

Union of India and Ors. Vs.sanjay Kumar Naik and Ors.

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Court : Delhi

Decided On : Sep-01-2017

Appellant : Union of India and Ors.

Respondent : Sanjay Kumar Naik and Ors.

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI WRIT PETITION (CIVIL)
No.9413/2016 Pronounced on:1st September, 2017 UNION OF INDIA AND ORS.
.....

... Petitioner

s Through Mr. Ripu Daman Bhardwaj, CGSC with Mr. T.P. Singh, Mr. Sahaj Garg,
Advocates. versus SANJAY KUMAR NAIK AND ORS. Through Mr. V.S. R.
Krishna, Advocate.

... RESPONDENTS

WRIT PETITION (CIVIL) No.1473/2017 UNION OF INDIA AND ORS.

... Petitioner

s Through Mr. Ripu Daman Bhardwaj and Mr. T.P. Singh, Advocates. Versus
SANDEEP KUMAR SWAROOP AND ORS...Respondents Through Ms. Jyoti
Singh, Sr. Advocate with Mr. N. Raja, Advocate. CORAM: HON'BLE MR.
JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE CHANDER SHEKHAR + %
W.P. (C) Nos. 9413/2016 & 1473/2017 Page 1 of 46 SANJIV KHANNA, J.

The question raised in the Writ Petition No.9413/2016 and Writ Petition No.1473/2017 is whether the respondents (except Sandeep Kumar Swaroop), who are working as Assistant Hydrogeologists, a Group -B post in the Central Ground Water Board (CGWB for short), are entitled to benefit of the Flexible Complementing Scheme (FCS). Sandeep Kumar Swaroop, the first respondent in WP(C)No.1473/2017, who is presently working as Scientist-B seeks ante dating of his promotion under the FCS.

2. The respondents, in Writ Petition No.9413/2016, 33 in number, had filed OA No.4547/2014, which has been allowed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) vide order dated 7th January, 2016, holding that the benefit of FCS should be extended to the respondents in view of the order dated 3rd March, 2011 of the Calcutta Bench of the Tribunal passed in OA No.1004/2010, which stands affirmed by the Calcutta High Court vide decision dated 8th October, 2012 in W.P.C.T. No.102/2012, Union of India and Ors. Vs. Tarun Mishra and Ors. The Tribunal also observed that the High Court of Andhra Pradesh, in its order dated W.P. (C) Nos. 9413/2016 & 1473/2017 Page 2 of 46 30.11.2010 passed in W.P. No.24452/2010, Sri Vinay Vidyadhar & Ors. v. Government of India & Ors., had approved the decision dated 18.04.1999 of the Hyderabad Bench of the Tribunal in OA No.1032/1996 which was earlier upheld by the High Court vide order dated 10.09.2008 passed in W.P. No.22349/1999, Union of India represented by Secretary, Ministry of Water Resources & Anr. v. V. Sambasiva Rao. These decisions hold that the petitioners were under an obligation vide O.M. dated 28.05.1986 as modified by O.M. dated 9.11.1998 to implement the FCS for Grade-B posts. SLP(C) CC No.7347/2009 preferred against the decision of the Andhra Pradesh High Court dated 10.09.2008 in V. Sambasiva Rao (supra) was dismissed by the Supreme Court in limine, after condoning the delay, recording that in the facts of the case they were not inclined to interfere. The Tribunal, we would observe, has not independently referred to the relevant provisions of different notifications and rules to examine the contention whether FCS was applicable to Group B posts.

3. The respondents in WP(C)No.1473/2017, six in number, had filed OA No.3761/2013. The first respondent had sought ante-dated promotion as Scientist-

B, whereas respondent Nos. 2 to 6 had sought W.P. (C) Nos. 9413/2016 & 1473/2017 Page 3 of 46 promotion to Scientist-B posts under the FCS from the date of acquiring eligibility. The respondents had claimed parity with their junior colleagues, i.e. Dr.Sudheer Kumar and Praveen Kumar Gandharthi, who had filed O.A Nos.370 and 371/2010 before the Hyderabad Bench of the Tribunal for upgradation to the level of Scientist-B under the FCS.

4. OA No.3761/2013 has been allowed by the Tribunal by the impugned order dated 1st August, 2016. This order is again not detailed and does not examine the FCS on merits, albeit relies upon the decisions of the Andhra Pradesh High Court in V.Sambasiva Rao (supra) and Vinay Vidyadhar (supra) and holds that the petitioners before us were obliged to implement FCS as revised by the DOP&T vide Office Memorandum dated 9.11.1998, without giving any effect to the cut-off date, viz. 9th November, 1998.

5. In order to fully grasp the controversy in issue, it is imperative for us, at this stage, to discuss the FCS. Pursuant to recommendations of the Third Pay Commission, the Department of Science and Technology vide letter No.DST/MS/1(45)/82 dated 14/22.11.1983 had laid down guidelines introducing the FCS to ensure promotion of W.P. (C) Nos. 9413/2016 & 1473/2017 Page 4 of 46 Group-A Officers in Scientific Service from one grade to another after the prescribed period of service. As per the guidelines, the FCS was restricted to scientific posts in the grades of Rs. 700-1300, Rs. 1100- 1600 and Rs. 1500-2000. Department of Science and Technology vide OM No.A-42014/2/86-A dated 28.05.1986 observed that some scientific departments would induct officers in the scale of Rs. 650- 1200, who were outside the purview of the benefit granted by FCS. Decision was taken to introduce and grant benefit of FCS to scientific posts beginning with the pay scale of Rs. 650-1200, where this was the direct recruitment grade, and to extend benefit of FCS to the scale of Rs. 2500-3000. Stipulation of minimum residency of 5 years in each grade for promotion was mandated.

6. The Central Ground Water Board (Scientific Group A Posts) Recruitment Rules, 1987 (1987 Rules, for brevity) were enacted by the Ministry of Water Resources

vide G.S.R. 434 dated 18.05.1987 and notified in the Gazette of India on 06.06.1987. As per Rule 5, existing posts in the CGWB were re-designated. The posts of Junior Hydrogeologists, Junior Geophysicists, Chemists and Hydrogeologists were re-designated as Scientist B in pay scale of Rs. 2200-4000 (pre- W.P. (C) Nos. 9413/2016 & 1473/2017 Page 5 of 46 revised scale of Rs. 700-1300), the lowest Group-A post as per the 1987 Rules. Rule 6 (3) of the 1987 Rules extended the benefit of the FCS only to Group-A posts/grade, subject to certain conditions specified therein. Thus, benefit of the OM No.A-42014/2/86-A dated 28.05.1986 i.e. FCS was not extended to officers in the pre-revised pay scale of Rs. 650-1200 under the 1987 Rules. Assistant Hydrogeologists in the pay scale of Rs. 650-1200 under the 1987 Rules were therefore denied benefit of FCS.

7. The 1987 Rules remained in-force till G.S.R. 333 was published by the Ministry of Water Resources on 28.06.1995 enacting the Central Ground Water Board (Scientific Group A Posts) Recruitment Rules, 1995 (1995 Rules), which were notified in the Gazette of India on 15.07.1995. As per Rule 7 (2) of the 1995 Rules, benefit of FCS was restricted and granted to Group-A scientific posts starting in the pre-revised pay scale of Rs. 700-1300, pari materia with the 1987 Rules. Thus, officers in the earlier pay scale of Rs. 650-1200 were left out of the purview of FCS.

8. During the interregnum, Communication No.21-6/91-GW/1537 dated 10th August, 1994 was addressed by the Deputy Secretary to the W.P. (C) Nos. 9413/2016 & 1473/2017 Page 6 of 46 Government of India to the Union Public Service Commission (UPSC) in connection with consideration of amendments to the 1987 Rules and enactment of new rules. The relevant portion of this letter reads:-

"i) Even though the proposal for inclusion of Group B officers in the different scientific streams in the scale of Rs. 2000-3500 in the Flexible Complementing Scheme was under consideration, a decision was taken with the approval of Secretary (WR) to exclude them as inclusion of Group B would have delay further the whole exercise in view of review of Flexible Complementing Scheme. 9. The promulgation of the 1987 and 1995 Rules gave rise to the controversy and claims by Group B officers. OA No.1032/1996, V. Sambasiva Rao & Ors. v. UOI & Anr,

was filed before the Hyderabad Bench of the Tribunal challenging the 1987 Rules and 1995 Rules, insofar as the Rules had excluded Group B, Assistant Chemist/ Assistant Hydrogeologist, from the purview of FCS evolved by the Department of Science and Technology in 1983 and notified in 1986 pursuant to the recommendation of the Third Pay Commission, and thereby shutting out the prospect of time bound promotion as Junior Chemist/Hydrogeologist (Scientist B) and above. The challenge was notwithstanding that the 1995 Rules did postulate W.P. (C) Nos. 9413/2016 & 1473/2017 Page 7 of 46 promotion of Assistant Chemist/Assistant Hydrogeologists as Junior Chemists/ Hydrogeologists.

10. Pending the decision in OA10321996, the Ministry of Water Resources published G.S.R. 55 amending the 1995 Rules on 03.02.1998 which was notified on 07.03.1998. Pertinently, no changes were made with regard to the applicability of the FCS.

11. Thereafter, on 09.11.1998 the Department of Personnel and Training issued OM No.2/41/97-PIC with instructions and modifying the existing FCS in furtherance of the recommendations of the Fifth Central Pay Commission. Paragraphs 3 and 5 to 7 of the OM dated 09.11.1998 are relevant and have been extracted below:-

"3. The recommendations of the Pay Commission that the existing disparities in the operation of Flexible Complementing Scheme in various scientific and technical departments on the matter of designation of posts, the number of pay scales and the residency period should be removed and there should be uniformity in this regard has been accepted. Accordingly all the posts covered under the Flexible Complementing Scheme shall carry the following uniform scales of pay, designations and the minimum residency period linked to performance:-

"Scales of Pay Designation Minimum Residency W.P. (C) Nos. 9413/2016 & 1473/2017 Page 8 of 46 period linked to performance (a) Rs. 8000-13500 Scientist B3Years (b) Rs. 10000-15200 Scientist C4Years (c) Rs. 12000-16500 Scientist D4Years (d) Rs. 14300-18300 Scientist E5Years (e) Rs. 16400-20000 Scientist F5Years (f) Rs. 18400-22400 Scientist G - In order to give immediate effect to the decision contained in this para, an umbrella Notification has been issued vide

G.S.R. No.660(E) dated 9.11.1998 XXX in-situ promotions under 5. It has further been decided that in order to extend the benefit of the Flexible Complementing Scheme to other Scientific Organisations that are demanding the extension of FCS in their case, the administrative Ministry of such institutions shall satisfy itself that such institutions are scientific and technical institutions and the officers are scientists holding scientific posts and are involved in scientific and technical activities as defined in the Annexure I to this office Memorandum and make its recommendations the Department of Science and Technology. On receipt of such a request the Department of Science and Technology shall set up a committee, including the representatives of the Department of Personnel and Training and of the Department of Expenditure as well as eminent scientists relevant to the discipline, for examining to W.P. (C) Nos. 9413/2016 & 1473/2017 Page 9 of 46 taken based on the administrative Ministry the proposal referred by concerned. A final decision on the proposal of an administrative Ministry for extension of FCS to other scientific organisations shall be the recommendations of this committee. Since it is not necessary that all the pay scales under the Flexible Complementing Scheme should be applicable in all the scientific organisations, as the size of the organisation may not justify introduction of the entire group of scales, the committee, while making its recommendation, would take a specific view as to the number of scales that should be operated in the organisation as well as the appropriate residency period for ensuring an even pace of promotion. However, the progression under Flexible Complementing Scheme will only be as per scales indicated in para 3 of this office Memorandum.

6. It is requested that all the Ministries/Departments, where the Flexible Complementing Scheme is in operation, may initiate action for review of the provisions of the Flexible Complementing Scheme and amend the provisions of the relevant recruitment rules so that the scheme is brought in conformity with the decisions/guidelines being conveyed vide this office Memorandum. Results of the review may also be conveyed to the Department of Science and Technology, the nodal department for operation of the Flexible Complementing Scheme. Action for extension of the Flexible Complementing Scheme to other scientific organisations, where the same is not in operation at present, may be taken in accordance with the decision contained in para 5 of this office Memorandum.

7. The relevant provisions of Department of Science & Technology Office Memorandum No.A. 42014/2/86- Admin.1(A) dated the 28th May, 1986 stand amended to W.P. (C) Nos. 9413/2016 & 1473/2017 Page 10 of 46 the extent the provisions of this Office Memorandum are at variance with the provisions of the said Office Memorandum. 12. OA10321996 V. Sambasiva Rao & Ors. v. UOI & Anr. was partly allowed by the Hyderabad bench of the Tribunal vide the order dated 19.04.1999 directing that the 1995 Rules should be reviewed to bring Group B posts in the pre-revised scale of Rs. 650- 1200 within the purview so as to entitle these posts to benefit of FCS.

13. The Union of India preferred W.P. (C) No.22349/1999 before the Andhra Pradesh High Court which was dismissed vide the judgment dated 10.09.2008. We shall be referring to the exact reasoning and nature of the directions given subsequently. The Union then preferred SLP (C) CC No.7347/2009, UOI & Anr. v. V. Sambasiva Rao & Ors., which was dismissed by the Supreme Court in limine by the order dated 31.08.2009. The order of the Andhra Pradesh High Court in W.P. (C.) No.22349/1999 upholding the Tribunals decision in OA10321996 gained finality.

14. In wake of the decision in V. Sambasiva Rao (supra), three other similarly placed officers, viz. V. Vidyadhar, Dr. Sudheer Kumar and Praveen Kumar Gandharthi who were working with the CGWB as W.P. (C) Nos. 9413/2016 & 1473/2017 Page 11 of 46 Assistant Chemists/Assistant Hydrogeologists filed OA Nos. 370 and 371 of 2010, titled Sri V. Vidyadhar & Ors. v. Government of India, Ministry of Water Resources, rep. by its Secretary & Ors. . These OAs were dismissed by the common order dated 30.08.2010 passed by the Hyderabad Bench of the Tribunal. However, W.P. No.24452 of 2010 preferred against the Tribunals order was allowed by a Division Bench of the Andhra Pradesh High Court by order dated 30.11.2010, which held:-

"Therefore, this Writ Petition is disposed of in terms of and in accordance with the order of this Court dated 10.09.2008 rendered in Writ Petition No.22349 of 1999. No Costs. 15. Thus, the Andhra Pradesh High Court whilst considering W.P. No.24452 of 2010 felt that the controversy was squarely covered by their order

dated 10.09.2008 passed in V. Sambasiva Rao (supra). The High Court overturned the decision of the Tribunal dated 30.08.2010 and granted the petitioners therein the relief as granted to the similarly placed officers in V. Sambasiva Rao (supra).

16. Thereafter, on 05.12.2012 Review W.P. M.P. No.28475 of 2012 preferred by the Government against the order dated 30.11.2010 was dismissed with the observation that the order dated 30.11.2010 W.P. (C) Nos. 9413/2016 & 1473/2017 Page 12 of 46 had not been implemented and the applicants before the Tribunal (V. Vidyadhar, Dr. Sudheer Kumar and Praveen Kumar Gandharthi) had filed Contempt Case No.1339 of 2011 before the Andhra Pradesh High Court. The Government had filed a counter in CC No.1339/2011 stating that the order dated 30.11.2010 had been implemented vis--vis V. Vidyadhar but Dr. Sudheer Kumar and Praveen Kumar Gandharthi had been appointed as Asst. Hydrogeologists (Group B Officers) after 9.11.1998 and therefore the FCS was not applicable to them. The High Court, dismissing Review W.P. M.P. No.28475 of 2012 vide order dated 5.12.2012, observed:-

" We have perused the OM dated 2.5.1986 as amended by OM dated 9.11.1998. There is no cut-off date for implementing the FCS, but however as per the said OM, officers are entitled for the scheme subject to fulfillment of the conditions stipulated therein. Therefore, we do not see any error on the face of the record or any illegality in the impugned order passed by this Court. The review petition is without any merit and is liable to be dismissed. Accordingly, the review petition is dismissed (emphasis supplied) 17. The Government thereafter preferred SLP (Civil) CC No.5329/2013 against the order dated 5.12.2012. The Special Leave W.P. (C) Nos. 9413/2016 & 1473/2017 Page 13 of 46 Petition was dismissed on the technical ground of inordinate delay of 694 days vide the order dated 01.07.2013.

18. Upon dismissal of the SLP on 01.07.2013, the order passed by the High Court in W.P. No.24452 of 2010 dated 30.11.2010 became final and binding. Accordingly, Dr. Sudheer Kumar and Praveen Kumar Gandharthi claimed and sought promotion to the post of Scientist B in terms of the said order.

19. On the 12th and the 16th of September, 2013, the respondents in WP(C) No.1473/2017 made a representation to the Chairman, Central Ground Water Board submitting that the Board of Assessments proposal being sent to the UPSC included Dr. Sudheer Kumar and Praveen Kumar Gandharthi. The respondents had asserted that they being senior to said officers were entitled to identical benefit and inclusion in the Board of Assessments proposal. Thereafter, the respondents in WP(C)No.1473/2017 filed OA No.3761/2013 before the Principal Bench of the Tribunal which has passed the impugned order dated 1st August,2016.

20. From the aforesaid it is quite clear that the department of Science and Technology vide OM dated 28th May, 1986 had extended W.P. (C) Nos. 9413/2016 & 1473/2017 Page 14 of 46 FCS to other Scientific and Technical Departments with Financial Procedure, Personnel Policy, Procurement Management System and Technical Supports Service (Civil Work). This OM also noticed that FCS was then restricted to the pre-revised grades of Rs.700 - 1300/-, Rs.1100 - 1600/- and Rs.1500 - 2000/- with a provision that total number of posts in the grade of 1500 - 2000/- would not be more than 30 % of the total number of persons in the three grades. The OM records that having regard to the fact that in some scientific departments there was induction of scientists in the scale of Rs.650 - 1200/-, it was decided to introduce FCS beginning with the scale of Rs.650 - 1200/- where there was direct recruitment to the said grade. In addition it was decided to extend FCS Scheme up to the scale of Rs.2500 - 3000/-, without there being any restriction as regards percentage and there would be full flexibility in all grades up to Rs.2500 - 3000/- with merit and record of research being the only criteria. The minimum residency of 5 years in each grade would be required for promotion under the FCS.

21. However, the situation underwent a change in view of the recommendations made by the 5th Pay Commission, who had W.P. (C) Nos. 9413/2016 & 1473/2017 Page 15 of 46 recommended introduction of the Modified FCS to Group-A posts in all scientific Departments including the Department of Atomic Energy, Department of Space and DRDO. With reference to these three organizations, the Cabinet did not agree with the Pay Commission and the

Department of Atomic Energy, Department of Space and DRDO were allowed to continue with the merit based promotion scheme covering Group A, B and C scientists and technical personnel. This is recorded in the detailed note F.O.2/41/97-PIC. This note had recommended that the FCS existing on the said date in the various departments could continue. It was noted that the Government had left to the Secretaries of the Scientific Ministries /Department to review and classify the posts and personnel, who would not be covered. The thrust being that there should not be major change in the FCS Scheme, but at the same time personnel who were not otherwise eligible to be covered by FCS, i.e. non-scientific personnel should be excluded. It was also recorded that there was demand of the Engineers from the CPWD, CGWB etc. for extension of FCS to those who were not involved in pursuit of scientific knowledge, but only in its application. W.P. (C) Nos. 9413/2016 & 1473/2017 Page 16 of 46 22. This was followed by the Office Memorandum No.2/41/97/PIC dated 9.11.1998, relevant portion of which has been quoted above. It was held that the Pay Commission had observed on the existing disparities in the operation of the FCS in various scientific and technical departments in the matter of designation of posts, number of pay scales and residency period and that these should be removed and there should be uniformity in this regard. The suggestions were accepted. Accordingly, all posts covered under the FCS would carry the stipulated uniform scales of pay, designations and minimum residency period linked to performance, namely:-

"Scales of pay Designation Minimum Residency period linked to performance (a) Rs. 8000- Scientist B135003 years. (b) Rs. 10000- Scientist C4years. 15200 (c) Rs. 12000- Scientist D4years. 16500 (d) Rs. 14300- Scientist E5years. 18300 (e) Rs. 16400- Scientist F5years. 20000 W.P. (C) Nos. 9413/2016 & 1473/2017 Page 17 of 46 (f) Rs. 18400- Scientist G22400 In order to give immediate effect to the decision, an umbrella Notification vide G.S.R. No.660 (E) dated 9.11.1998 was issued.

23. A reading of the aforesaid paragraphs of the revised FCS resonates that there was a marked shift from the earlier FCS Scheme, because a restricted and limited benefit was to be given and it was to only apply to scientists and technologists, holding the specified scientific posts in Scientific and Technical Departments and

engaged in scientific activities and service. However, exception was made in the case of department of Atomic Energy, Department of Space and DRDO where their own schemes were applicable. Paragraph 2 clause (a) had stipulated that the FCS shall not be applicable where criteria specified in the Office Memorandum were not fully met. The grades to be covered by the FCS were also indicated in paragraph 3 and the lowest post indicated was that of Scientist-B. Group B posts were not included in paragraph 3. It was also stated that to give the decision taken in paragraph 3 immediate effect, an umbrella notification was issued vide G.S.R. No.660(E) dated 9th November, W.P. (C) Nos. 9413/2016 & 1473/2017 Page 18 of 46 1998. This is clear from paragraphs 5, 6 and 7 of the OM dated 9th November, 1998, reproduced above. Office Memorandum No.A. 42014/2/86-Admn.1(A) dated the 28th May, 1986 of the Department of Science and Technology stood amended to the extent the provisions of this office Memorandum were at variance with the provisions of the said office Memorandum. Paragraphs 5 and 6 of the Office Memorandum dated 9.11. 1998 had directed that cases of other scientific organizations who were demanding extension of FCS would be taken up with the administrative Ministry of the said organisation/institution and, upon being satisfied that such institutions were scientific and technical institutions and the officers were scientists holding scientific posts, the administrative Ministry would make a representation to the Department of Science and Technology, which would set up a committee to examine the proposal forwarded by the administrative Ministry. It was also observed that it was not necessary that all pay scales under FCS should be applicable in all scientific organizations, as the size of the organizations might not justify introduction of entire group of scales. The Ministries/ departments were required to initiate action for review of the W.P. (C) Nos. 9413/2016 & 1473/2017 Page 19 of 46 provisions of FCS and ensure that they were brought in conformity with the decision / guidelines mentioned in the office Memorandum dated 9.11.1998.

24. Thus, the directions given in paragraphs 5 and 6 of the Office Memorandum dated 9.11.1998, required a further exercise by the different ministries. The effect Office Memorandum dated 9.11.1998 was not that the organizations or posts which were covered by Office Memorandum dated 28th May, 1986 would continue to get the said benefit. This would be clearly contrary to the language of not only

paragraph 6 but would also defeat what is stated in paragraphs 5 and 7 of the Office Memorandum dated 9.11.1998. Appropriate in this regard would be Annexures-I and II to the office Memorandum dated 9.11.1998, which had prescribed different criterion and point scales for promotion from one grade to the other. Minimum percentage for eligibility was prescribed in a point scale. Obviously, Annexure-II would not apply to Group B posts for it did not relate to the said grade and did not prescribe selection or assessment criteria on the 10 point scale. W.P. (C) Nos. 9413/2016 & 1473/2017 Page 20 of 46 25. The aforesaid Office Memorandum was followed by umbrella notification G.S.R. 660 (E) published in the gazette of India issued in exercise of power conferred under Article 309 of the Constitution by the President to come into force on the date of publication in the official gazette. Paragraphs 2 and 3 of the gazette notification G.S.R. 660 (E) dated 9.11.1998 are relevant and read as under:-

"2. Application: These rules shall apply to all the Scientific and Technical Group A (Gazetted) posts in the Department of Science and Technology, the Department of Scientific and Industrial Research, the Ministry of Non-conventional Energy Sources, the Department of Ocean Development, the Ministry of Environment, Forests and Wild Life, the Department of Bio- Technology and the Department of Electronics governed by the Recruitment Rules/Instructions specified the Schedule annexed to these rules.

3. Scheme: Notwithstanding anything contained in the Recruitment Rules or instructions specified in the Schedule annexed to these rules, the following provisions shall apply in the matter of in-situ promotions for Scientific and Technical Group A(Gazetted) posts in the Department of Science and Technology, the Department of Scientific and Industrial Research, the Ministry of Non-Conventional Energy Source, the Department of Ocean Development, the Ministry of Environment, Forests and Wild Life, the Department of bio-Technology and the Department of In - situ promotion under Flexible Complementing in W.P. (C) Nos. 9413/2016 & 1473/2017 Page 21 of 46 the Flexible Complementing Scheme, Electronics under namely:-

"(a) The scales of pay to which the Flexible Complementing Scheme shall apply the minimum residency period linked to performance for in-situ promotion to the next higher grade and the uniform designations of the Scientific and technical posts covered by the Flexible Complementing Scheme shall be as given in the Table below:-

"TABLE Designation Scale of Pay (1) (2) Scientist B Rs. 8000-275-13,500 Minimum Residency period linked to performance (3) 3 years, Scientist C Rs. 10,000-325-15,200 4 years, Scientist D Rs. 12,000-375-16,500 4 years, Scientist E Rs. 14,300-400-18,300 5 years, Scientist F Rs. 16,400-450-20,000 5 years, Scientist G Rs.18,400-500-22,400 (b) No person other than a person possessing the essential educational qualification of at least a Masters Degree in Natural/Agricultural Sciences or a Bachelors Degree in Engineering or Technology or Medicine, shall be eligible for in- situ promotion under the Flexible Complementing Scheme. W.P. (C) Nos. 9413/2016 & 1473/2017 Page 22 of 46 THE SCHEDULE (See Rules 2 &

3) Sl. No.Name of Ministry/Department Short title of the Recruitment Rules/Instructions 1. Ministry of Science and Technology (Department of Science and Technology and Department of Scientific and Industrial Research) 2. Department of Bio- Technology 3. Department of Electronics and the National Informatics Centre, Planning Commission The Department of Science and Technology Group A Gazetted Posts (Non-Ministerial, Scientific and Technical) Rules, 1984. The Department of Bio- Technology Group A Gazetted Posts (Non-Ministerial, Scientific and Technical) Recruitment Rules, 1989. Personnel Policy and Practicess for Group A Scientific and Technical Officers/Posts in the Department of Electronics/ Electronics Commission office Memorandum No.A-12018/1/81 PP dated the 11th August, 1981, as amended from time to time.

4. Ministry of Environment, Forests and Wild Life The Department of Environment, Forests and Wild Life Scientific Group A Posts Rules, 1987.

5. Ministry of Non- The Department of Non- W.P. (C) Nos. 9413/2016 & 1473/2017 Page 23 of 46 conventional Energy Sources Conventional Energy Sources Group A Gazetted Posts (non- ministerial, Scientific and Technical Rules, 1988.

6. Department of Ocean Development The Department of Ocean Development Recruitment (Group A posts) Rules 1996.

26. This notification was issued in exercise of powers conferred under the proviso to Article 309 of the Constitution and, therefore, restricts the benefits of the said rules to all the Scientific and Technical Group A (Gazetted) posts as specified. The Schedule specifies the list of the Ministries as well as the recruitment rules relating to Group 'A' posts to which the said O.M. would be applicable.

27. During the course of arguments the respondents had drawn our attention to the recommendations of the 5th Pay Commission. We feel that these are not required to be considered or delved into, as these were considered and thereafter notification dated 9.11.1998 under Article 309 have been enacted and enforced.

28. We have also gone through the judgment of the Andhra Pradesh High Court in V.Sambasiva Rao (supra). The said judgment refers to the 1987 and 1995 Rules wherein Group B Scientists who were in W.P. (C) Nos. 9413/2016 & 1473/2017 Page 24 of 46 the pre-revised pay scale of Rs.650 - 1200 were not included. Thereafter reference was made to a communication dated 10th August, 1994 of the Deputy Secretary of the Government of India addressed to the Union Public Service Commission for amendment of the 1987 Rules with a clarification that the decision to exclude Group B posts from the FCS was taken to avoid any delay in the whole exercise. Thus, the Division Bench observed that Group B posts were excluded to avoid delay in the implementation of the FCS and not because they were not eligible. Thereafter reference was made to Office Memorandum No.2/41/97- PIC dated 9.11.1998 with specific reference to the assertions made in paragraph 5 thereof. This decision does not note or take into account the gazette notification dated 9th November, 1998 i.e. GSR660(E) issued under the proviso to Article 309 of the Constitution. Thereafter the judgment records that the Office Memorandum dated 2nd May (sic. 28th May), 1986 was amended by the Office Memorandum dated 9.11.1998 and thus the Tribunal ought not to have directed the authorities to amend the 1995 Rules, which had statutory force. At the same time the Division Bench went on to observe that the Office Memoranda dated 28th May, W.P. (C) Nos. 9413/2016 & 1473/2017 Page 25 of 46 1986 and 9th

November, 1998 were Presidential Orders which had statutory force and therefore, the authorities were under an obligation to implement them and to take further action to implement the FCS. Relevant portion of the judgment dated 10.9.2008 is reproduced below:-

""13. It is pertinent to state that 1987 Rules were repealed and 1995 Rules have come into effect. Though the FCS was sought to be implemented in respect of in situ promotions of departmental officers in Scientist-B grade to 'C' and 'D' grades, the scientific officers who were in the pay scale of Rs.650- 1200, were not included in 1995 Rules. In fact, the communication No.21-6/91-GW/1537 dated 10-8-1994 of Deputy Secretary to Government of India, had been addressed to the Union Public Service Commission in connection with amendment to Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules, 1987 wherein certain clarifications were made and the relevant one is as under:

"i) Even though the proposal for inclusion of Group 'B' officers in the different scientific streams in the scale of Rs.2000-3500 in the Flexible Complementing Scheme was under consideration, a decision was taken with the approval of Secretary (WR) to exclude them as inclusion of Group 'B' would have delay further the whole exercise in view of review of Flexible Complementing Scheme."

14. Government of India, Ministry of Personnel, Public Grievances and Pensions, vide its Office Memorandum W.P. (C) Nos. 9413/2016 & 1473/2017 Page 26 of 46 issued No.2/41/97-IPC dated 09-11-1998 had instructions and the relevant portion reads as under:-

"further is requested that all the Ministries the provisions of It / Departments, where the Flexible Complementing Scheme is in operation, may initiate action for review of the Flexible Complementing Scheme and amend the provisions of the relevant recruitment rules so that the scheme is brought in conformity with the decisions / guidelines being conveyed vide this Office Memorandum. Results of the review may also be conveyed to the Department of Science and Technology, the nodal department for operation of the Flexible Complementing Scheme. Action for extension of the Flexible Complementing Scheme to other scientific organizations, where the same is not in operation at present, may be taken in accordance with

the decision contained in para - 5 of this Office Memorandum.

7. The relevant provisions of Department of Science and Technology Office Memorandum No.A-42014/2/86-Admn.I (A) dated 02-05-1986 [sic. 28-05-1986]. stand amended to the extent the provisions of this Office Memorandum are at variance with the provisions of the said Office Memorandum. 15. In the circumstances, the Tribunal ought not to have directed the petitioners to revise 1995 Rules so as to include the benefit of FCS for the Group -B posts. However, having regard to the Presidential Order, which has statutory force, pursuant to which the Department of Science and Technology issued W.P. (C) Nos. 9413/2016 & 1473/2017 Page 27 of 46 O.M. dated 02-05-1986 [sic. 28-05-1986]. and the consequent O.M. dated 09-11-1998, we are of the considered view that the petitioner is under obligation to implement O.M. dated 02-05-1986 [sic. 28-05-1986]., as modified by O.M. 09-11-1998 and take further action to implement the FCS in respect of respondents - applicants. SLP(C) CC No.7347/2009 against this decision was dismissed by the Supreme Court in limine observing that in the facts and circumstances of the case the Court was not inclined to interfere.

29. The Andhra Pradesh High Court in W.P. No.24452/2010, Sri Vinay Vidyadhar & Ors. v. Government of India & Ors., had quoted paragraph 14 of the judgment passed in V.Sambasiva Rao (supra), and also noted that the SLP against the order in V.Sambasiva Rao (supra) was dismissed. The court in Vinay Vidyadhar (supra) held that the authorities were required to comply with the order passed in V.Sambasiva Rao (supra). However, confusion really arose when a review application was filed in the case of Vinay Vidyadhar (supra) by the Ministry of Water Resources, New Delhi, in which it was held as under: This Court disposed of the said writ petition by order dated 30.11.2010 in terms of and in accordance with the order passed by this Court in W.P.No 22349 of 1999 dated W.P. (C) Nos. 9413/2016 & 1473/2017 Page 28 of 46 to which 10.9.2008 whereunder this Court while dismissing the writ petition filed by the Government of India, held that having regard to the Presidential Order, which has statutory force, pursuant the Department of Science and Technology issued Office Memorandum (OM) dated 2.5.1986 and the consequent O.M. dated 9.11.1998, we are of the considered view that the Government is under obligation to implement O.M. dated 2.5.1986 as

modified by O.M. dated 9.11.1998 and take further action to implement the FCS in respect of respondents-applicants. As the said orders were not implemented the writ petitioners filed contempt case in C. C. No.1339 of 2011. Government filed counter in the said contempt case stating that they have decided to implement the orders insofar as 1st petitioner is concerned and insofar as petitioners 2 and 3 are concerned, they were appointed as Assistant Hydro Geologists i.e. Gr. B Officers after 9.11.1998 and therefore the FCS is not applicable to them. Learned counsel for the review petitioners submitted that earlier Writ Petition No.22349 of 1998 filed by (10) persons have joined the department prior to 9.11.1998 and therefore the said OMs are applicable to them only, whereas respondents 2 and 3 herein have joined the department after 9.11.1998 and therefore they are not covered by FCS. He further contended that this Court disposed of W.P.No.24452 of 2010 without considering the facts and merits of the case and since the respondents 2 and 3 have joined after 9.11.1998, they are not eligible to be considered for FCS as per the OMs. We have perused the OM dated 2.5.1986 as amended by OM dated 9.11.1998. There is no cut-off date for implementing the FCS, but however as per the said OM, W.P. (C) Nos. 9413/2016 & 1473/2017 Page 29 of 46 officers are entitled for the scheme subject to fulfilment of the conditions stipulated therein. Therefore, we do not see any error on the face of the record or any illegality in the impugned order passed by this Court. The review petition is without any merit and is liable to be dismissed. Accordingly, the review petition is dismissed. 30. The authorities had thereafter preferred an SLP(Civil) No.5329/2013 against the order in the review application dated 5th December, 2012, which was dismissed on the ground of inordinate delay of 694 days.

31. Similar issue had arisen before the Calcutta Bench of the Central Administrative Tribunal in OA No.1004/2010, Tarun Mishra & Ors. Vs. Union of India. Aggrieved by the decision of the Tribunal, the Union of India had filed W.P.C.T.No.102/2012 before the Calcutta High Court. The writ petition was dismissed observing that the Tribunal, Calcutta Bench had followed the decision of the Andhra Pradesh High Court which was confirmed by the Supreme Court.

32. It would be relevant to also refer to another order dated 7th December, 2015 passed by the Division Bench of the Andhra Pradesh High Court in contempt case

[CC No.1380/2014]., V.Vinay Vidyadhar W.P. (C) Nos. 9413/2016 & 1473/2017 Page 30 of 46 & Ors. Vs. Secretary, Government of India, Ministry of Water Resources and Anr. This order is fairly detailed and refers to both the Office Memoranda dated 28th May, 1986 and 9th November, 1998 and also notices the decision in Civil Contempt Petitions filed earlier. The Contempt Petition was disposed of observing that the question was not free from doubt for paragraph 7 of the Office Memorandum dated 9th November, 1998, if independently taken into consideration, it might appear that the whole or entire office Memorandum dated 28th May, 1996 was amended. To avoid any confusion, we would reproduce the relevant paragraphs of the said order which are as under:-

"treated as an The answer to this question is not free from doubt. If paragraph No.7 of Office Memorandum dated 09.11.1998 is independently taken into account and consideration, it might appear as if the whole contents of Office Memorandum dated 09.11.1998 should be intended amendment to what is contained in Office Memorandum dated 28.05.1986. If that were to be the intention of the Government of India, there would not have been any necessity for them to refer to the notification G.S.R.No.660 (E) dated 09.11.1998 in paragraph No.3 of this Office Memorandum dated 09.11.1998, in as much as Office Memorandum dated 28.05.1986 covers both Group-A and Group-B Scientific officers and Technologists. In view of the contents of paragraph No.3 of Office Memorandum dated 09.11.1998 specifically advertng to G.S.R.No.660 (E) dated 09.11.1998, the view canvassed by W.P. (C) Nos. 9413/2016 & 1473/2017 Page 31 of 46 conduct. Sri K.M.Nataraj, learned Assistant Solicitor General, that the contents of paragraph No.3 of the Office Memorandum dated 09.11.1998 will be applicable to Group-A servants alone cannot be brushed aside lightly. It all depends upon the construction which is liable to be placed on the contents of Office Memorandum dated 09.11.1998. That would be a part of substantial adjudication of the lis itself. That having not been done by any Court, it will not be fair for us to construe that the action of granting in-situ promotions to the petitioners as Scientists B, C and D, as the case may be, with effect from specified dates as a deliberate and willful violation of the orders passed by this Court amounting to contemptuous exercising jurisdiction under Article 215 of our Constitution, the adjudicatory power and jurisdiction available, a substantial one at that, cannot be telescoped. When once

the respondents have passed an order on 30.09.2015 according benefits to the petitioner Nos.2 and 3 also as per the eligibility as determined by the respondents, we feel that there was a faithful compliance at long last with the directions issued by this Court in W.P.No.24452 of 2010. In view of the possible confusion prevailing in the minds of the respondents though the delay that occurred till 30.09.2015 for implementing the judgment is an unreasonable period consumed but yet that alone should not lead to an inevitable conclusion that the respondents have acted with deliberate intent to violate the orders of this Court, for them to be penalized. Further, while We are, therefore, of the opinion that by 30.09.2015, the judgment rendered by this Court in W.P.No.24452 of 2010 on 30.11.2010 and the review order dated 05.12.2012 stood implemented. W.P. (C) Nos. 9413/2016 & 1473/2017 Page 32 of 46 Hence, we dismiss this contempt case duly discharging the notice issued earlier. Accordingly, the contempt case is dismissed. No costs. However, we hope and trust that the Government of India would not take such a long time for implementing the writs issued by this Court henceforth. The last portion of the said order refers to the directions issued by the Andhra Pradesh High Court to comply with the paragraph 5 of the Office Memorandum dated 9th November, 1998, i.e. to decide whether or not to implement FCS in the case of Group B posts. We agree with these observations.

33. We do find difficulty in accepting the reasoning given in paragraphs 14 and 15 of the judgment of the Andhra Pradesh High Court in V. Sambasiva Rao (supra) . O.M. dated 9th November, 1998 was also issued in the same manner and under the same power and authority as O.M. dated 28th May, 1986. The latter O.M. has been issued under executive instructions in terms of the power conferred under Article 77 of the Constitution.

34. It is not possible to accept that the O.M. dated 28th May, 1986 would apply even if the O.M. dated 9th November, 1998 withdraws and rescinds the former notification in respect of Group-B services. To W.P. (C) Nos. 9413/2016 & 1473/2017 Page 33 of 46 this extent the O.M dated 28th May, 1986 was at variance and was amended/modified. We have quoted paragraph 7 of the O.M. dated 9th November, 1998 in paragraph 11, above. We have also noted one distinguishing factor, i.e. that the respondents in W.P. No.22349/1999, V.

Sambasiva Rao (supra), were employees of the Central Ground Water Board who had been appointed in Group-B prior to 9th November, 1998. The respondents in the present case were appointed after 9th November, 1998. As noticed above, the SLP preferred against the decision in V. Sambasiva Rao (supra), was dismissed in limine by the Supreme Court vide order dated 10.09.2008 specifically observing that in the facts and circumstances of the case the Court was not inclined to interfere with the impugned order. The said dismissal would not constitute a binding ratio or precedent declared by the Supreme Court. We have also examined the judgment of the Calcutta High Court in W.P. C.T No.102/2012, Tarun Mishra (supra). This decision makes reference to the Andhra Pradesh High Court decision in W.P. No.24339/1999 which was confirmed by SLP(C) CC No.7347/2009, and dismissed the contention raised by the petitioner-Authorities therein that the judgment of the Supreme Court W.P. (C) Nos. 9413/2016 & 1473/2017 Page 34 of 46 in (2007) 14 SCC556 UOI & Ors. v. S.K. Saigal & Ors. dated 15.11.2006 was not considered. This contention was rejected observing that the Andhra Pradesh order was confirmed much later in 2011. We do not find that this decision lays down any specific ratio decidendi.

35. One more important aspect which arises for consideration is the contention of the respondents that a number of Group B officers have been granted benefit of FCS. The petitioners were asked to ascertain the said fact and as per the affidavit placed on record they have accepted that 8 Group B officers appointed on or after 9th November, 1998 had been granted benefit of FCS. After the judgment in W.P.(C) 1473/2017 was reserved on 21st February, 2017, the respondents had filed CM No.17941/2017 for placing on record additional documents. The respondents had relied upon Office Order dated 1st May, 2017 by which in-situ promotion under the FCS was granted to 8 other officers pursuant to the contempt petition filed before the Tribunal. The petitioners were asked to file response and have filed reply affidavit accepting the said position. It is however, stated that promotion to these 8 officers was granted in compliance W.P. (C) Nos. 9413/2016 & 1473/2017 Page 35 of 46 with the order dated 26th April, 2014 passed in OA No.1182/2012 and the order passed in Contempt Petition No.279/2015 thereafter.

36. Reading of the said order dated 26th April, 2014 would indicate that the petitioners herein were directed to consider the claim of all applicants therein for grant of consequential benefits arising from issuance of revised seniority list where same benefits had been extended to persons junior to them. Thus promotional scales under the FCS were directed to be granted in all cases where juniors had been granted the said benefits. We may note that the seniority list for Group B posts had undergone a change pursuant to the said litigation in OA No.1182/2012. The stand taken by the authorities in the reply affidavit that there was an inadvertent lapse by not noticing the gazette notification GSR660E) dated 9th November, 1998 and consequently wrong legal opinion was tendered. Therefore, the order dated 26th April, 2014 passed by the Tribunal was never challenged.

37. In these circumstances we had heard the arguments which were concluded and judgment was reserved on 21st July, 2017. As per the respondents 19 officers who were inducted and joined Group B grade on or after 9th November, 1998 were granted benefit of the FCS. W.P. (C) Nos. 9413/2016 & 1473/2017 Page 36 of 46 As per the petitioner there are 16 such officers. The question which arises for consideration is whether in the aforesaid circumstances, we should or should not interfere with the impugned order of the Tribunal. The respondents highlight the contradiction and inconsistency which would arise if benefit of FCS is granted to some and not others. The earlier decisions even if debatable, as per the

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, should be applied universally as judgment in rem deciding the controversy.

38. Sections 40 to 44 of the Evidence Act deal with relevancy of judgments of Courts of justice. Section 41 stipulates that a final judgment, order or decree of a competent Court in exercise of jurisdiction of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person legal character, or which declares that any person is entitled to such legal character or to any specific thing as against any specified person, is relevant when the existence of such legal character or title of such person to such thing is relevant. The section thus pontificates when a judgment, order or decree is a conclusive proof. Strictly, the judgments specified in Section 41 are judgments in rem. W.P.

(C) Nos. 9413/2016 & 1473/2017 Page 37 of 46 39. Section 42 states that judgments, orders or decrees, other than those mentioned in Section 41, are relevant if they relate to matters of public nature relevant to the enquiry, but they are not conclusive proof of what they are saying. The first provision, i.e. Section 40, states that any previous judgment to bar second suit or trial is relevant when the Court decides whether it should take cognizance of such suit or hold such trial.

40. Section 43 states that the judgments, orders or decrees, other than those mentioned under Sections 40, 41 and 42 are irrelevant unless existence of such judgment, order or decree is a fact in issue or is relevant under some other provisions of the Act. Section 44 deals with fraud or collusion with which we are not concerned.

41. The aforesaid provisions bring out the distinction between what is strictly judgment in rem, which is covered and falls within the four corners of Section 41, and other decisions which may be relevant under Section 40 or 42. Section 40, as noticed above, deals with the principle of res judicata, which in legal jurisprudence is different from the principle of precedents or stare decisis. As a common law country, doctrine of precedents is applied and applicable in India. W.P. (C) Nos. 9413/2016 & 1473/2017 Page 38 of 46 Decisions of the Supreme Court and the High Court are binding precedents, which means they have to be followed or else distinguished. The principle of res judicata applies to the decision, while the principle of precedents operates as to the rule of law involved. In this sense, it binds everyone including those who come before the Court in other cases. This principle has a binding effect, and therefore operates in rem, i.e. it applies to other cases.

42. Judgments in personam are original judgments between parties to the case of contract, tort or criminal, whereas judgments in rem affect a persons status, but as noticed above, judgments in rem can be classified into two classes; one, which is conclusive against all the world, and the other, which is not conclusive, though admissible and treated as a precedent in other proceedings. The latter decisions, not being conclusive, can be reversed (see Hill Vs. Clifford, [1907]. 2 Ch. 236 at page 244).

43. The aforesaid principle finds recognition in service law in K. Ajit Babu & Ors. Vs. Union of India & Ors. (1997) 6 SCC473 which dealt with the benefits and advantages of adherence to the principle of precedents. This judgment dealt with the question of a W.P. (C) Nos. 9413/2016 & 1473/2017 Page 39 of 46 decision of the Central Administrative Tribunal on certain principles of law determining seniority of employees which had affected the employees who were not parties to the lis, and the course of action available to them. It was observed, consistency, certainty and uniformity in the form of judicial decisions were benefits arising from the doctrine of precedent and, therefore, the Tribunal would be bound by earlier judgments which act as precedents. Third parties, who are adversely affected, would be persons feeling aggrieved and in terms of provisions of Section 22 of the Administrative Tribunals Act, 1985 could seek review by re-opening the case. If the Tribunal dissents from the view expressed earlier, the matter can be referred to a larger/full bench. Of course, against the rejection of the said application for review, the aggrieved party can file a writ petition.

44. K. Ajit Babu (supra), therefore, dealt with a case where a judgment had wider repercussions and had the effect of a judgment in rem in the second sense. (see Wazir Singh & Ors. Vs. State of Haryana and Ors. 1995 (suppl.) 3 SCC697 wherein with reference to litigation by the State of Haryana, it was observed that multiplicity of litigation should be avoided. When there is an earlier decision, it W.P. (C) Nos. 9413/2016 & 1473/2017 Page 40 of 46 should be made applicable to non-parties as well, as the principle of law was settled).

45. Recently, the Supreme Court in State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors., (2015) 1 SCC347 had examined this issue on the question of judgments in service law which lay down a principle and, therefore, are treated as judgments in rem in the second sense. Several decisions on both sides were referred to and the following legal principles were set out:-

""22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under. 22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to

be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently. 22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same W.P. (C) Nos. 9413/2016 & 1473/2017 Page 41 of 46 and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. 22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC721:

1998. SCC (L&S) 226].). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

A careful reading of the aforesaid principles reveals that the principle of in rem in the second sense is not absolute. It is preferable to follow the said principle so that

there is no discrimination or W.P. (C) Nos. 9413/2016 & 1473/2017 Page 42 of 46 violation of Article 14 in service matters for all similarly situated persons should be treated alike and not differently. However, delay and laches as well as acquiescence can be a ground to deny benefit to fence sitters. Those who do not approach the Court in a timely and prompt manner can be denied equal treatment. Thus, it will be right to hold that doctrine of in rem in the second sense is not unconditional or unimpeachable. However, this exception would not apply where the earlier judgment pronounced by the Court is with the intent to give benefit to all similarly situated persons, whether they had approached the Court or not. Benefit should not be extended when the said intent is not there and the judgment expressly or impliedly states that the benefit of the judgment would be extended to those, who had sought to enforce their rights and their petitions were not stale on account of delay and laches or acquiescence.

46. Similar issues have also arisen under taxation laws as it has happened that the tax authorities do not file appeals in similar matters or earlier years. The consensus, it appears, is that the tax or the revenue authorities should not be barred or prohibited from preferring appeal where there is just cause for doing so, it is in public interest or W.P. (C) Nos. 9413/2016 & 1473/2017 Page 43 of 46 where divergent views have been expressed by the Tribunal or the High Courts. [see C.K. Gangadharan & Anr. Vs. Commissioner of Income Tax, Cochin, (2008) 8 SCC739 Commissioner of Central Excise, Bangalore Vs. Bal Pharma Ltd., Bangalore and Ors. (2011) 2 SCC620 and Catholic Syrian Bank Ltd. Vs. Commissioner of Income Tax (2012) 3 SCC784.

47. In view of the aforesaid discussion we would allow the present writ petitions and set aside the directions given in the impugned orders dated 7th January, 2016 in OA No.4547/2014 and 1st August, 2016 passed in OA No.3761/2013. However, at the same time, it has to be directed that in order to ensure compliance with paragraphs 5 and 6 of the OM dated 9th November, 1998 the petitioners would undertake an exercise as mandated to decide, whether or not benefit of FCS should be extended and granted to Group B employees of CGWB appointed on or after 9th November, 1998. While carrying out the said exercise the petitioners would keep in mind the fact that 16 or 19 such Group- B officers have been given

benefit of FCS as the petitioners did not challenge the orders passed by the Tribunal and there are judgments of the two High Courts which have attained finality. They would ensure W.P. (C) Nos. 9413/2016 & 1473/2017 Page 44 of 46 that there is no disparity or unequal treatment especially in cases where juniors have been granted benefit of FCS. This would not be acceptable, even if we have held that FCS was not immediately or per se applicable to Group-B employees, and had required a considered examination. Noticeably, there has been considerable and unexplained delay. Normally, we would not have fixed any time limit and only directed the petitioners to conduct the aforesaid exercise expeditiously. However the matter has remained pending since 9th November, 1998 and has created litigation all over the country in spite of the mandate given in paragraphs 5 and 6 of the OM dated 9.11.1998. In such circumstances, we direct the petitioners to undertake the said exercise within six months from the date of receipt of a copy of this order. The Secretary of the Ministries and the head of the CGWB would ensure that the task and exercise is completed within the said period and no application for extension of time is moved. We also observe that if any application for extension of time is made, the Court would take a strict view of the matter and may even impose costs, if justified. W.P. (C) Nos. 9413/2016 & 1473/2017 Page 45 of 46 48. With the aforesaid directions, the writ petitions are disposed of without any order as to costs. (SANJIV KHANNA) JUDGE (CHANDER SHEKHAR) JUDGE September 1St , 2017 ssn W.P. (C) Nos. 9413/2016 & 1473/2017 Page 46 of 46