presently proceed to dwell upon the issue whether any of the clarificatory letters/circulars conferred any

benefit on these employees so that they could be treated to be in regular service. On a perusal of the notification issued by the Board, it is clear as crystal that it relates to two categories of direct recruits who shall undergo training for a period of two years in the regular pay scale. Thus, the said notification has no application to apprentices who avail the training. In the clarification issued on 27-3-1991, there is a mention with regard to the regular pay scale in the Notification dated 13-9-1990.

The query was limited to the issue whether the training period of such a trainee would be counted for all intents and purposes or not. In that context, it was clarified that the period spent by the apprentice of all categories shall be treated as duty for all intents and purposes i.e. for grant of increment in accordance with the provisions as contained in the policy, leave and seniority i.e. from the date of joining in this cadre. It is worth

noting that the Board had issued further clarification that the benefit of grant of annual increment under the provisions as contained in the Letter dated 27-3-1991 was to be given to the trainees of all categories whose services had been regularised on 29-1-1991 or thereafter, and the consequential benefit should accrue only from the date on which the regular pay scale has been granted to the trainees of all categories. Clause 5 of the ACP Scheme which provides for eligibility criteria, in its note stipulates that for the purpose of the Scheme, regular satisfactory service would mean continuous service counting towards seniority under the Board including the continuous service in PSEB before reorganisation. It has been clearly stated that period spent on ad-hoc basis, work-charged basis, contingent basis and daily wages would not be counted for the purpose of counting the prescribed

length of regular satisfactory service for the Scheme.”

(emphasis supplied)

In terms of the law laid down by the Apex Court in the afore-extracted judgment and the judgment of the High Court of Kerala herein before extracted would lead to an unmistakable conclusion that the petitioners are entitled to count their services from 03.04.2006 for the purposes of payment and other service benefits i.e., increments etc. Thus, the anomaly created by the 4th and 5th respondents – BEL by granting higher pay scales to Technical Grade 'C' officers recruited with a lower pay scale than that of the petitioners was clearly erroneous on the part of the respondents by taking the date of entry of the petitioners into service as 05.04.2007 as against 03.04.2006. The point No.2 is answered in favour of the petitioners.

18. RE. POINT NO.iii : *To what relief the petitioners would be entitled to?*

18.1. The petitioners were appointed as Engineering Assistants Trainees with a pay scale of Rs.4,620-135-5,970-140-8,350/- with qualification of three years full time Diploma. Certain other employees were appointed as Technician Grade 'C' with ITI qualification. The petitioners were made to undergo training for a period of one year and the other employees namely, Technician Grade 'C' were directly employed without training. Thus, their date of appointment was taken from 05.04.2007 as against 03.04.2006, the date of appointment of the petitioners. Though both the categories were appointed on the same day, the pay scale of the petitioners was far higher to that of other cadre i.e., Technical Grade 'C'.

18.2. Timely wage revisions took place in the 4th and 5th respondents – BEL, the petitioners and the other cadre who were appointed on the same day were given wage revisions without any anomaly. When the wage revision in the year 2010 came about in the career path – VII, the petitioners who were appointed were given lesser wage than that of the other candidates who were appointed on the same day who were in career path – VI. As an illustration, the pay of the petitioners and the other cadre after the wage revision is as follows:

"COMPARITIVE SALARY STATEMENT BETWEEN
DIPLOMA HOLDER AND I.T.I QUALIFIED EMPLOYEE
FOR THE MONTH OF OCTOBER, 2015

<i>Salary for Diploma Holder</i>	<i>Salary for I.T.I. Holder</i>
<i>Gross Salary (Basic +DA) for the month October 2015</i>	<i>Gross Salary (Basic + DA) for the month October 2015</i>
Rs. (13200 + 13266) = 26466/-	Rs. (13841 + 13629) = 27470

18.3. A cursory perusal of the comparative salary statement between the petitioners who possess the qualification of three years Diploma and the other cadre i.e., Technician Grade 'C' who possess ITI qualification is made, it would become unmistakably clear that persons appointed to Technical Grade 'C' possess lesser qualification than that of the petitioners and the petitioners are now made to get less salary than those in the lower cadre only on the basis of the date of entry into service. In view of my finding that the date of entry into service of the petitioners who are appointed as trainees to be taken as 03.04.2006, they would be entitled to all benefits taking their appointed date as 03.04.2006. It is a trite law that a wage revision cannot result in reduction of salary of employees. The wage revision of the year 2010, has reduced the salary of the petitioners from **Rs.15,536/- to Rs.14,841/-**, which is admittedly

less than the pay of less qualified. Therefore, the petitioners are entitled to count their service from the date on which they were appointed as trainees and all service benefits i.e., wages, increments, additional increments, fitment benefits and special pay shall be considered reckoning from 03.04.2006 as the date of entry into service in the post of Engineering Assistant and also would be entitled to all consequential benefits that would flow from the said determination.

19. For the aforesaid reasons, the following:

ORDER

- a. The writ petition is allowed.
- b. The impugned orders dated 07.12.2013 and 28.02.2013 passed by the 3rd respondent is hereby quashed.
- c. The petitioners are held to have entered service w.e.f. 03.04.2006 as against 05.04.2007, held by the respondents and are

consequentially entitled to all service benefits
that would flow from such determination.

**Sd/-
JUDGE**

nvj
CT:MJ