

The State of Rajasthan Vs. Khem Chand Sharma and anr.

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Court : Rajasthan

Decided On : Jul-23-1992

Reported in : 1992(2)WLC618; 1992(2)WLN185

Judge : J.R. Chopra and; Y.R. Meena, JJ.

Appeal No. : D.B. Civil Special Appeal No. 9 of 1992

Appellant : The State of Rajasthan

Respondent : Khem Chand Sharma and anr.

Judgement :

J.R. Chopra, J.

1. This special appeal under Section 18 of the Rajasthan High Court Ordinance, 1949 is directed against the judgment dated December 2, 1991 passed by a learned Single Judge of this Court, which was modified on 16.12.1991 in S.B. Civil Review Petition No. 77 of 1991, whereby the learned Single Judge has accepted by writ petition filed by the petitioner respondent No. 1 Shri Khem 'Chand Sharma and following directions were issued to non-petitioner-appellant:

(i) to grant an ordinary time scale of Rs. 5100-150-5700-200-6300 to all RHJS Officers w.e.f. 13.8.1987.

(ii) to grant a Selection Scale of Rs. 5900-2-6700 to RHJS Officers w.e.f. 01/9.1988.

(iii) to grant Supertime Scale of Rs. 7300-7600 to seven officers of the RHJS from amongst those who are already in Selection Scale w.e.f. 1.1.1992 and post them as District Judges at five Divisional Headquarters other than Jaipur and two at Jaipur: one for Jaipur City and another for Jaipur District.

According to the non-petitioner-appellant, the judgment of the learned single Judge is without jurisdiction. The learned single Judge has transgressed the powers conferred upon the High Court under Article 226 of the Constitution and has thereby erred in giving directions to the Executive. It has been contended that the grant of pay scales to the members of any Service is governed by the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 and the earlier Rules made by His Excellency the Governor of Rajasthan under proviso to Article 309 of the Constitution and, therefore, all directions given by the learned single Judge are legislative in character and as such, no such directions, could have been given by the learned Single Judge. It has been further contended that the Courts are not conferred any powers to legislate any legislation and, therefore, as per the appellant, the learned Single Judge has wrongly assumed the role of the legislature, which has not been conferred upon the High Court under Article 226 of the Constitution.

2. It was submitted that the learned Single Judge has failed to properly appreciate the decision rendered by their lordships of the Supreme Court in Mallikarjuna Rao and Ors. v. State of Andhara Pradesh AIR 1990 SC 1251. It was further submitted that the impugned judgment of the learned Single Judge runs counter to the judgment of their lordships of the Supreme Court in State of Jammu & Kashmir v. A.R. Zakki and Ors. 1991 (IV) SVLR (L) 135, wherein the apex court of the Country has defined jurisdiction of the High Court to issue writs in the nature of mandamus to the Executive and it has been observed that a writ of mandamus cannot be issued to the Legislature to enact a particular legislation and that the same is true as regards the Executive when it exercises the powers to make rules which are in the nature of subordinate legislation. As per the appellant, the learned

single Judge has failed to appreciate the powers conferred under Article 233 and 235 of the Constitution. The matter relating to grant of pay-scales being a condition of Service is to be regulated by the Rules made by the Government and, therefore, no such directions should have been issued as has been given by the learned Single Judge.

3. According to the appellant, the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 do not lay down the pay-scale of Rs. 7300-7600 and, therefore, simply because certain other States have granted the pay scale of Rs. 7300-7600 to District Judges, no directions can be issued to the non-petitioner-appellant to create such a pay-scale for its District Judges. The conditions of service of the Rajasthan Higher Judicial Service cannot be equated with such conditions in the other States viz., State of Madhya Pradesh. It is well-established principle of law that the pay scales available in one State cannot form the basis to issue directions in the nature of legislation in other States because in such matters, Articles 14 and 16 of the Constitution are not attracted. Even as per r. 55 of the High Court Rules, the learned single Judge could not issue such directions sitting singly. The directions given by the learned single Judge to grant these pay scales to the RHJS Officers are arbitrary, unreasonable and unfair.

4. It was submitted that the pay-scales to RHJS Officers have been granted after considering their equalisations by the Pay-Commissions appointed by the State Govt. The Pay-Commission are expert-bodies on the subject. The Court cannot arrogate to themselves these functions. It was further submitted that the Indian Administrative Service is a Service carrying higher responsibilities than the Rajasthan Higher Judicial Service. According to the appellant, when the holder of supertime scale of Rajasthan Administrative Service is promoted to Indian Administrative Service, he gets lesser pay. It was contended that the observations of the learned single Judge as to how Judges should be appointed in the High Court were also uncalled for and they be declared per incuriam because no such point was raised in the writ petition and no submissions were made before the learned single Judge about it and, therefore, a fervent plea has been made that this appeal be accepted and the impugned judgment of the learned single Judge dated 2.12.1991 as modified vide order dated 16.12.1991 be set aside and the

impugned directions given in the judgment be quashed with costs of the appeal on respondent No. 1.

5. In his writ petition, the petitioner-respondent No. 1 has contended that the Rajasthan Higher Judicial Service, which consists of Additional District & Sessions Judges and District & Sessions Judges is definitely a superior service than the Rajasthan Judicial Service, which consists of Munsif-cum-Judicial Magistrates, Addl. Munsif-cum-Judicial Magistrates, Judicial Magistrates, Additional Civil Judge-cum-Additional Chief Judicial Magistrates and Civil Judge-cum-Chief Judicial Magistrates. The powers of the Munsif Magistrates are to hear civil suits upto a sum of Rs. 5,000/- and on criminal side, they are empowered to impose sentence of imprisonment upto three years and fine of Rs. 5,000/- whereas Civil Judges-cum-Additional Chief Judicial Magistrates and Civil Judges-cum-Chief Judicial Magistrates hear and decide civil suits, the value of which does not exceed Rs. 10,000/- and on criminal side, they are empowered to impose sentence of imprisonment upto 7 years and fine without any limit. The jurisdiction of Addl. District & Sessions Judges and District & Sessions Judges as regards civil cases is unlimited. They also hear and decide civil appeals arising from the judgments and decrees given by Munsifs and Civil Judges. On criminal side, they are empowered to inflict any sentence as per law upto the capital sentence viz., even if hanging a person till death, subject to the confirmation by the High Court, for its execution. The comparative duties of the Officers of the Rajasthan Judicial Service and the Officers of the Rajasthan Higher Judicial Service are set out in paras 4 to 7 of the writ petition and in para 8 of the writ petition, it has been contended that keeping in view hierarchy powers, jurisdiction, mode of selection qualifications and experience, it is clear that the duties and functions of officers of Rajasthan Higher Judicial Service are more arduous, strenuous and involve greater responsibilities than those of Officers of Rajasthan Judicial Service. These averments have not been disputed in the reply that has been filed on behalf of non-petitioner-appellant. In reply to para 8 of the writ petition, the non-petitioner-appellant has submitted that looking to the duties, functions and higher responsibilities attached to Rajasthan Higher Judicial Service, suitable and commensurate pay scales have already been prescribed. Thus, it is an admitted case of the non-petitioner-appellant that duties, functions and responsibilities

attached to the Officers of the Rajasthan Higher Judicial Service are higher than the Officers of the Rajasthan Judicial Service.

6. In paras 9 and 10 of the writ petition, it was submitted that after the formation of Rajasthan, the Rajasthan Civil Services (Unification of Pay-Scales) Rules, 1950 were brought into force with effect from 1.4.1950 and since then, the pay scales of employees of State of Rajasthan were revised from time to time. According to the petitioner-respondent No. 1, right from 1.4.1950 till 12.8.1987, the pay scales of officers of Rajasthan Higher Judicial Service have always been much higher and better than the pay scales given to the Officers of the Rajasthan Judicial Service. These averments have also not been disputed on behalf of non-petitioner-appellant.

7. In para 11 of the writ petition, it was contended in compliance of the judgment of this Court dated 18.12.1987 passed in Padam Kumar Jain, President of R.J.S. Officers Associations, Jaipur v. State of Rajasthan D.B. Civil Writ Petition No. 2216 of 1987, the State Govt. has provided the following four pay-scales to the Officers of the Rajasthan Judicial Service; with effect from 13.8.1987:

(i) Super time Scale Rs. 3900-5300(ii) Selection Scale Rs. 2975-4700(iii) Senior Scale Rs. 2540-3900(iv) Ordinary Scale Rs. 2200-4000.

Whereas the Officers of Rajasthan Higher Judicial Service were getting the following pay scales on 13.8.1987:

(i) Selection Scale Rs. 4275-5500(ii) Ordinary Scale Rs. 2750-5000

It was submitted that inspite of grant of aforesaid four pay-scales of the Officers of the Rajasthan Judicial Service with effect from 13.8.1987, no corresponding change was made in the pay-scales of the Officers of Rajasthan Higher Judicial Service and as a result thereof, for the first time since the formation of the State of Rajasthan, the ordinary scale of the Officers of the Rajasthan Higher Judicial Service came to be much less than highest scale of the Officers of Rajasthan Judicial Service. The aforesaid pay scales were again revised with effect from 1.9.1988 vide Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 as

under:

RAJASTHAN JUDICIAL SERVICE(i) Ordinary Scale 2200-4000(ii) Senior Scale 3000-4500(iii) Selection Scale 3700-5000(iv) Supertime Scale 4500-5700
RAJASTHAN HIGHER JUDICIAL SERVICE(i) Ordinary Scale 4500-5700(ii) Selection Scale 5100-6300

Thus, with effect from 1.9.1988, the Ordinary pay scale of the Officers of the Rajasthan Higher Judicial Service was brought at par with the super-time scale of the Officers of Rajasthan Judicial Service and in between 13.8.1987 to 1.9.1988, the ordinary scale of the Officers of the Rajasthan Higher Judicial Service remained lower than the selection scale of the Officers of the Rajasthan Judicial Service.

8. The contention of the non-petitioner-appellant is that from 1.9.1986 to 12.8.1987, there were only two pay scales for the Officers of the Rajasthan Judicial Service:

(1) Munsif cum Judicial Magistrates 1720-3350(2) Civil Judges & Chief Judicial Magistrates or Addl. Chief Judicial Magistrates 2600-4150

and with effect from 13.8.1987, the following four pay scales were granted to the Officers of the Rajasthan Judicial Service:

(i) Ordinary Scale 2300-4000(ii) Senior Scale 3000-4500(iii) Selection Scale 3700-5000(iv) Super-time Scale 4500-5700

According to the non-petitioner-appellant, if the earlier two pay scales were allowed to continue for the Officers of the Rajasthan Judicial Service, there would have been no difficulty in maintaining difference between the highest pay scale of the Officers of the Rajasthan Judicial Service and the lowest pay scale of the Officers of the Rajasthan Higher Judicial Service. The super-time scale for the Officers of the Rajasthan Judicial Service has been introduced on the analogy of such a scale made available to the Officers of the Rajasthan Administrative Service, Rajasthan Police Service and Rajasthan Accounts Service.

9. It was further contended by the non-petitioner-appellant that the super-time scale Officers of Rajasthan Administrative Service are promoted to the Senior scale of Indian Administrative Service, which carries pay-scales of Rs. 3200-4700. The Indian Administrative Service is also a superior service than the Rajasthan Administrative Service. However, the State Govt. has endeavoured to avoid such a situation for the Officers of the Rajasthan Higher Judicial Service and it has prescribed the ordinary scale of Rajasthan Higher Judicial Service as identical to the highest pay scale of Rajasthan Judicial Service. It was also contended in para 12 of the reply to the writ petition that the State Govt. is of the firm view that the ordinary scale of Rajasthan Higher Judicial Service, which is promotion post for Rajasthan Judicial Service Officers, should in no case be less than the highest scale of Rajasthan Judicial Service and, therefore, on prescription of supertime scale of Rajasthan Judicial Service as 3900-5300, the Ordinary scale of Rajasthan Higher Judicial Service should have been suitably revised but it was not done because it escaped notice of the Government and the concerned Officers also did not bring it to the notice of the Govt. perhaps for the reason that it was not going to effect their existing pay. It was also averred in para 12 of the reply to the writ petition that suitable revision of the ordinary scale of RHJS Officers under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 shall be made shortly incorporating an amendment therein under powers conferred vide Article 309 of the Constitution. Thus, it has been admitted on behalf of the non-petitioner-appellant that the RHJS is a promotion post from RJS and it should be provided with adequate scale of pay, which should not be less than the highest scale of Rajasthan Judicial Service. Although, the non-petitioner-appellant has admitted that RHJS being a superior service was always granted better pay scales from 1.4.1950 to 12.8.87 but now it says that it is firmly of the view that ordinary scale of RHJS, which is promotion post for RJS Officers should in no case be less than the highest scale of RJS. Although, in reply to para 10 of the writ petition, it obliquely suggests that when a super-time scale Officer of the Rajasthan Administrative Service is promoted to the senior scale of Indian Administrative Service, he is fixed in the pay-scales of Rs. 3200-4700. Thus, on promotion to a higher service, he gets lower pay scales. Thus, the non-petitioner-appellant wants to suggest that although, they are unjust to their own Officer in the Administrative side but they do

not want to be unjust towards the Judicial Officers and on promotion to Rajasthan Higher Judicial Service from Rajasthan Judicial Service. They at least want to grant them similar scales which are admissible to the super-time scale Officers of Rajasthan Judicial Service. It was further suggested that it is not unknown that even on promotions, similar scales of pay may be provided because on promotion, one gets the benefit of r. 26-A of the Rajasthan Service Rules. It has also been admitted in reply to para 14 of the writ petition that it is true that prior to 1.9.1988 there was a large difference between the minimum pay of both the services but that hardly matters. The large difference is rather disadvantageous to the incumbents of the posts and if there is a smaller difference, the incumbent of the lower post would reach minimum of the scale of the higher post much before his promotion and in that case, his pay in the scale of the higher post would be fixed at a stage higher than the minimum of the pay scale. According to the appellant, it is surprising that the petitioner is aggrieved with the advantage given to him.

10. The appellant has further contended that the Equivalence Committee appointed by the State Govt. to suggest the revised pay scale with effect from 1.9.1988 suggested this very pay scale for ordinary scale Officers of Rajasthan Higher Judicial Service, keeping in view of the minimum of the super time scale of Officers of Rajasthan Judicial Service. It has been admitted that though, this was not in line with past practice but this recommendation was accepted to give advantage to the RHJS Officers. The State Govt. laments why Officers of Rajasthan Higher Judicial Service are raising grievance about it. Thus, this much has been admitted that this suggestion of the Equivalence Committee was not in the line of the past practice which was in vogue before 1.4.1950 to 12.8.1987.

11. It was further contended by the non-petitioner-appellant that the District & Sessions Judges or the Addl. District & Sessions Judges are district level Officers whereas the Secretaries to the Govt. are State-level Officers. The Secretaries to the Govt. form policies which are executed by the district-level Officers. The Secretary to the Govt. whether he be Law Secretary or any other Secretary form policies for whole of the State, participates in decision making process which affects whole of the State'; supervises work of the district level Officers; issues necessary guidelines and instructions whenever necessary; and is answerable

directly to the State Govt. The district-level Officers implement policies framed at the State level and report to the State-level authorities. Thus, it was claimed that on account of higher responsibilities, the Secretaries to the Govt. are allowed higher pay scales than the district level Officers

12. It may be stated here and now that this analogy which has been claimed on behalf of the State Govt. is totally misconceived as far as District & Sessions Judges are concerned. The Law Secretary, who is Secretary to the Govt. in the Department of Law may formulate any policy for whole of the State and may participate in the decision making process, which may affect the whole of the State but he has no right either to give any directions to the District & Sessions Judges how to decide matters on the judicial side or to supervise their work. Rather, the posts of District & Sessions Judges and the Law Secretary are inter-changeable. The District & Sessions Judges have been categorised as Head of the Department other than Class-I Officers and they are not answerable to the Secretary to the Govt. in the Law Department. They are not obliged to implement the policies framed by the State Govt. or by the Law Secretary and, therefore, this simile, which has been set out in para 20 of the reply to the writ petition for grant of higher pay scales to the Secretaries to the Government and branding District & Sessions Judges as district-level Officers cannot withstand scrutiny even for a moment. All District & Sessions Judges discharge their judicial functions independently. It is only the High Court, which can supervise their work. The Secretary to the Govt. has no power to supervise their work. The control of the High Court over the District & Sessions Judges is total, complete and exclusive. Even the High Court does not interfere in their judicial functions, i.e. it cannot give any guidance to the District & Sessions Judges as to how they should decide judicial matters pending before them. The District & Sessions Judges are free to decide cases pending in their courts in their own way. Thus, the simile which has been put forth and which may have prevailed with the Equivalence Committee appointed by the State Govt. is totally misplaced and misconceived and is inapplicable so far as the District & Sessions Judges are concerned.

13. We have heard Mr. B.P. Aggarwal, Advocate General assisted by Mr. L.S. Udawat, the learned Additional Advocate General, Mr. M. Mridul, the learned

Counsel for respondent No. 1 and Mr. N.N. Mathur, the learned Counsel for respondent No. 2 and have carefully gone through the record of the case.

14. Mr. B.P. Aggarwal, the learned Advocate General appearing for the State has contended that the powers of this Court under Article 226 of the Constitution are very limited. Neither it can legislate nor it can issue any directions to the State Govt. in the form of a writ of mandamus to make particular Rules. In support of this contention, he has placed reliance on a decision of their lordships of the Supreme Court in *Mallikarjuna Rao v. State of A.P.* AIR 1990 SC- 1251. This decision was also cited before the learned single Judge. In that case, their lordships of the Supreme Court have held that it is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the

There can be no doubt that no Court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority.

Their lordships of the Supreme Court have held that it need hardly be emphasised that while construing the recommendations of the High Court, the State Govt. would proceed on the basis that in such matters, the opinion of the High Court is entitled to the highest regard. Thus, although, it was held that no mandamus can be issued to the legislature to enact a particular legislation and such a mandamus is also not possible to be issued against the executive when it exercises powers to make Rules, which are in the nature of subordinate legislation but recommendations of the High Court should receive highest regards.

15. It was however, strenuously contended by Mr. M. Mridul, the learned Counsel appearing for the petitioner-respondent No. 1 that this Court did not issue any mandamus to the executive to legislate. In this respect, he has drawn our attention to a decision of their lordships of the Supreme Court in *The Secretary, Finance Department v. The West Bengal Registration Service Association and Ors.* JT 1992 (2) SC 27, wherein it has been held that it is the primary function of the

executive and not the judiciary to determine the pay scales and equation of posts. The Courts can interfere only when employees have been unjustly treated by arbitrary state action or inaction. It was further held that the State Govt. ought to re-examine the question of the appropriate pay scale for Sub-Registrars in view of upward revision of the educational qualification. It was also held that the view of the High Court treating Sub-Registrars as equivalent to the judicial officers was an exercise to compare unequals as equals. The duties of Munsifs and Judicial Magistrates are more onerous than those of Sub-Registrars and therefore, unequals cannot be treated as equals. The entire thrust of this decision is that ordinarily, the determination of the pay scales and equalisation of posts is the primary duty of the Executive but unequals cannot be treated as equals and if they are treated as such then the Courts can interfere, if the employees have been unjustly treated by arbitrary State action or inaction. We may state here right and now that the learned single Judge did not give any directions to the legislation to legislate the Rules. No mandamus was issued carving out any pay scales for the Officers of the Rajasthan Higher Judicial Service so far as ordinary time scale and selection scales are concerned. These scales which have been granted to RHJS Officers as Ordinary and Selection scales already stand carved out by the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989. The Ordinary and Selection scales which have been prescribed for RHJS Officers find mention in Schedule-I appended to the aforesaid Rules as Scales No. 26 & 27. Thus, there is no direction to legislate. The grievance of the Officers of the Rajasthan Higher Judicial Service is that they have always been treated as superior to RJS Officer keeping in view their nature of duties, nature of powers and nature of functions. This is what has been mentioned in para 8 of the writ petition; which has not been denied by then non-petitioner-appellant. Rather, it has been admitted by the non-petitioner-appellant that the Rajasthan Higher Judicial Service is a superior service than Rajasthan Judicial Service and since after formation of the State of Rajasthan till 12.8.1987, the Officers of the Rajasthan Higher Judicial Service were getting higher pay scales than the Officers of the Rajasthan Judicial Service. It is only when the judgment of this Court in Padam Kumar Jain's case (supra) was implemented by the State Govt., this long standing superiority was disturbed with effect from 13.8.1987 and in between 13.8.1987 to 31.8.1988, the Officers of the

ordinary scale of Rajasthan Higher Judicial Service were put in lower scale than the Officers of the super-time scale of Rajasthan Judicial Service. This fact has been admitted by the non-petitioner-appellant in para 12 of their reply and it was submitted that the State Govt. wants to correct this anomaly which has occurred between 13.8.1987 to 31.8.1988 by making suitable amendments in the Rules and after 1.9.1988, the Ordinary scales RHJS Officers have been put in the same running pay scale of Rs. 4500-5700 which is available to the Super-time scale RJS Officers.

16. The contention of Mr. M. Mridul, the learned Counsel appearing for the petitioner-respondent No. 1 is that Article 14 not only stands violated when equals are treated as unequals but it stands equally violated when unequals are treated as equals. The learned single Judge, in this respect, has referred to a decision of their lordships of the Supreme Court in Mohd. Usman v. State of A.P. AIR 1971 SC 1801, wherein their lordships have held that the proposition of law that the doctrine of equality is attracted not only when equals are treated as unequals but also when unequals are treated as equals and that Article 14 is offended both by finding difference when there is none and by making no difference when there is one is unexceptionable. But the rule of equality is intended to advance justice by avoiding discrimination. Thus, in this case, this Court has not given any direction to the legislature to legislate the Rules. The claim of the RHJS Officers is that the state-action is arbitrary when it has granted equal pay scales to the Officers of the Ordinary scale of RHJS and Officers of the Super time scale of Rajasthan Judicial Service, though it has admitted that the RHJS is a superior service than the RJS. In such circumstances, a direction can be given by this Court to the State Govt. to rectify this unjust and arbitrary State-action or inaction, as the case may be, as has been held in the Secretary, Finance Department's case (supra).

17. The learned Advocate General drew, our attention to a decision of their lordships of the Supreme Court in K. Vasudevan Nair v. Union of India 1991 Supp. (2)SCC- 124, wherein it has been held that the findings of expert bodies like Pay Commission should not be interfered with ordinarily. It is not possible for the Supreme Court to determine the question on the basis of assertions made in writ petition and counters filed on behalf of the Union of India. This authority has no

application to the facts of the present case. In this case, the Pay Commission headed by Hon'ble Justice B.P. Beri (Ex. Chief Justice of Rajasthan) has granted the following pay-scales for the Officers of the Rajasthan Higher Judicial Service and Rajasthan Judicial Service with effect from 1.9.1981:

RAJASTHAN HIGHER JUDICIAL SERVICE:(i) District & Sessions Judges(Selection Scale) 2800 fixed(ii) District & Sessions Judges(Ordinary Scale) 1700-2600RAJASTHAN JUDICIAL SERVICE(i) Civil Judges-cum Chief Judicial Magistrates 1600-2325(ii) Addl. Civil Judges-cum Chief Judicial Magistrates 1210-2040(iii) Munsif cum Judl. Magistrate 1000-1800

However, with effect from 20.4.1983, the posts of Addl. Civil Judges-cum-Chief Judicial Magistrates were upgraded and they were also granted pay scales equivalent to the Civil Judge- cum-Chief Judicial Magistrates in the pay scale of Rs. 1600-2325. Thereafter, in the year 1986, the report of the Fourth Pay Commission set up by Govt. of India under the Chairmanship of Hon'ble Justice P.N. Singhal (Ex-Chief Justice of Rajasthan and a Judge of the Supreme Court) was submitted to the Govt. of India and Central Govt. employees were granted new pay scales with effect from 1.1.1986. The employees of the Govt. of Rajasthan also demanded similar central pay scales and, therefore, the Govt. of Rajasthan has revised the pay Scales of its employees vide Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 with effect from 1.9.1986 and those revised pay scales granted to the RHJS and R.IS Officers are as under:

RAJASTHAN HIGHER JUDICIAL SERVICE1. District & Sessions Judges(Selection Scale) 4275-55002. District & Sessions Judges(Ordinary Scale) 2750-5000RAJASTHAN JUDICIAL SERVICE1. Civil Judges & Chief Judl. Magistrates or Addl. Chief Judl. Magistrates 2600-41502. Munsif cum Judl. Magistrates 1720-3350

Thus, difference in pay scales of RJS Officers and RHJS Officers was maintained. However, when the State Govt. granted four pay-scales, Rajasthan Police Service and Rajasthan Accounts Service, a writ petition was filed and in Padain Kumar's case (supra), this Court directed the State Govt. to grant similarly four scales of pay to the Officers of the Rajasthan Judicial Service and accordingly, in

compliance of the judgment of this Court in Padain Kumar's case (supra), the State Govt. has granted the following four pay scales to the Officers of the Rajasthan Judicial Service with effect from 13.8.1987:

RAJASTHAN JUDICIAL SERVICE: 1. Ordinary Scale 1720-3350 2. Senior Scale 2540-3900 3. Selection Scale 2975-4700 4. Supertime Scale 3900-5300

and the following two scales of pay remained untouched as regards Officers of the Rajasthan Higher Judicial Service

RAJASTHAN HIGHER JUDICIAL SERVICE: 1. Ordinary Scale 2750-5000 2. Selection Scale 4275-5500

Thus, it is clear that it was from 13.8.1987 that the pay scale of Ordinary scale of RHJS Officers was brought lower to the Selection and Supertime scales RJS Officers and it remained lower upto 31.8.1988. However, the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 came into force with effect from 1.9.1988 and the following pay scales were granted to the Officers of the Rajasthan Higher Judicial Service and Rajasthan Judicial Service:

RAJASTHAN HIGHER JUDICIAL SERVICE: 1. District & Sessions Judges (Selection Scale) 5100-6300 2. District & Sessions Judges 4500-5700
RAJASTHAN JUDICIAL SERVICE: 1. Ordinary Scale 2200-4000 2. Senior Scale 3000-4500 3. Selection Scale 3700-5000 4. Supertime Scale 4500-5700

Thus, with effect from 1.9.1988, the super-time scale Officers of Rajasthan Judicial Service were brought at par with the Ordinary Pay scale of the Officers of Rajasthan Higher Judicial Service. Thus, it is clear that the Officers of the Rajasthan Higher Judicial Service were brought at par with the Officers of the Super time scale of Rajasthan Judicial Service not on the advice of any expert-body. When it has been admitted by the State Govt. that the Rajasthan Higher Judicial Service is a superior service than the Rajasthan Judicial Service and the nature of duties, nature of functions and jurisdiction over the cases to be decided by the RHJS Officers are superior than the Officers of the Rajasthan Judicial Service, the grant of similar running pay scales of Rs. 4500-5700 to the Ordinary

scale Officers of the Rajasthan Higher Judicial Service and the supertime scale RJS Officer is unjust and arbitrary and, therefore, the pay scale of Rs. 4500-5700 granted to the ordinary scale RHJS Officers deserves to be quashed.

18. It was contended by the learned Advocate General that if the grant of a particular scale is considered to be arbitrary and unjust then it can be quashed but no directions can be issued that particular pay scale should be provided to the ordinary scale RHJS Officers. The learned Advocate General was confronted with this situation that if it is held that the grant of pay scale No. 25 i.e. 4500-5700 to the ordinary scale RHJS Officers is arbitrary and unjust and therefore, it deserves to be quashed then the State Govt. is left with no other alternate than to grant pay scale No. 26 i.e. 5100-6300 to the ordinary scale RHJS Officers and the pay scale No. 27 i.e. 5900-6700 to the selection scale RHJS Officers. Sufficient time was granted to the learned Advocate General and the Additional Advocate General to come out with its own proposal and even the learned Addl. Advocate General after conclusion of the arguments requested the Court that the matter may not be decided during summer vacations and he will apprise the State Govt. of this situation that if the grant of pay scale No. 25 i.e. 4500-5700 to the ordinary scale RHJS Officers is quashed, there will be no alternative but to grant pay scales No. 26 i.e. Rs. 5100-6300 to the Ordinary Scale RHJS Officers and Pay scale No. 27 i.e. Rs 5900-6700 to the Selection scale RHJS Officers. We waited till the end of the summer vacations and after the end of summer vacations, the learned Additional Advocate General was called and asked as to what decision has been taken by the State Govt. He informed us that no decision has been taken by the State Govt. as yet. Thus, after taking sufficient time to re-examine the matter, the State Govt. did not take any decision so far.

19. Mr. Aggarwal then drew our attention to a Division Bench decision of the Andhara Pradesh High Court in K. Ch. Veerabhadra Rao v. G. Orderl. Ministry of Finance 1990 (1) SLR 48. That was a case of Andhara Bank Officers. A particular settlement was arrived at and in pursuance of that settlement, it was held that if difference in pay either in toto or in part is agreed to be paid, it cannot be held that it was paid as ex-gratia or grace. In such a case, it should be treated as a part of the settlement and, therefore, it was held that there is force in the contention for

the petitioner that the arrears payable under para 8 of guidelines in relation to Regulation 8 can be claimed by the Officers as of right and it is not a payment by grace or ex-gratia. This authority has no application to the facts of the present case. Here nothing has been paid by the Court to RHJS Officers as part of the settlement.

20. Our attention was next drawn to a decision of the Central Administrative Tribunal, Madras in *N. Thangaraj and Ors. v. The Union of India and Anr.* 1992(1) All India Services Law Journal (Madras) 97, wherein the Department had already directed to frame scheme to regularise daily labour. It was held that the applicant's services shall not be terminated but they should be regularised as and when vacancy is available. On facts, this authority has no application to this case.

21. He has further drawn our attention to a decision of their lordships of the Supreme Court in *State of UP. v. J.P. Chaurasia* (1989) 1 SCC 121, wherein it has been observed that in cases of parity in employment, factors justifying differentiation depends on evaluation of duties and responsibilities besides quantity, quality which are also material. The Courts are not suited to evaluate and compare on the basis of affidavits and pleadings. Such matters should be left to the executive who should appoint an expert body for the purpose. Courts should respect such determination unless malafides are shown. Here, it is an admitted case of the non- petitioner-appellant that RHJS is definitely a superior service than Rajasthan Judicial Service keeping in view the nature of duties, responsibilities and functions and, therefore, it is not a case where the Court will have to evaluate and compare their comparative duties and functions and powers on the basis of affidavits and pleadings. It is not a case where a direction has been issued to the State Govt. to frame new ordinary and selection scales. The scales stand formulated in the Rules. The question is that when, ever since the formation of the State of Rajasthan, the RHJS having been treated as a superior service than RJS, higher pay scales were granted to the Officers of the RHJS than the Officers of Rajasthan Judicial Service and thus, the grant of similar pay scales to the Officers of RHJS (Ordinary scale) and RJS (supertime scale) being unjust and arbitrary deserve to be quashed than which particular scales should be granted to the Officers of Rajasthan Higher Judicial Service so that the vice of arbitrariness and

unjustness is remedied and the principle of equality enshrined in Article 14 of the Constitution stands complied with.

22. While relying on the decision of their lordships of the Supreme Court in *Charanjit Lal v. Union of India* AIR 1951 SC 41, it was contended by Mr. Mridul that a law applying to one person or one class of persons is constitutional, if there is sufficient basis or reason for it. Any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed. It was further contended that Article 14 lays down an important fundamental right which should be closely and vigilantly guarded but in construing it, the Court should not adopt a doctrinaire approach which might choke all beneficial legislation.

23. As stated above, it is an admitted case of the parties that RHJS is a superior service than RJS and ever since 1.4.1950 to 21.8.1987, RHJS Officers have always been given higher pay scales than RJS Officers. Simply because super-time R.A.S. Officers who are promoted to Indian Administrative Service are put in lesser pay scale i.e. from pay scale 4500-5700 to 3200- 4700, which as per the reply filed by the non-petitioner- appellant appears to be unjust and unfair and, therefore, the State Govt. itself thought it proper that RHJS Officers in no case should be put in lower grade than RJS Officers and, therefore, by granting similar running pay scales to ordinary scale RHJS Officers and super-time scale RJS Officer, it cannot be said that the classification that has been made equalising RJS Officers (super-time grade) with ordinary scale RHJS Officers is just and reasonable. The Officers of RHJS and the Officers of RJS have never been treated as equals and, therefore, it is definitely a case of treating unequals as equals.

24. This Court in *Madan Gopal Kabra v. The Union of India* 1951 RLW 56 has held that under Article 226 of the Constitution, the power is conferred upon the High Court to issue not only writs in the nature of various categories specified in the Article but along with the writs, it can also issue directions and orders and they may be issued not only for the enforcement of fundamental rights but for any other

purpose. If Article 14 of the Constitution is given a go-bye and the equality principle is violated, this Court can issue directions.

25. In this respect, Mr. Mridul has drawn our attention to a decision of their lordships of the Supreme Court in *Purshottam Lal v. Union of India* AIR 1973 SC 1088, wherein although a particular report was submitted by second Pay Commission but with regard to a particular category of servants, it was not being implemented from a particular date. Rather, it was implemented from a later date recommended by the Pay Commission and, therefore, their lordships of the Supreme Court issued directions that it should be implemented from a particular date.

26. Mr. Mridul further referred to a decision of their lordships of the Supreme Court in *S.K. Verma v. Industrial Tribunal-cum-Labour Court, New Delhi* AIR 1981 SC 422, wherein it has been observed that a welfare Statute must of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions. Mr. Mridul has submitted that grant of pay scales is also a welfare statute and it must receive a broad interpretation. In making equalisation, certain broad facts which are admitted cannot be overlooked and if on the basis of admitted facts, unequals have been treated as equals, the Court can redeem that mischief and it cannot be stopped from doing so on the technical plea that this is the exclusive function of the executive and, therefore, no mandamus or directions should be issued. According to Mr. Mridul, the grant of pay-scales is a condition of service, which is governed by the Rules framed by the Governor under Article 309 of the Constitution and if in applying those Rules, the Govt. action becomes arbitrary and unjust or it smacks of capriciousness and the State is not able to honour its obligations on the ground that it will entail financial responsibilities, the matter cannot be allowed to rest at that. If the provisions of Article 14 are violated, the consideration of financial implications will have to be relegated to the background. India being a country ruled by Law, if the provisions of Article 14 of the Constitution are violated then such considerations of financial implications will have to be brushed aside.

27. Mr. Mridul next placed reliance on a decision of their lordships of the Supreme Court in *Randhir Singh v. Union of India* AIR 1982 SC 879, wherein their lordships of the Supreme Court have held:

that it is true that equation of posts and equation of pay are matters primarily for the Executive Govt. and expert bodies like the Pay Commission and not for Courts but where all things are equal that is, where all relevant considerations are the same, person holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of Course, if Officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such Officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

This principle of 'equal pay for equal work' which was firstly developed in *Randhirsingli's case* (supra) was later on followed in a catena of cases by their lordships of the Supreme Court and this Court. It is based on Article 39(d) of the Constitution, which proclaims equal pay for equal work both for men and women. This principle was reiterated by their lordships of the Supreme Court in *P.K. Ramchandra Iyer and Ors. v. Union of India* 1984 (2) SCC 141. Thus, it is clear that if two posts carry same type of work i.e. when all things are equal and all relevant considerations on the basis of which pay is to be granted are same, the persons holding identical posts cannot be treated differently. The fall-out of this principle is that if one post is superior to other post then the superior post must be given superior pay-scale. This difference is irresistible because if one acts otherwise, it will result in treating unequals as equals and, therefore, this will be a violation of Article 14 of the Constitution. As stated above, the principle of equality as enshrined in Article 14 of the Constitution is violated not only when equals are treated as unequals but when unequals are also treated as equals and when there is a violation of Article 14 of the Constitution, the Courts do interfere either by giving directions or by issuing a writ of mandamus. It is true that a writ of mandamus cannot be issued directing the legislature to legislate. It is further true that subordinate legislation is framed by the Executive under Article 309 of the Constitution. When the Executive has framed or carved out certain pay scales by a

subordinate legislation under Article 309 of the Constitution but in implementing them, their act is unjust, unreasonable or arbitrary i.e. it is violative of Articles 14 and 16 of the Constitution as the principle of equal pay for equal work is not followed and the unequals are treated as equals, the Courts have a right to interfere and they do interfere in such matters. If any authority is needed in support of this proposition, Mr. M. Mridul, the learned Counsel appearing for the respondent has drawn out attention to a decision of this Court in S.K. Ghosh v. State of Raj. 1984 RLR 966. Against that judgment, a special appeal was filed and that too came to be decided by a Division Bench of this Court in Natwarlal Thanvi v. State of Rajasthan 1988 (I) RLR-932, wherein the Division Bench of this Court has held that the High Court can give a direction in the nature of mandamus to State Govt. to amend Rules and to provide pay scales and status to Private Secretaries attached to Chief Justice and Judges of High Court equivalent to those of Private Secretaries of Commissioners and Secretaries to State Govt. It was further held that such scales are to be granted from a particular date. Although this direction affected the service conditions of the Private Secretaries attached to Chief Justice and Judges of the High Court but such a direction was given by the High Court in the shape of a writ of mandamus to the State Govt. to grant them pay scales equal to the Private Secretaries of the Commissioners and Secretaries to the Govt. No new scale was carved out. The scale already existed but inequalities in grant of pay-scales did exist and that was set right by issuing a direction in the shape of a writ of mandamus. It may be stated here that against this judgment of the Division Bench, a special leave petition bearing No. 10961/85, State of Rajasthan v. Natwarlal Thanvi and others was filed before their lordships of the Supreme Court and that too came to be dismissed on January 19, 1987.

28. A Division Bench of this Court in Ghanshyam Charon v. High Court of Judicature for Rajasthan at Jodhpur and Anr. 1987 (II) RLR 486 gave a direction that Librarians of Govt. Secretariat and of High Court have been put at par and equal pay scales have been granted to them and, therefore, the new pay scale which has been allowed to Librarians of Govt. Secretariat w.e.f. 1.1.1970 should also be granted to the Librarian of the High Court with effect from 1.1.1970.

29. In *State of Rajasthan v. Mrs. Kirti Chhabra* D.B. Special Appeal No. 206 of 1985, decided by Jaipur Bench on February, 19, 1992, a question arose whether the Assistant Librarian post at Jaipur, whose nature of duties, work responsibilities and functions etc. are similar to that of the Librarian posted at the Principal seat of the High Court at Jodhpur, should get similar pay scale as that of Librarian posted at the Principal seat of the High Court. While deciding that question, the Division Bench came to the conclusion that when the principle of equality is violated, a direction can be given that the equalisation which is essential, keeping in view the nature of duties should be established and a particular pay-scale which was higher to the one available to the Assistant Librarian posted at Jaipur Bench should be made available to him/her. Although this direction affected the service conditions but such a direction was given in the nature of mandamus by this Court.

30. When the State Govt. has decided to grant four scales of pay to the Officers of Rajasthan Administrative Service, Rajasthan Police Service and Rajasthan Accounts Service and it did not grant those scales to the Officers of the Rajasthan Judicial Service, Shri Padam Kumar Jain, who was the President of Rajasthan Judicial Service Association filed a writ petition before this Court bearing No. D.B. Civil Writ Petition No. 2216 of 1987 *Padam Kumar Jain v. State of Rajasthan*, which was decided by this Court at its Jaipur Bench on December 18, 1987, which has been reported in 1988 (1) RLR 45. In that case, it was held that equality of opportunity in matter of public employment must be established. If four scales have been granted to the Officers of Rajasthan Administrative Service, Rajasthan Accounts Service and Rajasthan Police Service then they should also be made available to the Officers of the Rajasthan Judicial Service and consequently, a writ of mandamus was issued to the State Govt. in order to do justice to Rajasthan Judicial Service Officers and similar four pay scales were allowed to them. Against that judgment, a special leave petition was filed before their lordships of the Supreme Court and that too came to be rejected.

31. Our attention was also drawn to a decision of their lordships of the Supreme Court in *Teerth Narain Mallick v. State of Bihar* 1987 (2) SCC 81, wherein a direction was given to the State Govt. by their lordships of the Supreme Court to increase the existing strength of Reserve Inspectors by 20% for better promotional

prospects of Reserve Sub-Inspectors. The matter related to the conditions of service of Reserve-Sub-Inspectors and such a direction was held to be proper in the facts and circumstances of that case.

32. Our attention was next drawn to a decision of their lordships of the Supreme Court in *Raghunath Pd. Singh v. Section Home (Police) Department, Govt. of Bihar* AIR 1988 SC 1033, wherein their lordships of the Supreme Court gave a direction to the State of Bihar to provide at least two promotional opportunities to the Officers of the State Police in the wireless organisation within six months. It may be stated here and now that, that also affected materially the service conditions of the Officers of Police in Wireless Organisation but their lordships thought it proper that keeping in view the circumstances which have been placed before them, at least two promotional opportunities should be provided to them in order to achieve equal opportunities of promotions to the persons of this cadre. Thus, the contention of Mr. B.P. Aggarwal, the learned Advocate General that the service conditions are governed by Article 309 of the Constitution and they cannot be changed by the courts by issuing a writ of mandamus or directions cannot stand scrutiny in the light of the aforesaid authorities quoted supra.

33. In *Employees of T & F Corps. of India Ltd. v. Union of India* AIR 1991 SC 1367, their lordships of the Supreme Court gave a direction to a Corporation of the Govt. to revise pay-scales of employees of 'A' Corporation to bring them at par with pay scales enjoyed by employees of 'B' Corporation. In a recent decision rendered by their lordships of the Supreme Court in *All India Judges' Association v. Union of India* AIR 1992 SC 165, a number of directions which affect the service conditions of Judicial Officers were issued by their lordships of the Supreme Court.

34. Mr. B.P. Aggarwal, the learned Advocate General while relying on a decision of their lordships of the Supreme Court in *Chandigarh Administration v. Manpreet Singh* 1992 (1) SCC 380 has contended that the High Court cannot assume appellate jurisdiction while exercising power under Article 226 of the Constitution. It can strike down an impugned rule on stated ground of invalidity and direct the authorities to reframe it and act accordingly but cannot itself reframe it and issue direction, order or writ on that basis without hearing the affected parties. In this

case, so far as the first two directions given by the learned single Judge are concerned, they do not result in reframing the scales. The scales were existing in the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 and 1989. What has been conceded is that in granting certain scales, unequals have been treated as equals and that violates Article 14 of the Constitution and, therefore, in such a circumstance, if the Court is convinced that the grant of a scale to a particular wing of Officers is unjust, unreasonable and unfair, it can certainly strike down that scale and can grant appropriate scales, which are existing in the Rules. In doing so the Court does not reframe the Rules. Simply because on promotion from R.A.S. to I.A.S., the pay of R.A.S. Officers is reduced, it cannot be said that something should happen to RJS Officers when they are promoted to RHJS. If any inequality exists in any cadre, that should be removed but that cannot be set up as a ground for treating unequals as equals. It would be better for the State Govt. to remove that disparity rather than set it up for denial of higher scale to the Officers of RHJS, when they are promoted from the cadre, of RJS.

35. In para 12 of the reply to the writ petition filed on behalf of the State of Rajasthan, the State Govt. has categorically stated that it is of the firm view that the ordinary scale of RHJS, which is a promotion post for RJS should in no case be less than the highest scale of RJS. Thus, when the State Govt. is convinced and is firmly of the view then it is estopped from setting a ground for grant of lower pay scale to RHJS Officer, when they are promoted from the Super-time scale of RJS. The fall-out of this submission made in para 12 of the reply is that RHJS Officers, as per the State Govt., should have been granted the scale of Rs. 3900-5300 with effect from 13.8.1987 when that scale was granted to the Super-time scale Officers of RJS, because they could not have been kept in the scale of Rs 2750-5000 with effect from the date the aforesaid super-time scale was granted to RJS Officers. The learned single Judge could not remedy this difficulty because that was not a typographical mistake and, therefore, he could not correct the judgment under Section 152 C.P.C.

36. It may be stated here that Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 lays down scales No. 30 and 31 as follows:

30. 3900-125-4400-150-5300.

31. 4275-125-4400-150-5300-200-5500.

It appears that the State Govt. vide its Notification No. F., 17(42) FD (Gr.2)/82 dated 9.7.1991 has granted pay scale No. 30 i.e. 3900-5300 to Addl. District & Sessions Judges/District & Sessions Judges with effect from 13.8.1987. When the State Govt. itself has granted the scale of Rs. 3900-5300 to the ordinary scale Officers of Rajasthan Higher Judicial Service then it ought to have granted the next higher pay scale to the selection scale Officers of Rajasthan Higher Judicial Service and as per the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987, the next higher scale is scale No. 31 i.e. 4275-125-4500-150-5300- 200-5500 which has been granted to all Officers, who were getting fixed pay of Rs. 2800/-. Thus, we accordingly direct the respondents to grant pay scale No. 31 i.e.4275-5500 to the Selection scale Officers of the Rajasthan Higher Judicial Service with effect from 13.8.1987.

37. We have already held above that the District Judges are not District-level Officers and we have given our reasons for that. It was contended that RHJS being a State Service, all other Officers similarly situated were fixed in the pay scale of Rs. 4500-5700 with effect from 1.9.1988 as per the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989. In this respect, the learned Advocate General drew our attention to certain Officers, who were earlier getting the pay scale of Rs. 3900-5300 or less than it have been fixed in the pay scale of Rs. 4500-5700 with effect from 1.9.1988. According to Mr. Aggarwal, the Addl. Chief Engineer (PHED), Addl. Chief Engineer (Irrigation) Addl. Chief Engineer (PWD), who were getting pay scale of Rs. 3350-5100 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 have been fixed in the pay scale of Rs. 4500-5700 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989. Likewise, the Addl. Director, Medical & Health Department, Professors in the Medical Colleges, Addl. Director (Mining), Director, Rajasthan Police Forensic Laboratory, Director, Rajasthan Police (Wireless) and Deputy Chief Town Planner who were getting the pay scales of Rs. 3350-5000; 3150-4700; 3350-5150; 3350-5150 and 3350-5150 have been fixed in the pay scale of Rs. 4500-5700 under the

Rajasthan Civil Services (Revised Pay Scales) Rules, 1989. He was further submitted that the Director Education (College) who was getting the pay scale of Rs. 3900-5300 has been fixed in the pay scale of Rs. 5100-6300. Thus, it is clear that all those Officers who were getting the pay scales lower than the scale of Rs. 3900-5300 have been fixed in the pay scale of Rs. 4500-5700 and the only one Officer i.e. Director Education (College) who was getting the pay scale of Rs. 3900- 5300 has been fixed in the pay scale of Rs. 5100-6300. No dissimilar treatment can be meted to Ordinary scale RHJS Officers. They should have also been granted the pay scale of Rs. 5100-6300 with effect from 1.9.1988 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989. In our opinion, the learned single Judge was perfectly justified in granting pay scale No. 26 to Ordinary scale RHJS Officers with effect from 1.9.1988 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989, and if pay scale No. 26 is granted to ordinary scale RHJS Officers, then there is no alternative but to grant pay scale No. 27 i.e. 5900-6700 to the Selection scale RHJS Officers with effect' from 1.9.1988 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989. In this view of the matter, the judgment of the learned single Judge deserves to be upheld to this extent.

38. Mr. M. Mridul, the learned Counsel appearing for the respondents has conceded that if the impugned order of the High Court promotes justice between the parties their lordships of the Supreme Court have held that in special leave to appeal they would decline to interfere with it notwithstanding the fact that the High Court might have erred in point of jurisdiction. In this respect, he has drawn our attention to decisions in Jagansingh v. State AIR 1980 Raj. 1 ; S.J. Aggarwal v. Karji Narayanbhai AIR 1980 SC 1611; Mohd. Swalleh v. III Addl. District Judge, Meerut AIR 1988 SC 94; and Council of Scientific & Industrial Research v. K.G.S. Bhatt AIR 1980 SC 1972. We are convinced that by granting ordinary scale of RHJS similar to supertime Scale of RJS, unequals have been treated as equals and that definitely violates Article 14 of the Constitution. It also violates the principle of equality as enshrined in Article 39(d) of the Constitution i.e. equal pay for equal work and higher pay for higher work. In this view of the matter, the first two directions given by the learned single Judge i.e. to grant pay scale No. 26 i.e. 5100-6300 to ordinary scale RHJS Officers and pay scale 5900-6700 (Scale No.

27) to selection scale RHJS Officers with effect from 1.9.1988 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 deserves to be maintained.

39. So far as the third direction given by the learned single Judge is concerned, i.e. to grant a supertime scale of Rs. 7300-7600 to seven Officers of the RHJS, from amongst those who are already in selection scale with effect from 1.1.1992 and post them as District Judges at five Divisional Headquarters other than Jaipur and two at Jaipur: one for Jaipur City and another for Jaipur District, that direction results in giving a mandamus to carve out the new scale and that is beyond the scope of Article 226 of the Constitution. That is what has been held by their lordships of the Supreme Court in Mallikarjuna Roa's case (supra), Asif Hameed's case (supra) and State of Jammu & Kashmir's case (supra). A particular scale which has been made available to the Higher Judicial Officers in Madhya Pradesh cannot be a ground to grant such a scale to the Officers of the Rajasthan Higher Judicial Service through a writ of mandamus. At best, a direction could have been given to the State Govt. in the light of the decision of their lordships of the Supreme Court in All India Judges; Association's case (supra) to set up a Pay Commission for granting equal pay scales to the Higher Judicial Service Officers at all India level. How many Officers should be granted supertime grade and when they should be posted are the matters which are to be looked into by the Full Court. Ordinarily, the Courts do not usurp the functions and powers of the Full Court, which meets to decide such matters on administrative side. It is for the High Court to recommend such a scales to the State Govt. in such matters, no writ of mandamus can be issued by the High Court to the State Govt. to grant such a scale, which is not existing in the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 to 7 Judicial Officers and to post them at particular places. How appointments to the High Court should be made was not a matter sub judice before the learned single Judge and, therefore, any observations made by the learned single Judge in this respect are obiter dicta because none of the parties made any submissions about it.

40. In the result, this appeal is allowed in part. The first two directions given by the learned single Judge are modified and we direct the respondents:

(1) to grant ordinary time-scale of Rs. 5100-150-5700-200-6300 to all RHJS Officers with effect from 1.9.198 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989;

(2) to grant selection scale of 4275-125-4400-150-5300-200-5500 to RHJS Officers with effect from 13.8.1987; under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987; and

(3) To grant selection scale of Rs. 5900-200-6700 to RHJS Officers with effect from 1.9.1988 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989.

However, the third direction given by the learned single Judge to grant supertime scale of Rs. 7300-7600 to seven Officers of the RHJS from amongst those who are already in selection scale w.e.f 1.1.1992 and post them as District Judges at five Divisional Headquarters other than Jaipur and two at Jaipur; one for Jaipur City and another for Jaipur District is set aside. It is for the High Court to recommend for grant of such a supertime scale to the RHJS Officers to the State Govt. and it is for the State Govt. to consider and decide such a request, if made by Hon'ble the Chief Justice on behalf of the Full Court within a reasonable time so that no heart-burning may persist in this wing of administration of justice.

41. In the circumstances of this case, the parties are left to bear their own costs of this appeal.

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