Dhananjay Sharma and ors. Vs. State of Bihar and ors.

Dhananjay Sharma and ors. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/134141

Court : Patna

Decided On : Jul-26-2001

Judge : Sanat Kumar Chattopadhyaya, J.

Appeal No. : C.W.J.C. No. 3063 of 1992

Appellant : Dhananjay Sharma and ors.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

S.K. Chattopadhyaya, J.

1. In this application altogether three hundred and twenty four petitioners have moved this Court impugning the letter of the Joint Secretary, Finance Department, Government of Bihar (respondent No. 2) dated 11th October, 1991, by reason of which it was intimated that the State Government has allowed the pay-scale of Rs. 260-408 to the Accountants of the different Treasuries from 1-5-1980 to 31 st March, 1981 and further that the scales of pay of Rs. 730-1080 and Rs. 1400-2600, which were granted to such Accountants of the different Treasuries with effect from 01-4-1981 and 01-1-1986, was without any verification and decision with respect to the scale of the aforesaid period i.e. 01-4-1981 and 01-1-1986 and the same is still under consideration of respondent-State. This letter is Annexure-1

to the writ petition. Though initially this was the prayer of the petitioners but subsequently by filing two different amendment petitions they have also cnallenged Annexure-14 dated 14th September, 1992, Annexure-15 dated 12-2-1993, Annexure-30 dated 4-6-1999, Annexure-A dated 7-8-1999 of the counter-affidavit filed by the respondents and Annexure-37 as contained in amendment petition filed on 24-11 -2000.

2. Some facts are required to be stated for appreciating the argument of the learned Counsel for the parties.

The Petitioner Nos. 3, 5, 7, 8, 20, 44, 81 and 98, who have already been superannuated, were working as Accountant in different Treasuries along with rest of the petitioners, who are still working as Accountant in different Treasures of the State of Bihar. Their functions and duties have been laid down under the Bihar Treasury Code, Volume-I and Auditor General Accounts Code. After appointed initially as Lower Division Clerk (LDC in short) in different Collectorates, they were promoted to the post of Upper Division Clerk (in short UDC). In terms of the recommendation of the Second Pay Revision Committee by order dated 2nd April, 1973, the LDCs were classified as Accounts Clerk and Correspondence Clerks respectively and it was mentioned that those who were working in the Treasury and were doing the work of Account, were classified as Accounts Clerk and all other Clerks, who were working in different branches, were classified as Correspondence Clerk. With effect from 01 -5-1980 LDCs and UDCs (Accounts side) were merged and Account Clerks were placed in the new scale of Rs. 260-408 instead of pay-scale of LDCs (Accounts) i.e. 220-315 and pay-scale of Rs. 248-372 being pay-scale of UDCs (Accounts). This letter dated 18-2-1981 is Annexure-6. By letter dated 10th February, 1982, it was intimated that the employees who were engaged in Treasuries belonging to the Accounts cadre side would get their pay in the same scale which were given to the other employees belonging to the Collectorates cadre in terms of the 4th Pay Revision Committee. This letter is Annexure-7, which indicates that the scale of pay of Rs. 260-408, which was given by Annexure-6 was practically annulled and they were entitled to get the pay-scale of UDCs of the Mufassil Establishment, which was of Rs. 284-372. Subsequently all the posts of the Accounts Clerks of different Collectorates were transferred to different Treasuries and Accounts Directorate under the control of the Director of Accounts and Treasuries of the Finance Department (respondent No. 3).

One Rajendra Pandey along with the petitioners functioning as Accountants in the Collectorate in Treasury wing were transferred to different Treasuries under the Finance Department. Though by Annexure-6 the Accounts Clerks of Transuries were given replaced pay-scale of Rs. 260-408 but by Annexure-7 the same was purported to be cancelled and thus being aggrieved said Rajendra Pandey moved this Court in CWJC No. 711 of 1983 (R) challenging the letter dated 10th February, 1982 (Annexure-7 to this petition). He prayed that he should be provided the replaced scale of Rs. 260-408-instead of Rs. 284-372. this Court by its order dated 25th August, 1988 allowed the writ application of Rajendra Pandey by quashing the order dated 10th February, 1982 and the respondents were directed to fix the salary of Rajendra Pandey in the scale of Rs. 260-408 with effect from 01-5-1980. The Court gave liberty to the respondents to move the Court for appropriate direction if there would be any difficulty in such fixation of the pay-scale. The judgment of the High Court is Annexure-8. The State Government moved the Supreme Court against the said order in S.L.P. (Civil) No. 9554 of 1989 and the Supreme Court, without interfering with the order of the High Court, disposed of the S.L.P. by observing that the writ granted by the High Court is confined to the individual case of Rajendra Pandey. The order of the Supreme Court is Annexure-9. Thus, in view of the Supreme Court decision Rajendra Pandey got the relief asked for.

According to the recommendation of the 4th Pav Revision Committee replaced scale of Rs. 580-860 was given to the Accounts Clerks of the Treasuries like the petitioners, Rajendra Pandey and Ors. The Fourth Pay Revision Committee, according to the petitioners, has given this replaced scale by taking into account the earlier scale of Rs. 284-372, as by that time earlier replaced scale of Rs. 260-408 was not available before it. The casa of the petitioners is that by order dated 5th October, 1989, further promotion was given to Rajendra Pandey and he was provided with correct replaced scale of Rs. 730-1080 with effect from 01-4-1981 on the basis of replaced scale of Rs. 260-408. Because of further promotion of said Rajendra Pandey he was also given the said next scale of pay.

Moreover, according to the petitioners similarly situated Accounts Clerks, known as Accountants of the Public Works Department and other Departments, who were enjoying old scale of Rs. 260-408, were provided with replaced scale of Rs. 730-1080 by the Fourth Pay Revision Committee. A grievance has been made by the petitioners that the State Government, taking into account that the replaced scale of Rs. 580-860, which was provided to the Accounts Clerks/Accountants of the Treasuries was not on the basis of scale of Rs. 260-408 but on the basis of lower pay-scale of Rs. 284-372, though by order dated 3rd October, 1989, Rajendra Pandey was given scale of Rs. 730-1080 with effect from 01-4-1981, mentioning in the said letter that the aforesaid decision relating to replaced scale of pay will be only applicable to Rajendra Pandey and not to others in terms of the Supreme Court order. This order of the State Government is Annexure-10. It appears that being aggrieved by the exception indicated in the said letter of 3rd October, 1989, some of the Accounts Clerks/Accountants moved the High Court at Ranchi Bench in CWJC No. 2180 of 1989(R). However, some of the present petitioners along with others challenged that partion of the letter (Annexure-10 herein) at Patna in CWJC No. 6 of 1990. While the writ application at Patna was pending for hearing a Division Bench of this Court finally disposed of CWJC No. 2180 of 1989(R) by its judgment dated 4th February, 1991. This judgment is Annexure-2. According to the Division Bench the petitioners of the said case were entitled to get replaced scale of Rs. 260-408 with effect from 1-5-1980 upto 31 st March, 1981, on the basis of the letter dated 18-2-1981, which is Annexure-6 in the instant writ application. With regard to pay-scale with effect from 1-4-1981, the Division Bench observed that those petitioners would be entitled for wages in terms of the recommendation of the Fourth Pay Revision Committee. The Division Bench also noticed that the letter dated 10th February, 1982 (Annexure-7 herein), which was Annexure-5 in the said writ application was already quashed by a Single Judge in CWJC No. 711 of 1983(R) and thus opined that by filing representations the petitioners can bring the aforesaid matters to the notice of the respondent-State and the respondent-State would dispose of the matter taking into account all the aforesaid facts and circumstances. Thus, the petitioners were given liberty to raise the matters only before the Anomaly Removal Committee and direction was given to that effect. The Division Bench having held that the Accounts Clerks/Accountants like those petitioners would be entitled for the scale of pay of Rs. 260-408 with effect from 1-5-1980 to 31st March, 1981. With regard to the revised pay-scale from 1-4-1981, however, remitted the matter back to the respondent-State to place the same before the Anomaly Committee and decide the matter of replaced scale of pay taking into account that the letter dated 10th February, 1982, was already quashed by this Court earlier.

According to the petitioners Fourth Pay Revision Committee wrongly revised the pay-scale of Accounts Clerks/Accountants of the Treasuries on the basis of the earlier scale of pay of Rs. 284-372 i.e. Rs. 580-860 and this policy continued to perpetuate when the revision was made by the Fifth Pay Revision Committee with effect from 01-1-1986 and, thus, replaced scale of Rs. 1200-1800 was recommended. The petitioners assert that in view of the Division Bench judgment dated 4th February, 1991, when the pay-scale with effect from 1-5-1980 to 31st March, 1981 to that of Accounts Clerks/Accountants of the Treasuries was revised to the pay-scale of Rs. 260-408, the respondent-State was bound to revise the pay-scale with effect from 1-4-1981 and 1-1-1986 accordingly. However, the said matter remained pending before the State Government. When with respect to Rajendra Pandey the matter of revision with effect from 1-4-1981 and 1-1-1986 was taken up, it was pointed out by the authorities that Rajendra Pandey has been provided with the scale of pay of Rs. 260-408 with effect from 1 -5-1980 to 31 st March, 1981, and a general decision was taken by the State Government to provide the replaced scale of Rs. 730-1080 with effect from 1-4-1981 in respect of Accounts Clerks/Accountants of the Public Works Department and other departments, who were in the same scale of pay of Rs. 260-408. When the question of giving replaced scale of pay in respect of the petitioners and other Accounts Clerks/Accountants of the Treasuries, who were similarly situated to Rajendra Pandey, came up for consideration, the State Government by order dated 10th September, 1991, provided the petitioners and Accounts Clerks/Accountants of the Treasuries, with the scale of Rs. 260-408 like Rajendra Pandey with effect from 1-5-1980 to 31st March, 1981, as with effect from 1st April, 1981. Thus, according to the petitioners the next replaced scale was to be provided to them also. The respective Controlling Officers took into consideration that the order dated 10-2-1982 (Annexure-7) had already been quashed in CWJC No. 711/83(R) and that similarly situated person of the same cadre, namely, Rajendra Pandey has already granted the replaced scale of Rs. 730-1080 with effect from 1-4-1981 and that in the category of Mufassil Office having scale of Rs. 730-1080 were provided with replaced scale of Rs. 1400-2600 with effect from 1-1-1986. Thus, the Controlling Officers were of the view that Accounts Clerks/Accountants of the different Treasuries including the petitioners were entitled to the revised pay-scale of Rs. 730-1080 with effect from 1-4-1981 and further replaced scale of Rs. 1400-2600 with effect from 1-1-1986. Accordingly this was done. Moreover, the petitioners, who were provided with the next higher scale of Selection Grade Scale were also given replaced scale of pay by their Controlling Officers (Treasury Officers). When the petitioners were satisfied with the said pay-scale, the State Government suddenly came out with the impugned order dated 11th October, 1991, as contained in Annexure-1, informing that with regard to replaced scale from 1 -4-1981 that of Rs. 730-1080 and with effect from 1-1-1986 i.e. of Rs. 1400-2600 were still under consideration of the Government and the Government has not taken any specific decision regarding this. The State Government directed the Controlling Officer to cancel the same, which resulted in recovery from the salary of the petitioners and other because they have already been paid the said amount. The petitioners assert that in the meantime number of persons like the petitioner Nos. 3, 5, 7,8 and 98 having retired from service received the said replaced scale of Rs. 730-1080 with effect from 1-4-1981 and further replaced scale of Rs. 1400-2600 with effect from 1-1-1986. They have also received replaced scale of their next higher Selection Grade posts. It is also alleged that though pension of various retired persons have already been fixed on the basis of such revised scale of pay but with regard to petitioners No. 3, 5, 7, 8, 20,44, 81 and 98 pension has not been finally fixed in the said replaced scale of pay, though they did receive the aforesaid replaced scale of pay during their service tenure.

3. Defending issuance of the Finance Department letter dated 11-10-1991 (Annexure-1) the stand of the State Government in its counter-affidavit is that in the light of the Division Bench judgment in CWJC No. 2180 of 1989(R) pay-scale of the petitioners were sanctioned at Rs. 260-408 with effect from 1-5-1980 to 31-

3-1981. While the matter of revision of pay-scale in respect of the petitioners with effect from 1-4-1981 and 1-1-1986 was under active consideration of the State Government, the Sub-Treasury Officers, Chas, Bokaro fixed the pay of the Treasury Clerks posted in the Treasury with effect from 1-4-1981 and 1-1-1986 in the pay-scale of which they were not entitled to. Finance Department having come to know of the said order of the Sub-Treasury Officers dated 25-9-1991, immediately issued a clarification by its letter dated 11-10-1991, which is Annexure-1. According to the respondents the Sub-Treasury Officers were not authorised to fix the pay-scale of Treasury Clerk as was done by them. The very cadre of the petitioners has been challenged by the respondents asserting therein that actually the petitioners were never declared as Accountants and they are in fact Treasury Clerks borne out of the cadre of Mufassil Clerk Establishment. Ultimately their claim for such revised pay-scale has been turned down by the State Government by its order dated 14-9-1992, which is Annexure-Ato the counter-affidavit.

4. From perusal of the counter-affidavit of the respondents it appears that the State Government has never accepted the petitioners as Accountant and they are being treated as Mufassil Clerks and according to them the ratio in the decision of Rajendra Pandey is not applicable to the case of the petitioners because he was paid the said revised scale in view of the modified judgment of the Supreme Court. However, it is not the stand of the respondents that the petitioners are not performing the same kind of jobs and having same responsibility as are being done by other Accountants in other departments. Their case is that only Senior Accounts Clerk having a recruitment qualification of Intermediate is entitled for the pay-scale of Rs. 730-1080 with effect from 1-4-1981 as per recommendation of the Fourth Pay Revision Committee, whereas the recruitment qualification for the petitioners post is Matriculation and as such they are entitled for the pay-scale of Rs. 580-860 with effect from 1-4-1981 and Rs. 1200-1800 with effect from 1-1-1986. According to them if some of the Treasury Officers, under these circumstances, have been given higher pay-scale, it is illegal.

5. It appears that when the Finance Department issued letter dated 12th of February, 1993 (Annexure-15) reducing pay-scale of the petitioners and other

similarly situated Accountants for Treasury, the petitioners moved this Court by filing an application for interim relief. Order contained in Annexure-15 was stayed by this Court on 2-3-1993. Thereafter the petitioners were granted interim relief from time to time by this Court during pendency of this application whenever the State Government wanted to reduce the pay-scale of the petitioners.

6. From the facts noted herein above it appears that whereas the petitioners claim the same scale of pay as was given to Rajendra Pandey and some of the other petitioners, who have already retired, on the contrary the stand of the State Government is that the petitioners are not eligible for the same pay-scale because they have no recruitment qualification of Intermediate. However, the respondents have not disputed the facts that under similar circumstances a Division Bench of this Court in the case of Suraj Prasad Sahu and Ors. v. State of Bihar and three Ors. C.W.J.C. No. 2180 of 1989(R), as contained in Annexure-12, after noticing the provisions of the Treasury Code has given a specific finding in Paragraph-50 as follows:

50. There is thus hardly any job of correspondence works, in the Treasury, it is, therefore, clear that at all material times, the petitioners were and are working as Accounts Clerks and not as correspondence Clerks.

The Court also considered the provisions of Rule 4(1) of the Treasury Code and Rules 63 to 71 and 472 to 477 of the said Code. Thus, the Division Bench has observed in Para 49 of the judgment that:

49. From Rule 4(1) of the Treasury Code, it appears that the Treasury is divided in two departments, namely, the department of Accounts which remained in the charge of an Account and a Cash Department under the charge of the Treasurer. It appear that the functions of the Cash Department of all the Treasuries are conducted by the Bank and only the matters relating to accounts are dealt with in the Treasury.

Rules 63 to 71 and 472 to 477 relates to work of Accounts. As is evident from Rules 42, 60,180 Note-I, 452 and 457 of the Bihar Treasursy Code Vol.I that non gazetted employees of the Treasury is designated as Accountant and their functions and duties in the Treasuries have been laid down in Rules 42,60, 65, 70,180 and 477 of Vol.l of the Treasury Code.

this Court also took into consideration that while making recommendation with regard to revision in the scale of the persons of all concerned employees, it not only took into account the work load, responsibility, educational qualification etc. in relation to particular set of employees but it also compared the same with the persons working in other departments. The scale of pay of an employee working in a particular department is not only fixed with reference to the designation of the employees concerned, but upon taking into consideration the minimum educational qualification required for holding the said post, the responsibility is conferred upon the employees, work-load and various others factors. The Division Bench has considered the entire recommendation of the Fourth Pay Revision Committee and has come to a conclusion that it is clear that those Accounts Clerks who had a higher qualification or had been working in higher grade than the petitioners had been given pay-scale of Rs. 260-408. The judgment passed by a Single Bench in the case of Rajendra Panctey (supra) was also noticed and while agreeing with the principles laid down by the Supreme Court in the case oilnderRai Yadavv. Union of India andothers, 1985 PLJR 36 (SC) it has also noticed that the Supreme Court in the case of Rajendra Pandey (supra) expressed the direction that the said judgment would remain confine to the petitioner of that case and the Supreme Court gave liberty to the State to raise objection once over again if other employees file a writ application questioning its decision. Thus, while agreeing with the petitioners' contention the Division Bench was of the opinion that at all material times those petitioners were working as Accounts Clerks and not as correspondence Clerks but refused to grant relief to those petitioners in view of the fact that Fourty Pay Revision Committee taking into consideration the facts and circumstances of the case did not think it fit to put those petitioners and other employees of the Collectorate in the pay-scale of Rs. 730-1080. However, according to this Court the only course open to those petitioners was to move the Anomaly Removal Committee or to opt continue to receive the salary on the basis of old scale of pay. While giving liberty to those petitioners to raise the matters before the Anomaly Removal Committee this Court held that in exercise of its writ jurisdiction the Court cannot fix the pay-scale of the employees. This judgment was passed on 4th February, 1991, and thereafter many correspondences were made as it appears from record. There is no dispute that after the judgment of the Division Bench the pay-scale of Suraj Prasad Sahu and other petitioners in that case were revised by the State Government by its letter dated 10th September, 1991.

7. In the present case by virtue of different interim orders, admittedly, the petitioners got the pay-scale of Rs. 730-1080 from 1 -4-1981 and Rs. 1400-2600 from 1-1-1986 and Rs. 5,000-8,000 from 1-1-1996, which is made for basic grade post. It is also not in dispute that after passing of the interlocutory order dated 2-3-1993 the Finance Department by his letter dated 8-6-1993 clarifying therein that the petitioners would get present pay-scale that is recommended by the Fourth Pay Revision Committee with effect from 1-4-1981 and 1-1 -1986 and they would also get the higher pay-scale of the existing pay still final decision of the instant writ petition. This letter is Annexure-18. However, immediately one month thereafter the Finance Department came out with another resolution dated 21-7-1993, by reason of which the Directorate of the Treasuries and Accounts, under which different Treasuries/Sub-Treasu'ries were functioning, was dissolved and a decision was taken that the services of the Accountants of the Treasuries of the Finance Department like the petitioners would be henceforth under the control of the Deputy Commissioner and Collector of the individual District. As this resolution was directly affecting the rights of the petitioners, they moved this Court in C.W.J.C. No. 7703/93. Again Division Bench of this Court by its order dated 17-1 -1994, in view of the stand taken by the respondents, disposed of the writ application in terms of the statement made by the Advocate General that by issue of Resolution dated 21st July, 1993, the service condition of the petitioners shall not be effected in any manner. According to the Advocate General, the petitioners were put under the administrative control of the concerned Deputy Magistrate/Deputy Commissioner and by resolution of the Directorate, neither the nature of work, nor their salary shall be affected. The petitioners shall continue to get in further the same pay-scale which they were getting earlier till disposal of C.W.J.C. 3063 of 1992 (the instant case). It was also the stand of the respondents-State that by dissolving the Directorate, the petitioners' promotional avenue shall not be affected. After the aforesaid order of the Court, the petitioners

continued to function against the post of Accountants/Accounts Clerks and also continued to receive salary on the basis of Rs. 1400-2600, which was provided with effect from 1-1-1986. In the mantime, however, the Fifth Pay Revision Committee gave its recommendation and in view of that with effect from 1-1-1986 the posts having the basic grade pay-scale of Rs. 1400-2600 was provided Rs. 1500-2750 as Junior Selection Grade, Rs. 1640-2900 as Senior Selection Grade and Rs. 1800-3330 as Super Time Scale. Subsequently, in order to revise the existing pay-scale the State Government constituted a Fitment Committee (6th Pay Revision Committee) constituting two members, one of which was one of the retired Judges of this ColJrt. This resolution is Annexure-20.

8. From perusal of Annexure-20, it appears that the State Government decided to give the same pay-scale and service condition as has been provided to the Central Government. In August, 1989 the Fitment Committee/5th Pay Revision Committee submitted its report and the same was accepted by the respondents-State under Resolution dated 30-12-1989. According to the petitioners the present Fitment Committee (6th Pay Revision Committee) was wrongly intimated about the pay-scale of the Accountants as Rs. 284-372 with effect from 1-5-1980 in place of Rs. 260-408, which was earlier held by this Court in Rajendra Pandey's case. On the basis of this wrong notion the Fitment Committee recommended the lower pay-scale of Rs. 4000-6000 against the post of the Accounts Clerks/Accountants of the Treasuries. However, the Fitment Committee specifically dealt with different categories including common category, Indian Audit and Accounts Department, Finance Department etc. It also took into consideration the report of the Pay Commission of the Central Government in which the case of the Central Government employees has been dealt with in common categories. With respect to the Central Government employees the Pay Commission has also discussed about the post of Accountant, Senior Account, Sectional Officer, Assistant Accounts Officer, Junior Accounts Officer, Accounts Officer etc. and recommended common pay-scale of Accountants of different departments of the Central Government. An extract copy of the report of the Central Pay Commission dealing in Chapter 55 has been annexed in this application as Annexure-22 from this it appears that the posts of Accountants, which are available in different departments and having unrevised pay-scale of Rs. 1320-2040 and/or Rs. 1200-

2040 were provided a common revised pay-scale of Rs. 4000-6000. The posts like Senior Accountant having pay-scale of Rs. 1600-2660/Rs. 1400-2600 were provided coommon revised pay-scale of Rs. 5,000-8,000. The report was submitted by the Fitment Committee in 1998. The petitioners found thsfwhereas on one hand in the Finance Department as well as other departments like Bihar Flying Institute, Ranchi, Directorate of Land Acquisition and Rehabilitation, Housing Department, Directorate of Treasuries, the posts of Accountants have been provided the revised pay-scale of Rs. 5,000-8,000 as against the unrevised pay-scale of Rs. 1400-2600, the petitioners who are enjoying unrevised pay-scale of Rs. 1400-2600 and also functioning in different Treasuries of the Finance Department have been recommended a lower pay-scale of Rs. 4000-6000 with effect from 1-1-1996. The chart clearly indicates the pay-scale of the post of Accounts etc. vis-a-vis other departments, which is Annexure-23.

9. The controversy and agony of the petitioners was not confined to this aspect of the matter only but by Resolution dated 25-1 -1999 (Annexure-24), deviating from its earlier stand before the High Court in the case of Ramesh Prasad Singh and Ors. v. The State of Bihar and Ors. C.W.J.C. No. 7703 of 1993 that the service condition and pay-scale of the petitioners would not be disturbed and would remain the same, it was indicated in Clause-8 of the resolution that the service condition will be altered. The petitioners moved before this Court in contempt petition bearing MJC No. 434 of 1993, which is admittedly pending. By Resolution dated 8-2-1999 the case of the Treasuries employees were referred to the Fitment Committee along with the recommended pay-scale to the post of Treasury Accountants and the matter was remitted back to the Fitment Committee for fresh decision. The petitioners that the case would be considered in accordance with law. The Fitment Committee reconsidered the scale of 70 posts including the post of the petitioners, it is stated, were assured by the respondents but in the case of Accountants in the Treasuries, the consideration was kept pending in view of the fact that the case relating to the post of Accountants the writ is pending for final decision. The petitioners were provided the revised pay-scale of Rs. 4000-6000, Rs. 5000-8000 and Rs. 5500-9000 and this review report of the Fitment Committee is Annexure-27. All of a sudden on 4-6-1999 the Finance Department came out with another letter stating therein that the pay fixation has not been

made as yet and the recommendation of the Fitment Committee is not made application to the post of Accountant. In such situation according to the petitioners they should have been provided the revised pay-scale of the existing pay-scale. This letter dated 4-6-1999 is Annexure-30. The petitioners filed representation before the Authority stating herein the, facts. The petitioners also challenged Annexure-30 by filing an amendment petition in the present writ application.

10. From the facts aforesaid it appears that the respondents are some how deviating from their own stand in different occasions. It is not disputed by the respondents that the petitioners are performing the same job having same responsibility like Accountants in the other departments. But, whereas the pay-scale of the Accountants in other departments has been effected by the respondent-State, in case of petitioners, who are uncontrovertedly working as Accountants are being treated differently for some reason or other. The attitude of the respondents, in my view, is clearly against the principle laid down in Article 14 of the Constitution which forbids class legislation and permits only reasonable classification.

11. It is well settled that the persons belonging in a class have to be treated equally in the matter of payment. The principle of equal pay for equal work is a settled principle and, as such, the petitioners should be paid at par with the employees who are performing some duties on regular basis. this Court in the case of Rudra Narain Khan v. The State of Bihar and Ors. CWJC No. 2149/91 has held that since both the sets of persons were discharging the same duty they were entitled to equal pay. It was also held that the fixation of pay on the basis of cut-off date was not rational.

12. During pendency of this writ application it appears that even when the State Government did not implement the latter recommendations of the Fitment Committee and the manner in which those recommendations were implemented by the State Government did not usher in a phase of peace, harmony and goodwill between the Government and its employees but caused deep unrest, discontent and resentment among large sections of the employees, the State Government agreed to constitute a Committee under the Chairmanship of a serving Judge of

the High Court and, as such, Fitment Appellate Committee was constituted headed by Hon'ble Mr. Justice Aftab Alam as Chairman. After elaborate discussion and considering different aspect of the dispute the Committee submitted its report. An extract copy of which has been annexed as Annexure-33 to the supplementary affidavit filed by the petitioners on 26-6-2001 Para 1.6 of the report reads as follows:

1.6. Ultimately, the State agreed to constitute a Committee under the Chairmanship of a serving Judge of the High Court to consider any errors or mistakes in the recommendations made by the Fitment Committee or the State Government's decision on those recommendations, as may be pointed out by the employees. The State Government further agreed that the recommendations of this Committee would be binding and its recommendations would be implemented by the State Government with effect from 1-1-1996 but material benefits would be allowed only with effect from 1 -4-1997.

From this para it appears that the State Government has agreed that the recommendations of this Committee would be binding and would be implemented by the State Government with effect from 1-1-1996.

A copy of the Complete report of the Fitment Appellate Committee has been handed over to the Court for its perusal. At page 83 of the report the Committee has dealt with the case of the Treasury Accountant in Treasury Directorate and after considering in details the cases of similarly situated employees in different departments it has observed in Paragraph 8.18 as follows:

8.18. What becomes clear from the discussions and records made available to this Committee is that, based on an all India pattern the State Government had created a separate Directorate of Treasury in 1979. Obviously, on the lure of better service conditions and promotional avenues, same of the Clerks in the Collectorate opted for this cadre. Unfortunately, the Government did not take any further steps to strengthen this organisation and stop gab arrangements were only made. As a result, ultimately only about 265 of the original incumbents are now left who, having served on this cadre for the last 21 years and having drawn a higher pay-scale are now confronted with the predicament of having to revert back to a much lower pay-scale. In view of this Committee the position has radically changed with the High Court giving a number of directions in this matter after having gone into this controversy. In CWJC No. 3063/92 the Hon'ble High Court directed 2-7-1999 that 'It is submitted that the matter regarding pay fixation of the Treasury Accountants/Clerks is pending with the Fitment Committee and until recommendations are made and decisions taken by the Government thereon, the pay of the Treasury Accountants/Clerks should be fixed in the replacement scale corresponding to Rs. 1400-2600 in which they are getting their pay at present.' In a further order dated 19-8-1999 the Hon'ble Court directed that 'In the facts and circumstances of the case, I direct the Respondents to pay the scale which the petitioners were getting in terms of the order of this Court in the above mentioned Writ petition.' In pursuance of this order Government issued sanction order No. 7035 dated 26-10-1999 providing that the Writ petitioners who were drawing pay in the scales of Rs. 1400-2600, Rs. 1500-2750 and Rs. 1640-2900 would continue to draw their pay in those scales. Therefore, it would be necessary to treat these 265 odd people, who were Collectorate staff and who had opted for the treasury cadre in 1979, on a different footing from other incumbents (i.e. those on deputation/absorption from Board/ Corporations/other organisations or future recruitments) and whereas the scale for a Clerk in the treasury should be treated as Rs. 4000-6000 and the post filled up accordingly, for this group of 265 odd employees this Committee recommends their pay be fixed in the replacement scale to the scale of Rs. 1400-2600 i.e. the revised scale of Rs. 5000-8000. As this number reduces due to attrition the posts would get reverted back to the scale of Rs. 4000-6000.

13. From aforesaid observations it appears that the Fitment Appellant Committee has noticed the pendency of the present writ application and interim order dated 2-7-1999. Having discussed those facts the Fitment Appellate Committee at page 398 recommended as such:

SI. No. Designation Existing Recommended Reference paragraph

(Deptt. Pay-Scales Pay-scales by of Fitment Appellate

wise) Fitment Appellate Committee

Committee

21 Treasury 4000-6000 265 personnel who opted Treasury

Accounts Cadre from Collectorate in 1979

recommended Rs. 5000-8000

otherwise no change.

14. From the report, thus it appears that ultimately the dispute which was unnecessarily raised by the respondents-State has been settled finally and the Fitment Appellate Committees was of the view that the petitioners are entitled to get the pay-scale of Rs. 5000-8000.

15. Learned Counsel for the petitioners submitted that the petitioners would accept the recommendation of the Fitment Appellate Committee and the State Government should be directed to implement the recommendation immediately because despite interim orders passed by this Court the last pay-scale of Rs. 5000-8000, which the petitioners were getting till the month of April, 1999, has not been paid to them. Moreover, they have stated categorically that the petitioners are going without salary since May, 1999. A copy of this supplementary affidavit was served on the State Counsel on 25-6-2001 and even when no counter was filed by the State Government informing the Court as to whether the respondents are going to implement the recommendation of the Fitment Appellate Committee immediately, the case was listed under the heading 'To be mentioned'. On 11-7-2001 opportunity was given to the State Counsel to inform this Court about this but even when the case was taken up forfurther hearing on 17-7-2001 Mr. S.B.N. Singh, learned State Counsel submitted that nothing had been heard by him from the respondent side though instruction was sought for.

16. Considering the submissions of the parties and going through the controversy between them in details, I am of the view that now the matter is finally settled by the Fitment Appellate Committee. According to the petitioners they will have no grievance if the recommendation of the Fitment Appellate Committee is implemented. On the other hand, as noticed above, while constituting the Fitment

Appellate Committee the State Government had agreed that the recommendation of the Committee would be binding and the same would be implemented by the State Government with effect from 1-1-1996 but materials benefits would be only allowed from 1-4-1997. In my view the State Government is bound by their own admission that they will honour the recommendations of the Fitment Appellate Committee and will implement the same and, as such, there cannot be any difficulty in implementation of the same. In my considered opinion there remains no dispute between the parties, which resulted in such a long proceeding before the High Court.

17. In the result, I allow this application by quashing the letter dated 11th October, 1991 (Annexure-1), letter dated 14th September, 1992 (Annexure-14), letter dated 12-2-1993 (Annexure-15), letter dated 4-6-1999 (Annexure-30) and Resolution dated 7-8-1999 (Annexure-A to the counter-affidavit) and direct the State-respondents to implement the recommendation of the Fitment Appellate Committee forthwith and positively within one month from today. I also direct the respondents to pay the petitioners the pay-scale of Rs. 5000-8000 which they were admittedly getting by virtue of interim orders passed by this Court from time to time but has been stopped from the month of May, 1999, within the same period. Lastly, it is made clear that pension of petitioners No. 3, 5, 7, 8, 20, 44, 81 and 98, who have retired, on such revised scale of pay shall be finally fixed in the said replaced scale of pay without any further delay.

18. With above observations and directions this with application is allowed.