

R. Kumar and 24 ors. Vs. the State of Tamil Nadu and ors.

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Court : Chennai

Decided On : Jan-19-1996

Reported in : (1996)IILLJ1Mad; (1996)IMLJ393

Judge : AR. Lakshmanan, J.

Acts : [Constitution of India, 1950](#) - Articles 226, 229 and 229(1)(2); Madras Presidency Towns Insolvency Act, 1943 - Sections 77(1) and 77(1)(1)

Appeal No. : W.M.P. No. 24781/1995

Appellant : R. Kumar and 24 ors.

Respondent : The State of Tamil Nadu and ors.

Advocate for Def. : V.P. Sengottuvel, Govt. Advocate

Advocate for Pet/Ap. : R. Gandhi, Sr. Counsel for ;R.G. Narendran, Adv.

Judgement :

ORDER

Ar. Lakshmanan, J.

1. The Petitioners are the employees in the Office of the Official Assignee, which is incharge of the administration of the estates of the insolvents adjudicated by order of this Court. They filed the Writ Petition for the following relief.

To issue a writ of mandamus directing respondents 1 and 2 to implement and revise the scales of pay of various categories and also to amend the nomenclature of various posts in the Madras High Court Official Assignee Service on par with that of the equal categories in the Madras High Court Service and Tamil Nadu Secretariat Service, and direct respondents 1 and 2 to revise and refix the scales of pay for the posts of various categories in the Madras High Court Official Assignee Service on par with that of the equal categories of the Madras High Court Service and Tamil Nadu Secretariat Service with all attendant benefits of pay, allowances and other monetary benefits on par with that of the equal categories with effect from October 1, 1984.

2. The brief facts of the case are as follows: The Office of the Official Assignee is in charge of the administration of the estates of the insolvents adjudicated by order of this Court. The office consists of various sections viz., Accounts Section, Property Section, Debts Sections, Dividend Section, General Section and Record Section. Each section has got a Section Head and Staff working under him. The duties and responsibilities of each section is clearly earmarked and transfer is also made from one section to another depending on the nature of work and other exigencies. The service particulars and other details of the petitioners are furnished in paragraph 4 of the affidavit and hence the same is not repeated.

3. In exercise of the powers conferred under Article 229(1)(2) of the Constitution of India, the Hon'ble Chief Justice of the Madras High Court, with the approval of the Governor of Tamil Nadu, framed the rules relating to salaries, allowances, leave and pension of the Madras High Court Service Rules and the Madras High Court Official Assignee Service Rules, to regulate the method of recruitment, the conditions of service, the salaries and allowances, leave and pension relating to those two services. The Hon'ble the Chief Justice is the appointing authority for categories 1 to 7 in Division I (Gazetted Post) and Categories 1 to 8 of Division II (Non-gazetted Superior Posts) in the Madras High Court Service. Similarly, in respect of Categories 1 and 2 of Class I (Gazetted Posts) and Categories 1 to 4 of Class II (Non-gazetted posts) in the Madras High Court Official Assignee Service, the Hon'ble Chief Justice is the appointing authority.

4. The qualification prescribed under the rules for categories 1 to 6 of Division I (Gazetted Posts) in the Madras High Court Service and for categories 1 and 2 of Class II (Non-gazetted Posts) in the Madras High Court Official Assignee Service are one and the same viz., (1) a Law degree and (2) B.A., or B.Sc., or B.Com., or B.Sc. (Hons) or B.Com(Hons) degree of any university in the Indian Union. The qualification prescribed for all other categories (Non-gazetted Superior Posts) upto Junior Assistants in the Madras High Court Service as well as in the Madras High Court Official Assignee Service in one and the same, viz., a degree of any of the Universities in the Indian Union. The qualification prescribed for the categories of Steno-typists and Typists is one and the same in both the services.

5. Section 77 of the Presidency Towns Insolvency Act (hereinafter referred to as the Act) deals with the appointment and removal of Official Assignees of insolvent's estate. Section 77(1)(a) reads as follows:-

'The Chief Justice of the High Court of Madras may from time to time appoint substantively or temporarily such persons as he thinks fit to the office of Official Assignee of insolvents' estates and such person or persons as he thinks fit to the office of the Deputy Official Assignee for the said Court and may, with the concurrence of a majority of the other judges of the Court, remove the person for the time being holding any of the said offices for any cause appearing to the Court sufficient.'

6. To the above Section 77(1)(a) of the Act, the following paragraph was added by way of State Amendment by the Government of Tamil Nadu:

'The Official assignee, the deputy Official Assignee or assignees, if any, and all other officers and servants subordinate to the Official Assignee (other than those employed in estates under his administration) shall form part of the staff attached to the said Court.'

7. It is contended by Mr R. Gandhi learned Senior Counsel for the Petitioners, that the members of the High Court Official Assignee Service discharge similar duties, functions and responsibilities as that of the equal categories in the Madras High Court Service. The working conditions and the responsibility required are the same

and similar for both the services. Therefore, the petitioners pray that equal pay for equal work has to be fixed. It is further submitted that the scale of pay relating to the members of the Madras High Court Official Assignee Service for different categories were all along treated on par with the equal categories of the members of the Madras High Court Service prior to the introduction of the Pay Commissions and throughout the first, second and third Pay Commissions and until the introduction of the Fourth Pay commission.

8. It is submitted that consequent upon the implementation of the Fourth Pay Commission, the scale of pay of the members of the High Court Service has been revised on par with that of the members of the Tamil Nadu Secretariat Service, whereas the scale of pay for the members of the Madras High Court Official Assignee Service has been fixed on par with other common categories, without taking into consideration that the staff of the Official Assignee shall form part and parcel of the staff attached to the High Court in terms of Section 77 of the Act, and that the duties and responsibilities and working conditions are same in respect of both the services. It is further submitted that consequent on the implementation of the recommendations of the Pay Commissions and connected Govt. Orders thereon, revising the scales of pay of the various categories in all other services, separate orders will be issued by the Hon'ble the Chief Justice exercising the powers conferred by Article 229 of the Constitution of India, with the prior approval of the Governor, revising and fixing the scales of pay relating to various categories both in the Madras High Court Service and the Madras High Court Official Assignee Service.

9. The petitioners would submit that while revising the scale of pay rule for Madras High Court Service, consequent on the implementation of the recommendations of the Fourth Pay Commission and the connected Govt. Orders, the nomenclatures of certain categories in the Madras High Court Service were redesignated on par with that of the equal categories in the Tamil Nadu Secretariat Service. Similar change of nomenclatures relating to various categories in the Madras High Court Official Assignee Service has not been given effect to by the respondents at that time. Aggrieved by that, the members of the Madras High Court Official Assignee Service submitted a personal representation to the Hon'ble the Chief Justice on

March 27, 1986 praying for revision of scale of pay rules relating to the Madras High Court Official Assignee Service on par with that of the members of the equal categories in the Madras High Court Service. A written submission to this effect has also been submitted through the Official Assignee and the Registrar of this Court on March 27, 1986.

10. It is pertinent to notice at this juncture that the representation made by the 3rd respondent in Letter No. 139/88-A1 in response to the proceedings of the 2nd respondent in ROC No. 1108/88-G2 dated September 2, 1988 in clear and categorical terms set out the grievances of the petitioners.

Similarly, the 3rd respondent by letter No. 139/88-A1 dated November 7, 1991 addressed the 2nd respondent praying for protection of the interests and welfare of the members of the Official Assignee Service by suitably revising their pay scales and pay structure on par with the members of the Madras High Court Service in view of Section 77(1)(a) of the Act, which states that the staff of the Official Assignee's Office also form part of the staff attached to the High Court. It is contended that as a result of the disparity in pay scale, the petitioners lose more than Rs. 1,000/- per month and unless the anomaly is rectified, the petitioners' right will be seriously prejudiced.

11. According to the petitioners, a similar disparity continues while implementing the recommendations of the Fifth Pay Commission and the connected Govt. Orders therein revising the scale of pay rules relating to the Madras High Court Official Assignee Service. At this juncture, the Deputy Official Assignee, who belongs to the category No. II in Class I (Gazetted Post) in the Madras High Court Official Assignee Service, (Mr. T. P. Parameswaran, the present Official Assignee), received a written reply from the Government that his request for revising the scale of pay on par with that of the Sub Judges of the Tamil Nadu state Subordinate Judiciary Service and Deputy Registrar and Special Officer (Grouping) of the Madras High Court Service, which was maintained till the implementation of the Fourth Pay Commission, was not acceptable to the Government. The then Deputy Official Assignee (now the Official Assignee) filed W.P.No. 788 of 1988 on the file of this Court for suitable directions. S. Nainar

Sundaram, J., (as he then was), while allowing that Writ Petition on July 28, 1988, observed as follows:

'The impugned letter is one by and under which there was a decline on the part of the State to accede to the request of the 3rd respondent to revise the scale of pay of the post of Deputy Official Assignee on par with that of Subordinate Judges. There is one indisputable element which comes to the aid of the petitioner who is now in the category of Deputy Official Assignee with reference to his plea for refixing the scale of pay on par with that of the Subordinate Judges effective from May 22, 1986, the date on which he assumed the post, and that is the principle 'equal pay for equal work.'. The post of Deputy Official Assignee has been treated all along on par with the post of the Subordinate Judge. This is not being disputed by respondents 1 and 2. Dealing with a similar plea by the Deputy Registrar and the Special Officer for Grouping of Cases of this Court, a Bench of this Court in S. Jayaraman and Anr. v. The State of Tamil Nadu represented by its Commissioner and Secretary to Govt. Home Department, Madras - 9 and other (W.P.No. 4229 of 1984, order dated November 7, 1984) applied the principle 'equal pay for equal work', and countenanced the plea for equalization of their scale of pay with that of the Subordinate Judges. Nothing convincing is stated before me on behalf of respondents 1 and 2 to make any departure in the case of the post of the Deputy Official Assignee, which post the petitioner is occupying. Under these circumstances, this Writ Petition is allowed, respondents 1 and 2 are directed to revise and refix the scale of pay of the petitioner as prayed for by him within the period of eight weeks from the date of receipt of a copy of this order. There will be no order as to costs.'

12. An appeal filed by the Government in W.A.No. 84 of 1990 was dismissed by a Division Bench of this Court consisting of Hon'ble Dr. Justice A.S.Anand, Chief Justice (as he then was) and S. Govindaswami, J, by order dated February 15, 1990. While rejecting the State's appeal, the Bench has observed as follows:

'After hearing the learned Government Pleader, we find that there is no case made out to interfere with the order of the learned single Judge. It has been found by the learned single Judge, on the basis of the materials placed before him, that the

respondent was entitled to the benefit of revision and refixation of his pay with effect from May 22, 1986. Learned Govt. Pleader has been unable to show as to how that finding is assailable. We find no merit in this appeal which is hereby dismissed.'

Thereupon, respondents, 1 and 2 therein implemented the directions of this Court in respect of the scale of pay for the post of Deputy Official Assignee in the Madras High Court Official Assignee Service.

13. Similar question of parity relating to the Special Pay for the Personal Assistants to the Hon'ble Judges and to the Hon'ble the Chief Justice in the Madras High Court Service on par with that of the Reporter of the Legislative Assembly of the Tamil Nadu Secretariat Service, has been decided by this Court in W.P.No. 13708 of 1986. S. Mohan, J. (as he then was), by order dated June 22, 1987 held as follows:

'Equal pay for equal work has now become settled law. Therefore, for my part, I am totally unable to understand how persons belonging to the category of the petitioners could be denied the special pay and allowances on par with the similarly placed categories in the Secretariat. As a matter of fact, the duties of the Personal Assistants to the Hon'ble Judges of the High Court are very onerous in nature, in that, (i) they deal with highly confidential matters in relation to judgments; (ii) their services are requisitioned at any part of the day; (iii) they have no fixed hours of work; and (iv) their work is extremely strenuous. Having regard to all these, this is a case in which the Government should, without any further delay, sanction the petitioners special pay of Rs. 100/- in addition to the special pay which they are now drawing, with effect from April 1, 1984. Orders in this regard shall be passed on or before August 10, 1987. The writ Petition is accordingly allowed. No costs.'

14. Mr. R. Gandhi, learned Senior Counsel for the petitioners, would submit that the scale of pay for the posts of Special Accountant and General Assistant in Categories 1 and 2 of Class II (Non-Gazetted post) in the Madras High Court Official Assignee Service, applying the principles of equal pay for equal work, requires to be revised and fixed on par with that of the scale of pay for the post of

Asst. Registrar in the High Court Service since the qualifications prescribed, the duties discharged, the responsibilities required and the working conditions in each category are similar and same. Similarly, the scale of pay for the posts of Section Heads designated as (1) Office Superintendent, (2) chief Clerk, Dividend Department, and (3) Chief Accountant in the Madras High Court Official Assignee Service has to be revised and refixed on par with that of scales of pay for the post of Managers now redesignated as Section Officers in the Madras High Court Service, whose responsibilities, duties and working conditions are same and similar. Similar revision in the scale of pay relating to the posts of Assistants, Junior Assistants, Steno typists and Typists in the Madras High Court Official Assignee Service is to be made and refixed on par with that of the scales of pay for the posts of Assistants and Junior Assistants now redesignated as Assistant Section Officers and Assistants respectively and Steno-typists and Typists in the Madras High Court Service.

15. It is contended that unless the parity between the equal categories in the Madras High Court Official Assignee Service and the Madras High Court Service is restored, the petitioners would be put to great monetary loss and if the present disparity is allowed to continue, it will nullify the mandatory provision of Section 77(1)(a) of the Act, which clearly states that Deputy Official Assignee and all other officers and servants subordinate to the Official Assignee shall form part of the staff attached to this Court. It is also pointed out that the Government of Tamil Nadu by G.O. Ms.No. 545, Finance (Pay Cell Department) dated August 1, 1992, has revised the scale of pay of certain categories in the Judicial Department (other than the High Court) while amending the Govt. Order, the respondents did not consider the similar categories in the Madras High Court Official Assignee Service, with the result, the scale of pay relating to equal categories in the Madras High Court Official Assignee Service is further reduced not only from the High Court and the Tamil Nadu Secretariat Service but also from all common categories in the Tamil Nadu Judicial Ministerial Service and other Services. Therefore, it is contended that great injustice is done to the members of the Madras High Court Official Assignee Service while fixing and revising the scale of pay of equal categories in various services.

16. The petitioners pray that the respondents 1 and 2 should be directed to revise the scale of pay for various categories in the Madras High Court Official Assignee Service on par with that of the equal categories in the Madras High Court Service and the Tamil Nadu Secretariat Service with effect from October 1, 1984 by suitably amending the nomenclatures of various categories.

17. Mr. B. Ratnasabapathi, Additional Secretary to Government, Home Department, Govt. of Tamil Nadu, who is the 1st respondent, in the writ petition, filed a counter affidavit. According to him, the duties of the members of the High Court Service and the members of the High Court Official Assignee Service, and also the responsibilities are not one and the same. The Duties and responsibilities of the posts in the High Court service are much more than that of the posts in the Office of the Official Assignee. It is contended that since the posts in the Official Assignee Service have no parity with that of the posts in the Secretariat Service, the nomenclature of the posts in the office of the Official Assignee have also not been changed with that of the corresponding posts in the Secretariat. No parity has been maintained between the office of the Official Assignee and the Secretariat.

18. Regarding the revision of scale of pay of the posts of Office Superintendent, Chief Clerk, Chief Accountant, etc, it is contended by the State, that the existing pay scales granted by the Fifth Pay Commission are appropriate and in accordance with the qualification, job responsibility and hierarchical pay relativity. It is further submitted that though the scales of pay of the posts in the office of the Official Assignee are identical with that of the posts in the High Court , Service, the new relativity created after the introduction of Central Pay Scales has no relation to the old relativities that existed prior to the Fifth Pay Commission. Hence it is contended, that there is no justification to revise the existing pay scales of posts in the office of the Official Assignee with that of the Secretariat staff.

19. It is conceded in paragraph 9 of the counter affidavit that the Hon'ble the Chief Justice is the competent authority to make appointments in the Office of the Official Assignee, frame rules and make amendments thereon, and that the High Court is the appropriate authority to change the nomenclature of the posts in the

office of the Official Assignee with that of corresponding posts in the High Court Service. In the concluding paragraph 10 of the counter affidavit it is stated that without changing the nomenclature, there is no justification for revising the scale of pay of certain posts in the Office of the Official Assignee as averred by the petitioners.

20. I have carefully considered the rival submissions made by Mr. R.Gandhi, learned Senior Counsel for the petitioners, and Mr. V.P. Sengottuvel learned Govt. Advocate for the respondents. I have also gone through the earlier orders passed by this Court in W.P.Nos. 13708 of 1986 and 788 of 1988 and W.A.No. 84 of 1990 and other connected papers. Further, I perused the following documents:

i) The Madras High Court and the Madras High Court Official Assignee Services - Revision of Scales of Pay Rules issued by the Hon'ble the Chief Justice in exercise of the powers conferred on him under Article 229 of the Constitution for fixation of pay in respect of the members of both the services.

ii) Revision of Scales of Pay Rules for Madras High Court Services and Madras High Court Official Assignee Service.

iii) Representation of the Official Assignee dated March 27, 1986 to the Registrar, High Court, Madras.

iv) Representation made by the staff of the Official Assignee dated march 27, 1986 addressed to the Hon'ble the Chief Justice.

v) Letter by the Registrar, High Court, Madras in Roc. No. 1108788.G2 dated September 2, 1988 to all the District Judges, etc., enclosing a copy of the questionnaire of the Fifth Tamil Nadu Pay Commission.

vi) Reply by the 3rd respondent dated September 28, 1988 to the Registrar, High Court, furnishing the details to the questionnaire issued by the Fourth Pay Commission.

21. It is seen from the records that while changing the nomenclature of the posts by amendments in the Madras High Court Service Rules, similar amendments to

the nomenclatures of the posts in the Madras High Court Official Assignee Service were not made. The scale of pay for the post of Deputy Official Assignee alone has been revised by the Government under G.O.Ms.No. 864/G1/Ser I dated April 23, 1990 in pursuance of the directions of this Court dated July 28, 1988 in W.P.No. 798 of 1988, as confirmed by the Bench in W.A.No. 84 of 1990 filed by the Government. It is further seen that the posts of Special Accountant and General Assistant in the Madras High Court Official Assignee Service are grouped as categories 1 and 2 respectively of Class II. For the post of Special Accountant, a degree in law is prescribed as in the case of Assistant Registrar of the High Court, in addition to other special qualifications viz., Chartered Accountant Examination (either Intermediate or Final), or B.Com. degree. For the post of General Assistant, a degree in Articles Science or Commerce and a degree in Law is prescribed. For all other categories in Class II, except for the posts of Stenotypists and Typists, the minimum qualification prescribed is a degree in Arts or Science or Commerce. Thus it is seen that the prescribed qualifications are on par with that of the equivalent categories in the Madras High Court Service.

22. Under the Madras High Court Official Assignee Service Rules, the incumbents of the posts of Special Accountant and General Assistant may also be considered for appointment as Deputy Official Assignee. Considering the duties and responsibilities of the posts of Special Accountant and General Assistant in the Madras High Court Official Assignee Service and the minimum qualification prescribed for them being a degree in Law, their scales of pay may also have to be fixed on par with that of the post of the Assistant Registrar in the Madras High Court Service. The nomenclatures of the posts of Special Accountant and General Assistant in the Madras High Court Official Assignee Service have to be changed as Special Officer (Accounts) and Special Officer (Assets) respectively or by any other suitable nomenclatures.

23. The Official Assignee by his letter dated November 7, 1991 suggested to this Court that the posts of Office Superintendent and Chief Clerk Dividend Department, are grouped under Category 3 of Class II in the Madras High Court Official Assignee Service. The post of Chief Accountant is grouped under Category 4 of Class II in the Madras High Court Official Assignee Service Rules.

Considering the duties and responsibilities attached to these posts, their nomenclatures have to be changed as Section Officer (Administration), Section Officer (Dividend) and Section Officer (Accounts) and their scales of pay have to be revised and equated with that of the Section Officers in the Madras High Court Service.

24. The Official Assignee has further suggested in his letter to the Registrar of this Court that the nomenclatures of Assistants consisting of Debt Collector (Grade I), Court Clerk, Rents and Rates Clerk, Second Clerk of the Dividend Department, Second Accountant and Cash Keeper grouped under Category 5 of Class II in the Madras High Court Official Assignee Service Rules have to be changed as Assistant Section Officers consisting of Assistant Section Officer (Debt Collection), Assistant Section Officer (Courts), Assistant Section Officer (Property), Assistant Section Officer (Dividend), Assistant Section Officer (Accounts), and Assistant Section Officer (Cash) and their scales of pay have to be revised and equated with that of the Assistant Section Officers of the Madras High Court Service.

25. According to the Official Assignee, the nomenclatures of the posts of Junior Assistants grouped under Category 6 of Class II in the Madras High Court Official Assignee Service have to be changed as Assistants and their scales of pay to be revised and equated with that of the Assistants in the Madras High Court Service.

26. The further suggestion of the Official Assignee in his letter to the Registrar of this Court is, that the posts of Typists and Steno-typists are grouped under Category 6 of Class II of the Madras High Court Official Assignee Service. But, the qualifications prescribed for these posts are different from that of the qualification prescribed for the post of Junior Assistant in the same category. It is, therefore, desirable to re-fix the minimum general educational qualifications for the posts of Typists and Steno-typists as a degree in Arts or Science or Commerce in addition to the respective technical qualifications in typewriting and shorthand, as the case may be. Therefore, according to the Official Assignee, the scales of pay for the posts of Typists and Steno-Typists may also be re-fixed on par with that of the Junior Assistants (proposed Assistants) in Category 6 of Class II in the Madras High Court Official Assignee Service.

27. The petitioners have also filed W.M.P.No. 24781 of 1995 to direct respondents 1 and 2 to revise the nomenclature of the various posts in the Madras High Court Official Assignee Service on par with the Madras High Court Service and pay the scales of pay with effect from October 1, 1984. According to the petitioners, the 1st petitioner, who was holding the post of Special Accountant resigned on January 13, 1993 and the subsequent appointee in the said post is Mr. Nallasenapathi, who is holding the said post from January 22, 1993. The prescribed qualification for the post is B.Com., or Chartered Accountant Examination (either Inter or Final) with a Bachelor's Degree in Law, and the scale of pay for the post at present is Rs. 2200-75-2800-100-4000. The equivalent post in the High Court Service is Assistant Registrar, for which the qualification is similar and the duties and responsibilities are also similar for both the posts. However, the scale of pay for Assistant Registrar in the High Court Service is Rs. 3000-100-3500-125-14500. The nomenclature of the post of Special Accountant in the Madras High Court Official Assignee Service is to be revised as Assistant Official Assignee (Accounts) in the scale of Rs. 3000-100-3500-125-4500.

28. The Petitioners would further aver in the affidavit that the 2nd petitioner is holding the post of General Assistant. The prescribed qualification for the post is any degree with law qualification and the scale of pay at present is Rs. 1820-60-2300- 75-3200-100-3500. The equivalent post in the Madras High Court Service is Assistant Registrar in the scale of pay of Rs. 3000- 100- 3500-125-4500 with similar duties and responsibilities. The nomenclature of the above post of General Assistant in the Madras High Court Official Assignee Service is to be revised as Assistant Official Assignee (Property) in the scale of Rs. 3000- 100-3500-125-4500.

29. The 3rd petitioner was holding the post of Superintendent in the Madras High Court Official Assignee Service and he retired on December 31, 1994. The scale of pay for the said post is Rs. 1600- 2300-2660 and the duties and responsibilities are similar. The nomenclature of the post of Superintendent in the Madras High Court Official Assignee Service is to be revised as Section Officer in the scale of pay of Rs. 2000-60-2300-75-3200-100-3500.

30. The 4th petitioner is holding the post of Chief Clerk in the Madras High Court Official Assignee. The scale of pay for the post is Rs. 1600-2300-2660. The nomenclature of the post of Chief Clerk in the Madras High Court Official Assignee Service is to be revised as Section Officer in the scale of pay of Rs. 2000-60-2300-75-3200 as the nature of duties and responsibilities are similar.

31. The 5th petitioner was holding the post of Chief Accountant and retired on November 30, 1994. His scale of pay is Rs. 1200- 30-1560-40-2040 plus special pay Rs. 25/-. The nomenclature of the post of Chief Accountant in the Madras High Court Official Assignee Service is to be revised as Section Officer on par with that of Section Officer of the High Court Service in the scale of pay of Rs. 2000-60-2300-75-3200-100-3500 as the nature of duties and responsibilities are similar.

32. Petitioners 6 to 11 are holding the post of Assistants in the Madras High Court Official Assignee Service in the scale of pay of Rs. 1200-30-1560-40-2040 and the nomenclature has to be revised as Assistant Section Officers on par with the High Court Service in the Scale of pay of Rs. 1640-60-2600-75-2900.

33. Petitioners 12 to 25 are holding the post of Junior Assistants in the scale of pay of Rs. 975-25-1150-30-1660 and the nomenclature of the said post has to be revised as Assistants on par with the High Court Service in the scale of pay of Rs. 1100-25-1150-30-1660 with effect from June 1, 1988, as the nature of duties and responsibilities are identical.

34. It is averred in the affidavit filed in support of the direction petition that petitioners 15 and 16 are holding the post of Junior Assistants and on par with the Madras High Court Service, they are entitled to the benefit under G.O.Ms.No. 305, Personnel and Administrative Reform (Per.I) Department dated September 7, 1992 and further entitled for redesignation as Assistant Section Officer Grade Assistant in the scale of pay of Rs. 1640-60-2600-75-2900 from August 1, 1992 onwards on par with the Assistant Section Officer Grade Assistant of the Madras High Court Service by G.O.Ms.No. 1323, Home (Courts V) Department, dated October 31, 1994.

35. The Petitioners have also filed a separate book-let containing the duties and responsibilities of the personnel employed in the Office of the Official Assignee, High Court, Madras, viz., Special Accountant, General Accountant, Office Superintendent, Chief Clerk, Dividend Department, Chief Accountant, and the duties assigned to the Assistants including Cash Keeper and Junior Assistants. They have also filed a comparative chart of categorization and classification of posts in the Official Assignee Service and the High Court Service, which is reproduced hereunder.

Office of the Official Assignee

Sr. No. Category No. of Persons Nomenclature Scale of Pay Qualification

1.	Class II Category -1	Special Accountant	2200-75-2800-100-4000	B.Com., or C.A. (Inter or Final with B.L.)
2.	Class II Category -2	General Accountant	1820-60-2300-75-3200	Any degree with B.L.
3.	Class II Category -3	Superintendent	1600-50-2300-60-2660	Any degree
4.	Class II Category -3	Chief Clerk	do--do-	
5.	Class II Category -4	Chief Accountant	1200-30-1560-40-2040	do-
6.	Class II Category -5	Assistant	do--do-	
7.	Class II Category -6	Junior Assistant	Including Steno - Typist and typist	975-25-1150-30-1660

High Court

S.no. Nomenclature Scale of Pay Qualification

1.	Assistant Registrar	3000- 100-3500- 125-4500	Any degree with B.L.
2.	do--do--do-		
3.	Section Officer	2000-60-2300-75-3200-1 00-3500	Any degree
4.	do--do--do-		
5.	do--do--do-		
6.	Assistant Section Officer	1640-60-2600-75-2900	do-
7.	Assistant	1100-25-1150-30-1660	do-

36. This Court during September, 1994, recommended to the Government to treat the Special Accountant as General Accountant of the Madras Official Assignee Service on par with the Assistant Registrar in the High Court Service. The said recommendation of this Court had been communicated by the 2nd respondent to the Joint Secretary of the Home Department by letter dated September 22, 1994. However, by another communication dated August 7, 1995 from the 1st

respondent to the Government, the Special Accountant of the Madras High Court Official Assignee Service has been equated with that of the Administrative Officer of the Madras High Court Service and the post of General Assistant in the Madras High Court Official Assignee Service has been equated with that of the Section Officer of the Madras High Court Service.

37. In my opinion, the plea taken by the 1st respondent that there is no parity between the secretariat Staff and the Staff of the Official Assignee Office is unsustainable for the reason that the staff of the Official Assignee's Office are also the staff attached to this Court in terms of Section 77(1)(a) of the Act. The interpretation given by the 1st respondent, if accepted, in my opinion, would have an effect of nullifying the statutory provision. As pointed out by the learned Senior Counsel for the petitioners and also as could be seen from the records, the nature of duties and responsibilities of the members of the Official Assignee Service are similar to the categories of the Madras High Court Service. This apart, in view of the specific provision under Section 77(1)(a) of the Act, as amended by Tamil Nadu Amendment, the petitioners are to be treated as an integral part of this Court and to deny the benefits which have been extended to the members of the High Court Service to the petitioners is discriminatory and unreasonable.

38. In my opinion, the duties, responsibilities and qualifications prescribed are similar to both High Court Service and the Official Assignee Service. However, there is continuing disparity in the pay scales of the staff of Official Assignee Service. Therefore, the petitioners have come before this Court for redressal of their grievance. In fact, the duties and responsibilities of the Official Assignee Service extend to the whole territory of India when the insolvents have business connection all over India. It is also not in dispute that in the case of High courts of Bombay and Calcutta, the Official Assignee is an integral part of the organisation and there is no separate service like in Madras even though the Act applies only to these three metropolitan cities, like Bombay, Calcutta and Madras. I have already seen that in the case of Special Accountant and General Assistant, the High Court by its letter dated September 22, 1994 has recommended that these two posts should be treated on par with the Assistant Registrar of the High Court Service since the qualification required for all these posts is Bachelor degree in law.

However, this Court has modified the above recommendation and fixed Special Accountant on par with Sub Assistant Registrar and fixed General Assistant on par with Section Officer.

39. This Court also in W.P.No. 788 of 1988, which was confirmed in W.A.No. 34 of 1990, has directed that the pay for the Deputy Official Assignee be fixed on par with that of Special Officer (Grouping) of High Court Service, even though there was disparity in the scale of pay for these posts right from the implementation of the Second Pay Commission. Subsequently, the order of this Court in W.P.No. 788 of 1988, as confirmed in W.A.No. 84 of 1990, was implemented by the Government in so far as the Deputy Official Assignee is concerned. There cannot be any dispute in regard to the qualifications, duties and responsibilities of Office Superintendent, Chief Clerk and Chief Accountant in Official Assignee Service, which are similar to that of Section Officer in the High Court Service.

40. The qualification, duties and responsibilities of Assistants and Junior Assistants in Official Assignee Service are equal to that of Assistant Section Officer and Assistant respectively in the High Court Service. The Assistant, who has completed five years of service as on August 1, 1992 in the High Court Service, was graded as Assistant Section Officer grade Assistant and pay is fixed on Assistant Section Officer scale. The promotion opportunities in the Office of Official Assignee is very remote. It is stated that the previous Special Accountant Mr. D. Narasimhan has served for 23 years in the same post and retired without any promotion. Likewise, one Mr. Vedachalam, was promoted as Office Superintendent after putting in 25 years of service in the Assistant grade. The Junior Assistants in the Official Assignee service have to put a minimum of 10 to 15 years of service for getting promotion as Assistant. Hence, as rightly contended by Mr. R. Gandhi, the policy of equal pay for equal work should be implemented for the members of the Official Assignee Service as well.

41. It is seen from the records that the High Court has been consistently taking a stand in support of the claim made by the petitioners. Therefore, in my opinion, the stand taken by the Government is erroneous in view of the express provision in Section 77(1)(a) of the Act as amended by Madras Act, 5 of 1943. It is high time

that the rules were suitably amended. As already seen, in the High Courts of Bombay and Calcutta, the Office of the Official Assignee is treated as an integral part of the High Court. I, therefore, recommend that the Office of the Madras High Court Official Assignee be treated as an integral part of the Madras High Court Service. I would further recommend that there is no need to have a separate set of rules for the staff in the Official Assignee's Office as they are also part of the staff of the High Court. I, therefore, direct respondents 1 and 2 to take appropriate action immediately in this regard.

42. The then Hon'ble Officiating Chief Justice of this Court has also in reply to the questionnaire of the Tamil Nadu Fifth Pay Commission recommended that the pay scales of the Official Assignee Service may be revised as under:

a) Official Assignee

As for the District Judge, Grade II.

b) Deputy Official Assignee

As for the posts of Official Referee and Special Officer (Grouping of Cases) in the Madras High Court Service.

c) Special Accountant :

As for the District Munsif and Administrative Officer in the High Court.

d) General Assistant

As for the Section Officers/Court Officers in the High Court Service.

e) Office Superintendent and Chief Clerk.

As for similar category in the High Court Service or in the Tamil Nadu Secretariat Service or in the Subordinate Courts, whichever is higher.

f) Chief Accountant, Assistant including Cashier, Debt Collector Grade I, Court Clerk, Rents and Rates Clerk, Section Clerk of Dividend Dept. and Section Accountant.

Their pay scales may be revised as for the similar posts in the High Court Service.

g) Manager

As for the Assistants in the Subordinate Courts.

h) Junior Assistant Record Clerk and Office Assistants

These posts being common categories, may be given the same scale of pay as for similar posts in the Subordinate Courts.

From the above, it is seen that the Hon'ble The Officiating Chief Justice has recommended that all the posts in the High Court Official Assignee Service may be given the same scale of pay as for the similar categories in the High Court Service.

43. Article 229 of the Constitution provides that any appointment of officers and servants of the High Court shall be made by the Chief Justice of the Court or by such other Judge or Officer of the Court as he may direct and subject to the provisions of any law made by the Legislature of the State, the conditions of service of Officers and servants of the High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judges or Officers of the Court authorised by the Chief Justice to make rules for the purpose, provided further, that the rules made under these clauses shall, so far as it relates to salaries, allowances, leave or pensions, required the approval of the Governor of the State. In so far as the High Court is concerned, there cannot be any interference whatsoever, by the Executive Government of the powers of the Hon'ble Chief Justice by interfering with the independence of the Judiciary or with the Service conditions of the employees of the High Court. In this view of the matter, it is to be noticed that in exercise of the powers under the proviso to Clause 1 of Article 229 of the Constitution, the Governor is not required to act with the aid and advice of the Counsel of Ministers and hence ought to give his approval to the recommendation of the Hon'ble Chief Justice. It would be in violation of Article 229 of the Constitution if the recommendation of the Hon'ble the Chief Justice is not accepted by the Government. I have taken a similar view while

allowing W.P.Nos. 6641 of 1991 and 1187 of 1992 filed by the Tamil Nadu Civil Courts Senior Bailiffs Association represented by its President, which is reported in : (1996)1MLJ12 .

44. For the fore-going reasons, I direct respondents 1 and 2 to change the nomenclature of the staff of the Madras High Court Official Assignee Service with that of the equal categories in the Madras High Court Service and the Tamil Nadu Secretariat Service within three months from today. I, further direct respondents 1 and 2 to revise and refix the scales of pay of various categories of the Madras High Court Official Assignee Service on par with that of the equal categories of the Madras High Court Service and the Tamil Nadu Secretariat Service within two months from the date of change of nomenclature,

45. As already seen, the High Court has made its recommendations for fixation of pay on par with that of the High Court Service only to the questionnaire sent by the Tamil Nadu Fifth Pay Commission referred to above. This apart, the writ petition itself has been filed only in the year 1993. Therefore, this Court deem it just and proper to grant the relief from the date of implementation of the Tamil Nadu Fifth Pay Commission viz., from June 1, 1988. Therefore, I am of opinion that the petitioners are entitled to monetary benefits as indicated above only from June 1, 1988, on which date the Tamil Nadu fifth Pay Commission recommendations were implemented and not with effect from October 1, 1984 as prayed for by them. The benefits given to the staff of Madras High Court Service on and after June 1, 1988 be extended to the staff of the Madras High Court Official Assignee Service also in regard to pay, allowances, etc.

46. In the result, the writ petition and the direction petition are ordered as indicated above. However, there will be no order as to costs.