IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO.11710 OF 2014 (O&M)

RESERVED ON: DECEMBER 19, 2024

DATE OF DECISION: MARCH 25, 2025

Sarbans Singh and others **…Petitioners**

Versus

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Versus

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CWP No. 27089 of 2015

Mange Ram and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 19099 of 2017

Dharam Pal and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 26273 of 2018

Anand Singh and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 26236 of 2018

Sanjeev ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP No. 19829 of 2019

Suraj Pal and another ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 26522 of 2017

Ashok Kumar and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 2644 of 2019

Subhash Chander ...Petitioner

Versus

State of Haryana and others ...Respondents

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CWP No. 27049 of 2019

Ram Kumar and another ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 32990 of 2019

Mool Raj ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP No. 4571 of 2020

Shishpal and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 25772 of 2015

Satbir Singh and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 26954 of 2015

Mahabir Singh ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP No. 26806 of 2018

Tarsem Singh and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 9319 of 2019

Panna Lal and another ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 23228 of 2021

Ranbir Singh and others ...Petitioners

Versus

State of Haryana and others

...Respondents

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CWP No. 25789 of 2015

Sumer Singh and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 23778 of 2022

Kitabo ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP No. 23840 of 2022

Dharampal Singh ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP No. 5621 of 2022

Rajesh Kumar and another ...Petitioners

Versus

State of Haryana and another ...Respondents

CWP No. 18170 of 2023

Partap Singh and another ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 1794 of 2018

Joginder Singh and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 15388 of 2023

Ishwar Singh ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP No. 5405 of 2004

Puran Singh s/o Shri Ram Singh ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP No. 23064 of 2017

Haryana Roadways Sankyut Karamchari Sangh ...Petitioner

Versus

State of Haryana and others ...Respondents

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CWP No. 4751 of 2022

Ram Niwas and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 5071 of 2022

Jai Dev ...Petitioner

Versus

State of Haryana and others ...Respondents

CWP No. 24689 of 2014

Telu Ram and others …Petitioner

Versus

The State of Haryana and others …Respondents

CWP No. 11602 of 2017

Samsher Singh and others …Petitioners

Versus

The State of Haryana and others …Respondents

CWP No. 22341 of 2014

Ram Pat and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CWP No. 12744 of 2014

Ramesh Chand and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioners (in CWP-12660, 13043-2014) and
for the respondents (in LPA-1040-2012).

Mr. Akshay Bhan, Senior Advocate with
Mr. A.S. Talwar, Advocate and
Mr. A.S. Rawaley, Advocate for the petitioner(s)
in CWP-20698-2014.

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Mr. Jaspal Singh Maanipur, Advocate and
Mr. Jasbir Singh, Advocate
for the petitioner (s) (in CWP-11710, 16276-2014 and 10794-2016).

Mr. V.D. Sharma, Advocate
for the petitioner (in CWP-26522-2017).

Mr. S.P. Chahar, Advocate
for the petitioner (s) (in CWP-20334-2014, 6430, 25971, 25974, 25986, 25987, 25980, 27061, 27081-2015, 932, 957 and 986-2016).

Mr. B.S. Mamli, Advocate for the petitioner (s)
in CWP-13124-2016.

Mr. Ravinder Maik (Ravi), Advocate,
for the petitioner (s) (in CWP-12744, 22332, 22333, 22340, 22342, 22351, 22363, 22373, 22374, 22379-2014, 17806-2015, 10891, 23623-2017).

Mr. Vivek Singla, Advocate for the petitioner(s)
in CWP Nos.14251, 14252-2015 & 18827-2014.

Mr. Rakesh Deswal, Advocate
for the petitioner (in CWP-9919-2015).

Mr. Siddharth Bhukkal, Advocate
for the petitioner (in CWP-4751-2022).

Mr. Sunil Kumar Nehra, Advocate and
Mr. Viren Nehra, Advocate for the petitioner(s)
in CWP-13481-2016, 23228-2021.

Mr. Balraj Singh Dhull, Advocate
for the petitioner(s) (in CWP-3709, 9278-2016).

Mr. Anil Kumar Rana, Advocate
for the petitioner (in CWP-23840-2022).

Mr. Amit Arora, Advocate for the petitioners No.1, 2, 3, 5, 6 and 7 in CWP No.24689-2014.

Mr. Manv Ahlawat, Advocate for
Mr. Rohit Mittal, Advocate,
for the petitioner in CWP-23632-2014.

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Mr. Arvind Seth, Advocate,
for the petitioner(s) in CWP Nos.14876 & 11237 of 2015.

Mr. Deepak Sonak, Advocate and
Mr. Vikas Sonak, Advocate for the petitioner (s)
in CWP Nos.16090, 26071-2014, 5971, 7843, 11416, 11430, 14409-2015, 4127, 24799, 25060-2016, 2417 & 2398-2018.

Mr. G.S. Gopera, Advocate,
for the petitioner (s) (in CWP-6886-2015).

Mr. J.S. Dahiya, Advocate
for the petitioner (s) (in CWP-20752-2014).

Mr. Karamveer Singh Banyana, Advocate
for the petitioner (s) (in CWP-25789-2015).

Mr. B.K. Bagri, Advocate
for the petitioner (s) (in CWP-7064-2015).

Mr. S.S. Kaliramna, Advocate for the petitioner(s)
in CWP Nos.11237-2017, 16528 and 17156-2015.

Mr. Vivek Singla, Advocate, for the petitioner (s)
in CWP-14251-2015.

Mr. B.S. Tewatia, Advocate for the petitioner (s)
in CWP Nos.25492, 25514, 14915 and 14919 of 2014.

Ms. Kirandeep Kaur, Advocate and
Mr. Kamaldip Singh Sidhu, Advocate for the petitioner (s)
in CWP No.16285-2015.

Mr. Ankur Goyat, Advocate for
Mr. Ramesh Goyat, Advocate for the petitioner(s)
in CWP Nos.14736-2014, 17519, 14760, 16299, 16351, 27089-2015, 32990-2019 and 23778-2022.

Mr. Ashok Tyagi, Advocate and
Mr. Gaurav Tyagi, Advocate
for the petitioner (s) (in CWP-1957-2015).

Mr. Sukhdev Singh, Advocate for
Mr. Vikram Singh, Advocate for the petitioner (s)
in CWP Nos.19926 and 20134-2014.

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Mr. Ashish Gupta, Advocate for the petitioner(s)
in CWP No.21582-2015.

Mr. Jagjeet Beniwal, Advocate for the petitioner (s)
(in CWP-8932, 9826, 12818-2015, 2644, 8308-2016).

Mr. Jai Bhagwan Sharma, Advocate
Mr. Baljeet Nain, Advocate and
Mr. Rajesh Nain, Advocate
for the petitioner (s) (in CWP-24689-2014).

Mr. Manoj Chahal, Advocate for the petitioner (s)
in CWP Nos.14736, 23628, 23632, 23792- 2014, 8945, 9995, 10075- 2015 and 18170-2023.

Mr. Raja Sharma, Advocate
for the petitioner (s) (in CWP-14300-2015).

Mr. Monu Sharma, Advocate and
Mr. Rohit Mittal, Advocate for the petitioner(s)
in CWP-23632-2014.

Mr. Jasdev Singh Thind, Advocate and
Mr. Manjit Singh Gahlawat, Advocate for the petitioner(s)
in CWP No.7848-2015.

Mr. Dhiraj Chawla, Advocate for the petitioner(s)
in CWP Nos.22593-2016, 11768-2017, 22538-2017
and 16321, 7792 and 7837-2015.

Mr. R.S. Panghal, Advocate
for the petitioner(s) (in CWP-20174, 20175, 22331-2014).

Mr. Nonish Kumar, Advocate for the petitioner (s)
in CWP No.4571-2020.

Mr. R.K. Hooda, Advocate,
for the petitioner (s) (in CWP-11602, 12626, 12837-2017)
and for petitioner(s) No.11,27, 29, 30, 32, 36, 37 (in CWP-5958-2016).

Ms. Sunita Devi, Advocate for the petitioner (s)
in CWP-171-2017.

Mr. Pankaj Kundra, Advocate
for the petitioner (s) (in CWP-5958, 20629-2016).

Mr. Ankur Sheoran, Advocate for the petitioner(s)
in CWP-12551-2017.

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Mr. Gurinderpal Singh, Advocate and
Ms. Sushma Singh, Advocate for the petitioner (s)
in CWP Nos.11653, 20423, 20455, 22431, 22423, 23890, 24704, 26600- 2014, CWP Nos.1570, 4563, 11843, 11998-2015 and CWP Nos.1794-2018 and 1990-2016.

Mr. Arvind Yadav, Advocate for the petitioner(s)
in CWP-1510-2015.

Mr. Yashpaul Malik, Advocate and
Mr. Ankur Malik, Advocate
for the petitioner (in CWP-14536-2015).

Mr. Shashi Kumar Yadav, Advocate for the petitioner(s)
in CWP-25929-2015.
Mr. Deepak Nayar, Advocate
for the petitioner (in CWP-3854-2015).

Mr. N.C. Kinra, Advocate and
Mr. Harsh Kinra, Advocate
for the petitioner (s) (in CWP-9646-2018).

Mr. Nitin Rathee, Advocate for the petitioner(s)
in CWP-12744-2014.

Mr. Sumit Sangwan, Advocate
for the petitioner (in CWP-17827-2014).

Mr. S.P. Laler, Advocate and
Mr. Shubham Saroha, Advocate
for the petitioner (s) (in CWP-8932-2015).

Mr. Rajesh Arora, Advocate for the petitioner (s)
in CWP-1037-2015.

Mr. Vikas Lochab, Advocate for the petitioner
in CWP-12205-2015.

Ms. Sunita Nain, Advocate for the petitioner (s)
(in CWP-6561, 7753, 18207, 19494, 26070-2015, 22991-2016, 2796-2017, 2644-2019).

Mr. Amit Kaith, Advocate for the petitioner (s)
in CWP-14998 and 14988-2016.

Mr. Sushil Kamboj, Advocate
Ms. Neetu Prashar, Advocate, for the petitioner(s)
in CWP No.1964-2018.

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Mr. Naresh Kaushik, Advocate
for the petitioner (s) in CWP-15971-2015.

Mr. Mohit Poswal, Advocate for
Mr. Sandeep Thakur, Advocate for the petitioner (s)
in CWP Nos.5071-2022, 10304-2018.

Mr. Gaurav Sharma, Advocate
for the petitioner (s) (in CWP-26806-2018).

Mr. Sandeep Singh, Advocate
for the petitioner (s) (in CWP-25740-2021).

Mr. Sandeep Thakan, Advocate
for the petitioner (s) (in CWP-10304-2017 and CWP-5701-2022).

Mr. Satish Sharma, Advocate
Mr. Kamal Sharma, Advocate
Mr. Chetan Kapoor, Advocate
Mr. Kamaldeep Singh Redhu, Advocate
Mr. Gurinder Pal Singh, Advocate,
Mr. Surya Parkash, Advocate and
Mr. Jaskirat Singh, Advocate,
Mr. Harsh Rana, Advocate for
Mr. Anil Rana, Advocate
Mr. J.K. Goel, Advocate,
Mr. Amarjit Beniwal, Advocate,
Mr. Sukhdev Singh, Advocate for
Mr. Vikram Singh, Advocate,
Mr. Ashish Sanghi, Advocate
Mr. Ashish Gupta, Advocate,
Mr. Arvind Kumar Yadav, Advocate
Mr. Subhash Ahuja, Advocate
Mr. Kuldeep Sheoran, Advocate
Mr. Naveen Daryal, Advocate
Ms. Abha Rathore, Advocate
Mr. Pawan Kumar, Advocate for
Mr. Saurabh Arora, Advocate
Mr. Vishvanath Sharma, Advocate
Mr. R.K. Arora, Advocate and
Mr. Jugam Arora, Advocate
Mr. Mukul Chandila, Advocate for
Mr. S.S. Sahu, Advocate,
Mr. Dharamveer Phour, Advocate,

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Mr. Sumer Singh, Advocate,
Mr. Amit Malik, Advocate for
Mr. S.S. Mor, Advocate,
Mr. Shantanu Bansal, Advocate,
Mr. Sandeep Bhardwaj, Advocate,
Mr. Jai Singh Yadav, Advocate,
Mr. Sandeep Panwar, Advocate,
Ms. Shabnam Mahajan, Advocate for
Mr. Shrey Goel, Advocate,
Mr. Samarvir Singh, Advocate
Mr. Narinder Malhotra, Advocate
for the petitioner(s).

Mr. Ankur Mittal, Addl. A.G., Haryana and
Mr. Saurabh Mago, Sr. DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana
Ms. Kushaldeep K. Manchanda, Advocate,
Mr. Siddhant Arora, Advocate and
Ms. Sanvi Singla, Advocate for the respondent-
State of Haryana.

Mrs. Shubhra Singh, Advocate for respondents No.1 to 5
(in CWP-8793-2015).

Mr. Kewal Krishan, Advocate for
Mr. S. K. Mahajan, Advocate for respondent No.5
(in CWP-18338-2015).

LAPITA BANERJI, J.

The abovementioned batch of 225 writ petitions are disposed of vide this common judgment and order since common questions of facts and law have arisen therein. The recitals from **CWP No.11710 of 2014** ***"Sarbans Singh and others v. The State of Haryana and others"*** are considered, for the purpose of a factual narrative.

FACTUAL MATRIX

2. In the present writ petition filed under Article 226 of the Constitution of India, the petitioners have challenged the constitutional validity of Sections 3 and 4 of the Haryana (Abolition of Distinction of

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Pay Scale between *Technical and Non-technical posts*) Act, 2014 (herein after referred to as "*2014 Act*"). By the aforesaid sections, the State sought to withdraw the benefit of *"technical pay scale"* given in terms of the instructions dated 30.03.1982, 23.08.1990; 26.07.1991 and 09.08.2010 retrospectively, with respect to the employees who were yet to be granted such benefits. The proviso to Section 4 clarified that the persons who had already been granted the benefits of *"technical pay scale"* under the said instructions or by virtue of orders of Court "***shall"*** continue to draw their pay in *"technical pay scales"*.

3. In the writ petition it is stated that the petitioners were appointed on various dates in the year 1993, on daily wage basis after their names were forwarded by the Employment Exchange. The services of the petitioners were regularized in the regular pay scale of Rs.2550-55-2660-EB/60-3200 vide official order dated March 10, 2004 with effect from October 01, 2003. At the time of regularization of the petitioners, the employees who were working on the *technical post*s like that of the petitioners, were drawing their salary under regular pay scale of Rs.4000-6000/-. However the petitioners were granted a lesser pay scale despite being regularized. The petitioner No.1-Sarbans Singh, Petitioner No.2- Phulla Ram, Petitioner No.3- Sohan Lal, Petitioner No.10-Raj Kumar and Petitioner No.13- Suresh Kumar, were given the minimum pay scale attached to the *technical post* along with D.A with effect from the date when they were appointed on daily wage basis. Except them, all others were given the D.C. rate.

4. The petitioners, thereafter, were promoted to the post of Assistant Mechanic in the pay scale of Rs.5200-20,200+1800 grade pay,

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whereas, they were entitled to the grade pay of Rs.2400/-. The petitioner No.1-Sarbans Singh, petitioner No.2-Phulla Ram, petitioner No.10-Raj Kumar, petitioner No.3-Sohan Lal, petitioner No.13-Suresh Kumar, petitioner No.7-Jangsher Singh were promoted as Mechanic and petitioner No.17-Madan Lal was promoted as Black Smith in the aforesaid pay scale with grade pay of Rs.2400/-.

5. It is the case of the petitioners that due to the enactment of Sections 3 and 4 of the 2014 Act and specifically proviso to Section 4 of the Act, the petitioners have been unfairly discriminated against. The impugned provisions of the 2014 Act had created an anomaly whereby the juniors of the petitioners working on the same post received higher pay compared to their seniors due to the fortuitous circumstances of higher pay being granted to them, prior in time. Such an anomaly was against the well settled principle of service law that no junior could be given a higher pay compared to that of a senior, while holding the same post and performing the same duties. In the event, there was a pay anomaly between seniors and juniors, the pay of the seniors would naturally have to be "*stepped up"*.

6. As per instructions dated 30.03.1982, 23.08.1990, 26.07.1991 and 09.08.2010, the petitioners were all entitled to get the "*technical pay scale*", The *technical pay scale* was fixed at Rs.1200-2040/- under the instructions dated August 23, 1990, which was further revised from time to time, keeping in mind the recommendations of 5th and 6th Pay Commission but arbitrarily withdrawn by enactment of 2014 Act.

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7. Against the denial of *"technical pay scale"*, some of the petitioners had filed writ petitions being Civil Writ Petition Nos.8812 of 2010 "*Kuldeep Kumar v. State of Haryan*a", Civil Writ Petition No.380 of 2011 "*Jagmal Singh v. State of Haryana*", Civil Writ Petition No.614 of 2011 "*Subhash v. State of Haryana*" and Civil Writ Petition No.23740 of 2011 "*Phulla Ram and others v. State of Haryana and others*", for grant of "*technical pay scale*". During the pendency of the aforesaid writ petitions, the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-Technical posts) Ordinance 2013 (hereinafter referred to as "2013 Ordinance") was promulgated vide Notification dated December 10, 2013, withdrawing all the instructions granting benefits of *"technical pay scale"* with a proviso that the employees who had already been granted the benefit under the instructions and orders of Court, would continue to draw their salaries at "*technical pay sc*ales" already granted to them.

8. Due to the promulgation of the 2013 Ordinance, all the pending writ petitions were rendered infructuous. Vide order dated January 29, 2014, liberty was granted by a Coordinate Bench to the petitioners to challenge the validity of 2013 Ordinance, in accordance with law. Thereafter, the 2014 Act came into force vide notification dated March 11, 2014, upon the assent being granted by the Governor of Haryana.

9. The writ petitioners being aggrieved by the factum of 98 employees out of 115 employees being given the *"technical pay scale"* by respondent No.4-General Manager, Haryana Roadways, Yamuna Nagar and only 17 employees being left out despite discharging duties of

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*technical post*s, have challenged the said action in the present writ petition. Only the 17 employees whose cases had been pending before the Hon'ble High Court were denied the *"technical pay scale"*, whereas other employees including some of the juniors of the petitioners who possessed the same qualifications and discharged same duties were given "*technical pay scale*" either by virtue of Court orders or by the department itself by virtue of aforesaid instructions. Out of the said 17 petitioners, 03 have expired and 03 have retired.

SUBMISSIONS ON BEHALF OF THE WRIT PETITIONERS

10. Mr. R. K. Malik, Senior Advocate appearing on behalf of the petitioners has argued that an Act could not have been brought into existence to unfairly discriminate against the employees who were working in the same class. Admittedly, some petitioners were senior to the employees to whom the benefits had been given. The State-respondents had acted arbitrarily and with patent illegality to continue granting benefits of *"technical pay scale"* to the employees who had already been granted and were enjoying the same due to sheer incidence of time. An Act could not be brought into force retrospectively to negate the vested rights of the petitioners. Just because the business of the Court did not permit the writ petitions filed by the petitioners to be decided prior to the promulgation of the Ordinance/Enforcement of the Act, the said petitions could not be rendered infructuous by bringing into force the 2014 Act with proviso to Section 4 regarding continuation of payment on the *"technical pay scale"* to the employees who had already granted. Therefore, the Act was violative of Article 14 of the Constitution of India.

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11. It was contended on behalf of the petitioners that the 2014 Act, by withdrawing the instructions that had the force of law, sought to take away the vested rights of the petitioners. By virtue of the instructions, the petitioners were entitled to the grant of *"technical pay scale"* as some of the employees were granted the benefit of *"technical pay scale"* relying on the same. Just because the State-employer sat upon the representations of the petitioners, forcing them to approach this Hon'ble Court, the employer-State should not be allowed to take advantage of its own delay and laches. The action of the State in promulgating the 2013 ordinance and bringing into effect the 2014 Act retrospectively, with effect from February 01, 1981, was patently illegal and manifestly arbitrary.

12. The case of "***Mahender Singh & others V. State of Haryana and others***" being CWP No.20006 of 2010 has been strongly relied upon by the learned Senior counsel for the petitioners. Vide the said judgment, the Hon'ble Single Judge held that all the petitioners working on *technical post*s were entitled to the grant of *"technical pay scale"*, irrespective of the qualifications to their credit. Secondly, persons working on posts held to be technical by any order of the Hon'ble High Court were also entitled to the grant of *"technical pay scale"*. The third set of employees who were working on the posts for which the qualification of neither Matric nor ITI was prescribed in the Rules, nor were held entitled to benefits by any judgment of the Hon'ble High Court were referred back to the respective departments for conscious decisions to be taken on the said cases.

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SUBMISSIONS ON BEHALF OF RESPONDENT-STATE

13. *Per contra*, Mr. Mittal, learned Additional Advocate General, appearing on behalf of the State submitted that in terms of the instructions, particularly the instruction dated 01.05.1990, the modified pay scale was to be granted only to those persons who were working against such technical posts where the minimum educational qualification prescribed is matriculation with ITI Certificate/Polytechnic. It was the prescribed qualification for the post as per the applicable rules, that were to be seen and not the qualification of the person occupying the post. However, certain decisions of the Court directing that the technical pay scale be granted to the petitioners led to a situation where those who were not entitled to it were extended the benefit. In certain cases irrespective of the qualifications, the petitioners were being granted benefit of *"technical pay scale"* which should not have been done. He refers to the decision of the Single Bench in ***Labh Singh v. State of Haryana****" 1995 (1) SCT 311* to demonstrate that when the State government had proposed to withdraw the "*technical pay scale*" from the petitioners working as T. Mates, who were matriculates and ITI diploma holders, the action was struck down by the learned Single Judge and the *"technical pay scale"* granted to the employees who were neither matriculate nor ITI diploma holders was upheld, for the reason that the employees were working on the *technical posts* and could not be deprived of the revised pay scales. The decision in ***Labh Singh*** *(supra)* was never challenged, and therefore, attained finality.

14. In the case of "***Raj Karan v. State of Haryana", 2002 (4) SCT 499,*** a Co-ordinate Bench of this Court relying on ***Labh Singh's***

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case (supra) had allowed the writ petition since no minimum educational qualification was prescribed for the post, in which the employee was working and the employee/petitioner was found to be entitled to the pay scale that was attached to the post. By the aforesaid decision, a Co-ordinate Bench had held that even though no educational qualification was prescribed for the post in which the petitioner was working, but on facts there was no dispute with regard to the petitioner being a matriculate with ITI Certificate who would have qualified for a technical post even if the qualification was prescribed. It was only on the basis of such qualifications, the petitioner was originally appointed on April 01, 1978 as a work charge employee and later regularised with effect from January 01, 1987. Therefore, the State was not permitted to withdraw the revised benefits already granted to the petitioner. It was argued that since the petitioner already possessed higher qualification in the case of ***Raj Karan (supra)*** the said case is distinguishable on facts as the petitioners herein do not possess higher qualification. The appeal filed by the State of Haryana, being Civil Appeal No. 007155 of 2005 was dismissed by the Apex Court vide order dated December 31, 2007.

15. Similarly, a Special Leave Petition bearing No.2864 of 2011 filed against the decision passed in **"*Gurdev Singh v. State of Haryana*"** *2012 (2) SCT 126* was dismissed on February 21, 2011. In this case some of the petitioners were neither Matriculate nor I.T.I Diploma holders. It was held by the Single Bench that the petitioners possessed the requisite qualification to hold the post at the time of their recruitment and any qualification prescribed subsequently will not affect their right to hold the post or their entitlement for the revised pay scales on the ground

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that they do not possess the qualification prescribed later on. Thus, relying on the decisions in ***Labh Singh (supra)*** and ***Raj Karan (supra),*** it was directed that the pay scales of the posts and grades having been revised could not be withdrawn.

16. It was argued by the learned State counsel that the view taken in ***Gurdev Singh's case (supra)***, was possibly not correct, since it held that irrespective of the qualifications, if an employee discharged the functions of a particular post, he would be entitled to a higher pay scale.

17. Similarly, in LPA 1847 of 2011 & other connected matters, the Coordinate Bench vide its order dated December 10, 2012 had dismissed the appeals filed by the state holding that the matter was covered by the decision of this High Court in ***Raj Karan's case (supra).***

18. Mr. Mittal, Additional Advocate General, Haryana, has further referred to the order dated April 09, 2013 passed in LPA No.1040 of 2012 "***State of Haryana and others v. Rajbir Singh and others,***" wherein it was noticed that the contrary judgment in CWP ***No.241 of 2007 "Jagdish v. State of Haryana"*** decided on ***March 20, 2008***, was not brought to the notice of the Division Bench deciding LPA No.1847 of 2011. Since the judgments taking contrary view were not brought to the notice of the Hon'ble Division Bench, the present issue was required to be resolved by a larger Bench. Therefore, the Hon'ble Chief Justice had issued directions to constitute a larger Bench, vide order dated April 09, 2013.

19. He further submitted that when the aforesaid issues were pending adjudication before the Hon'ble Full Bench, the Government of Haryana had promulgated the 2013 Ordinance vide notification dated

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December 11, 2013. In view of such an ordinance coming into force, the Hon'ble Full Bench had disposed of the reference with the observation that the said reference had become infructuous as the questions were rendered redundant. Thereafter, the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-Technical posts) Act, 2014 came into force vide notification dated March 11, 2014 with an aim to abolish the distinction in pay scales prescribed for the technical and non-technical posts.

20. Since the representations of some of the writ petitioners were rejected by the departments concerned and some others were kept pending in 2013 when the 2013 ordinance was promulgated, the instant writ petition was filed challenging the Ordinance, Act and the Execution Action. He contended that there was nothing arbitrary in such promulgation of 2013 Ordinance or the subsequent 2014 enactment as the petitioners could not claim *"negative equality"*.

21. Before coming into operation of the 2013 Ordinance, the cases where the Court granted relief are stated herein under:

> *(i) CWP No.7928 of 1993 "**Ram Kishan and others v. State of Haryana"***
>
> *(ii) CWP No.10414 of 1993 "**Labh Singh and others v. State of Haryana and others**"*
>
> *(iii) CWP No.2032 of 2000 "**Attar Singh and another v. State of Haryana and others**"*
>
> *(iv) CWP No.1791 of 2002 "**Raj Karan v. State of Haryana**"*
>
> *(v) CWP No.18754 of 1991 "**Gurdev Singh and others v. State of Haryana and others**"*
>
> *(vi) "CWP No. 5665 of 199 "**Ved Parkash and others v. State of Haryana and another**"*

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*(vii) "CWP No.20006 of 2010 "**Mahender Singh and others v. State of Haryana**"*

*(viii) LPA No.1847 of 2011 "**Narinder Kumar v. State of Haryana and others**"*

22. The cases where the benefit of modified pay scale was denied by the Court before the promulgation of the 2013 Ordinance and the Act of 2014 are as stated hereunder:-

(i) "*LPA No.842 of 2011 "**State of Haryana and others v. Jasmer Singh**".*

The Single Bench allowed the writ petition but the co-ordinate Bench vide judgment and order dated July 05, 2011 allowed the State's appeal. It was held that Fitter Coolies were entitled to the modified pay scale of 950-1400 vide memo dated July 26, 1991 and not to the modified pay scale of 1200-2040. SLP (C) bearing No.13392 of 2013 was dismissed by the Apex Court order dated November 13, 2021.

*(ii) "RSA No.1174 of 2011 "**Uma Shankar v. HUDA**"*
*RSA No. 1174 of 2011 "**Uma Shankar v. HUDA**" was also dismissed by the Hon'ble Court by holding that since the plaintiff was not working on a technical post, just the fact that he was a matriculate and ITI holder, did not make him eligible to a higher pay scale.*

23. After coming into existence of the Act of 2014, the *"technical pay scale"* has been granted to the petitioners in following petitions:

*(i) "CWP No.16400 of 1995 "**Hardeep Singh v. State of Haryana and others**" decided on 24.04.2015*

*(ii) CWP No. 18287 of 2011 "**Baljit Singh and others v. State of Haryana and others**" decided on 02.07.2015*

*(iii) CWP No.10973 of 1993 "**Rangi Ram and others v. State of Haryana and others**" decided on 08.05.2015.*"

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24. In some writ petitions where *"technical pay scale"* has been denied to the employees, after the 2014 Act came into force are as follows:

(*i)* "*CWP No.18251 of 2014 "**Baljit Singh and others v. State of Haryana and others**" decided on 04.09.2014*

*(ii) CWP No.26985 of 2014 "**Sumer Singh v. State of Haryana and others**" decided on 16.02.2016*

*(iii) CWP No.17474 of 1999 "**Ashok Kumar v. State of Haryana and others**" decided on 01.02.2016*

*(iv) CWP No.8093 of 2023 "**Mukesh Kaushik and another v. State of Haryana and others**" decided on 20.04.2023*

*(v) CWP No. 6597 of 2019 "**Vijay Pal Singh v. State of Haryana and others**" decided on 18.04.2024 (LPA against judgment is pending with order of stay on recovery)*

*(vi) CWP No.2364 of 2018 "**Om Parkash v. State of Haryana and others**" decided on 03.05.2023 (review is pending)*

*(vii) CWP No.8093 of 2023 "**Mukesh Kaushik and another v. State of Haryana and others**" decided on 20.04.2023*

*(viii) CWP No.20233 of 2012 "**Ashok Kumar Sharma and others v. State of Haryana and others**" decided on 15.10.2024*

*(ix) CWP No.9489 of 2020 "**Alla Ditta and others v. State of Haryana and others**" decided on 25.01.2024*

*(x) CWP No.1419 of 2009 "**Satbir Singh v. State of Haryana and others**" decided on 26.09.2024*

25. Some writ petitions where the constitutional vires of 2014 Act have been challenged were dismissed on the ground of delay and laches. The same are as follows:

*(i) "**Bhal Singh v. State of Haryana and others**" 2016 (4) SCT 399*

*(ii) CWP No.2147 of 2021 "**Jaiparkash v. State of Haryana and others**" decided on 24.02.2021*

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26. It is submitted on behalf of the State that five pay scales came into existence as per the recommendation of 4th Pay Commission with effect from January 01, 1986. The said pay scales are as follows:

> "*Rs.750-940; Rs.775-1025; Rs.800-1150; Rs.950-1400; and Rs.950-1500"*

27. Vide instructions dated August 23, 1990, all persons who were placed in any of the pay scales where the minimum prescribed qualification for the post was matriculate with ITI Certificate, were granted the upgraded pay scale of Rs.1200-2040/-, as the posts were declared *technical*. Furthermore, the State has revised the pay scales twice after 1990, keeping in view the recommendations of the 5th Pay Commission with effect from January 01, 1996 and the 6th Pay Commission with effect from January 01, 2006. Since the State did not define "*technical posts*" or technical qualifications of "*ITI Certificate/ Polytechnic Certificate*" a large number of litigations had ensued, as various employees approached the High Court aggrieved by the action of the State in not granting the *"technical pay scales"* despite working on such posts. Due to the decisions of Court, as illustrated above, an employee who did not have the qualification, but was working on a *technical post,* or was promoted to a *technical post*, was held entitled to a *"technical pay scale"*. Furthermore, persons who possessed technical qualifications but were recruited on a post which required no such qualifications also got the benefits of *"technical pay scales"* due to the rulings of Court.

28. It is submitted by the learned Additional A.G., that only when an employee is employed on a *technical post* with the requisite

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qualifications, he would be eligible for the benefit of *"technical pay scale"*. Meeting only one of the criteria is not enough. Due to the rulings of Court, a completely anomalous situation was created. Due to the anomalous situation, the State of Haryana felt it necessary to distinguish the *technical* and *non-technical posts* and prescribe a separate pay scale for the *technical posts*.

29. As simpliciter withdrawal of the instructions would have led to a spate of litigations given the previous chequered history, the 2013 ordinance was promulgated followed by the 2014 Enactment with the proviso to Section 4. Therefore, the decision to enact the proviso to Section 4 was neither illegal nor arbitrary.

30. It is submitted that the constitutional validity of the Act could only be challenged on the following grounds:

i) Lack of Legislative Competence of the State Legislature and

ii) Act being violative of Part III of the Constitution of India.

As far as the case at hand is concerned, none of the above said grounds have been pleaded as a ground for challenge to the Act of 2014.

31. The following judgments have been cited by the State counsel on the issue of validity of legislation:

*1) "**Food Corporation of India v. Bhartiya Khadya Nigam Karamchari Sangh**"(2012)2 SCC 307*

*2) "**State of Bihar v. Bihar State +2 Lecturers Association**" (2008) 7 SCC 231*

*3) "**Heena Kausar v. Competent Authority**" (2008)14 SCC 724*

*4) "**Government of Andhra Pradesh v. P. Laxmi Devi**" (2008)4 SCC 720*

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5) *"**M/s P.G.F Limited v. Union of India**" (2015)13 SCC 50*

6) *"**State of M.P v. Rakesh Kohli**" (2012)6 SCC 312.*

32. It has been sought to be argued on behalf of the State that there was no vested right that was retrospectively taken away by the Act of 2014 in favour of the employees. An anomalous situation was created due to orders of Court whereby unqualified persons were getting revised pay scale for working on *technical posts* and persons who were not working on *technical posts* were also given the benefits for having the technical qualifications. The judgments herein below have been cited to argue the competence of the State Legislation to enact laws with retrospective effect:

1) *"**Government of Andra Pradesh and another v. Hindustan Machine Tools Ltd**." (1975) 2 SCC 274*

2) *"**M/s Ujjagar Prints and others v. Union of India and others**" (1989) 3 SCC 488*

3) *"**Indian Aluminium Co. v. State of Kerala**" AIR 1996 SC 1431*

4) *"**National Agricultural Cooperative Marketing Federation of India Ltd and another v. Union of India and others**"*

5) *"**State of Tamil Nadu v. State of Kerala and others**" (2014)12 SCC 696*

6) *"**Cheviti Venkanna Yadav v. State of Telangana and others**" (2017) 1 SCC 283*

7) *"**A.Manjula Bhashini v. Managing Director, A.P.Women's Coop. Finance Corpn. Ltd**" AIR 2010 SC 3143*

33. The third contention that has been raised on behalf of the State is that the principle of '*equal pay for equal work*' cannot be

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mechanically/automatically applied. Various considerations regarding the financial capacity, responsibility, educational qualification and mode of appointment has to be taken into consideration for granting "*equal pay for equal work*". The following judgments have been relied upon by the State:

1) *"**Mewa Ram Kanojia v. All India Institute of Medical Sciences**" (1989) 2 SCC 235*

2) *"**Shyam Babu Verma v. Union Of India**" (1994) 2 SCC 521*

3) *"**Deb Narayan Shyam v. State of West Bengal**" 2005 (2) SCC 286*

4) *"**UP State Sugar Corporation Ltd. and another v. Sant Raj Singh and others**" 2006 (9) SCC 82*

34. The fourth issue argued by the learned State counsel is the doctrine of *"negative equality*". It has been argued that if benefits of a revised pay scale have been erroneously granted to some of the employees, the petitioners cannot claim *"negative equality"* at par with them. The following decisions have been cited in that regard:

1) *"**Basawraj v. Special Land Acquisition Officer**" 2013 (14) SCC 81*

2) *"**Union of India v. Kartik Chandra Mondal**" (2010) AIR SC 3455*

3) *"**Chaman Lal v. State of Punjab**" 2014 (15) SCC 715*

4) *"**State of Bihar v. Upendra Narayan Singh**" 2009 (5) SCC 65*

5) *"**Punjab State Electricity Board v. Jagjiwan Ram**" 2009 (3) SCC 61*

6) *"**State of Orissa v. Mamta Mohanty**" 2011 (3) SCC 436*

7) *"**Tinku v. State of Haryana and others**" Civil appeal no. 8540 of 2024 decided on 13.11.2024*

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ANALYSIS OF CASE LAW

35. Several cases have been cited by the respondents which merit a detailed discussion. In ***Food Corporation of India*** *(supra)*, the issue related to in-service employees being motivated to acquire additional qualifications to gain incentives. The short issue that fell for consideration is reproduced herein after:

> *"xxx*
>
> *10. Whether grant of incentives only to the in-service employees of FCI, who acquire professional qualifications after entering into service and denial of the same to those who had acquired the same professional qualifications before entering the service is invalid in law, being violative of Articles 14 and 16 of the Constitution?*
>
> *xxx"*

The answer to said issue was provided in para 15. Relevant extract thereof is reproduced herein after:

> *"xxx*
>
> *15. We are of the opinion that bearing in mind the aforesaid fact situation and the objective sought to be achieved by issuance of the said Circular, there is substantial merit in the stand of FCI. The classification adopted by FCI is between an employee obtaining a higher qualification after joining service and an employee who already possessed such qualification before joining the service. As aforesaid, the main purpose of this classification is to grant an incentive to the employees already in service in FCI to motivate them to acquire higher qualifications for their own benefit as well as of their employer viz. FCI. We are convinced that the classification sought to be made by FCI between the two sets of employees bears a just and rational nexus to the object sought to be achieved by introducing the said incentive scheme. Judged from this point of view, in our opinion, grant of the incentive in relation to the in-service employees, in no way amounts to discrimination between the in-service employees and the employees recruited with higher qualification, offending either Article 14 or Article 16 of the Constitution, particularly when the incentive is in the form of a special increment as "personal pay" to be merged in pay at the time*

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of promotion to the next higher grade and thus, having no bearing on the inter se seniority and/or to the future promotion to the next higher grade.

xxx"

36. In the present writ petition, the technical qualifications for upgraded pay scale of *technical post*s were prescribed later and not at the time of their appointment. By prescribing the qualification later and by creating an artificial distinction between the employees who were already drawing the benefits and who were yet to draw the benefits on an upgraded pay scale, the petitioners are being unfairly discriminated against. Therefore, the aforementioned case is clearly distinguishable from the facts of the instant case.

37. The issue raised in ***State of Bihar*** *(supra)* is related to difference in pay scale between the lecturers, who were trained and the lecturers, who were untrained. In that case even though the Apex Court held that the Division Bench of the High Court was not right in holding that there was no distinction between trained lecturers on one hand and untrained lecturers on the other, still the directions of Division Bench in granting the same pay scale was not withdrawn. The relevant extract is reproduced herein after:

"xxx

41. The above discussion would normally result into the appeal being allowed by setting aside the order passed by the Division Bench and by restoring the order of the learned Single Judge upholding the action of the State Government. In the facts and circumstances of the case, however, we are not persuaded to set aside the order of the Division Bench in exercise of discretionary jurisdiction of this Court under Article 136 read with Article 142 of the Constitution mainly because of two reasons.

42. Firstly, when the Appellate Fitment Committee was appointed by the State Government presided over by a sitting Judge of the High Court of Patna and the matter was

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> *referred to as regards anomaly in pay scales to trained and untrained lecturers, the reference expressly mentioned that the State Government will accept the recommendation of the Committee and the Committee recommended payment of uniform pay scales to trained as well as untrained lecturers.*
>
> *43. Secondly, it was stated in the affidavit-in-reply filed by the untrained lecturers' association (the writ petitioners) that after the report of the Fitment Appellate Committee, the State Government on 22-01-2001 withdrew its earlier order dated 19-10-2000 for sending untrained lecturers (in-service candidates) for taking training on the ground that no such training was mandatory in view of report of the Committee and when uniform pay scales were to be given to trained as well as untrained lecturers.*
>
> *xxx"*

38. The issue therein was whether the untrained lecturers could be considered at par with the trained lecturers. The classification or difference was held to have a rational nexus with the object that was sought to be achieved as the important task of nation building by imparting education lay on the shoulders of the teachers. Here the issue is not with regard to additional training that the employees were required to undertake. The issue is with regard to withdrawal of benefits retrospectively on the basis of qualifications prescribed later.

39. The case of ***Heena Kausar*** *(supra)*, was related to the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"). The validity of the proviso appended to Section 68-C of the NDPS Act was under consideration. The proviso to Section 68-C prior to its amendment stood as follows:

> *"Provided that no property shall be forfeited under this Chapter if such property was acquired by a person to whom this Act applies before a period of six years from the date on which he was charged for an offence relating to illicit traffic."*

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The proviso after amendment of Section 68-C is as follows:

> *"68-C. Prohibition of holding illegally acquired property- (1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.*
>
> *(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central government in accordance with the provisions of this chapter:*
>
> *Provided that no property shall be forfeited under this chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act or from the date or (sic of) detention was issued, as the case may be*."

40. The issue raised therein was whether the proviso, as it stood prior to the amendment, was ultra-vires the Constitution of India. The said issue was answered in the terms stated herein under:

> "*xxx*
>
> *17. The "proviso" appended to Section 68-C was in the statute book since 1989. The appellant's husband was served with an order of detention as far back as in the year 1994. The notice under Section 68-D of the Act was issued in the year 1995.*
>
> *18. Only because at a later stage, a period of limitation was prescribed for initiation of proceedings for forfeiture of the properties, the same, in our opinion, by itself would not be sufficient to arrive at a conclusion that the same attracts the wrath of Article 14 of the Constitution of India.*
>
> *19. It is now well settled that validity of a statute can be upheld if there exists a valid and reasonable classification therefore, being based upon the substantial distinction bearing a reasonable and just relation with the object d sought to be attained.*
>
> *20. In this regard, we may notice some well-settled legal principles. A law may be constitutional even though it affects an individual. There exists a presumption in favour of the constitutionality of an enactment. The burden of proof that*

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> *the legislation is unconstitutional is upon the person who attacks it, saves and except the cases where, inter alia, arbitrariness appears on the face of the statute and the burden of proof in regard to constitutionality of the statute is on the State. The principle of equality would not mean that every law must have universal application for all persons who, by nature, attainment or circumstances, are in the same position.*
>
> *25. The statute deals with an economic aspect of the matter. The purported object for which such a statute has been enacted must be noticed in interpreting the provisions thereof. The nexus of huge amount of money generated by drug trafficking and the purpose for which they are spent is well known. Harsh laws, not only for punishing the drug traffickers but also for preventive detention, if the conditions therefore are satisfied, were made. Necessity was felt for introduction of strict measures so that money earned from the drug trafficking by the persons concerned may not continue to be invested, inter alia, by purchasing moveable or immovable properties not only in his own name but also in the names of his near relatives.*
> *xxx "*

How the said case is applicable to a case of ***"pay parity"***, sought by the petitioners who were Class-III and Class-IV employees, is beyond the comprehension of this Court.

41. In ***P. Laxmi Devi's case*** *(supra),* the issue was whether the requirement of a pre-deposit of 50% of the deficit stamp duty for making a reference under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as the "Stamp Act") as amended by Andhra Pradesh Act 8 of 1998 was valid. The issue is succinctly stated in para 3 of the judgment which is reproduced herein under:

> *"xxx*
>
> *3. The writ petition was filed in the high Court praying for a declaration that Section 47-A of the Indian Stamp Act as amended by A.P. Act 8 of 1998 which requires a party to deposit 50% deficit stamp duty as a condition precedent for a reference to the Collector under Section 47-A is unconstitutional. By the impugned judgment, the high Court has declared it unconstitutional. Hence, this appeal.*
>
> *xxx"*

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42. After the 1998 amendment, Section 47-A (1) of the Stamp Act, as applicable to the State of Andhra Pradesh would read as under:

> *6. "47-A. Instruments of conveyance, etc. how to be dealt with. (1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon:*
>
> ***Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned****."*
> *xxx"*

43. The Apex Court was of the view that there was no violation of Articles 14 and 19 or any other provision of the Constitution of India in enactment of the aforesaid provision. The amendment was only for plugging loopholes and for quick realization of the stamp duty. It was held that imposition of stamp duty was a tax and question of hardship was not a relevant consideration to constraint a taxing statute. How the discussion relating to a taxing statute can be equated with the refusal to grant benefits of *"technical pay scale"* to the employee/petitioners on the principle of "*equal pay for equal work"* is not comprehensible to the mind of this Court.

44. In ***M/s PGF Limited case*** *(supra),* the Supreme Court laid down certain guidelines for determination of cases where the vires of an

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enactment is challenged by a litigant. In the said case, the vires of SEBI guidelines under Section 11-AA of the SEBI Act were challenged by the appellate company. A contention was raised by the appellant that the joint venture business of the appellant relating to sale and development of agricultural land would not fall within the category of "collective investment" scheme. Therefore, the stringent directions issued to the appellant company, restraining them from collecting money from the investors or launching new schemes and directions given to refund the collected money vide the impugned order passed by SEBI should be set-aside. In that context, the Apex Court held that the business of the appellant company squarely fell within the definition of Section 11-AA of the SEBI Act. Relevant extract is reproduced herein:

> *"xxx*
> *43. Therefore, the paramount object of parliament enacting the SEBI Act itself and in particular the addition of Section 11-AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with a fond hope that such investment will get appreciated in course of time. Certain other Sections of the people who are worst affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.*
> *xxx*"

The conclusion that the Apex Court had drawn, is reproduced herein after:

> *"xxx*
> *58.1 We, therefore, hold that Section 11-AA of the SEBI Act is constitutionally valid.*

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> *58.2 We also hold that the activity of PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(1)(ba)read along with the Section 11-AA (ii) of the SEBI Act and consequently the order of the second respondent dated 6.12.2002 is perfectly justified and there is no scope to interfere with the same.*
>
> *58.3 In the light of our above conclusions, PGF limited has to comply with the directions contained in the last paragraph of the order of the second respondent dated 6.12.2002.*
> *xxx"*

Accordingly, the appeal was dismissed with costs assessed at Rs.50,00,000/- to be deposited by the appellant with the Registry of Supreme Court. How the facts of ***PGF's case*** *(supra)* and the rationale in that judgment are applicable to the present case is perplexing to the mind of this Court, to say the least.

45. The issue in consideration in ***Rakesh Kohli's case*** *(supra)* is whether Article 45 (d) of Schedule 1-A of the Stamp Act that was brought in by the Stamp (M.P. Amendment) Act, 2002, is violative of Article 14 of the Constitution of India. The issue is succinctly described in para 4 of the judgment. Relevant extract thereof is reproduced herein after:

> *"xxx*
> *4. By the M .P.2002 Act, stamp duty relating to power of attorney has been prescribed in Article 45 of Schedule 1-A. Clause (d) thereof prescribes stamp duty at 2% on the market value of the property which is the subject matter of the power of attorney when power of attorney is given without consideration to a person other than father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorising such person to sell immovable property situated in Madhya Pradesh. The writ petitioners pleaded, inter alia, that the distinction between an agent who was a blood relation and who was an outsider carved out in Article 45 (d) was legally impermissible. The provision violates Article 14 of the Constitution as it has sought to create unreasonable classification.*
> *xxx"*

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46. The Apex Court held that vide the 2002 amendment the State government had sought to include stamp duty being payable in cases of indirect and inappropriate mode of transfer by providing a power of attorney to a person other than kith or kin without consideration. It was concluded that by the amendment, the State sought to levy stamp duty on ostensible documents, the real intention of which was transfer of immovable property. Such imposition of stamp duty had a direct nexus with the object of Stamp Act and therefore, the classification between kith and kin on one hand and outsiders on the other could not be held to be without rationale. The aforesaid case has no manner of application to the facts of the present case.

47. The issue in ***Hindustan Machine Tools*** *(supra)* related to the widening of the definition of the word "*house*" being amended retrospectively. The meaning of the word "*house*" was broadened to eliminate certain impediments and include *"factory"* within the said definition. After the definition of "*house*" was broadened, it was held that the State was well within its authority to impose "house tax" at factory premises but was not correct in the imposition of "*permission fee*" on the respondent. The above case relating to a taxing statute has no manner of application to the present case, since no benefits given to similarly situated employees were sought to be withdrawn with retrospective effect depriving the petitioners.

48. ***M/s Ujagar Prints and others case*** *(supra*) is a case where the issue was whether the process of bleaching, dying, printing etc. amounted to "*manufacture*" within the meaning of Central Excise and Salt Act, 1944 (hereinafter referred to as "the Central Excise Act") prior

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to its amendment in 1980, so as to attract the levy of excise duty on processed fabrics. How the question of levy of tax under Section 2(f) of the Central Excise Act is applicable to the present case cannot be appreciated by this Court.

49. In ***Indian Aluminium Company's case*** *(supra)* the issue related to validation of past illegal levy and collection of surcharge by removing the vice pointed out by the High Court and including of a provision permitting retention of amount so collected, despite the past order of the Court for refund by amendment of the provisions of Kerala Electricity Surcharge (Levy and Collection) Act, 1989.

50. The said case relates to a taxing statute. Directions of the High Court with regard to the refund of the duty for the period that was not covered by the new Act of 1963 were not challenged. The following principles enunciated in the said judgment are reproduced herein after:

> *"xxx*
>
> *56. From a resume of the above decisions the following principles would emerge:*
>
> *(1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them;*
>
> *(2) The Constitution delineated delicate balance in the exercise of the sovereign power by the legislature, executive and judiciary;*
>
> *(3) In a democracy governed by rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law.*
>
> *(4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law*

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permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;

(5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;

(6) The court, therefore, needs to carefully scan the law to find out: (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

(7) The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the legislature. Therefore, they are not encroachment on judicial power.

(8) In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly

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> *overrule the decision or make a direction as not binding on it but has power to make the decision consistent with the law of the constitution and the legislature must have competence to do the same.*
>
> *[Emphasis supplied]*
>
> *xxx"*

51. In ***National Agricultural Cooperative Marketing Federation's case*** *(supra),* the question arose with regard to the validity of retrospective operation of certain provisions of the Income Tax Act, 1961. The question was whether the exemption granted in respect of profits and gains made by the cooperative societies by marketing of agricultural produce, was applicable to the Village Cooperative Societies, District Cooperative Societies or to the members of State Cooperative Societies (Apex Societies). The Apex Court held that by amending the provisions of Section 80 P(2) (a)(iii) retrospectively from 1968 so as to include the term "grown by" the new levy/financial burden imposed on Apex Societies for the past 30 years was not unconstitutional, since the desire and extent of enforceable financial burden was minimal. The said case has no manner of application to the present case.

52. In ***State of Tamil Nadu's case*** *(supra)*, there had been long-drawn litigation between the two states of Kerala and Tamil Nadu regarding the water level in the Mullaperiyar dam, and the disputes were referred to a Five Judge Constitutional Bench. The issue before the Supreme Court was whether the Kerala Irrigation and Water Conservation (Amendment) Act, 2006 enacted by the Kerala State Legislature, fixing and limiting the full reservoir level (FRL) to 136 ft, was unconstitutional being in violation of the doctrine of separation of powers, since only three weeks earlier, the Supreme Court had in its

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judgment **"*Mullaperiyar Environmental Protection Forum v. Union of India"***, reported in (2006) 3 SCC 643, permitted the water level in the Mullaperiyar Dam to be raised up to 142 ft. It was also argued on behalf of the petitioner-State of Tamil Nadu, that the 2006 Amendment Act was beyond the legislative competence of the State of Kerala insofar as it affects the Mullaperiyar Dam, in view of Section 108 of the State Reorganisation Act, 1956 which is a law made by Parliament under Articles 3 and 4 of the Constitution. The same conferred plenary power to traverse all legislative entries in all the three lists including Entry 17 List II. The view of the Constitutional Bench with regard to legislative competence is set out hereinafter:

> *"xxx*
> ***100.*** *One of the leading cases of this Court on the legislative competence vis-à-vis decision of the Court is Prithvi Cotton [Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283] . In that case, the validity of the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 was assailed on behalf of the petitioners. The Validation Act had to be enacted in view of the decision of this Court in Patel Gordhandas Hargovindas [Patel Gordhandas Hargovindas v. Municipal Commr., AIR 1963 SC 1742 : (1964) 2 SCR 608] . Section 3 of the Validation Act provided that notwithstanding anything contained in any judgment, decree or order of a court or tribunal or any other authority, no tax assessed or purported to have been assessed by a municipality on the basis of capital value of a building or land and imposed, collected or recovered by the municipality at any time before the commencement of the Validation Act shall be deemed to have been invalidly assessed, imposed, collected or recovered and the imposition, collection or recovery of the tax so assessed shall be valid and shall be deemed to have been always valid and shall not be called in question merely on the ground that the assessment of the tax on the basis of capital value of the building or land was not authorised by law and accordingly any tax so assessed before the commencement of the Validation Act and leviable for a period prior to such commencement but not collected or recovered before such commencement may be collected or recovered in accordance with the relevant municipal law.*

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101. *The Constitution Bench in Prithvi Cotton case [Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283] exposited that the validity of a validating law depended upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removed the defect which the courts had found in the existing law and made adequate provisions in the validating law for a valid imposition of the taxes. In the words of the Constitution Bench: (Prithvi Cotton case [Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283] , SCC pp. 286-87, para 4)*

"4. ... When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. ***Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal.*** *Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions.* ***The validity of a validating law, therefore, depends upon whether the legislature possesses***

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the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax. *[Emphasis Supplied]*

xxx"

53. The view of the Constitutional Bench with regard to separation of powers doctrine under the Indian Constitution is set out hereinafter:

"*xxx*

126. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between the legislature, executive and judiciary may, in brief, be summarised thus:

126.1. Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law. In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs—legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of powers, the separation of powers between the legislature, executive and judiciary is not different from the Constitutions of the countries which contain express provision for separation of powers.

126.2. Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution. Separation of judicial power is a significant constitutional principle under the Constitution of India.

126.3. Separation of powers between three organs—the legislature, executive and judiciary—is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Article 14 of the Constitution.

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126.4. The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State Legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

126.5. The doctrine of separation of powers applies to the final judgments of the courts. The legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

126.6. If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law.

126.7. The law enacted by the legislature may apparently seem to be within its competence but yet in substance if it is shown as an attempt to interfere with the judicial process, such law may be invalidated being in breach of doctrine of separation of powers. In such situation, the legal effect of the law on a judgment or a judicial proceeding must be examined closely, having regard to legislative prescription or direction. The questions to be asked are:

(i) Does the legislative prescription or legislative direction interfere with the judicial functions?

(ii) Is the legislation targeted at the decided case or whether impugned law requires its application to a case already finally decided?

(iii) What are the terms of law; the issues with which it deals and the nature of the judgment that has attained finality?

If the answer to Questions (i) and (ii) is in the affirmative and the consideration of aspects noted in Question (iii) sufficiently establishes that the impugned law interferes with the judicial functions, the Court may declare the law unconstitutional.

xxx"

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54. The Apex Court held that a plain and simple judicial decision on fact cannot be altered by a legislative decision by employing doctrines or principles such as “public trust doctrine”, “precautionary principle”, “larger safety principle” and, “competence of the State Legislature to override agreements between the two States”. The constitutional principle that the legislature can render judicial decision ineffective by enacting validating law within its legislative field fundamentally altering or changing its character retrospectively would have no application where a judicial decision has been rendered by recording a finding of fact. Under the pretence of power, the legislature cannot neutralise the effect of the judgment given after ascertainment of fact by means of evidence/materials placed by the parties to the dispute. A decision that disposes of the matter by giving findings upon the facts is not open to change by legislature. A final judgment, once rendered, operates and remains in force until altered by the court in appropriate proceedings. Thus, the 2006 (Amendment) Act was held to be not a validation enactment as it sought to nullify the judgment of the Apex Court which was constitutionally impermissible. The cited case in fact aids the case of the Petitioners.

55. In the present case by enacting the 2014 Act, the State cannot be permitted to act in violation of Article 14 of the Constitution of India.

56. In ***Cheviti Venkanna Yadav’s case*** *(supra)*, it was held that the legislature has the power to retrospectively amend the laws and thereby remove the causes for invalidity of such law and the same did not

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amount to statutory over-ruling of a Court's judgment by legislature. The issue related to alteration of the number of members of the marketing Board and their tenure on the board when the State of Telangana was carved out from the State of Andhra Pradesh.

57. The High Court had initially struck down the said change. Thereafter, an amendment to the Act was brought into force with retrospective effect, regarding reconstitution of the Market Committee. The Apex Court held that as long as the legislature had the competence to pass the law, they had the power to remove the grounds of invalidity or illegality due to which the law has struck down. It was not a case where arbitrarily a distinction was sought to be drawn within the same class of employees giving a go-bye to the well settled principle of "*equal pay for equal work*" and in violation of Article 14 of the Constitution of India.

58. The issue in ***A.Manjula Bhashini's case*** *(supra)* was whether a person employed on daily wage basis or as a contingent worker in different departments of the government were entitled to be regularised on completion of five years and whether the amendments made in the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (hereinafter referred to as "the 1994 Act") were ultra vires the provisions of the Constitution of India. The Apex Court upheld the constitutional validity of the amendment and issued directions with regard to regularisation of such employees upto the cut off date of March 25, 1993 as specified in the first proviso to Section 7 of the 1994 Act. Relevant part is set out herein under:

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> *"xxx*
> ***92.*** *Undisputedly, the Ordinance issued in 1993 was the first exercise of legislative power by the State to prohibit employment on daily wages and to restrict appointments on temporary basis and, at the same time, streamline the recruitment in public services by adopting a procedure consistent with the doctrine of equality embodied in Articles 14 and 16 of the Constitution.*
>
> ***93.*** *The 1994 Act was enforced with effect from 25-11-1993 i.e. the date on which the Ordinance was published in the Official Gazette. Therefore, that date had a direct bearing on the policy of regularisation circulated vide the G.O. dated 22-4-1994, which was issued by the State Government in exercise of its executive power under Article 162 of the Constitution. When that policy was engrafted in the 1994 Act in the form of the proviso to Section 7, the legislature could not have fixed any date other than 25-11-1993 for determining the eligibility of daily-wage employees who fulfilled the requirement of 5 years' continuous service. If any other date had been fixed for counting 5 years' service of daily-wage employees for the purpose of proviso to Section 7, the object sought to be achieved by enacting the 1994 Act would have been defeated, inasmuch as the regular recruitment could not have been made for appointment against the sanctioned posts and back door entrants would have occupied all the posts. Therefore, the cut-off date i.e. 25-11-1993 prescribed by the legislature for determining the eligibility of daily-wage employees and others covered by Section 7 of the 1994 Act cannot be dubbed as arbitrary, unreasonable, irrational or discriminatory.*
> *xxx"*

The instant case has no relation to the issue of regularisation of the employees or of cut-off date as the service of all the petitioners had admittedly been regularised and the discrimination was not made on the basis of cut-off date as some juniors were granted an upgraded pay scale.

59. In ***Mewa Ram Kanojia's case*** *(supra)*, it was held that the doctrine of "*equal pay for equal work*" is applicable when the employees are holding same rank and performing similar functions and discharging similar duties and responsibilities, and are being denied equality in matters relating to scale of pay. The petitioner therein was a

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hearing therapist and wanted the pay scale prescribed for "*speech therapist*" and "*audiologist*". There, the Apex Court held that the petitioner failed to place any material before the Court showing that he performed duties and functions corresponding to that of an audiologist.

60. It was further held that there were qualitative differences between two posts on the basis of educational qualification and it was the pay commission who was in a better position to judge the qualitative difference, the volume of work, reliability and responsibility required for the post. The petitioner was held not to be entitled to any relief. Admittedly, the petitioners herein have been discharging the same duties and responsibilities as that of their counter parts, who were being paid at a higher pay scale.

61. In ***Shyam Babu Verma's case*** *(supra),* the petitioners were pharmacists whose pay scales were reduced after several years of service. It was pointed out that the petitioners were not qualified pharmacists possessing *qualifications* mentioned in the Act. Erroneously, a wrong pay scale had been granted to them.

62. At the time when the petitioners in the present case were inducted, there was no prescribed *minimum qualification* to the posts in which they were engaged. Moreover, there was also no issue regarding members of the pay commission evaluating the work, nature of duties of the petitioners *vis-à-vis* their counter parts as same duties and functions were performed as admittedly duties performed are the same.

63. Furthermore, in ***Shyam Babu's case*** *(supra)* the third pay commission had made a distinction between the two categories of pharmacists depending upon whether they possessed the qualifications

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mentioned under Sections 31 and 32 of the Pharmacy Act, 1948. No such distinction has been made by the pay commission in the present case.

64. In ***Deb Narayan Shyam's case*** *(supra)* it was held that the "*Amins*" in West Bengal could not claim parity of pay scale with the "*Surveyors*". The qualifications for two posts were different and the work of surveyors was technical in nature. Admittedly, there is no difference in the work discharged by the petitioners and their counter parts in the present case.

65. In ***Sant Raj Singh's case*** *(supra*) the issue was whether educational qualification could be considered to be the relevant criteria for difference in payment of wages. At the time of appointment, the educational qualifications were laid down as a criterion for classifying employees in different grades. It is reiterated that in the present case, at the time of appointment there was no stipulation as to the minimum educational qualification for the posts in which the petitioners were appointed.

66. In ***Basawraj's case*** *(supra)* the issue was whether the High Court was correct in condoning the huge delay without sufficient cause having been shown in some cases and dismissing the applications for condonation of delay in other cases. In such circumstances, the Apex Court held that it was a settled proposition of law that Article 14 of the Constitution of India was not meant to perpetuate illegality or fraud by extending the wrong decisions made in some cases to the other cases at hand. Article 14 does not envisage *"negative equality"* but it only has a positive aspect. The relief given to similarly situated person inadvertently

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or by mistake could not confer any legal right to others to get the same benefit.

67. The present case is not the one, where illegal benefits were granted to undeserving persons due to fraud or inadvertence. During the time of appointment there was no stipulation with regard to essential qualifications of matriculation or ITI for grant of "*technical pay scale"*. Therefore, correctly benefits of *"technical pay scales"* were given to some of the employees relying on government instructions whereas the petitioners were denied. The petitioners are only claiming "*pay parity"* with them.

68. In ***Kartik Chandra Mandal's case*** *(supra),* the issue was with regard to regularisation of the casual employees who had been recruited without following a proper procedure and not been sponsored by the employment exchange. The Tribunal held that the workers who were disengaged on the day when the office memorandum for regularisation, came into force could not claim regularisation. However, considering the fact that they belonged to weaker section of the society, the respondents were directed to absorb the petitioners on a suitable post commensurate with their qualifications.

69. The High Court held that the order passed by the Tribunal merited no interference. The Apex Court held that office memorandum was only applicable to the persons in service and the persons who had already been disengaged could not urge discrimination against them and no order for their absorption could be passed. Such is not the case in the present writ petitions as grievances of only regular employees are being considered here.

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70. In ***Chaman Lal's case*** *(supra),* the Hon'ble Supreme Court was shocked that without impleading the State of Punjab as a party, relief of pension was sought against it. No relief was sought against the defendants in the suit, who were the Fish Farmers Development Agency, Gurdaspur and the Chief Executive Officer of the said agency. The relevant extract is reproduced hereinafter:

> "*xxx*
>
> ***13.*** *We fail to understand how the suit was maintainable as it is a settled legal proposition that in view of the provisions of Section 79 and Order 1 Rules 9 and 27 of the Code of Civil Procedure, 1908 and Article 300 of the Constitution of India, if a relief is sought against the State or the Union of India, the State or Union of India must be impleaded as a party. In case it is not so impleaded, the suit is not maintainable for want of necessary party. This view stands fortified by the judgment of this Court in Collector v. Bagathi Krishna Rao [Collector v. Bagathi Krishna Rao, (2010) 6 SCC 427 : (2010) 2 SCC (Civ) 712] , wherein after placing reliance on earlier judgments of this Court particularly, Ranjeet Mal v. Northern Railway [Ranjeet Mal v. Northern Railway, (1977) 1 SCC 484 : 1977 SCC (L&S) 164] and Chief Conservator of Forests v. Collector [Chief Conservator of Forests v. Collector, (2003) 3 SCC 472 : AIR 2003 SC 1805] , this Court held that if the relief is sought against the State, it is necessary for the plaintiff to implead the State and in absence thereof the suit itself would not be maintainable.*
>
> ***15.*** *Thus, in view of the fact that the judgment and decree in the case of Charanjit Lal seems to be collusive and in a suit which itself was not maintainable, we are unable to accept the submission advanced by Shri Garg, the learned counsel for the appellant.*
> *xxx"*

71. It was held that the services rendered by the appellant with the Fish Farmers Development Agency was not to be counted for grant of retiral benefits as the said agency was neither the State nor a department of the government. The agency was a society registered under the Societies Registration Act, and therefore, only the period of

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his service with the society could not be granted pension. Later the appellant was absorbed with the department of animal husbandry, fisheries and dairy development, Punjab. The appellant tried to rely on a collusive decree in respect of another employee, which the Apex Court rejected and held that no *"negative equality"* could be prayed for, by the appellant.

72. In the present case, neither was there any dispute to petitioners rendering service with the transport department of State of Haryana nor is there any reliance on a collusive decree between the employees who have been granted "*technical pay scale"* by relying on government instructions by the State of Haryana. Thus, the case at hand is completely distinguishable on facts. This is a case where the juniors are being granted a higher pay scale without any additional qualification and the seniors are being deprived of the same without any legally tenable or cogent reason.

73. In ***Upendra Narayan Singh's case*** *(supra),* the issue was whether the employees engaged in Group-III and IV posts, such posts being non-sanctioned post and without issuing any advertisement, or sending requisition for employment to Employment Exchange could be reinstated in service. The Single Judge of the High Court quashed the termination orders. The Division Bench upheld the order of learned Single Judge holding that in two similar cases, the State government had not challenged the orders passed by the Single Judge. In the Special Leave Petition filed before the Supreme Court, the appeal was allowed holding that the High Court was not justified in reinstating the back door entrants. It further held that the Division Bench was not justified in

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refusing to examine the illegality and legitimacy of the initial appointments on the ground that the State had failed to file Letters Patent Appeal in respect of other employees.

74. It is again reiterated that this is not a case where back door entrants have procured jobs due to favouritism, nepotism or corruption. There is no allegation of incompetence or inefficiency against the petitioners who were regular employees. The only question that has fallen for consideration is whether the petitioners are entitled to the same pre-revised upgraded pay scale as was granted to their counter parts who had same qualification. The question is whether the State could have introduced a proviso to Section 4 of the 2014 Act to continue the grant of *"technical pay scale*" benefits to the counter parts of the petitioners only because their cases were examined before the 2013 Ordinance came into force, and deny the petitioners the same as the representations of the petitioners were pending with the authorities or the writ petitions were pending before the Hon'ble High Court on the said date. Question that falls for consideration is whether the respondent authorities could be permitted to deprive the petitioners of their vested rights due to sheer incidence of time. The answer obviously has to be in the negative.

75. In ***Jagjiwan Ram's case*** *(supra),* the issue was whether '*regular service'* meant the services rendered after regular appointment or whether the services rendered as temporary, *ad hoc* or work charge employee could be considered as regular service. It was held that the fact that in some other case, benefits had been granted to few employees in compliance of a Court's order, could not influence or affect the

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interpretation of the relevant provisions of the scheme, for time bound promotion.

76. Again this Court fails to understand why the said decision has been cited since the employees herein are admittedly regular employees and there is no issue with regard to the benefits of time bound promotional scales/promotional increments being granted to them.

77. In ***Mamta Mohanty's case*** *(supra),* the issue was whether the eligibility criteria for appointing lecturers in affiliated colleges in Orissa could be relaxed. It was held that minimum eligibility for appointment of teaching staff had to be adhered to, even in case of non-governmental and non-aided private colleges. In that case, the respondent was appointed without following the procedure prescribed. The post of lecturer in Chemistry was neither advertised nor was the candidates requisitioned from the Employment Exchange.

78. Again, this Court fails to understand why the said case has been relied on, as there is no allegation that the appointment of the petitioners were made without following the prescribed procedure. No minimum qualifications were prescribed for the grant of *"technical pay scale"* at the time of appointment of the petitioners.

79. The case of ***Tinku*** *(supra)* deals with the issue of compassionate appointment and the applicable policy at the time of death of the appellant's father- a deceased police constable. The appellant had become a major after 11 years of death of his father, whereas the government instructions dated March 22, 1999 permitted a minor dependant on a deceased government employee to get the benefit

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of *ex-gratia* compassionate appointment only if the dependant attained majority within a period of 03 years from the date of the death of government employee.

80. In such circumstances, the Apex Court held that the scope and purport of such policies were to provide immediate succour to the bereaved family and there was no vested right to compassionate appointment.

81. How the case of regular employees wanting *"technical pay scale"* can be compared to a case where compassionate appointment was being sought after 11 years of the death of the deceased employee and the question of *"negative equality"* being discussed in such circumstances is beyond the comprehension of this Court.

82. In ***Tinku's*** *case (supra)*, the Apex Court held that the very idea of equality enshrined in Article 14 was a concept clothed in positivity based on law. It could be invoked to enforce a claim having sanctity of law. No direction, therefore, could be issued mandating a state to perpetuate any illegality or irregularity committed in favour of a person, an individual or a group of individuals. In case, illegal claims were entertained and directions were issued, the same would not only be against tenets of justice but also would negate its ethos, resulting in the law being causality culminating in anarchy and lawlessness.

83. There is no question of illegality being perpetuated in the present case where the employees were appointed by way of regular appointments and were admittedly performing the same duties and responsibilities of the *"technical pay scale"* holders and no cogent reason has been cited for not granting the petitioners the upgraded pay

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scale of technical posts, apart from the promulgation of the 2013 ordinance and the subsequent 2014 enactment being brought into force to withdraw the benefits already granted by way of instructions.

DISCUSSION

84. Upon perusal of the prayers in the writ petition, it appears that the grievance of the petitioners is primarily against the enactment of Sections 3 and 4 of the 2014 Act. The relevant Sections are reproduced herein below:

> *"3. Notwithstanding anything contrary contained in any service rules, instructions etc., all persons serving on various posts in different Service under the State shall be entitled to get the pay scales prescribed for those posts only under the relevant service rules, notifications and instructions issued from time to time and no person who is serving or has served on any post in any Service under the State, shall be entitled to a higher pay scale on account of possessing a technical qualification, or on account of serving or having served on a post for which the prescribed qualification is/was of technical nature i.e Matric with ITI/ Polytechnic or Non-Matric with ITI/Polytechnic.*
>
> *4. The entry at serial number 3 under common category posts in the annexure to instructions bearing No.1/54/2PR(FD)-82, dated 30.03.1982, at serial number 40 in annexure A to instructions bearing No.6/23/3PR(FD)- 88 dated 23.08.1990. No.6/23/3PR (FD)-88 dated 26.07.1991 and No.6/83/2009-3PR (FD), dated 09.08.2010 are hereby withdrawn and shall be deemed to have been withdrawn with effect from the date of their coming into force:*
>
> ***Provided that all those persons who had already been granted unconditionally the up-graded pre-revised pay scale and drawing the same before date of notification of the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-Technical Posts) Ordinance, 2013 (Haryana Ordinance No.6 of 2013) viz. the 10th December, 2013, shall continue to draw these pay scales as a measure personal to them.***
> *Xxx"*

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85. The said two Sections cannot be read in isolation and has to be read in conjunction with Section 2 (h) of the Act. The same is reproduced herein after:

> *"Section 2 (h)*
>
> *"Technical qualification" means Matric with ITI/ Polytechnic or Non-Matric with ITI/Polytechnic whichever is prescribed for appointment to the post in the Services.*
>
> *xxx"*

86. From the perusal of the said section, it appears that *technical qualification* would mean Matric with ITI/Polytechnic or Non-Matric with ITI/Polytechnic whichever qualification is prescribed for appointment to a **"***post***"** in the service. When the petitioners were appointed/engaged there was no *technical qualification* prescribed for the *post* in which they were appointed. So, the benefits cannot be denied to them. By enactment of Section 3, the benefits that were given to the employees at the time of appointment to the posts which had no prescribed qualification could not be sought to be taken away. Furthermore, employees with *technical qualifications* as per the Act serving at a *post* which may not be on a *"technical pay scale"* could not be suddenly sought to be withdrawn.

87. One of the primary rules for the interpretation of any statutory requirement is that it must be read as a whole. From this general proposition, the doctrine of harmonious construction evolved by way of judicial pronouncements. Statutory interpretation requires, that in case of any apparent conflict between the different parts and provisions of a written statute, they should be so interpreted that none of

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them becomes nugatory[1]. A beneficial reference maybe made to the judgment of the Supreme Court in "***Venkataramana Devaru v. State of Mysore",*** *AIR 1958 SC 255*. In the said case, the substantial question of law which arose before the Supreme Court, was whether the right of a religious denomination to manage its own affairs in matters of religion guaranteed under Article 26(b) is subject to, and can be controlled by, a law protected by Article 25(2)(b), i.e., throwing open a Hindu public temple to all classes and sections of Hindus. Venkatarama Ayyar J. speaking for the Court elaborated on the doctrine, in the following words:

> *"The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of interpretation."*

Harmonising the two conflicting provisions of the Constitution, the Constitutional Bench held that if Article 26(b) were to be interpreted in an absolute sense, it would render nugatory of the right of every Hindu, to enter into a religious institution of a public character, under Article 25(2)(b). Therefore, Article 26(b) must, be read as subject to Article 25(2)(b).

88. Therefore, Section 3 has to be read conjointly with Section 2(h) of the 2014 Act, and be given a harmonious interpretation as the rights of the petitioners got crystallised under government instructions which are now sought to be withdrawn.

89. Vide enactment of Section 4, the instructions dated 30.03.1982, 23.08.1990, 26.07.1991 and 09.08.2010 were sought to be

[1] Durga Das Basu *Commentary on the Constitution of India*, 8th edition (New Delhi: Wadhwa, 2007), 249-251.

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withdrawn retrospectively without any cogent or valid reason. Significantly, the benefits if granted to the employees before promulgation of the 2013 ordinance which came into effect on December 10, 2013, were sought to be continued. The legal basis for such an artificial distinction sought to be made between the employees despite purported withdrawal of the aforesaid instructions is neither discernible from the scheme of the Act, nor from the arguments made on behalf of the State-respondents.

90. To the mind of this Court, a harmonious interpretation has to be given effect to different provisions in the Act and the Act needs to be read as a whole. Therefore, it is held that Sections 3 and 4 of the 2014 Act would be valid for new recruits who are appointed to the posts where technical qualifications have been prescribed as per Section 2(h). They would be eligible for drawing the pay scale attached to the post and not for performing duties relating to the post with *over* or *under* qualification.

91. As far as the proviso to Section 4 is concerned, the same also needs to be harmoniously construed. The proviso stipulates that the employees who had already been granted upgraded pre-revised pay scale and were drawing the same before the date of 2013 notification "***shall continue to draw the pay scales as a personal measure to them***." Nowhere does the proviso states that the upgraded pre-revised pay scale cannot be granted to the employees whose representations were either pending with the concerned department or writs were pending before the Court of Law. To the mind of this Court, due to fortuitous circumstances of writ petitions of certain employees being decided prior

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in time, the vested right of the petitioners could not be taken away retrospectively. By sheer incidence of time a similarly situate class of employees cannot be put to grave prejudice or disadvantage.

92. This Court cannot lose sight of the fundamental principles of service law that a senior working on the same post having same qualifications and discharging similar duties cannot be given a lesser pay. In case such anomaly is created, the pay of senior needs to be "***stepped up***". The fundamental rules regarding stepping up of pay as notified by the Office Memorandum dated September 13, 2022, vide No. DOPT-1667551701810 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training, is reproduced herein below:

> "*xxx*
>
> *I.* ***GENERAL INSTRUCTIONS***
> *In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 01.01.2016 drawing lower pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, the pay of the senior Government servant in the higher post should be stepped up to a figure equal to the pay as fixed for the junior Government servant in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior Government servant and will be subject to the following conditions, namely:*
>
> ***II. ESSENTIAL CONDITIONS***
>
> *(a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted are identical in the same cadre;*
>
> *(b) the Pay Level in the Pay Matrix of the lower and higher posts in which they are entitled to draw pay should be identical;*

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(c) the anomaly is directly as a result of the application of the provisions of Fundamental Rule 22(I)(a)(1) read with Rule 13 of CCS(RP)Rules, 2016. For example, if the junior officer was drawing more pay in the existing pay structure than the senior by virtue of any advance increments granted to him, the provisions of this sub rule should not be invoked to step up the pay of the senior officer.

III. DATE OF NEXT INCREMENT AFTER GRANT OF STEPPING UP OF PAY

The order relating to re-fixation of the pay of the senior officer in accordance with clause (i) shall be issued under Fundamental Rule 27 and the senior officer shall be entitled to the next increment on completion of the required qualifying service with effect from the date of re-fixation of pay.

IV. EVENTS / CASES WHERE STEPPING UP OF PAY IS NOT ADMISSIBLE

The following instances/events wherein juniors draw more pay than seniors do not constitute anomaly and, therefore, stepping up of pay will not be admissible in such events:

(a) Where a senior proceeds on Extra Ordinary Leave which results in postponement of his Date of Next Increment in the lower post and consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade than his junior(s);

(b) If a senior forgoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier and the junior draws higher pay than the senior.

(c) If the senior is on deputation while junior avails of the ad-hoc promotion in the cadre, the increased pay drawn by the junior due to ad hoc/officiating and/or regular promotion following such ad hoc promotion in the higher posts vis-à-vis senior, is not an anomaly in strict sense of the term;

(d) If a senior joins the higher post later than the junior, for whatsoever reasons, whereby he starts drawing

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less pay than the junior. In such cases, senior cannot claim stepping up of pay at par with that of his junior.

(d) If a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post if he draws less pay than his junior though he may have been promoted earlier to the higher post.

(e) Where an employee is promoted from lower post to a higher post, his pay is fixed with reference to the pay drawn by him in the lower post under FR22(I)(a) (1) read with Rule 13 of CCS(RP)Rules, 2016 and due to his longer length of service in the lower grade, his pay may get fixed at a higher stage than that of a senior direct recruit appointed to the same higher grade and whose pay is fixed under different set of rules. For example a Senior Secretariat Assistant (SSA) on promotion to the post of Assistant Section Officer (ASO) gets his pay fixed under FR 22(I)(a)(1) with reference to the pay drawn in the post of SSA, whereas the pay of ASO(DR) is fixed under Rule 8 of CCS(RP)Rules, 2016 at the minimum pay or the first Cell in the Level, applicable to ASO to which he is appointed. In such a case, the senior ASO (DR) cannot claim pay parity with that of the promotee junior ASO.

(f) Where a senior is appointed in higher post on ad-hoc basis and is drawing less pay than his junior who is appointed in the same cadre and in same post on ad hoc basis subsequently, the senior cannot claim pay parity with reference to the pay of that junior since the ad-hoc officiating service in higher post is reversible and also since full benefits of FR22(I)(a)(I) are not available on ad-hoc promotion but only on regular promotion following such ad-hoc promotion without break.

(h) Where a junior gets more pay due to additional increments earned on acquiring higher qualifications.

V. PROCEDURE FOR REFERRING CASES OF STEPPING UP OF PAY TO DOPT

Proposals on pay fixation, pay protection, etc. shall be referred to DOPT, through administrative Ministry/ Department concerned, giving full facts of the case in chronological order with all relevant documents properly flagged and specifying the point of reference without

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ambiguity. It needs to be ensured that all the points listed out in the checklist are available in the file for proper appreciation of the case.

CHECK LIST FOR CASES OF STEPPING UP OF PAY

1. The primary reason for request of stepping up;

2. Whether the condition of stepping up fulfilled in terms of 1OM No. 4/3/2017-Estt. (Pay-I) dated 26.10.2018. If no, which condition is not fulfilled;

3. Copies of promotion order of the senior and junior;

4. Comparative pay fixation statement of the senior and junior invariably indicating the pay of both the officers on the same reference dates since the date of their joining the service and the 'option' exercised for pay fixation by these officers from time to time.

5. Whether promotion is on regular basis or ad-hoc basis;

6. Whether senior and junior belong to same cadre;

7. Whether the pay scale of lower and higher post of both employees is identical;

8. Cause of anomaly i.e. FR 22(I)(a)(1) or any other reason, specify other reason;

9. Views/opinion of IFU/IFD of the administrative Ministry;

10. Specific views of FA of the administrative Ministry on the point of reference;

11.2 All the references should be made to DOP&T with the approval of the Secretary of the Administrative Ministry/Department.

12.1 While sending the proposal, the name, designation of the Joint Secretary/Director (Phone number and e-mail id) who can be contacted for further correspondence is also to be indicated.

Xxx"

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93. A beneficial reference may be made to a judgment allowing *"stepping-up"* of pay passed by Apex Court ***"Union of India and others v. C.R. Madhava Murthy and another"*** reported in *(2022) 6 Supreme Court Cases 183 ,* relevant extract whereof is reproduced herein below:

> *"xxx*
>
> *10. The High Court has therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay, which reads as under:-*
>
> *"(22) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior — (a) As a result of application of FR 22-C. [Now FR 22 (I)(a)(1)]. In order to remove the anomaly of a government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:*
>
> *(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;*
> *(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
> *(c) The anomaly should be directly as a result of the application of FR-22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.*
>
> *The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay."*

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> *11. Therefore, it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the appellants herein to step up the pay of the original writ petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for.*
> *xxx"*

94. In "***State of Punjab and others v. Jagjit Singh and others***" *reported in (2017)1 SCC 148*, the Apex Court held that even if temporary employees discharged equal duties and responsibilities as the regular employees, still it would vest in them right to claim wages at par with minimum of the pay scale of regularly appointed government employees holding same post on the ground of "*equal pay for equal work*". Relevant extract of the said judgment is reproduced herein below:

> "x*xx*
>
> ***60.*** *Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties*

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> *and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post. [Emphasis supplied]*
>
> *xxx"*

95. In the present case, the petitioners are all regularly appointed employees. Therefore, this Court has no hesitation to hold that they have a vested right to claim "*equal pay for equal work*". Accordingly, this Court holds that Sections 3 and 4 of the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-Technical posts) Act, 2014 is applicable prospectively *qua* appointments made after the said enactment. It is imperative to widen the scope of the proviso to Section 4 to do complete justice between the parties. Therefore, it is held that not only the employees who were already enjoying the benefits of the upgraded pre-revised scales will be granted the said pay scale but also the employees like the petitioners who were not granted the aforesaid pre-revised upgraded *"technical pay scales"* will also be granted the same. The provisions of the Act will be applicable prospectively from the date of its coming into force.

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CONCLUSION

96. In Conclusion, it is held as follows:

(i) The legislative competence of the State Government is not in dispute and therefore the constitutional validity of Sections 3 and 4 of the 2014 Act is upheld.

(ii) However, Sections 3 and 4 of the 2014 Act will be applicable prospectively from the date the 2013 Ordinance was notified on December 10, 2013 and will be applicable qua the new recruits who were appointed to the posts where technical qualifications have been prescribed as per Section 2(h).

(iii) The pay of the petitioners is required to be "*stepped up*" at par with their juniors from the date the petitioners were regularised in service.

97. Accordingly, the authorities are directed to compute the arrears of such difference in pay from the date of regularisation of the petitioners and pay the same along with interest @ 6% per annum. However, the interest @ 6% per annum shall be restricted to a period of three years prior to filing of the writ petitions and paid till the time of actual date of disbursement of the arrears. The same shall be disbursed to the employees concerned, within three months from the date of this judgment.

98. With the directions aforesaid, the aforementioned writ petitions are **disposed of**.

99. Pending application(s) if any, shall also stand **disposed of** accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

MARCH 25, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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