A STATE OF WEST BENGAL & ANR.

v.

WEST BENGAL REGN. COPY WRITERS ASSN. & ANR.

(Civil Appeal No. 3414 of 2009)

MAY 8, 2009

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[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

West Bengal Registration (Copywriters) Rules, 1999 – Copywriters – Grant of license under the Rules – Status of C *copywriters – Held: There is no master-servant relationship between copywriters and State Government – Copywriters are mere licensees – Grant of license does not amount to creating service – It cannot clothe them with the status of Government servant – They were not doing any government duty nor there* D *was absolute control over their working – They were not paid from public exchequer – Copywriters not on Government establishment under Rules formulated under Article 309 – On facts, High Court erred in directing creation of service and framing Rules as also providing nomenclature for such service* E *instead of directing absorption of copywriters as LDCs – It traveled beyond the scope of its jurisdiction – Thus, order of High Court set aside and that of tribunal restored – Constitution of India, 1950 – Article 309.*

Constitution of India, 1950 – Article 226 – Writ petition – F *High Court travelling much beyond the pleadings – High Court instead of directing absorption of copywriters as LDCs, directing to decide nomenclature of the post – Held: Not correct – Relief granted by High Court extraordinarily beyond its jurisdiction – Even in its plenary jurisdiction, while moulding* G *relief, there must be a plea to support the relief.*

Respondents-members of West Bengal Registration Copywriters' Association were licensees under the West Bengal Registration (Copywriters) Rules, 1982 as

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amended by Copywriters Rules, 1999. Under the license, the members could prepare the true copies of the documents, compulsorily required to be filed alongwith the documents presented for registration, on receiving fees prescribed in the Rules. Respondents claimed absorbtion as regular employees in the cadre of Lower Division Clerk under the concerned authority as they were doing the identical work of preparing copies as done by LDCs. They prayed for injunction against the authority from appointing any person in the cadre of LDC unless all the members of the Association were accommodated in that post of LDC; and also claimed parity with the "extra-muharrirs", whose services were regularised. Tribunal dismissed the applications. Respondents filed writ petitions. High Court held that there was relationship of master and servant between the State Government and the Copywriters appointed under the Rules and not that of licensee or licensor, thus, were entitled to the relief claimed. It observed that though they could not be absorbed as LDCs, State Government would decide the nomenclature of their post. Hence, the present appeals.

Allowing the appeals, the Court

HELD: 1. (i) The original writ petitioners-Copywriters are mere licensees.

(ii) Though the West Bengal Registration (Copywriters) Rules, 1999 have been formulated by the Government for awarding the licenses the Rules do not spell out an absolute control over the working of Copywriters. The Rules merely pertain to the grant of licences and control of those licences, however, does not control the working and duties of the Copywriters.

(iii) The Copywriters do not do any Government duty.

A They are merely required to copy the deeds which are to be presented for registration. Though the filing of a fresh copy is necessary for registration, the making of that copy does not amount to a Government duty.

B (iv) The Copywriters are not controlled in the matters of their attendance, working hours, leave, pension and output of work etc., by the Government.

(v) The Copywriters are not on the establishment C under the Rules, more particularly the Rules formulated under Article 309 of the Constitution of India.

(vi) The Copywriters are not paid from the D Government coffers. They are paid by the private parties who require those copies for Registration of the deeds. Therefore, there is no fiduciary relationship between the Government and the Copywriters nor is the government responsible for E any such payment.

(vii) The grant of licence for copywriting does not amount to creating a service. Hence, there is no master-servant relationship between the Copywriters and the Government nor can they said to be F Government servants entitling them to so-called equal treatment with the other Government servants.

(viii) High Court erred in directing the creation of service and for that purpose framing the Rules as G also providing the nomenclature for such a service. High Court traveled beyond the scope of the original application and the writ petition. [Para 47] [395-E-H; 396-A-H; 397-A]

2.1. It is the basic principle of interpretation that where H

the language of the Statute is clear and admits of no doubt, then the Court will accept the plain meaning of the provisions. Applying the test of plain meaning, no Rule either under the Copywriters' Rules of 1982 or the Copywriters' Rules of 1999, can be read as clothing the Copywriters with the status of Government servants. The Rules nowhere provide any master and servant relationship in between the State Government and the Copywriters. The Rules, at the most, provide for the licenses armed with which, the Copywriters can follow the profession of Copywriting, as is clear from Rule 3 of the Copywriters' Rules of 1982. [Para 20] [368-C-E]

2.2. Extra-muharrirs were already on the establishment of the Government in the regular posts. They were absorbed by the State Government in the posts of LDCs. All that was done to change the nomenclature of that post, and finding that the duties of that post were almost identical to the duties of the LDCs, they were absorbed as the LDCs. Therefore, it is not a case where the persons, who were not even on the establishment of the Government were conferred with the status of the Government servant. Such was not the case in case of the Copywriters. Admittedly, they were never on the Government establishment. They were private persons and they took the advantage of the Copywriters' Rules of 1999, which provide for the licenses to be given for doing the job of a Copywriter. They have been provided with this opportunity to earn their livelihood by working as the Copywriters on the basis of the licenses. They were not comparable in any manner with the Extra-muharrirs even in respect of their educational qualification. The minimum qualification for a licensee as a Copywriter is barely VIth Class passing, which is unimaginable in the present days as a minimum qualification for a Government job. It is suggested that

A almost all the Copywriters were educated and were holding a better qualification. That may be so, but that does not in any manner solve the problem of the Copywriters, whose minimum qualification, as prescribed in the Rules, is much lower than that of the LDCs. Before
B the High Court, no evidence was brought to show as to how the post of Extra-muharrirs is comparable to or identical to the post of Copywriters. [Para 21] [368-G-H; 369-A-F]

C 2.3. The petition is wholly silent about the assertion that the writ petitioners are doing the identical duty as that of the LDCs and they are actually the Government servants. There is not even a whisper in the writ petition that a separate cadre with a separate nomenclature should be created for them by the Government. In fact,
D in the last part of the writ petition, the petitioners have asserted that injustice was done to them in their representations remaining without a reply and in their not being absorbed in service and further they are not being allowed to sit in the examination. They asserted that the
E respondents should be injuncted from proceeding with the absorption in the post of LDCs in their offices. It cannot be understood as to how on the basis of such a petition, the petitioners were allowed to completely change their stand and introduce, for the first time, a
F theory of master and servant or even allowed to argue that they were the Government servants and in fact, because of the duties conducted by them, they were the servants of the Government on its establishments. All this was allowed, though not at the tribunal level but at the
G level of the High Court. [Para 25] [371-G-H; 372-A-D]

2.4. Respondents tried to point out that the State Government in their counter affidavits themselves asserted that there was no master and servant relationship between the writ petitioners and the State
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Government and, therefore, petitioners could not assert their right to be absorbed as LDCs. Therefore, the respondents pointed out that if the theory of master and servant was introduced by the Government in its reply, then the writ petitioners had every right to assert that there was a master and servant relationship between them and the Government. Such logic cannot be understood. A Writ Petitioner has to stand on his own legs and has to rely on the pleadings in the Writ Petition. A simple case was pleaded by the Writ Petitioners in the Writ Petition that they had a right to be absorbed as LDCs, firstly because the Extra-muharrirs were so absorbed and secondly, because they were doing the same job as LDCs. They had nowhere suggested that they were already on the Government establishment and there existed master and servant relationship between them and the Government and, therefore, it was incumbent on the Government to either absorb them as the LDCs or to create a separate service for them. They never asserted that they were equally circumstanced with the LDCs or Extra-muharrirs, which position, they introduced for the first time before the High Court. Such radical change in the stand, as also the radical change in the prayers could not have been allowed by the High Court in a writ petition, muchless when the High Court was concerned with the limited exercise of deciding the correctness or otherwise of the tribunal's judgment. Unfortunately, High Court seems to have travelled much beyond the pleadings and has, therefore, fallen into error in granting an unimaginable relief to the writ petitioners of creating a service for them with a separate nomenclature. All this was clearly beyond the jurisdiction of the High Court. [Para 26] [372-G-H; 373-A-D]

2.5. In prayer clause, a direction is prayed for to provide the writ petitioner with employment as LDCs or equivalent posts. It is certain that the prayers are no

A different in other writ petition. Once those prayers vanish on account of the concession by the counsel, really nothing could remain in the petition. However, High Court went on to examine the belated theory of master and servant, which was totally out of the scope of the B original application, as well as, the Writ Petition. When the State Government in its reply before the tribunal asserted that there was no relationship of master and servant, the writ petitioners seem to have totally changed their stand. Writ Petitioners before the High Court, as well as, before C the tribunal rightly conceded that they could not be appointed or absorbed as LDCs. Respondents very fairly stated that they had abandoned that prayer, however, tried to justify that in its plenary jurisdiction, the High Court could mould the relief. There could be no doubt about the High Court's power to mould the relief. D However, even in its plenary jurisdiction, while moulding the relief, there must be a plea to support such a relief. The relief granted by the High Court in this case is extraordinarily beyond the jurisdiction of the High Court and has no nucleus in the writ petitions or in the original E applications. The basic case that was pleaded was that since the Extra-muharrirs were absorbed by the Government, the writ petitioners; who were doing the task of Extra-muharrirs, also had a right to be absorbed in the Government. This plea was obviously baseless, as F while Extra-muharrirs were on the regular establishment of the Government, the writ petitioners were not and, therefore, they could not have claimed the parity. It is only after the reply of the Government came, denying the master servant relationship, that the Writ Petitioners G started singing the tune of the de facto Government service in their favour. The argument before the High Court, as well as, the tribunal was that because of the duties and because of licenses which were controlled by the Government in their grant, continuance and H termination as well as suspension that the Copywriter

license holders were in fact Government servants and, therefore, had a right under Articles 14 and 16 of the Constitution of India, is rejected. High Court treated unequals as the equals and for that purpose, it had to do the acrobatics for finding that the Copywriters had the trace of Government service. [Para 28] [374-E-H; 375-A-G] A B

2.6. High Court proceeded to hold that once it was proved from the Rules that they had the tracings of the Government service in their favour, then they were entitled to the equal protection like other Government servants. All this was impermissible because the Government service is controlled and managed by the Rules under Article 309 of the Constitution of India. Such Rules were never there and were not likely to be there in case of the writ petitioners. No Government service can be de-hors the Rules. There were the Rules for the Copywriters, but those Rules could never be read as creating a separate Government service. They, at the most, were licensees. Firstly, the writ petitioners were not paid from the coffers of the Government. Secondly, though there was an apparent control, there was no control on their actual working. There was no attendance register for these Copywriters nor were they required to take leave in case they decided to remain absent. They were not even controlled in the matter of their actual working hours. Thus, the control was qua the licenses, not qua the duties, which was ignored. The grant of licenses was bound to be under the Rules and, therefore, their continuation, termination or suspension was also bound to be under the Rules. But, that was the only scope. The Rules never provided as to how the working of the Copywriters would be controlled. They were, undoubtedly, independent professionals. They could come and leave at any time. Nobody could compel their attendance and the disciplinary control which was C D E F G H

A pressed into service by respondents and others was only in respect of continuation of their license. Such a disciplinary control would be available in case of all the licensees in whatever Department the licenses are given. A criminal cannot be allowed to enjoy a license nor could B a person, who misbehave, could enjoy the continuation of a license. That is not the test, muchless to hold such persons to be the persons on the Government establishment. Again, merely because the Rules provided that every deed must be copied and a copy thereof must C be offered while registering the deed, it did not mean that the Copywriters were doing any Government duties. The concept of the Government servant's duty is entirely different. What the Copywriters were doing, was only in terms of their profession and for earning by copying. A D job of making a copy of the deed for some remuneration is not a Government job nor does it involve a Government duty. [Para 29] [375-G-H; 376-A-H; 377-A]

2.7. A person with horrible handwriting or a person with illegible handwriting could never had been given this E license, which essentially required good handwriting, so that it should be legible copy of the deed which is offered for the registration. This certainly was not a Government duty. The Government duty would start only after the deed is presented for the registration. This would also F include the checking as to whether the deed is accompanied with by a legible copy thereof. But, writing of the copy could never amount to a Government duty or a statutory duty. A particular Copywriter having a good reputation, a very good handwriting, may invite a rush of G the clients and might have to refuse the work. That was perfectly possible. Therefore, in the matter of their working, there was no control and merely because they hold the license to copy the deeds, it did not mean that the Copywriters were doing any duty, which was even

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distantly similar to the Government duty. [Para 30] [377-B-F] A

2.8. The essential of a master and servant relationship is that the servant must be retained by the master for doing any duties given by the master and the remuneration must flow from the master to the servant. The servant must be under the total control of the master insofar as duties are concerned. There was no control as such on the working of these Copywriters. They were merely licensees and if there was any control, the control was only on their licenses. There was no control over the manner in which they do their work of copying. Again, there has to be a disciplinary control which is conspicuously absent in the instant case. The control was only qua the licenses, their continuation or their termination. It cannot be accepted that from the bare reading of the rule, there was a total control by the Government over the working of these Copywriters. These Copywriters did not get paid by the Government. Government had no responsibility, whatsoever, to pay or even to ensure that they got paid a particular amount. While one Copywriter could earn Rs.1,000/- a day, the other could remain content with Rs.50 a day, depending upon the work that he has handed out. It was not the duty of the Government to see that every Copywriter gets some minimum wages. The concept of "payment of wages" by Government is totally absent. What the Copywriters got and were entitled to get was a fees for their services to the private persons, who wanted to get their deed registered. Once all these factors are considered cumulatively, it is obvious that there was no trace of master and servant relationship. [Para 31] [378-A-G] B C D E F G

2.9. As regard the submission that there was a power of transfer in the present Rules also and that showed the H

A ultimate control, in the first place, that power of transfer is not an absolute power of transfer. It depends upon contingency of the availability of the adequate number of Copywriters in a particular district. That would not be a decisive factor. [Para 37] [388-B-C]

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2.10. A grant of license cannot clothe the Copywriters with the status of Government servant nor were they doing any Government duty. There is very little or no material to suggest any master and servant relationship between the Copywriters and the Government. It cannot C be held that there was master-servant relationship between State Government and the Copywriters. [Paras 43 and 44] [393-B, D; 394-E-F]

2.11. The submission that if all the Copywriters were D to be accommodated as the Clerks in the Government service, then more than 6000 posts would have to be created and that would be a practical difficulty; that majority of these Copywriters did not have the basic qualification required and thus there would be a practical E problem in accommodating these Copywriters; and all that would not be possible without there being any Rules under Article 309 of the Constitution, is correct. This factor of the practical difficulty was completely ignored in the impugned judgment. [Para 45] [394-G-H; 395-A]

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2.12. The submission that such licenses are given in number of other Departments where the creation of service cannot be even conceived; that the claim of the Copywriters that they were doing the essential service of the Government is falsified from the fact that in the six G Districts, the Copywriters Rules, 1999 have never been implemented since inception and there are no such copywriters available; that in those Districts the Xerox copies of the documents are provided as their true copies; that had the work of copywriters been essential, H Government would not have dispensed with the services

of tne Copywriters in these six District; that the Copywriters did not execute any Governmental work nor was their work essentially required for the working of Registration Office, is correct. There are 6466 Deed-writers, 1200 Marriage Registrars, 20,000 Post-office Agents, 40,000 Insurance Agents and 1100 Stamp Vendors in the State of West Bengal. Clothing the Copywriters with the Government Service would mean a financial debacle for the State, is correct as each and every licence granted by the Government does not amount to service. [Para 46] [394-F-H; 395-A]

Workmen of Nilgiri Cooperative Marketing Society vs. State of T.N. and Ors. **2004(3) SCC 514;** *Official Liquidator vs. Dayananda and Ors.* **2008(10) SCC 1 and** *Secretary, State of Kerala vs. Umadevi* **2006 (4) SCC 1, Relied on.**

Dharamgadhra Chemical Works Limit vs. State of Saurastra **AIR 1957 SC 264;** *Chintaman Rao vs. State of Madhya Pradesh* **AIR 1958 SC 388;** *The Superintendent of Post Offices vs. P.K. Rajamma* **1977 (3) SCC 94 and** *Ram Singh vs. Union Territory, Chandigarh* **2004(1) SCC 126, Held inapplicable.**

G.B. Pant University of Agriculture vs. State of Uttar Pradesh **2000 (7) SCC 109, Distinguished.**

State of Assam and Ors. vs. Shri Kanakchandra Dutta **AIR 1967 SC 884;** *The State of U.P. vs. Chandra Prakash Pandey* **AIR 2001 SC 1298;** *Union Public Service Commission vs. Girish Jayanti Lal Vaghela and Ors.* **2006 (2) SCC 482;** *State of Gujarat and Anr. vs. Raman Lal Keshav Lal Soni and Ors.* **1983 (2) SCC 33;** *Gurugobinda Basu vs. Sankari Prasad Ghosal* **AIR 1964 SC 254;** *State of U.P. vs. Audh Narain Singh* **AIR 1965 SC 360;** *D.R. Gurushantappa vs. Abdul Khuddus Anwar* **1969(1) SCC 466;** *S.L. Agarwal vs. G.M. Hindustan Steel Ltd.* **1970 (1) SCC 177;** *G.L. Shukla vs. State of Gujarat* **ILR 1967 Guj 560;** *Divisional Manager,*

A *Aravali Golf Club vs. Chander Hass* **2008 (1) SCC 683;** *Principal, Mehar Chand Polytechnic vs. Anu Lamba* **2006(7) SCC 161 and** *State of Haryana vs. Navneet Verma* **2008 (2) SCC 65, Referred to.**

B *Cassidy vs. Ministry of Health* **1951 (1) All ER 574;** *Short vs. J.W. Henderson Ltd.* **1946 (174) LT 417;** *Morren vs. Swinton and Pendlebury Borough Council* **1965 (2) All ER 349;** *Argent vs. Minister of Social Security* **1968 (3) All ER 208, Referred to.**

C **Case Law Reference:**

AIR 2001 SC 1298	**Referred to.**	**Para 13**
AIR 1967 SC 884	**Referred to.**	**Para 32,33, 34**
D **2006 (2) SCC 482**	**Referred to.**	**Para 35, 36**
1951 (1) All ER 574	**Referred to.**	**Para 35**
1946 (174) LT 417	**Referred to.**	**Para 35**
1965 (2) All ER 349	**Referred to.**	**Para 36**
E **1968 (3) All ER 208**	**Referred to.**	**Para 36**
1983 (2) SCC 33	**Referred to.**	**Para 37**
AIR 1964 SC 254	**Referred to.**	**Para 37**
F **AIR 1965 SC 360**	**Referred to.**	**Para 37**
1969(1) SCC 466	**Referred to.**	**Para 37**
1970 (1) SCC 177	**Referred to.**	**Para 37**
G **ILR 1967 Guj 560**	**Referred to.**	**Para 37**
AIR 1957 SC 264	**Held inapplicable**	**Para 38**
AIR 1958 SC 388	**Held inapplicable**	**Para 38**
1977 (3) SCC 94	**Held inapplicable**	**Para 39**

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STATE OF WEST BENGAL *v.* WEST BENGAL REGN. 347 COPY WRITERS ASSN.

2000 (7) SCC 109	**Distinguished**	**Para 39**
2004(1) SCC 126	**Held inapplicable**	**Para 40**
2004(3) SCC 514	**Relied on**	**Para 40**
2008 (1) SCC 683	**Referred to**	**Para 41**
2006(7) SCC 161	**Referred to**	**Para 42**
2008 (2) SCC 65	**Referred to**	**Para 43**
2008(10) SCC 1	**Relied on**	**Para 44**
2006 (4) SCC 1	**Relied on**	**Para 44**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3414 of 2009.

From the Judgment & Order dated 16.4.2007 of the High Court of Calcutta in W.P.S.T. No. 826 of 2001.

WITH

C.A. No. 3415, 3416 of 2009.

Bhaskar P. Gupta, Jayanta Kr. Mitra (N.P.), Ranjit Kumar (N.P.) Jaydip Kar, Rana Mukherjee, Goodwill Indeevar, Sanjiv Sen, Anurag Pandey, Anip Sachthey, Dipak Kumar Jena, Minakshi Ghose Jena, Sushil Thakur, V.N. Raghupathy, Humayun Sahu, F.I. Choudhary, R.P. Goyal, Soumya Chkrabotry, P. Narasimhan, R.K. Gupta, S.K. Gupta, Shekhar Kumar, Anip Sachthey for the appearing parties.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. This judgment will dispose of SLP(Civil) No. 9921 of 2007, SLP(Civil) No. 10191 of 2007 and SLP(Civil) No. 12048 of 2007.

2. Leave granted in all the Special Leave Petitions.

A 3. In all these appeals, the common judgment passed by the Calcutta High Court, allowing W.P.S.T. No. 826 of 2001, W.P.S.T. No. 1312 of 2001 and W.P.S.T. No. 15 of 2002, is in challenge.

B 4. In those Writ Petitions filed before the High Court, a common judgment dated 22.6.2001 passed by the West Bengal State Administrative Tribunal (hereinafter called 'the Tribunal' for short) in T.A. No. 391 of 1998, T.A. No. 392 of 1998, O.A. No. 2377 of 1999 and O.A. No. 4636 of 1999, dismissing all the original applications, was in challenge. The C High Court has set aside the order of the Tribunal and allowed the original applications. While doing so, the High Court has also granted certain reliefs. The State of West Bengal being aggrieved by the same, has come up before us.

D 5. Initially, before the High Court of Calcutta, a Writ Petition came to be filed being W.P. No. 1643 of 1996, by the Registered Association of the Copywriters. One other similar Writ Petition was also filed vide W.P. No. 2304 of 1996. These two Writ Petitions came to be transferred to the Tribunal, while E two other original applications were also made before the Tribunal by the individual Copywriters.

6. The common case emerging before the High Court was that the members of the West Bengal Registration Copywriters' Association (hereinafter referred to as 'the Association'), as F well as, the applicants in the original applications were the licensees under the West Bengal Registration (Copywriters) Rules, 1982 (hereinafter called 'the Copywriters' Rules of 1982' for short), which were replaced by the West Bengal Registration (Copywriters) Rules, 1999 (hereinafter called 'the Copywriters' G Rules of 1999' for short). These Rules dealt with the subject of preparing true copies of the documents, which were to be presented for registration under the West Bengal Registration (Filing of True Copies) Rules, 1979 (hereinafter called 'the Copywriters' Rules of 1979' for short). They also fixed the H prescribed fees. The members of the Association were the

licensees under these Rules, who were given the licenses, under which they alone could prepare the true copies of the documents on receiving fees prescribed in the Rules. Such true copies of the documents were compulsorily required to be filed alongwith the documents, which were presented for registration. The petitioners (respondents herein) mainly pleaded that they had filed applications for their absorption/regularization as regular employees in the cadre of Lower Division Clerk (hereinafter referred to as 'LDC' for short) under the concerned authority. They also pleaded for an injunction against the concerned authority from appointing any person in the cadre of LDC unless all the members of the Association were accommodated in that post of the LDC. They pointed out that they were doing the identical work of preparing copies as was required to be done by the LDCs. They had also given a history of their struggle in their Writ Petitions/original applications. In short, the pleading was that they were suffering from insecurity, having no chance of promotion or stability in the working field and that they had also staged demonstration and had also gone on strikes. However, such agitation was withdrawn on the basis of the assurances given by the Finance Minister of State of West Bengal and yet nothing was done, and their several representations were ignored. It was then pleaded that various vacancies had cropped up in the office of the Registrars throughout the State of West Bengal under the Inspector General of Registration and accordingly, the Registrars had asked the employment exchanges to sponsor the names of the eligible candidates for the purpose of appointment in the post of LDC. It was pleaded that previously in the year 1978, the respondent Government had absorbed some Copywriters working in the office of Registrars throughout the State of West Bengal as LDCs and all of them were employed under the Registration Department. These Copywriters, who were so accommodated were at that time, called as "Extra-muharrirs" and that is how all the Extra-muharrirs then were awarded with the permanent job and while doing so, even age was relaxed. A parity was, therefore, pleaded that all the members, who were

A holding the licenses as the Copywriters were identically placed as those Extra-muharrirs and were working from 1984 and had the requisite qualifications, expertise and experience to work as LDC.

B 7. It was further pleaded that since they were licensed Copywriters, they could not even now claim employment through the employment exchange. They pointed out that the licenses were given on the basis of tests and selections and further on the basis that they were holders of employment exchange cards. It was further pleaded that they were doing their C duties honestly, diligently, sincerely and continuously, without any break and blemish as Copywriters and in fact, the Extra-muharrirs who were accommodated, were doing exactly the same work and as such, the members of the Association were also entitled to be accommodated as the LDCs. They also D pointed out that the said Copywriters were required to work under the full control of the Government and yet they were being refused absorption/regularization. In the Writ Petition filed earlier before the High Court, which was transferred to the Tribunal, the following prayers were made:-

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(a) A writ in the nature of mandamus do issue commanding the respondents and/or their officers and/or their subordinates to comply to their assurances and representation by absorbing your F petitioner and their members in the regular cadre of service under the respondent No. 2 in the post of Lower Division Clerks;

(b) A writ in the nature of mandamus do issue directing the respondents and/or their subordinates and/or G their officers not to appoint any one as Lower Division Clerk or in similar grade of service without first appointing the petitioners and their members in the service;

H (c) A writ in the nature of mandamus do issue directing

the respondents and/or their officers and/or their subordinates to allow your petitioners and their members to sit for the test either oral or in writing of selection to the posts of Lower Division Clerks having fallen vacant under the respondents herein;

(d) A writ in the nature of mandamus do issue commanding the respondent and their officers and subordinates to allow each of the petitioners and their members to sit in the examination for selection to Lower Division Clerk irrespective of their period of license and employment exchange card;

(e) A writ in the nature of prohibition do issue prohibiting the respondents from appointing any one without appointing the petitioners and their members first as the Lower Division Clerk;

(f) to (k) x x x x
x x x x x

8. This was opposed by the State of West Bengal by a detailed reply on the ground that such absorption of the Copywriters in the regular cadre of services in the post of LDC was not possible. It was pointed out that there was no employer-employee relationship between the members of the Association i.e. Copywriters and the State of West Bengal, and as such, the Tribunal had no jurisdiction to decide the issues raised. It was pointed out that the Copywriters were license holders under the Copywriters' Rules of 1982 (at present under the Copywriters' Rules of 1999) and they were merely holding the licenses to be eligible to perform the duties of Copywriters. Such duties were not under the State of West Bengal and in fact, the Copywriters were individual professionals and earned fees for job by the public in general, who come in the Registration Office for registering their documents. It was pointed out that the licenses of the Copywriters merely enable them to make out the copies of documents, which is a statutory

A requirement. As the Rules provide, for filing of the true copies alongwith the documents which were produced before the Registrar and since the Government had to ensure the authenticity of such documents, accordingly, the Rules were framed granting licenses to the Copywriters, who were B authorized persons to prepare copy of the original documents. It was pointed out that the absorption was not possible as the recruitment rules did not provide for any such absorption and there was no question of accommodating all these Copywriters as the LDCs. It was further pointed out that there were C recruitment rules for filling up the posts of LDCs and the recruitment had to be done in terms of those rules. It was also pointed out that the Extra-muharrirs, who were accommodated earlier, as stated in the original applications, were a different class altogether. They were in fact, the employees of the State D Government and it was an individual cadre, which was re-designated as LDC following the recommendation of the First Pay Commission, constituted for that purpose. It was pointed out that the petitioners (respondents herein) had deliberately tried to mislead the Tribunal, knowing well that Extra-muharrirs were in regular employment of the State Government and they E were merely re-designated as the LDCs. It was also urged that there were no assurances given, whatsoever, for accommodating the said Copywriters in the post of LDC. Any discrimination on the part of the State Government was also denied. In short, it was urged that the Writ Petitioners had no F right, whatsoever, being accommodated as the LDCs.

9. While the matters were pending before the Tribunal, two other original applications also came to be filed, they being O.A. No. 4636 of 1999 and O.A. No. 2377 of 1999 on the same G subject. All these matters were heard together by the Tribunal and by its judgment dated 22.6.2001, the Tribunal dismissed all the original applications, holding that there was no relationship of master and servant and that the petitioners, i.e., the Copywriters (respondents herein) could not insist on their H being absorbed in the post of LDCs.

10. The only question, which was canvassed and decided by the Tribunal was as to whether the Copywriters have any accrued right on account of their rendering services as Copywriters for being appointed as LDCs and/or whether the petitioners (respondents herein) are eligible for their absorption as LDCs. The Tribunal, inter alia, held that though it was true that the Copywriters were the creatures of the Copywriters' Rules of 1982 as amended by the Copywriters' Rules of 1999, they were merely the license holders, which licenses were given by the licensing authority after observing all formalities provided in the said Rules. Their task was only to prepare, in the prescribed form, the true copies of the documents, which were to be presented for registration under the Copywriters' Rules of 1979. The Tribunal also held that though it was true that the activities of the Copywriters were supervised by the authorities concerned and in that sense, the respondent authority had the control over the Copywriters, which included the cancellation/ suspension of the Copywriters' licenses, renewal etc. and further though the Copywriters were allowed to sit in the office premises and work under the control and supervision of the office of the Registering Officers, yet it could not be said that there was any right created in their favour by their continuously working since 1982 for being absorbed as the LDCs. The Tribunal also came to the conclusion that they could not claim parity with Extra-muharrirs nor could it be said that there was any gross indiscrimination on the part of the authorities in the said Copywriters' not being absorbed as the LDCs.

11. The Tribunal further found that the absorption or as the case may be, regularization, could be directed only under the Rules and that there were no such Rules nor any policy for regularizing or absorbing the Copywriters as the LDCs. The Tribunal made a distinction that in case of Extra-muharrirs, they were considered to be the seasonal employees under the Tehsildar or as the case may be, part time Government servants under Rules 15 of the West Bengal Land Manual, 1977 and their salaries/remuneration were payable from the public exchequer

A and as such, they were treated to be Government employees and regularized. The Tribunal also found that the said Extra-muharrirs were engaged in connection and for the purpose of assisting the collection of land revenue, which was held to be perennial type of a work, although their services were on the B seasonal basis. The Tribunal also further found that admittedly, the Copywriters were not the casual workers, they were mere license holders for the purposes of their livelihood and merely because some facilities like accommodation etc. were provided to them and because they were under the control of C the authorities under the terms of license, it did not mean that the said licensees were directly under the State Government or there was relationship of master and servant between the State Government and the Copywriters. The Tribunal further found that insofar as the posts of LDC were concerned, there were specific Recruitment Rules providing examination/ D interview and in the absence of any provision, the petitioners (respondents herein) could not claim to be absorbed as LDCs, giving the complete go-by to the Recruitment Rules framed under Article 309 of the Constitution of India. The Tribunal specifically found that the license was hereditary in nature, E whereas, employment under such was not so and it distinguished the status of the petitioner (respondents herein). Giving the findings, the Tribunal dismissed all the original applications.

F 12. The petitioners (respondents herein) then filed the Writ Petitions before the Calcutta High Court, challenging the common judgment by way of W.P.S.T. No. 826 of 2001, W.P.S.T. No. 1312 of 2001 and W.P.S.T. No. 15 of 2002. All these Writ Petitions were heard and were disposed of by the G common judgment passed by the Division Bench of the Calcutta High Court. The High Court in its impugned judgment found that there existed relationship of master and servant between the State Government and the Copywriters appointed under the Rules and in reality, the relationship was not that of H licensee or licensor. The High Court noted that the Writ

Petitioners had conceded that they were not entitled to the relief claimed in the application before the Tribunal, namely, the absorption in the post of LDC. The High Court, however, entertained the stand that the Writ Petitioners were entitled to equal protection of law, as is available to a Government servant, provided in Article 14, 16 and 308-311 of the Constitution of India, while serving under the State. In short, the High Court held that firstly, there existed master and servant relationship between the State Government and the petitioner Copywriters and, therefore, they were entitled to the relief claimed. It was urged on behalf of the respondent Government before the High Court that the Copywriters were merely the licensees and they could claim any better status than that. It was also pointed out that these licenses were granted in keeping with the Rules made therefor. That contention was negatived. In coming to this conclusion, the High Court has relied on various Rules brought in vide the Copywriters' Rules of 1999. As per the interpretation put forth by the High Court, the said Rules had the effect of creating a master and servant relationship between the Copywriters and the State Government.

13. The High Court has also very heavily relied on the five Judges' Bench decision of this Court in *State of Assam & Ors. Vs. Shri Kanakchandra Dutta* reported in AIR 1967 SC 884, as also another decision in *The State of U.P. Vs. Chandra Prakash Pandey* reported in AIR 2001 SC 1298. The contention of the State Government that the Copywriters were professionals, was also repelled. Various other decisions were considered by the High Court and it ultimately came to the conclusion that since there existed master and servant relationship between the State Government and the Copywriters appointed under the Rules, it could not be said that the relationship was merely that of licensees and licensor. The High Court observed that the Rules gave a "false impression" that the said relationship was merely of licensees and licensor. It was further held that the demand of remuneration to these Copywriters, which was recoverable from the parties at the rates

A fixed by the Rules, was violative of principles and tenets of the Constitution, as mentioned in Articles 14, 16, 21, 308-311, as like every other Government servant, they were entitled for a regular scale of pay.

B 14. The High Court went on to observe that though they could not be absorbed as LDCs, it would be for the State Government to decide the nomenclature of their post and their salary was liable to be fixed after taking into consideration the nature of the jobs and duties entrusted to them, only after comparing those with the similarly placed Government C employees either in the same or in other Departments, the principle of "equal pay for equal work". On the basis of this finding, the High Court further went on to hold that these benefits should be awarded to the Copywriters from the date of filing the first of the applications filed by the Association, namely, Writ D Petition No. 1643 of 1996, which got renumbered as T.A. No. 391 of 1998. The High Court also awarded the arrears to the Copywriters from the said date after adjusting the remuneration already received by the individual Copywriters. The High Court further directed that the years of continuous service put in by E them even prior to the date as Copywriters, should be taken into account for the purposes of calculation of the retiral benefits, subject to the minimum and maximum age limit for entry into the Government service (probably the date, when they first got the license to practice as Copywriters) and secondly, F their service rendered prior to the attainment of minimum qualifying age should be ignored. The High Court also held that the service rendered beyond the age limit prescribed for superannuation should not be considered for giving retiral benefits. Lastly, the High Court also directed to decide the G nomenclature of the post and the scale of pay for the same within three months from the date of judgment. The State Government was given six months' time to pay the arrears. It was further held that if the Government defaulted to pay the arrears, the amount would carry interest at the rate of eight per H cent per annum. With all these findings, the High Court allowed

the Writ Petitions, which are now fallen for our consideration. A

15. Shri Bhaskar P. Gupta, Learned Senior Counsel appearing on behalf of the State of West Bengal, firstly took us through various provisions of the Registration Act, 1908 and the various amendments made to them by the State of West Bengal. We were also taken through 1981 Amendments and the Statement of Objects and Reasons, so also we were taken through the Registration (West Bengal Amendment) Bill, 1986. Shri Gupta took us through various Rules, firstly, the Copywriters' Rules of 1979 and more particularly, the Copywriters' Rules of 1999. The whole thrust of the argument was that there was nothing in the provisions of the Registration Act or the Rules to suggest that the legislature ever intended creation of a separate service for these Copywriters. The Learned Senior Counsel very earnestly argued that vide the above mentioned Rules, the legislature has created a separate class, called "Copywriters". The contention was that, firstly, filing of a copy of a deed before the same presented for registration, was made compulsory and then a class was created called "Copywriters", who were given the licenses by the concerned authorities to make those copies. It was urged that the Copywriters had the task of copying the said deeds on payment of prescribed fees, as fixed under the Rules and for that purpose, the Copywriters were given licenses and for giving those licenses, they were selected, meaning that licenses were granted not to all and sundry, but to certain persons, depending upon their qualifications. The Learned Senior Counsel was at pains to point out that there could never exist master and servant relationship because these Copywriters were not under the control of the authorities, insofar as their attendance, their working hours or their emoluments were concerned. The Learned Senior Counsel pointed out that it was a total misnomer to say that those Copywriters were the Government servants since from the very nature of the work of Copywriters, it could not be said that they were doing any Government duties. It was further argued that the Division Bench, in its B C D E F G H

A impugned judgment, has almost rewritten the Rules. It was pointed out by the Learned Senior Counsel that such directions even under the plenary jurisdiction of Article 227, could not be given, as that amounted to legislating and hence impermissible. Lastly, the Learned Senior Counsel urged that the rulings which
B the High Court had relied on, were not at all applicable.

16. As against this, Shri Jayant Kumar Mitra, Learned Senior Counsel, as also Shri Ranjit Kumar, Shri P.P. Rao, Learned Senior Counsel and other Learned Counsel like Shri Dipak Kumar Jena appearing on behalf of the respondents,
C supported the High Court judgment. In the leading address, Shri Jayant Kumar Mitra urged that though the Writ Petitioners before the High Court had given up their main prayer, it could not be said that the High Court had given the relief not prayed or the one beyond the pleadings. The Learned Senior Counsel
D pointed out that the High Court had moulded the relief and instead of directing the absorption of Copywriters as the LDCs, had directed to create a new class for the Writ Petitioners. He also pointed out that the State Government had earlier regularized the services of Extra-muharrirs and the Copywriters
E were doing no different work than those persons. It is on these rival pleas that the present appeal has to be decided.

17. It will be better first to see the legal provisions, which have been relied on by the parties extensively. The Registration
F Act, 1908 is a Central legislation for consolidating the enactments relating to the registration of the documents. Various States have introduced State amendments to this Act. Section 19A was introduced by a State amendment in 1981 which provided that notwithstanding anything elsewhere in the
G Act or any other law, no document shall be accepted by the Registration Officer for registration, unless it is prepared and presented and accompanied by a true copy thereof in accordance with such Rules, as may be made in that behalf. While amending the Act, the State of West Bengal had introduced Part XIII A. XIIIB and XIIIBB in 1978. Part XIII BB
H

which is relevant here deals with the Inspector General, who has the power to make Rules, consistent with the Act, with prospective or retrospective effect, providing for the grant of licenses to the Copywriters, revocation of such licenses, the terms and conditions, subject to which and the authority by which such licenses shall be granted and generally for all purposes connected with the copying of documents for registration. Rules so made, were to be submitted to the State Government for approval and after approval were to be published in the Official Gazette and on such publication, those Rules would have the effect as if they are enacted in the Act. This power in the State Government, to make the Rules, came vide Section 80A. On its heels, came the Copywriters' Rules of 1982, as also the West Bengal (Deed Writers) Rules, 1982 (hereinafter called "the Deed Writers' Rules of 1982" for short). Needless to mention that we are presently concerned with the Copywriters' Rules of 1982. Section 80GG was incorporated thereafter in 1986, which empowered the Inspector General to make rules relating to Copywriters. Section 80GG became operative w.e.f. 1.1.1993. The Copywriters' Rules of 1982 were replaced by Notification Nos. 23335 and 23336 and in their place, the Copywriters' Rules of 1999 were brought in. For the purposes of the controversy in question, though it started in 1996, the relevant Rules are the Copywriters' Rules of 1999 since 1982 Rules were replaced by 1999 Rules. These Rules introduced a completely new scheme of self-employment by granting licenses to the deed writers and Copywriters creating for them self-employment, profession or vocation. The most relevant amongst these Rules are Rules 2(3), 3, 5, 6, 7, 8, 9, 10, 15, 17, 19, 20(2), 21, 24 and 26. They are as under:-

2(3) *"Licensing Authority"* means the District Registrar as defined in Section 2 of the Registration Act, 1908 (16 of 1908).

3. *Prohibition of unlicensed persons:-* No person who is not a licensed Copywriter duly appointed by the

A licensing authority under these Rules, shall engage himself in the profession of a Copywriters.

5. *Persons eligible for license:*-A Copy Writer's license may be granted to a person:-

B (i) who is a citizen of India;

(ii) who has completed eighteen years of age, but is below 35 years of age, on the date of notification inviting applications for license;

C (iii) who has passed the School Final or its equivalent examination, provided that any person applying for a Copy Writer's license under Rule 6 shall be eligible for such license if such person has passed Class VI D Examination for promotion to Class VII and has gained experience as an assistant to a Deed Writer in his profession for not less than three years on the date of application;

E (iv) who has passed the Copywriter's Licensing Test conducted by the licensing authority;

(v) who writes neatly, legibly and correctly;

(vi) whose conduct is good; and

F

(vii) who is not debarred by any of the conditions as laid down in Rule 7.

6. *(Provides die-in-Harness Principle)*

G **7.** *Disqualifications:*-

(1) A Copywriter's license shall not be granted to a person:-

H (a) if he has been declared by a competent

Court to be of unsound mind; or

(b) if he has been convicted for any criminal offence or any proceeding is pending against him in any criminal Court; or

(c) if he is a deaf-mute; or

(d) if he is a leper or suffers from an incurable contagious disease; or

(e) if his license has at any time been cancelled and the order cancelling the license has not been quashed by the competent authority; or

(f) if he is engaged in any gainful occupation or employment.

(2) In the case of refusal to grant a license, the licensing authority shall record his reasons for refusal and communicate a copy of the order to the person applying for license.

8. *(Not necessary)*

9. *Renewal of license:-* (1)A license issued under these Rules may be renewed on year to year basis by the District Register, subject to good conduct, satisfactory work and physical fitness, duly certified by the Registering Officer under whose superintendence and control the Copywriter works, by an endorsement on the body of the renewal application, on payment of the prescribed renewal fee. The application for renewal shall be filed to the Registering Officer in the month of November each year together with the Treasury Challan or Bank Draft or Money Order Receipt showing the remittance of renewal fee. The Registering Officer shall forward the application to the concerned

A District Registrar with necessary endorsement as required under this rule with his remarks, if any.

(2) xx xxx xxx

(3) xxxx xxx xxx

B

10. *Conditions of renewal:-* (1)A license shall not be renewed:-

(a) if the licensee fails or has failed to observe any of the conditions of his license or to comply with the direction of making deposit of renewal fees as provided in Rule 9; or

C

(b) during the period for which the license has been suspended; or

D

(c) if the licensee becomes physically unfit or mentally unbalanced to perform the duties of a Copywriter.

E

(2) (a) The name of the Copywriter, the renewal of whose license is refused by the District Registrar under any provision of these Rules, shall be struck off from the registers maintained by the District Registrar, as well as, by the Registering Officers concerned.

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(b) A Copywriter, who fails to apply for renewal within the stipulated period, may, however, apply for a fresh license.

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15. *Rights and duties of Copywriter:-*(1) A licensed Copywriter shall be allowed to sit in the officer precincts.

(2) He shall work under the control and supervision of the Registering Officer.

H

(3) He will enter office either on being summoned by the Registering Officer or in connection with his specified work of preparing true copy. A

(4) A Copywriter shall confine himself to the work of preparing true copies of documents to be presented for registration. He shall not engage himself in the act of canvassing for the Deed Writer. B

17. Cancellation of Copywriter's license:- (1)A license granted under these rules to a Copywriter may be cancelled by the District Registrar, if- C

(a) his license has been suspended thrice during the course of two consecutive years, provided that where the suspension of the license is for demanding or receiving remuneration in excess of the amount specified in these rules, the license may be cancelled if it has been suspended twice during the course of two consecutive years; D E

(b) he become disqualified on any of the grounds specified in Rule 7.

(2) The District Registrar shall have powers to cancel the license of a Copywriter, who is guilty of the breach of any of the provisions of these rules or of his license or of any misconduct.. F

(3) The District Registrar shall cancel the license of a Copywriter after a regular proceeding. In such a proceeding generally, charge shall be formally framed, copy of the charge shall be made over to the Copywriter concerned, evidence shall be recorded in his present, G H

A adequate opportunity shall be allowed to him to defend himself by adducing witnesses and, finally, there shall be written orders with appropriate reasons.

B 19. Suspension of a Copywriter's license:- A license granted under these Rules to a Copywriter may be suspended if he-

(1) fails to maintain the Register or to issue receipts as required under Rule 12;

C

(2) contravenes any of the provisions of these Rules or any of the conditions of his license or is found guilty of disobedience to any lawful order passed under these rules;

D

(3) is found guilty of abatement or participation in any illegal transaction with any member of the staff of the Registrations Office'

(4) Conducts or behaves himself improperly in E the Registration Offices.

20(2) An order of suspension shall be issued after a regular proceeding. The Copywriter accused of guilt shall be given adequate opportunity to be F heard and defend himself. The decision of the suspending authority shall be recorded in writing and a copy of it shall be furnished to the Copywriter concerned.

21. *Copywriter's licensing test:-* (1)An examination to G be called "Copywriter's Licensing Test" shall be conducted by the licensing authority of each district. The time and place of the examination and also the language in which the candidates shall be examined shall be notified in such manner as the H licensing authority considers appropriate and

necessary.

(2) The test shall relate to the transcription of documents and may include any other subject as may be prescribed by the licensing authority.

(3) An examination fee as provided in these rules shall be levied on each application.

24. *Remuneration*:-The rate of remuneration shall be as follows:-

(1) For copying 100 words or part thereof Rs.6.00, subject to the minimum of Rs.30.00;

(2) For preparing typed copy by licensed Copywriter, the charge shall be the same as in Clause (1);

(3) For comparing 100 words or part thereof, each comparer shall get Rs.4.00, subject to a minimum of Rs.20.00.

26. <u>Suspension, cancellation, revocation and/or granting of license under certain circumstances:-</u>

(1) Notwithstanding anything contained in these rules, the Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal, may, on his own motion or otherwise, call for the records of any case relating to grant of license, and if it so appears to him that license has been granted or not granted in contravention of these rules or if it so appears to him that the licensing authority was biased or influenced in granting or not granting the license, he may pass such order

A including order of suspension, cancellation, revocation, and/or granting of license, as he may deem fit and proper, after giving the reasons therefor in writing, provided that no such order shall be passed without giving the
B person or persons so affected, an opportunity of being heard and without calling for a report from the licensing authority.

(2) An appeal against any order under Sub-Rule (1) shall lie to the Government in the Finance
C (Taxation) Department, if preferred within thirty days from the date of communication of the order passed under that sub-rule.

The above mentioned Rules were generally referred to and
D relied on by the parties and hence, we have quoted them extensively. Apart from that, Shri Jayant Kumar Mitra, Learned Senior Counsel appearing on behalf of the respondents, also referred to Rule 5 and 9 of the Copywriters' Rules of 1979. Rule 5 provides for preparation of copies, while Rule 9 provides for
E authentication and filing of the copies. We need not dilate upon these Rules at this juncture.

18. Coming back to the Copywriters' Rules of 1999, they in general and particularly those Rules, which have been quoted above, bring out a position that the Copywriters' licenses are
F to be held exclusively, in the sense that a person holding deed writer's license shall not be entitled to hold the same and that none excepting the license holder, can engage himself in the profession of a Copywriter. The language used in Rule 3 describing it as a "profession of Copywriter" is extremely
G important. Rule 5 provides for the qualifications for holding such a license. It is worth seeing that it requires is only passing of VIth Class Examination. Such a person should have minimum 3 years of experience on the date of application. Such a person would also have to appear for a Test, he should be able to right
H neatly, legibly and correctly and he should have good conduct.

Rule 6 suggests that if a Copywriter dies in harness or becomes incapacitated, then his/her spouse or any one of his/her sons/daughters/near relations would be eligible to be considered for grant of Copywriter's license on their making application through proper channel to the Inspector General of Registration. Rule 9 provides for renewal of license, as the license granted is only an annual one. Rule 10 provides for the conditions of renewal. The Rule provides that if the licensee has violated any of the conditions or does not pay the renewal fee or during the earlier period, his license has been suspended or he becomes physical unfit or mentally unbalanced, then his license shall not be renewed. Though Rule 12 has not been quoted by us, even that was referred to by the Learned Counsel and more particularly, Learned Counsel for the respondents, to show that the licensee has to abide by the conditions, he cannot charge more fees then prescribed under Rules. He has to issue a receipt in Form No. 6 and he may be debarred for not following these conditions, he is also required to maintain a register in Form No. 5, he shall exhibit the rates of remuneration and he shall be amenable to the inspections made by the Registering Officer and shall be generally under the control of licensing authority. Rule 15 provides the rights of the Copywriter, suggesting that he should be allowed to sit in the office precincts and shall work under the control of Registering Officer. Rule 17 provides for the cancellation of license, while Rule 19 provides for the suspension of the license. Suspension has been dealt with in Rule 26. Rule 20(2) provides the manner and procedure, under which the suspension shall take place. Lastly, Rule 24 provides for the rates of remuneration or the fees. All this completes the legal scenario.

19. Shri Bhaskar P. Gupta, the Learned Senior Counsel for the appellants pointed out that the Rules and the provisions, read in any manner, cannot conceive of a relationship of master and servant between the Copywriters and the State Government. Shri Gupta said that it is at the most, a self-employment generating scheme. The Learned Senior Counsel

A pointed out that there are Rules under Article 309 for recruitment of the Government servants and the present Rules do not come anywhere near those Rules. It was pointed out that there are no tests in the Government Organization, which are comparable to or equivalent to the post of Copywriters. It was B suggested that these Copywriters do not do any work relating to the Registration Office of State nor is any payment required to be made to them from the public exchequer. It is for this reason that the Learned Senior Counsel argued that the whole claim of absorption, as made initially in the original application, C is baseless.

20. When we see the aforementioned Rules, they nowhere provide even distantly, any master and servant relationship in between the State Government and the Copywriters. It is the basic principle of interpretation that where the language of the D Statute is clear and admits of no doubt, then the Court will accept the plain meaning of the provisions. Applying the test of plain meaning, no Rule either under the Copywriters' Rules of 1982 or the Copywriters' Rules of 1999, can be read as clothing the Copywriters with the status of Government servants. E The Rules, at the most, provide for the licenses armed with which, the Copywriters can follow the profession of Copywriting, as is clear from Rule 3 of the Copywriters' Rules of 1982.

21. The demand for absorption seems to have emanated F from what happened earlier in the case of Extra-muharrirs, who were admittedly absorbed by the State Government in the posts of LDCs. That fact was used by Shri Jayant Kumar Mitra, Learned Senior Counsel for the respondents very earnestly to convince us that the Extra-muharrirs did the same job of G Copywriting and were identically placed as these Copywriters. On the other hand, Shri Bhaskar P. Gupta, Learned Senior Counsel for the appellants pointed out to us that there cannot be any comparison between the Extra-muharrirs and the Copywriters for the simple reason that the Extra-muharrirs were already on the establishment of the Government in the regular H

posts. All that was done to change the nomenclature of that post, and finding that the duties of that post were almost identical to the duties of the LDCs, they were absorbed as the LDCs. Therefore, it is not a case where the persons, who were not even on the establishment of the Government were conferred with the status of the Government servant. Such was not the case in case of the Copywriters. Admittedly, they were never on the Government establishment. They were private persons and they took the advantage of the Copywriters' Rules of 1999, which provide for the licenses to be given for doing the job of a Copywriter. They have been provided with this opportunity to earn their livelihood by working as the Copywriters on the basis of the licenses. They were not comparable in any manner with the Extra-muharrirs even in respect of their educational qualification. It is to be seen from the Rules that the minimum qualification for a licensee as a Copywriter is barely VIth Class passing, which is unimaginable in the present days as a minimum qualification for a Government job. It is tried to be suggested that almost all the Copywriters were educated and were holding a better qualification. That may be so, but that does not in any manner solve the problem of the Copywriters, whose minimum qualification, as prescribed in the Rules, is much lower than that of the LDCs. Again during the debate, as also before the High Court, no evidence has been brought, showing as to how the post of Extra-muharrirs is comparable to or identical to the post of Copywriters. We will have to, therefore, straightaway reject the claim in this behalf.

22. At this juncture, we must consider the arguments of Shri Bhaskar P. Gupta, Learned Senior Counsel for the appellants, about the relief which has been granted to the Writ petitioners. We have referred to this argument in the earlier part of this judgment. The Prayer clause in the Writ Petition No. 2304/1996, which Writ Petition was transferred to the Tribunal to be renumbered as T.A. No. 392 of 1998 is already quoted by us in paragraph 7 of this Judgment.

A 23. The whole petition was based on the perpetual demand on the part of the Copywriters to be absorbed as the LDCs. A substantial part of the petition deals with not only the demand, but also the agitations, which were taken up by the Copywriters individually, as well as, on Association level. We B have seen the Writ Petition very carefully. After referring to the Copywriters' Rules of 1982 (the Copywriters' Rules of 1999 had not, by then, come into effect, since Writ Petition was filed in 1996), the Writ Petitioners pointed out, more particularly, Rule 5, 7 and 14 thereof to suggest that the Writ Petitioners' C eligibility for license was fixed by the Government and that they were selected after making an application under Rule 7 and further to show from Rule 14 that they were to work under the control and supervision of the Registering Officer. The Writ Petitioners have also relied on some other Rules and also the fact that the Rule of 'dying in harness' was made applicable to D these Copywriters. In short, the contention was that the Writ Petitioners were carefully selected for the grant of license and that their service conditions were almost alike to the LDCs.

24. In para 14 of the Writ Petition particularly, Writ E Petitioners referred to the representations given by them for their permanent absorption as Copywriters under the respondent State. A reference is made to demonstration in the year 1995 and a further reference is made to the intervention and alleged assurances given by the Finance Minister of State F and other Officers for considering the grievance, as well as, the proposal of permanent absorption of the Writ Petitioners, upon which the continuous strike was withdrawn by them. Writ Petitioners, in para 15 and 16, have referred to a representation dated 20.6.1995 and have further asserted that recently G vacancies had cropped up in the Office of Registrar throughout the West Bengal and, therefore, the names of the prospective candidates to fill up such vacancies were invited from the employment exchanges. In fact, this was the sore point felt by the Writ Petitioners, whose main demand in the Writ Petition, H as would be clear from the Prayer clause, was to stop such

process for employment, started by the State Government. It is only with that idea that they had sought for an injunction against the said process. In para 17 of the Writ Petition, the Writ Petitioners urged that previously, i.e. in or about 1979, the Government had absorbed all the Copywriters working in the office of Registrars throughout the West Bengal as LDCs under the said office and had employed them under the State, though the Writ Petitioners were careful enough to state that those persons were then called "Extra-muharrirs". We have already dealt with the question of Extra-muharrirs in the earlier part of the judgment. In para 18, again it was asserted that the Writ Petitioners had requisite qualification, expertise and experience to work as LDCs. The Writ Petitioners then referred to their Trade Union and in para 21, the Writ Petitioners asserted that those, who had the qualifications, should be allowed to sit for examination for absorption in the posts of LDCs, which examination was meant for filling up the vacancies of LDCs. They also pointed out that their Cards of employment exchange were surrendered temporarily in view of their engagement as Copywriters. They also referred to a so-called assurance given that they would ultimately be absorbed in the office of the respondent Registrars on availability of the vacancies for the posts of LDC. They also prayed in para 26 that the age bar should not be introduced in their case, as some of them had already crossed the age limit of 35 years. In para 28, they asserted their legal and fundamental rights to be absorbed. In para 30, they stated about their requisite qualifications and eligibility to be selected as LDCs. Lastly, in para 31, the Writ Petitioners asserted that the exercise on the part of the Government was discriminatory and arbitrary. What prominently appears from the Writ Petition is that in the whole Writ Petition, the Writ Petitioners are conspicuously silent about any master and servant relationship between them and the Government much less on the basis of 1982 or 1999 Rules.

25. The petition is wholly silent about the assertion that the Writ Petitioners are doing the identical duty as that of the LDCs

A and they are actually the Government servants. Further, there is not even a whisper in the Writ Petition that a separate cadre with a separate nomenclature should be created for them by the Government. In fact, in the last part of the Writ Petition, the Writ Petitioners have asserted that injustice has been done to B them in their representations remaining without a reply and in their not being absorbed in service and further they are not being allowed to sit in the examination. In para 36, they asserted that the respondents should be injuncted from proceeding with the absorption in the post of LDCs in their offices and from C calling for interview or written tests or for any selection procedures in respect of the said posts. What we fail to understand is as to how on the basis of such a Writ Petition, the Writ Petitioners were allowed to completely change their stand and introduce, for the first time, a theory of master and D servant or even allowed to argue that they were the Government servants and in fact, because of the duties conducted by them, they were the servants of the Government on its establishments. Unfortunately, all this was allowed, though not at the Tribunal level, but at the level of the High Court.

E 26. Shri Jayant Kumar Mitra, Learned Senior Counsel for the respondents tried to point out that in their counter-affidavit, the State Government themselves asserted that there was no master and servant relationship between the Writ Petitioners and the State Government and, therefore, the Writ Petitioners F could not assert their right to be absorbed as LDCs. Therefore, Shri Mitra pointed out that if the theory of master and servant was introduced by the Government in its reply, then the Writ petitioners had every right to assert that there was a master and servant relationship between them and the Government. G We completely fail to understand this logic. A Writ Petitioner has to stand on his own legs and has to rely on the pleadings in the Writ Petition. A simple case was pleaded by the Writ Petitioners in the Writ Petition that they had a right to be absorbed as LDCs, firstly because the Extra-muharrirs were H so absorbed and secondly, because they were doing the same

job as LDCs. They had nowhere suggested that they were already on the Government establishment and there existed master and servant relationship between them and the Government and, therefore, it was incumbent on the Government to either absorb them as the LDCs or to create a separate service for them. It has to be understood that they never asserted that they were equally circumstanced with the LDCs or Extra-muharrirs, which position, they introduced for the first time before the High Court. Such radical change in the stand, as also the radical change in the Prayers could not have been allowed by the High Court in a Writ Petition, muchless when the High Court was concerned with the limited exercise of deciding the correctness or otherwise of the Tribunal's judgment. Unfortunately, the High Court seems to have travelled much beyond the pleadings and has, therefore, fallen into error in granting an unimaginable relief to the Writ Petitioners of creating a service for them with a separate nomenclature. All this was clearly beyond the jurisdiction of the High Court.

27. We have already stated about the original Writ Petition, which was converted as a Transfer Application. Unfortunately, copy of Writ Petition being WPST No. 826 of 2001, which was filed after the order of the Tribunal was passed, has not been filed before us. We have, therefore, seen the other two Writ Petitions, which came to be filed before the Calcutta High Court, they being WPST No. 1312 of 2001 and WPST No. 15 of 2002, which were also decided by the High Court by the common judgment. The story is no different. The plea are almost the same, inasmuch as the petitioners therein also compared themselves to the Extra-muharrirs and claimed a parity with them. The same plea regarding right and control and the manner of working for determining the employer-employee relationship has been pressed into service for the first time, though same was not the case before the Tribunal. It was also tried to be suggested in the grounds that in pith and substance, the Copywriters held statutory licenses and since they were working under the command and control of the authorities and

A were subordinate to their disciplinary jurisdiction and since those licenses were controllable by the State Government, therefore, they became the integral part of the State Government Organization and, therefore, all that had remained was to recognize such a status by their absorption into the B regular structure of the Government. Same plea, to the effect that the Copywriters were doing what the Government could have got done through their employees, has also been pressed into service. Again, the same identical reliance was placed on the fact that their remuneration was fixed by the Government C Rules. Thus, the same theory of interpretation came in these petitions after the Tribunal's order.

28. At this backdrop, when we see the Prayer clause, all that was prayed is setting aside of the judgment of Tribunal and a direction to the State Government to absorb and regularize D the services of the Copywriters in the regular cadre of service under the respondents therein, in the posts of LDC or in any such suitable post commensurate to their qualification and experience. Identically, the injunction is also prayed for restraining the State Government from filling up the post of E LDCs. Very typically, in Prayer clause (e), a direction is prayed for to provide the Writ Petitioner with employment as LDCs or equivalent posts. We are certain, the prayers are no different in WPST No. 826 of 2001, the copy of which is not on our record. In fact, it is on this short ground that the Writ Petitioners F had given up their main demand of being absorbed as LDCs that these appeals are liable to be rejected. Once those prayers vanish on account of the concession by the Learned Counsel, really nothing could remain in the petition. However, High Court went on to examine the belated theory of master and servant, G which was totally out of the scope of the original application, as well as, the Writ Petition. Even at the cost of repetition, we may say that when the State Government in its reply before the Tribunal asserted that there was no relationship of master and servant, the Writ Petitioners seem to have totally changed their H stand. The Learned Counsel for the Writ Petitioners before the

High Court, as well as, before the Tribunal had rightly conceded that they could not be appointed or absorbed as LDCs. Shri Mitra, Learned Senior Counsel for the respondents very fairly stated at the beginning of the debate that they had abandoned that prayer. Shri Mitra, however, tried to justify that in its plenary jurisdiction, the High Court could mould the relief. There could be no doubt about the High Court's power to mould the relief. However, even in its plenary jurisdiction, while moulding the relief, there must be a plea to support such a relief. The relief granted by the High Court in this case is extraordinarily beyond the jurisdiction of the High Court and has no nucleus in the Writ Petitions or in the original applications. The basic case that was pleaded was that since the Extra-muharrirs were absorbed by the Government, the Writ Petitioners, who were doing the task of Extra-muharrirs, also had a right to be absorbed in the Government. This plea was obviously baseless, as while Extra-muharrirs were on the regular establishment of the Government, the Writ Petitioners were not and, therefore, they could not have claimed the parity. It is only after the reply of the Government came, denying the master servant relationship, that the Writ Petitioners started singing the tune of the de facto Government service in their favour. The argument before the high Court, as well as, the Tribunal was that because of the duties and because of licenses which were controlled by the Government in their grant, continuance and termination as well as suspension that the Copywriter license holders were in fact Government servants and, therefore, had a right under Articles 14 and 16 of the Constitution of India. We must, at once, repel this argument of Article 14 and 16, which has been accepted by the High Court. The High Court has treated unequals as the equals and for that purpose, the High Court had to do the acrobatics for finding that the Copywriters had the trace of Government service.

29. Taking this defective logic further, the High Court proceeded to hold that once it was proved from the Rules that they had the tracings of the Government service in their favour,

A then they were entitled to the equal protection like other Government servants. All this was impermissible for the simple reason that the Government service is controlled and managed by the rules under Article 309 of the Constitution of India. Such rules were never there and were not likely to be there in case
B of the Writ Petitioners therein. That by itself was enough to reject the claim of the Writ Petitioners. No Government service can be de-hors the rules. There were, undoubtedly, the rules for the Copywriters, but those rules could never be read as creating a separate Government service. They, at the most,
C were licensees. Firstly, these Writ Petitioners were not paid from the coffers of the Government. Secondly, though there was an apparent control, there was no control on their actual working. It was very fairly admitted at the time of debate that there was no attendance register for these Copywriters nor
D were they required to take leave in case they decided to remain absent. Further, they were not even controlled in the matter of their actual working hours. Thus, the control was qua the licenses, not qua the duties. This fine distinction was ignored. The grant of licenses was bound to be under the rules and, therefore, their continuation, termination or suspension was also
E bound to be under the rules. But, that was the only scope. The rules never provided as to how the working of the Copywriters would be controlled. They were, undoubtedly, independent professionals. They could come and leave at any time. Nobody could compel their attendance and the disciplinary control which
F was pressed into service by Shri Mitra and others was only in respect of the continuation of their licenses. Such a disciplinary control would be available in case of all the licensees in whatever Department the licenses are given. A criminal cannot be allowed to enjoy a license nor could a person, who
G misbehave, could enjoy the continuation of a license. That is not the test, muchless to hold such persons to be the persons on the Government establishment. Again, merely because the rules provided that every deed must be copied and a copy thereof must be offered while registering the deed, it did not
H mean that the Copywriters were doing any Government duties.

The concept of the Government servant's duty is entirely different. Here, what these Copywriters were doing, was only in terms of their profession and for earning by copying. A job of making a copy of the deed for some remuneration is not a Government job nor does it involve a Government duty.

30. Much was spoken about the selection of these Copywriters. If they were Copywriters, the Government was perfectly justified in holding the tests for awarding the licenses. A person with horrible handwriting or a person with illegible handwriting could never had been given this license, which essentially required good handwriting, so that it should be legible copy of the deed which is offered for the registration. This certainly was not a Government duty. In our opinion, the Government duty would start only after the deed is presented for the registration. This would also include the checking as to whether the deed is accompanied with by a legible copy thereof. But, writing of the copy, in our opinion, could never amount to a Government duty or a statutory duty. We specifically asked the Learned Senior Counsel for the Copywriters, as to whether a Copywriter could refuse to do the copying work on account of any relevant reason. The Counsel very fairly admitted that he could so refuse to write. We can easily visualize such a situation that a particular Copywriter having a good reputation, a very good handwriting, may invite a rush of the clients and might have to refuse the work. That was perfectly possible. Therefore, in the matter of their working, there was no control and merely because they hold the license to copy the deeds, it did not mean that the Copywriters were doing any duty, which was even distantly similar to the Government duty. All the arguments, therefore, based on the rules, have to be rejected.

31. This takes us to the finding on the master and servant relationship, since that was the main tune on behalf of the Copywriters during all the arguments before us. We would ordinarily have entertained this plea, since it was not raised in

A the Writ Petitions turned into Transfer Applications. However, since the main thrust of the Learned Senior counsel for the Copywriters was on this master and servant relationship, we would choose to consider the argument. The essential of a master and servant relationship is that the servant must be
B retained by the master for doing any duties given by the master and the remuneration must flow from the master to the servant. The servant must be under the total control of the master insofar as duties are concerned. We have already given a finding that there was no control as such on the working of these
C Copywriters. They were merely licensees and if there was any control, the control was only on their licenses. There was no control over the manner in which they do their work of copying. Again, there has to be a disciplinary control which is conspicuously absent in this case. The control was only qua the licenses, their continuation or their termination. Therefore, we
D are unable to accept the argument of Shri Mitra that from the bare reading of the rule, we must hold that there was a total control by the Government over the working of these Copywriters. Now, we will take the the most crucial question regarding the master and servant relationship. Admittedly, these
E Copywriters did not get paid by the Government. Government had no responsibility, whatsoever, to pay or even to ensure that they got paid a particular amount. While one Copywriter could earn Rs.1,000/- a day, the other could remain content with Rs.50 a day, depending upon the work that he has handed out.
F It was not the duty of the Government to see that every Copywriter gets some minimum wages. In fact, the concept of "payment of wages" by Government is totally absent. What the Copywriters got and were entitled to get was a fees for their services to the private persons, who wanted to get their deed
G registered. Once all these factors are considered cumulatively, it is obvious that there was no trace of master and servant relationship.

32. To get out of this difficult situation, Shri Mitra, Learned
H Senior Counsel for the respondents, relied on the case of

Kanakchandra Dutta (cited supra). Whether Mauzadars working under the Government held a civil post, was a question considered in this matter. Under the Mauzadari system, the land revenue used to be collected in Assam Valley and the Mauzadar was in charge of a Mauza and responsible for the revenue collection of that Mauza. In short, Mauzadar was spoken of as "Revenue Contractor". The executive instructions appearing in paragraphs 115 to 159 and 167(a) of Assam Land Revenue Manual, 6th Edition drew a complete scheme for the appointment and dismissal of the Mauzadars, their duties and emoluments and the registers, which were to be kept and maintained by them. They were to be appointed and dismissed by the Deputy Commissioner subject to the Commissioner's approval and could be suspended by the Deputy Commissioner on his own authority. Normally, Mauzadar's successor used to be selected from among the members of his family. Every Mauzadar, before his appointment, had to execute a written agreement (kabuliyat) in the prescribed form. Mauzadar, as has been said earlier, was responsible for the collection of poll-tax, house-tax, tauzi-bahir revenue, grazing fees and forest dues. He was required to pay to the treasury the full amount of all installments of land revenue, as also the other taxes collected by him within a particular time. The Mauzadar was not concerned with the assessment of land revenue or the settlement of land or checking of maps or assessment papers. He was only concerned with the collection of land revenue. He was charged with the duties of supervising the performance of duties by Gaonburas, to receive applications for waste lands which he was authorized to entertain and to submit them with a report to the proper revenue authority, to submit reports of cases sent to him by special order for local enquiry, to assist the district authorities in the assessment of income tax, to report, when so directed, upon the sufficiency of the security offered by the lessees of Government or Local Board Ferries, fisheries etc., to submit weekly reports upon the condition of crops, the prevalence of epidemics amongst men or cattle, the loss of life caused by wild animals and the appearance of

A insect pests, to compile and submit to the Civil Surgeon a monthly return of vital statistics, to check the Gaonburas' reports of births and deaths by local inspection, to effect field mutations and field partitions in uncontested cases, to assist Government in any work connected with the village organization system, to B warn persons not to allow their cattle to stray on roadside lands and to submit weekly returns of collections. Therefore, he was generally required to act as the Deputy Commissioner's Assistant in all administrative matters within his Mauza, so far as he may be called upon to do so. This Court also took the C complete trace of his duties, which further included the power of attachment and sale of movables under Section 69 of the Assam Land and Revenue Regulation, 1886 (Regulation No. 1 of 1886). It also took note of the fact that Mauzadars were appointed Revenue Officers under Section 124 of the D Regulation. It was also noted that all Mauzadars were appointed as ex-officio Assistant Settlement Officers and invested with the powers to effect registration under Section 53(A) in uncontested cases and to dispose of under Chapter VI of the Regulation all applications for partition of revenue-paying estates in which no objection is preferred. The Court further went on to note that E there was no formal definition of "post" and "civil post". The Court further observed:-

> "A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as F distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Article 311. In Article 311, a member of a civil service of the Union or an all-India Service or a civil service of a State is mentioned G separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Articles 309, 310 and 311. The H heading and the sub-heading of Part XIV and Chapter I

emphasize the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. *A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."* (emphasis supplied).

33. Heavily relying on this judgment, Shri Jayant Mitra, Learned Senior Counsel for the respondents, compared the post of Mauzadar with the Copywriter. It was suggested that like Mauzadars, the Copywriters also held heritable office. The Learned Senior Counsel further urged that the element of 'appointment' of Mauzadars was present, in Copywriters' case, inasmuch as the licenses were granted, continued and terminated, as also, suspended by the State government under the Rules, it was pointed out that practically all the factors were present in their case also. We do not think that there is any similarity between the duties of Mauzadars and the duties of Copywriters. In fact, all the duties done by the Mauzadars were the Government duties, the most important being the collection of revenue and the collection of other taxes, which were essentially Government functions. The nature of powers enjoyed by the Mauzadars is also another pointer to suggest that in comparison to Mauzadars, Copywriters had no powers. All that they were required to do was to copy the deeds. There were not only the powers to collect the revenue on the part of Mauzadars, but they also had the special duties of supervisory nature. They were also responsible to the Government servants like Assistant Commissioners, under whom they worked and to whom they reported the essential information for income tax.

A They also had the powers to effect the partition and thereby, to deal with the land in some cases. We fail to follow as to how this case could be of any assistance to the respondents herein. This Court observed:-

B "Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by C way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. *He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the* D *State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer, exercising delegated powers of Government.* (Emphasis supplied) Mauzadars in the Assam Valley are appointed E Revenue Officers and ex-officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under F the State."

34. This Court further noted that though the Mauzadars were not paid the salaries, they were paid the remuneration by way of commission on collections of Government dues. The Court further noted that considering the overall duties, which we G have quoted above, the Mauzadars held civil posts. We have already pointed out that in case of Mauzadars, they were paid from the Government coffers, while in case of the Copywriters, they got paid from the private individuals. Again, the element of 'control' is completely absent in case of Copywriters, which H was present in case of Mauzadars. Similarly, Mauzadars were

clothed with the administrative powers on the revenue side and had to carry out onerous duties in connection with the affairs of the State, which is not the case of the Copywriters. In our opinion, therefore, the reliance placed by Shri Mitra, Learned Senior Counsel for the respondents, on this case, is uncalled for.

35. Relying on this case further, Shri Mitra, Learned Senior Counsel for the respondents, invited our attention to another decision in *Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Ors.* reported in 2006 (2) SCC 482 and more particularly, to the observations in para 10 thereof, where the decision in the case of *Kanakchandra Dutta* (cited supra) was relied upon for deciding as to whether appointment of a person under the Administration of a Union Territory on contract basis for a short period, de-hors the statutory rules and without complying with the Article 16, the person could be held as the Government servant. The Court came to the conclusion that such person could not be viewed as a person holding a civil post. The petitioner therein was appointed as Drugs Inspector on short term contract basis on a fixed salary for a period of six months. While he was so serving, one advertisement was issued for Drug Inspector post providing the upper age limit for making direct recruitment at 30 years. Since the petitioner was over-aged by two years, he sought relaxation of his age claiming to be a Government servant by filing a Writ Petition, which was allowed and the High Court had directed to issue the age relaxation certificate. The question fell for consideration as to whether the Writ Petitioner was a Government servant as the relaxation for possible only for Government servant. Relying on the judgment in *Cassidy Vs. Ministry of Health* reported in 1951 (1) All ER 574, the Court noted that while in "contract for service", the master can order or require what is to be done, in other case, i.e., "contract of service", he cannot only order or require what is to be done, but can also direct how it shall be done. The Court also referred to another decision in *Short Vs. J.W. Henderson Ltd.* reported in 1946 (174) LT 417, which had

A laid down the attributes of employer-employee relationship, which principles were followed in the latter decision. In that case, the following four indicia of contract of service were laid down:

B (a) The master's power of selection of his servant;

(b) The master's responsibility of payment of wages or other remuneration ;

(c) The master's right of suspension or dismissal;

C (d) The master's right to control the method of doing the work.

Undoubtedly, it was observed that a contract of service may still exist if some of these elements are absent altogether, D or present only in an unusual form. It was, however, treated that the factor of superintendence and control has always been a critical and decisive of the legal quality of the relationship.

36. The Court then proceeded to consider the law laid down E in *Morren Vs. Swinton and Pendlebury Borough Council* reported in 1965 (2) All ER 349, which made a slight departure by saying that though in many cases, the importance of the factor of superintendence and control was emphasized, but that is not the determining test. The Court noted the law laid down F in *Morren's* Case to the effect that superintendence and control cannot be a decisive test, when one is dealing with a professional man or a man with professional skill and experience. Lastly, the Court referred to the decision in the case of *Argent Vs. Minister of Social Security* reported in 1968 (3) All ER 208, in which it was suggested that though in earlier G cases, the most important test, if not the all-important test, was the extent of control exercised by the employer over the servant but with the development of law in recent times, the emphasis has shifted and no longer rests so strongly on the question of control. Control is obviously an important factor. In some cases, H it may still be a decisive factor, but it is wrong to say that in

every case, it is the decisive factor. The Court then went on to consider the law laid down in the case of *Kanakchandra Dutta* (cited supra) in para 15 and came to the conclusion that indicia laid down in this case this case could not be the only test for determining the person holding a civil post under the Union Territory or State. Ultimately, in para 23, the Court observed that the principle laid down in the case of *Kanakchandra Dutta* (cited supra) did not advance the case of the respondent in any manner, as certain other factors like the process of recruitment in accordance with relevant service rules were not followed and certain other incidents of service like transfer, disciplinary action, pension and the facility of General Provident Fund were absent in his case. Lastly, the Court also considered the decision in *State of U.P. Vs. Chandra Prakash* (cited supra), where the question was whether the Kurk Amins appointed on commission basis by Collectors for realization of outstanding dues of various cooperative societies as arrears of land revenue can be treated to be employees of the State Government. It was pointed out that Kurk Amins had not been appointed on contract basis as is the case of Respondent No. 1, but they were in fact, regularly appointed and had to perform Govt. duty of recovering arrears of land revenue. The Court, therefore, did not hold the said person as a Government employee. A look at this case would suggest that the rules for the appointment were given the utmost importance. Admittedly, in the present matters there were no rules for appointment of any service. The rules merely provided the manner in which the licenses were to be created and controlled. That is a distinction. According to us, even this case does not help the respondents herein. In fact, the observations in para 15 to the effect that the decision in *Kanakchandra Dutta* (cited supra) provided the complete test, go rather against the respondents.

37. This takes us to the case of *State of Gujarat & Anr. Vs. Raman Lal Keshav Lal Soni & Ors.* reported in 1983 (2) SCC 33. The question, which fell for consideration was as to whether personnel drawn from different sources, namely,

A Government departments, as well as, the local authorities or Municipalities merged together to constitute a single integrated civil service under the State by a legislative enactment, would become the State Government employees, irrespective of their original status. The question was answered in affirmative. This B decision was very heavily relied upon by Shri Mitra, Learned Senior Counsel for the respondents, since the end result went in favour of the employees and they were held to be holding the civil posts. In para 27, the Court observed:-

> C "We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. *On the other hand, no single factor may be considered* D *absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the* E *duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid* and a host of such circumstances, may have to be considered to determine F the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not." (Emphasis Supplied)

Reference was made to the cases in *Gurugobinda Basu* G *Vs. Sankari Prasad Ghosal* reported in AIR 1964 SC 254, *State of U.P. Vs. Audh Narain Singh* reported in AIR 1965 SC 360, case of *Kanakchandra Dutta* (cited supra), *D.R. Gurushantappa Vs. Abdul Khuddus Anwar* reported in 1969(1) SCC 466 and *S.L. Agarwal Vs. G.M. Hindustan Steel Ltd.* reported in 1970 (1) SCC 177. In para 31, this Court noted that H

the Panchayat Service constituted under Section 203 of the Gujarat Panchayats Act was a civil service of the State and members of the service were Government servants. It was noted that this question was decided by the High Court of Gujarat more than 15 years back in *G.L. Shukla Vs. State of Gujarat* reported in ILR 1967 Guj 560 by Hon'ble Bhagwati, J. (as he then was). In that judgment, Hon'ble Bhagwati, J. observed:-

> "The mode of recruitment, the conditions of service and matters relating to appointments, transfers and promotions of persons employed in the panchayat service as also disciplinary action against them are all determined by the State Government and that is consistent only with the State being the master in the entire panchayat service. The mandatory provision for promotion from panchayat service to State service which is required to be made in the rules also shows that both the services are services of the State. There could be no question of promotion from one service to another if the masters in the two services were different. Then it would be a case of termination of one service and appointment of another....."

The Learned Judge further said:-

> "It is not possible to believe that the officer or servant could have been intended by the Legislature to be treated like a chattel which can be tossed about from one master to another. The only reasonable way of looking at the matter seems to be and that conclusion is inevitable on the language of these provisions, that the panchayat service is a civil service of State like the State service and since both the services are civil services of the State with the State as the master, an officer or servant can be allocated from the State service to the panchayat service and reallocated from the panchayat service to the State service....."

A Considering other provisions, ultimately, this Court held the employees to be belonging to the Government service and found that there existed the master and servant relationship. The situation is entirely different in the present case and as has been oft quoted by this Court that every case would have to be B decided on the facts. We do not find any parity of the facts in this case with the case at hands. It was tried to be argued feebly by Shri Mitra, Learned Senior Counsel for the respondents that there was a power of transfer in the present rules also and that showed the ultimate control. In the first place, that power of C transfer is not an absolute power of transfer. It depends upon contingency of the availability of the adequate number of Copywriters in a particular district. That, in our opinion, would not be a decisive factor. On the other hand, what we find is that there is no payment of wages to the Copywriters from the Government coffers nor is there any control on the work or on D the way the work is to be conducted. Further, there are no rules creating any such service like the rules, which were considered in the case of *State of Gujarat & Anr. Vs. Raman Lal Keshav Lal Soni & Ors.* (cited supra). This case is, therefore, of no use to the respondents herein.

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38. Shri Jayant Mitra, Learned Senior Counsel for the respondents relied on the judgment in *Dharamgadhra Chemical Works Limit Vs. State of Saurastra* reported in AIR 1957 SC 264. This case obviously will not apply for the simple F reason that the question there was as to whether a person, if paid not per day, but by the job, could be held as a workman. The observations have been made to the effect that the rules regarding hours of work etc. applicable to other workmen may not be conveniently applied to them, is no deterrent against G holding the persons to be workmen within the meaning of the definition. We do not think that these observations or the law laid down in this case, is apposite to the present controversy. The other case relied on was *Chintaman Rao Vs. State of Madhya Pradesh* reported in AIR 1958 SC 388. This was the H case under the Factories Act. The Court was called upon to

decide upon as to whether who is a contractor and distinction between a contractor and a workman. This was the case under the labour jurisprudence and, therefore, the observations made therein in paras 10 and 11 would not apply to the present controversy. Relying on this case, the Learned Senior Counsel tried to contend that the State supervises and controls the work done by the Copywriters. For this purpose, reliance was made on the Copywriters' Rules of 1979. That was tried to be viewed as a control by the State Government on the working of the Copywriters. We have already held that the rules do not have any such scope as to spell out an absolute control on the work of Copywriters.

39. The Learned Senior Counsel also relied on the case of *The Superintendent of Post Offices Vs. P.K. Rajamma* reported in 1977 (3) SCC 94. This was a case regarding the extra departmental branch Post Masters and extra departmental delivery agents. The question was as to Whether such persons could be held to be holding the civil post. The Court came to the conclusion that considering the elaborated provisions of rules controlling the appointment, leave, termination of services, the nature of penalties, procedure for imposing penalties and other matters relating to the conduct and service of extra departmental agents, such persons were holding the civil post. We have closely seen the ruling and find that the rules relating to extra departmental branch Post Masters are entirely different. Those extra departmental branch Post Masters were being paid from the coffers of the Government and their service was also controlled in the manner of penalties. Such is not the case here. The ruling is of no consequence. Further reliance was made on the case of *G.B. Pant University of Agriculture Vs. State of Uttar Pradesh* reported in 2000 (7) SCC 109, where the question was as to whether the employees of the Cafeteria run in the University could be recognized as regular employees of the University. The Canteen workers were ultimately held to be the employees of the University. We have compared the conditions of service. The law laid down in this case cannot

A apply, since on facts, this case is entirely different. There can be no comparison between the Canteen workers of a University, who were actually in the employment and the Copywriters, who were merely license holders.

B 40. For canvassing his case on employer-employee relationship, Shri Mitra relied on the case of *Ram Singh Vs. Union Territory, Chandigarh* reported in 2004(1) SCC 126. Our attention was drawn to the finding that the control is only one of the important tests, but not the only test and in determining such relationship, all the relevant factors have to be considered. C Reference is also made to the integration test for examining as to whether an employee is fully integrated into the employer's concern or has remained apart from and independent of it. There can be no question with the ratio. However, in our opinion, even applying the integration test, it cannot be said in D the present case that the Copywriters have the integral part of the Government machinery. We have already commented upon the other factors like power of selection, dismissal, the remuneration etc. This case refers to insurance contributions, supply of tools and materials etc., which is absent in the present E case. Therefore, even this case would be no consequence. Lastly, the reliance was made on the case of *Workmen of Nilgiri Cooperative Marketing Society Vs. State of T.N. & Ors.* reported in 2004(3) SCC 514. That was the case regarding the claim of the workers that they were the workmen of Nilgiri F Cooperative Marketing Society. The Court, undoubtedly, culled out some principles like the appointing authority, the pay master, the person who can dismiss, the length of the alternative service, the extent of control, the nature of job, the nature of establishment etc. in para 37 of the judgment. Ultimately, the G Court decided against the workmen in para 98 of the judgment and held:-

> "98. It has been found that the employment of the workmen for doing a particular piece of work is at the instance of the producer or the merchants on

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> an ad hoc basis or job to job basis and, thus, the same may not lead to the conclusion that relationship of employer and employee has come into being. Furthermore, when an employee has a right to work or not when an offer is made to him in this behalf by the producer or by the merchants will also assume significance."

This was the case, where in Cooperative Marketing Society, having about 22,000 members, who brought their agricultural produce in the marketing yards of the society by hired lorries or trucks. The concerned persons, who claimed to be the workmen, helped for unloading of the gunny bags containing potatoes from the lorries, unpacking the gunny bags and keeping the potatoes in lots inside the godown, grading the potatoes into different sorts, weighing the auctioned potatoes in 45 kg and packing them into gunny bags brought by the merchants, stitching the gunny bags and loading them into lorries hired by the merchants. These persons, who claimed to be the workmen, were paid on the basis of the work output. The growers and merchants were free to engage their own porters and graders. There had been no obligation on the Society's godown to engage service of these workers, waiting in the yard. There were no attendance registers or wage registers and the Society was found to have no control as to who should do the work and the members were free to engage any worker available in the yard. There were no working hours fixed for porters and graders and they were free to come and go at will. They had no obligation to report to work everyday nor was there any control regarding the number of workers to be engaged and the work to be turned out by the porters and graders. There were no appointment orders issued by the Society and there was no disciplinary control over the porters and graders exercised by the Society. In the light of these facts, this Court came to the conclusion that the workmen could not claim to be the workmen of the Society. The situation is no different, though in some matters, some distinguishing features

A can be seen. In our opinion, this case would come nearest to the facts of the present case. In our opinion, this case would, therefore, help the appellants more than the respondents, who have chosen to rely on the same. The integrated approach suggested by this Court in this decision, when made applicable
B to the present case would be of no assistance to the respondents.

41. On the other hand, Shri Gupta, Learned Senior Counsel for the appellants, invited our attention to the decision in *Divisional Manager, Aravali Golf Club Vs. Chander Hass*
C reported in 2008 (1) SCC 683. Here, the daily wager Malis who were working for a long period as daily wager Tractor Drivers without there being any sanctioned post of Tractor Driver, were ordered to be regularized as Tractor Drivers, by the High Court. This direction was struck down by this Court, holding that when
D there was no sanctioned post of Tractor Driver, the Court could not direct to creation of such posts and regularize the Malis in such posts. Thus, it has been clearly held that where there are no sanctioned posts, the creation of posts is impermissible.

E 42. Shri Mitra, Learned Senior Counsel for the respondents tried to distinguish this case on the ground that it is different on facts. However, we may rely on this case to the limited extent that where there are no sanctioned posts of a particular nature, the workmen cannot be directed to be accommodated in the
F post and for that matter, no direction can be given to create any such post. In *Principal, Mehar Chand Polytechnic Vs. Anu Lamba* reported in 2006(7) SCC 161, the ad-hoc/temporary appointees and promotees, who were not appointed in terms of any statutory rules, claimed regularization. This Court pointed
G out that the project, under which they were employed, was a time bound project and no a regular service and, therefore, the High Court's direction to create the post and regularize the services of the respondents therein, was quashed by this Court. Again, to the limited extent that the posts cannot be directed to be created in complete disregard to the rules, this decision
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helps the appellants. A

43. Shri Mitra, Learned Senior Counsel for the respondents, tried to suggest that in the present case, the Copywriters were engaged to perform duties of the State on regular basis, in pursuance of the so-called licenses issued by B the State Government. We have already clarified that such a grant of license cannot clothe the Copywriters with the status of Government servant nor were they doing any Government duty. In *State of Haryana Vs. Navneet Verma* reported in 2008 (2) SCC 65, this Court approved of the abolition of the post of C Accounts Executive by the Government. That was challenged before the High Court. This Court observed that an action taken by the Government in good faith cannot be challenged and the Courts do not have any competence to go into such matters, particularly on the basis of scant materials. We have no D hesitation to say that in the present case, there is very little or no material to suggest any master and servant relationship between the Copywriters and the Government.

44. Lastly, Shri Gupta, Learned Senior Counsel for the respondents relied on the decision in *Official Liquidator Vs.* E *Dayananda & Ors.* reported in 2008(10) SCC 1. That was a case, where the staff employed in the office of the Official Liquidator attached to different High Courts claimed the status of permanent Central Government employees. The employments were undoubtedly of temporary nature, but this F staff was attached to the Official Liquidator and were doing the Government duty. The mode and source of their recruitment and remuneration were also controlled by the Central Government. However, this Court came to the conclusion, on the basis of the decision in *Secretary, State of Kerala Vs. Umadevi* reported G in 2006 (4) SCC 1, that such staff formulated a different class. This Court noted that from the inception of their employment, the staff there were being paid from the fund created by disposal of assets of the company (in liquidation). Thus, this Court was of the view that the directions given by the High Court H

A for creation of supernumerary posts to facilitate absorption of company paid staff were not legally sustainable. In many ways, the facts are common, inasmuch as, the duty, which were done by the staff was undoubtedly an official duty. This Court took into account the fact that they were never paid the wages by B the Central Government nor were they on the Central Government establishment. This staff, undoubtedly, worked under the control of the Official Liquidators, who were none else but the Central Government employees and yet the Court came to the conclusion that they could not be given the status of the C Central Government employees. This case comes very near to the facts of the present case and would be much helpful to the appellants, inasmuch as, firstly, this staff, though appointed by the Central Government, was working in the premises provided by the Central Government and sometimes in the High Court D premises, and secondly, though they were on ad-hoc basis, they were working continuously and the nature of their duties was official. Further, they were under the direct control of the Official Liquidator, as is being claimed in the present case and yet it was held by the court that they could not claim the status of the Central Government employees. The situation is more or the E less identical in the present case. We are, therefore, convinced that the law relied upon by Shri Mitra, Learned Senior Counsel, as also the other Learned Senior Counsel like Shri Ranjit Kumar, Shri P.P. Rao, and Learned Counsel like Shri Dipak Kumar Jena, does not help the respondents and it cannot be F held that there was master-servant relationship between State Government and the Copywriters.

45. Shri Gupta contended that if all the Copywriters were to be accommodated as the Clerks in the Government service, G then more than 6000 posts would have to be created and that would be a practical difficulty. Further majority of these Copywriters did not have the basic qualification required and thus there would be a practical problem in accommodating these Copywriters. He further reiterated that all that would not H be possible without there being any Rules under Article 309 of

the Constitution of India. The contention is undoubtedly correct. This factor of the practical difficulty has been completely ignored in the impugned judgment.

46. Shri Gupta pointed out that such licenses are given in number of other Departments where the creation of service cannot be even conceived. He pointed out that the claim of the Copywriters that they were doing the essential service of the Government is falsified from the fact that in the Districts of Burdwan, Purba Medinipur, Paschim Medinipur, Maldah, Uttar Dinajpur and Dakshin Dinajpur the Copywriters Rules, 1999 have never been implemented since inception and there are no such copywriters available. In those Districts the Xerox copies of the documents are provided as their true copies. Had the work of copywriters been essential, Government would not have dispensed with the services of the Copywriters in these six Districts. According to the learned counsel this clearly suggest that the Copywriters did not execute any Governmental work nor was their work essentially required for the working of Registration Office. The argument is undoubtedly correct. Learned counsel also pointed out that there are 6466 Deed-writers, 1200 Marriage Registrars, 20,000 Post-office Agents, 40,000 Insurance Agents and 1100 Stamp Vendors in the State of West Bengal. He pointed out that clothing the Copywriters with the Government Service would mean a financial debacle for the State. The argument is undoubtedly correct as each and every licence granted by the Government does not amount to Service.

47. The conclusion of all the above discussion is as under:

(i) That the original Writ Petitioners-Copywriters are mere licensees.

(ii) Though the Rules have been formulated by the Government for awarding these licenses the Rules do not spell out an absolute control over the working of these Copywriters. The Rules merely pertain to

A the grant of licences and control of those licences, however, did not control the working and duties of the Copywriters.

(iii) The Copywriters do not do any Government duty. They are merely required to copy the deeds which B are to be presented for registration. Though the filing of a fresh copy is necessary for registration, the making of that copy does not amount to a Government duty.

C (iv) The Copywriters are not controlled in the matters of their attendance, working hours, leave, pension and output of work etc., by the Government.

(v) The Copywriters are not on the establishment under D the Rules, more particularly the Rules formulated under Article 309 of the Constitution of India.

(vi) The Copywriters are not paid from the Government coffers. On the other hand they are paid by the private parties who require those copies for E Registration of the deeds. Therefore, there is no fiduciary relationship between the Government and the Copywriters nor is the government responsible for any such payment.

F (vii) In short the grant of licence for copywriting does not amount to creating a service. Hence there is no master-servant relationship between the Copywriters and the Government nor can they said to be Government servants entitling them to so-G called equal treatment with the other Government servants.

(viii) The High Court has erred in directing the creation of service and for that purpose framing the Rules as also providing the nomenclature for such a

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service. In that the High Court has traveled beyond the scope of the original application and the writ petition. A

48. The appeals thus deserve to be allowed and they are accordingly allowed. The common judgment of the High Court is set aside and that of the Tribunal is restored. Under these circumstances, however, there shall be no order as to costs. B

N.J. Appeals allowed.