



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

(1) WP(C) No.6189 of 2018

1. In-service TET Qualified Elementary Teachers' Association, Karimganj, represented by its President, namely, Imdadur Rahman, Assistant Teacher, 32 No. Lowairpoa L.P. School, Under Patherkandi Education Block, Village: Khud Purahuria, PO: Manikganj, District: Kamrimganj, Assam, PIN – 788712.

2. Nani Gopal Deb, Assistant Teacher, 371 No. Uttar Bilbari L.P. School, Village: Ranibari, PO: Ranibari, PS: Nilambazar, District: Karimganj, Assam.

3. Nazmul Islam, Assistant Teacher, 34 No. Bosla Boys L.P. School, resident of Bonomali Road, PO, PS & District: Karimganj, Assam.

4. Snigdha Talukdar, Assistant Teacher, 1239 No. Vivekananda Harijan L.P. School, Karimganj, resident of L.B. Road, PO, PS & District: Karimganj, Assam.

5. Chayan Banik, Assistant Teacher, 606 No. Bagadohar L.P. School,

resident of Silchar Road, Ghatline,
Karimganj, PO, PS & District:
Karimganj, Assam.

.....Petitioners

-Versus-

1. The State of Assam to be represented by the Commissioner & Secretary to the Government of Assam, Education (Elementary) Department, Dispur, Guwahati - 781006.
2. The Commissioner & Secretary to the Government of Assam, Finance Department, Dispur, Guwahati - 781006.
3. The Secretary to the Government of Assam, Finance (PRU) Department, Dispur, Guwahati - 781006.
4. The Pay Anomaly Committee (Government of Assam), Notices to be served through the Additional Chief Secretary/Commissioner & Secretary/Secretary to the Government of Assam, Personnel Department, Dispur, Guwahati - 781006.
5. The Director of Elementary Education, Assam, Kahilipara, Guwahati – 781019.

.....Respondents

(2) WP(C) No.2763 of 2019

1. Bhupen Chandra Sut,
Son of Shri Kanak Chandra Sut,
Resident of Village: Balaibil, PO:
Changsari, District: Kamrup, Assam,
PIN – 781101.

2. Kishan Patowary,
Son of Sri Basanta Patowary,
Resident of Village: Dorakhara, PO:
Dorakhara, District: Kamrup, Assam,
PIN – 781101.

3. Madhab Chandra Sarma,
Son of Late Krishna Kanta Sarma,
Resident of Village: Ischadagharia, PO:
Kaniha, PS: Rangia, District: Kamrup,
Assam, PIN – 782354.

4. Arifuddin Ahmed,
Son of Late Mahnur Ali,
Resident of Village: Saniadi, PO:
Saniadi, District: Kamrup, Assam, PIN
– 781102.

5. Bhupen Chandra Nath, Assistant
Teacher, Son of Late Girish Nath,
Resident of Village: Dubjeni, PO:
Chhaygaon, District: Kamrup, Assam.

6. Nabarun Chakrabarty,
Son of Late Nilotpal Chakrabarty,
Resident of Village: Rangpur, PO:
Rangpur, District: Cachar, Assam, PIN
– 788816.

7. Kartik Rajbongshi,
Son of Hari Chandra Rajbongshi,
Resident of Village: Bareigaon, PO:
Tamulpur, District: Baksa (BTAD),
Assam, PIN – 781367.

8. Manoranjan Das,
Son of Subhangshu Das,
Resident of Ward No.16, District:
Barpeta, Assam, PIN – 781301.

9. Jitumani Sarma,
Son of Madhab Sarma,
Resident of Village: Barpeta Road,
Jyotinagar, PO: Simlaguri, District:
Barpeta, Assam, PIN – 781315.

10. Ashok Das,
Son of Dandiram Das,
Resident of Village: Bankakata, PO:
Choudhurikhat, District: Kamrup,
Assam.

11. Madan Biswasi,
Son of Late Abhay Charan Biswasi,
Resident of Village: Hajo Malitola, PO:
Hajo, District: Kamrup, Assam, PIN –
781102.

12. Fakrul Islam,
Son of Late Abdur Rouf,
Resident of Village: Chamdhara, PO:
Dagaon, District: Nagaon, Assam, PIN
– 782124.

.....Petitioners

-Versus-

1. The State of Assam, represented by
the Commissioner & Secretary to the
Government of Assam, Elementary
Education Department, Dispur,
Guwahati - 781006.

2. The Secretary to the Government of
Assam, Finance (PRU) Department,
Assam, Dispur, Guwahati - 781006.

3. The Anomaly Committee of Revision
of Pay, 2017, Government of Assam,
Finance (Pay Research Unit)
Department, Dispur, Guwahati –
781006.

4. The Joint Secretary, Finance (PRU)
Department, Assam, Dispur, Guwahati
– 781006.

5. The Treasury Officer, Kamrup,
Guwahati.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

For the Petitioners : Mr. A.M.S. Mazumder, Advocate in
WP(C) No.6189/2018.
: Mr. H. Das and Mr. D. Baruah,
Advocates in WP(C) No.2763/2019.

For the Respondents : Mr. R. Mazumdar, Standing Counsel,
Education (Elementary) Department.
: Mr. B. Gogoi, Standing Counsel,
Finance Department.

Date of Hearing : 18.07.2024.

Date of Judgment : 23.07.2024.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. A.M.S. Mazumder, learned counsel for the petitioners in WP(C) No.6189/2018 and Mr. H. Das, learned counsel for the petitioners in WP(C) No.2763/2019. Also heard Mr. R. Mazumdar, learned Standing Counsel, Education (Elementary) Department and Mr. B. Gogoi, learned Standing Counsel, Finance Department, appearing for the respective respondents.

2. In both these writ petitions, the petitioners have challenged the validity of the Notification dated 02.07.2018 issued by the Secretary to the Government of Assam, Finance (PRU) Department, whereby the Government of Assam has accepted certain recommendations of the Anomaly Committee and took a decision to revise the Allowances/Pay Scales of certain category of employees of

different Departments. The petitioners have also challenged the Notification dated 04.08.2018 issued by the Secretary to the Government of Assam, Finance (PRU) Department, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, whereby certain amendments had been made in the Schedule to the Assam Services (Revision of Pay) Rules, 2017 under the Head of "Education Department" below the Sub-Head "Assam Lower School Service (Teaching & Inspection) ME/MV/Senior Basic Schools" and "LP/Junior Basic/Pre-Primary Schools" by inserting new entry in some columns.

3. The brief facts of the case are that the petitioners are possessing Graduate qualification and are serving as Assistant Teachers in provincialized Elementary Schools in the State of Assam, mostly in Lower Primary Schools, however, some of the petitioners are serving in the Upper Primary Schools also. The State of Assam, as per the recommendations of the 7th Assam Pay & Productivity Pay Commission (hereinafter to be referred as "7th APPPC"), brought into force the Assam Services (Revision of Pay) Rules, 2017 (hereinafter to be referred as "ROP Rules, 2017") vide Notification dated 17.03.2017 while exercising powers conferred by proviso to Article 309 of the Constitution of India, which has come into effect from 01.04.2016. As per the ROP Rules, 2017, which has been given effect from 01.04.2016, Pay Structure of Teachers serving in ME/MV/Senior Basic Schools has been revised in the following manner:

“Name of Post or Service	Existing Pay Scale		Revised Pay Structure		Remarks
	Pay Band (₹)	Grade Pay (₹)	Pay Band (₹)	Grade Pay (₹)	
1	2	3	4	5	6

Assam Lower School Service (Teaching and Inspection)
ME/MV/Senior Basic Schools

Head Master, ME/ MV/Senior Basic Schools	PB-2 5200-20200	3300	PB-2 14000-49000	8700	
Graduate Teacher	PB-2 5200-20200	2700	PB-2 14000-49000	8700	
Junior (Under Graduate) Teacher of ME/ MV/Senior Basic Schools/ Assistant Sub- Inspector of Schools	PB-2 5200-20200	2500	PB-2 14000-49000	6200	

LP/Junior Basic/Pre-Primary Schools

Head Master	PB-2 5200-20200	2700	PB-2 14000-49000	8700	
Graduate Teacher	PB-2 5200-20200	2700	PB-2 14000-49000	8700	
Under Graduate Teacher	PB-2 5200-20200	2500	PB-2 14000-49000	6200	
Craft Teacher	PB-2 5200-20200 (Matriculate)	2400	PB-2 14000-49000 (Matriculate)	6200	

4. It appears that several Employees' Organizations/individual employees had raised grievances before the State Government in respect of certain recommendations of the 7th APPPC in relation to Grade Pays, Pay Bands, re-designation of posts, advance increments, fixed pays, House Rents, Medical Allowances and Allowances of various types.

5. To redress those grievances, the Government of Assam constituted an Anomaly Committee vide Notification dated 18.05.2017. The Anomaly Committee has submitted its recommendations to the Government of Assam on 31.12.2017 and the Government of Assam has accepted certain recommendations of the Anomaly Committee and decided to implement the same vide Notification dated 02.07.2018, which is under challenge in these writ petitions.

6. Pursuant to the Notification dated 02.07.2018, the Governor of Assam, while exercising powers conferred under proviso to Article 309 of the Constitution of India, has issued a Notification dated 04.08.2018, whereby the Schedule to the ROP Rules, 2017 has been substituted by a new Schedule, whereby the Grade Pay of the Graduate Teachers serving in LP/Junior Basic/Pre-Primary Schools has been reduced from Rs.8700/- to Rs.7400/-. The amended Schedule of the ROP Rules, 2017 is reproduced herein below:-

“Assam Lower School Service (Teaching and Inspection)
ME/MV/Senior Basic Schools

Name of Post or Service	Existing Pay Scale		Revised Pay Structure		Remarks
	Pay Band (Rs.)	Grade Pay (Rs.)	Pay Band (Rs.)	Grade Pay (Rs.)	
(1)	(2)	(3)	(4)	(5)	(6)
Head Master, ME/ MV/Senior Basic Schools	PB-2 5200-20200	3300	PB-2 14000-49000	8700	
Trained Graduate Teacher	PB-2 5200-20200	2700	PB-2 14000-49000	8700	Irrespective of Arts, Science,

					<i>Commerce Graduate</i>
<i>Untrained Graduate Teacher including Trained Under-Graduate Teacher & Untrained Under Graduate</i>	<i>PB-2 5200-20200</i>	<i>2500</i>	<i>PB-2 14000-49000</i>	<i>6800</i>	
<i>Untrained Teacher</i>	<i>PB-2 5200-20200</i>	<i>2500</i>	<i>PB-2 14000-49000</i>	<i>6200</i>	
<i>Assistant Sub-Inspector of School</i>	<i>PB-2 5200-20200</i>	<i>2500</i>	<i>PB-2 14000-49000</i>	<i>6200</i>	

LP/Junior Basic/Pre-Primary Schools

<i>Name of Post or Service</i>	<i>Existing Pay Scale</i>		<i>Revised Pay Structure</i>		<i>Remarks</i>
	<i>Pay Band (Rs.)</i>	<i>Grade Pay (Rs.)</i>	<i>Pay Band (Rs.)</i>	<i>Grade Pay (Rs.)</i>	
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
<i>Trained Graduate Teacher</i>	<i>PB-2 5200-20200</i>	<i>2700</i>	<i>PB-2 14000-49000</i>	<i>7400</i>	
<i>Untrained Graduate Teacher including Trained Under-Graduate Teacher</i>	<i>PB-2 5200-20200</i>	<i>2500</i>	<i>PB-2 14000-49000</i>	<i>6800</i>	
<i>Untrained Teacher</i>	<i>PB-2 5200-20200</i>	<i>2500</i>	<i>PB-2 14000-49000</i>	<i>6200"</i>	

7. Learned counsels appearing for the petitioners in both these writ petitions have vehemently argued that the action of the State Government of reducing the Grade Pay of the Graduate Teachers working in the LP/Junior Basic/Pre-Primary Schools is illegal, arbitrary and discriminatory. It is contended that the categorization of the Graduate

Teachers working in the LP/Junior Basic/Pre-Primary Schools and of those Teachers working in ME/MV/Senior Basic Schools is without any justification.

It is contended that the decision to reduce the Grade Pay of the Graduate Teachers serving in LP/Junior Basic/Pre-Primary Schools is not permissible under the law and that too without affording an opportunity of hearing to the petitioners particularly when earlier their Pay Structure was at par with the Graduate Teachers serving in Upper Primary Schools.

8. It is further argued that the Graduate Teachers serving in LP/Junior Basic/Pre-Primary Schools are discharging the similar duties as of the Trained Graduate Teachers serving in ME/MV and Senior Basic Schools and in such circumstances, the action of the State Government of reducing the Grade Pay of the Graduate Teachers serving in LP/Junior Basic/Pre-Primary Schools is violative of Article 14 of the Constitution of India.

9. The learned counsels for the petitioners have placed reliance on the decisions of the Hon'ble Supreme Court rendered in ***Divisional Superintendent, Eastern Railway, Dinapur & Ors. -Vs- Shri L.N. Keshri & Ors.***, reported in ***(1975) 3 SCC 1; Greed Corporation of Orissa & Ors. -Vs- Rasananda Das***, reported in ***(2003) 10 SCC 297; Union of India & Ors. -Vs- Jagdish Pandey & Ors.***, reported in ***(2010) 7 SCC 689*** and ***State of West Bengal & Anr. -Vs- West Bengal Minimum***

Wages Inspectors Association & Ors., reported in ***(2010) 5 SCC 225***. Lastly, it is prayed that the impugned Notifications dated 02.07.2018 and 04.08.2018 may kindly be set aside and a direction be issued to the respondent State to fix the Grade Pay of the petitioners as Rs.8700/- instead of Rs.7400/-.

10. Per contra, the learned counsels appearing for the respondents have vehemently opposed the writ petitions and have submitted that the State Government has not committed any illegality in fixing the petitioners' Grade Pay at Rs.7400/- instead of Rs.8700/- pursuant to the recommendations of the Anomaly Committee. It is contended that the Anomaly Committee, after scrutinizing the recommendations made by the previous Pay Commissions and considering the entry qualification required for various categories of posts of Teachers as per the Service Rules, has made a recommendation that there should be different Grade Pay for different categories of L.P. School Teachers in accordance with the ROP Rules, 2010.

It is also contended that the Expert Body, after taking into consideration the various aspects, has recommended for a different Pay Scale for the Graduate Teachers serving in the Pre-Primary Schools and Upper Primary Schools on the logic that the requisite qualification for an Elementary Teacher is under-graduate in the Service Rules and, therefore, they are not entitled for graduate pay.

The recommendations of the Anomaly Committee were made after examining the minimum entry qualification required for various categories of posts of Teachers and the same cannot be questioned without there being strong reasons.

11. It is submitted that the petitioners have failed to demonstrate that the recommendations of the Anomaly Committee are arbitrary or without taking into consideration the various relevant aspects. It is further contended that those Teachers, who were serving in various Schools on the basis of their intermediate qualifications, cannot be termed as Graduate Teachers simply because they had acquired the Graduate Degrees.

12. In support of the above contentions, the learned counsels for the respondents have placed reliance on the decisions of the Hon'ble Supreme Court rendered in the ***S.C. Chandra & Ors. -Vs- State of Jharkhand & Ors.***, reported in ***(2007) 8 SCC 279***; ***Union of India & Ors. -Vs- M.V. Mohanan Nair***, reported in ***(2020) 5 SCC 421*** and a judgment of a Division Bench of this Court in ***Mariamamma Sebastian -Vs- Union of India & Ors.***, reported in ***2009 5 GLR 230***. The respondents have also placed reliance on a decision of the Hon'ble Supreme Court in the case of ***State of West Bengal & Anr. -Vs- West Bengal Minimum Wages Inspectors Association & Ors.***, reported in ***(2010) 5 SCC 225***, on which the learned counsel for the petitioners have also placed reliance. The

learned counsels for the respondents have, therefore, prayed that there is no force in these writ petitions and the same are, therefore, liable to be set aside.

13. On rejoinder, learned counsels appearing for the petitioners have vehemently submitted that the attitude of the respondents is discriminatory *vis-à-vis* the petitioners and the Assistant Teachers serving in various Upper Primary Schools. It is the contention of the petitioners that in some of the Blocks, the Assistant Teachers in the Upper Primary Schools are paid salary as per the Grade Pay of Rs.8700/- as admissible to the Graduate Teachers working in Upper Primary Schools. In support of their contention, the petitioners have placed reliance on a Pay Slip for the month of July, 2023 of one of the Teacher, namely, Mithu Boro, in Block Elementary Education, Chhaygaon.

14. In counter to the above contentions, the learned counsels appearing for the respondents have submitted that the respondents are in knowledge that in some of the Schools, either Pre-Primary Level or Upper Primary Level, the Assistant Teachers are being paid salary as per the Grade Pay of Rs.8700/- and as per the respondents, the same is a fault on the part of the officers. It is further submitted that for that purpose, deliberations are going on in the Department to resolve the said anomaly at the earliest. It is further contended that fixation of Grade Pay of the said Assistant Teacher, as indicated by the petitioners, is illegal and on the basis of the said illegality,

the petitioners cannot claim the relief which would amount to perpetuate the illegality. In support of the above contention, the learned counsels for the respondents have placed reliance on the decision of the Hon'ble Supreme Court rendered in ***Basawaraj & Anr. -Vs- Special Land Acquisition Officer***, reported in ***(2013) 14 SC 81***.

15. We have heard the learned counsel appearing for the parties and have perused the material available on record.

16. It is pertinent to mention here that the service conditions of the petitioners herein are governed by the Assam Elementary Education (Provincialisation) Rules, 1977. The definitions of "Lower Primary School" and "Upper Primary School" are provided in Section 2(x) and 2(xii) of the 1977 Rules, which read as under:

"2(x) 'Lower Primary School' means the School imparting Education up to Class V;

(xii) 'Upper Primary School' means the Institution imparting education upto Class VIII including ME School or MV School or ME Madrasa or Senior Basic School individually or a combination of any two or three of or all the four categories of these institutions."

17. From the facts, it is clear that prior to coming into force of the ROP Rules, 2017, the Pay Scales of Graduate Teachers serving in the LP/Junior Basic/Pre-Primary Schools were fixed in the Pay Band-2 in Pay Scale of Rs.5200/- – Rs.20200/- with the Grade Pay of Rs.2700/-. However, with the coming into force of the

ROP Rules, 2017, their pay structures have been revised and they were placed in Pay Band-2 in the Scale of Pay of Rs.14000/- – Rs.49000/- with a Grade Pay of Rs.8700/-. The Anomaly Committee in its recommendations has recommended to fix the Grade Pay of Rs.7400/- for Graduate Teachers working in LP/Junior Basic/Pre-Primary Schools under Pay Band-2 in the Pay Scale of Rs.14000/- – Rs.49000/-. At this stage, it would apposite to quote the recommendations of the Anomaly Committee in relation to the Grade Pays of Graduate Teachers, which are as follows:-

“Anomaly in Grade pays of Graduate teachers:

The Finance PRU Department has referred the matter relating to pay fixation of teachers of lower Primary and Upper primary schools to anomaly committee. In this connection, the Committee examined the recommendations of the 7th Pay & Productivity Pay Commission contained in Point No ‘1.6(C)’ of Chapter 14 of the Report:

‘The Commission feels that at the level of LP and ME schools there are no justification for differentiating the qualification of science graduate vs-a-vis arts graduate or any other graduate. Accordingly the Commission recommends that the entire graduate teacher in LP and ME schools should have the same GP of Rs.3300. It is further recommended that all other teachers who have under graduate qualification should be put in the GP of Rs.2500.’

In the above recommendation, the 7th APPPC mentioned that there is no justification for differentiating the qualification of Science graduate vis-a-vis arts graduate or any other graduate teacher in case of LP and ME schools. So the Commission recommended pay scale to other trained Graduate teachers at par with the Science Graduate teacher without discrimination.

But the fact is that in case of LP/Junior Basic Schools, there are no Science, Arts or any other graduate posts. These category of posts exist only in ME Schools. The Committee examined the minimum entry qualification required for the various categories of posts of teachers as per existing applicable service Rule. The Minimum qualification of the teachers of LP School is under graduate. Therefore, the scale of pay of graduate teachers prescribed is not justified in case of teachers of LP schools.

The Anomaly Committee carefully scrutinised the recommendations made by previous Pay Commissions and it has been found that ROP Rules 1990 and 1998, there were two categories of pay scale for LP School Teachers i.e. trained teacher and untrained teacher. But under ROP 2010, the LP School teachers have been classified under three categories viz, i) trained graduate teachers, ii) trained under graduate teacher and iii) untrained teachers. The pay scales for these teachers were recommended in the same pay band with different grade pays i.e. grade pay of Rs.2700/- for trained graduate teachers and Rs.2500/- for other two categories of teachers.

Therefore anomaly committee in of the view that there should be different grade pay for different categories of LP schools teachers in accordance with ROP 8 Rule 2010. After careful consideration, the Committee recommends grade pay of Rs.7400/- for trained graduate teachers, Rs 6800/ for untrained graduate teachers including trained under graduate teachers and Rs.6200/- for untrained teachers under ROP Rule. As per information available, at present the senior most Teacher in LP School is allowed to hold charge as in charge Headmaster. There is no specific post of Headmaster for LP School. The Pay scales of head master of LP Schools has to be decided by the Government in administrative Department while creating posts, if considered necessary. Therefore it will be inappropriate for the Anomaly Committee for prescribing any pay scale for the Head Master of LP Schools.

In case of ME and other upper primary Schools, the Anomaly Committee feels that there should be

parity of pay scale amongst all teachers irrespective of streams i.e. Arts, Science, Commerce etc. Therefore, the Anomaly Committee recommends Grade pay of Rs.8700/- to the trained Graduate teachers as applicable to the Science graduate teacher. The Committee also recommends grade pay of Rs 6800/ to the untrained graduate teacher including trained under graduate teacher and untrained undergraduate teacher. The remaining teachers without training shall continue to get grade pay of Rs.6200/-.”

18. While going through the said recommendation, it is culled out that the Anomaly Committee has scrutinized the recommendations made by the previous Pay Commissions in ROP Rules, 1990; 1998 and 2010. The Anomaly Committee has also taken into consideration the fact that in LP/Junior Basic/Pre-Primary Schools, there are no Science, Arts or other Graduate posts and the minimum entry qualification required for Teachers of L.P. Schools is under-graduate. Having gone through the recommendations of the Anomaly Committee, it cannot be said that the same are arbitrary and has been made without considering various aspects, such as the entry qualification, nature of job and the subjects taught in the Schools concerned.

19. It is settled that the recommendations of the Expert Bodies are not liable to be interfered with in routine manner until and unless it is demonstrated that the said recommendations are without any justifications.

20. The Hon'ble Supreme Court in **S.C. Chandra** (supra) has held as under:

“33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen* [(2007) 1 SCC 408].

34.

35.

36. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide *Govt. of W.B. v. Tarun K. Roy* [(2004) 1 SCC 347].

37. Similarly, in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* [(2002) 6 SCC 72] the principle of equal pay for equal work was considered in great detail. In paras 9 and 10 of the said judgment the Supreme Court observed that equation of posts and salary is a complex matter which should be left to an expert body. The courts must realise that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter which is for the executive to discharge. Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences vide *Union of India v. Pradip Kumar Dey* [(2000) 8 SCC 580].”

21. In *West Bengal Minimum Wages Inspectors Association* (supra), the Hon'ble Supreme Court has held as under:

“22. The claim in the writ petition was not based on the ground that subject post and reference category posts carried similar or identical duties and responsibilities but on the contention that as the subject post holders and the holders of reference category posts who were enjoying equal pay at an earlier point of time, should be continued to be given equal pay even after pay revision. In other words, the parity claimed was not on the basis of equal pay for equal work, but on the basis of previous equal pay.

23. It is now well settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts.

24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.”

22. In **M.V. Mohanan Nair** (supra), a 3(three) Judges Bench of the Hon’ble Supreme Court has observed as under:

“32. When the expert body like the Pay Commission has comprehensively examined all the issues and representations and also took note of

inter-departmental disparities owing to varying promotional hierarchies, the Court should not interfere with the recommendations of the expert body. When the Government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the Court would have a serious impact on the public exchequer.

33. Observing that it is the function of the Government which normally acts on the recommendations of the Pay Commission which is the proper authority to decide upon the issues, in *Union of India v. P.V. Hariharan*, (1997) 3 SCC 568, it was held as under : (SCC pp. 570-71, para 5)

‘5. ... It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of ‘equal pay for equal work’ is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to

pay scales i.e. matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member.'

34. Observing that the decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review, in *State of U.P. v. U.P. Sales Tax Officers Grade II Assn.* (2003) 6 SCC 250], the Supreme Court held as under : (SCC p. 253, para 11)

'11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees.'

35. In *State (NCT of Delhi) v. Grade-I Dass Officers' Assn.* (2014) 13 SCC 296, the Supreme Court refused to interfere with the ACP Scheme as it would violate government policy and since exercise of judicial review would not be proper, upheld the ACP Scheme and the conditions therein.

36. In *State of T.N. v. S. Arumugham* (1998) 2 SCC 198, the Supreme Court has observed that the Government has the right to frame a policy to ensure efficiency and proper administration and to provide to suitable avenues for promotion to officers working in different department. The Supreme Court has further observed that the Tribunal cannot substitute its own views for the views of the Government or direct new policy based on the views of the Tribunal.

37. Observing that fixation of pay and determination of responsibilities is a complex matter which is for the executive to take a decision, the Courts should approach such matters with restraint, in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* (2002) 6 SCC 72, the Supreme Court held as under : (SCC pp. 79-80, para 10)

'10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. ... That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the Court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.'

(emphasis supplied)

38. The prescription of pay scales and incentives are matters where decision is taken by the Government based upon the recommendation of the expert bodies like the Pay Commission and several relevant factors including financial implication and court cannot substitute its views. As

held in Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72, the Court should approach such matters with restraint and interfere only when the Court is satisfied that the decision of the Government is arbitrary. Even in a case where the Court takes the view that order/scheme passed by the Government is not an equitable one, ordinarily only a direction could be given to the State Government or the authority for consideration of the matter and take a decision. In the present batch of cases where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP Scheme granting financial upgradation in the next grade pay is arbitrary and unjust; warranting interference. The implementation of the MACP Scheme is claimed to have led to certain anomalies; but as pointed out earlier, MACP Scheme itself is not under challenge.”

23. Recently, the Hon’ble Supreme Court in the case of **State of Uttar Pradesh & Anr. -Vs- Virendra Bahadur Katheria & Ors.**, reported in **2024 SCC OnLine 1712** has held as under:

“53. It needs no emphasis that prescription of pay scale for a post entails Policy decision based upon the recommendations of an expert body like Pay Commission. All that the State is obligated to ensure is that the pay structure of a promotional or higher post is not lower than the feeder cadre. Similarly, pay parity cannot be claimed as an indefeasible enforceable right save and except where the Competent Authority has taken a conscious decision to equate two posts notwithstanding their different nomenclature or distinct qualifications.”

24. So far as the contention of the learned counsels for the petitioners that some of the Assistant Teachers working in the Upper Primary Schools are fixed in the

Grade Pay of Rs.8700/- is concerned, the learned counsels for the respondents have admitted that the said fixation of the Grade Pay of the Assistant Teachers is erroneous and illegal and the same is to be looked into by the respondents. However, the petitioners cannot claim the similar treatment given to some employees erroneously in illegal manner as it may amount to perpetuate the illegality.

25. The Hon'ble Supreme Court in **Basawaraj** (supra) has observed as under:

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745], Anand

Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164], K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455].)

26. A Division Bench of this Court in **Mariamman Sebastian** (supra) has declined to grant relief to a Junior Teacher who was claiming higher Grade Pay on the basis of his qualification of graduation while observing as under:

“8. Taking note of the submissions made by Dr. Singh, now the point that falls for consideration before us is as to whether the petitioner is entitled to be paid the pay scale of trained graduate teacher.

Admittedly, the petitioner was not appointed as trained graduate teacher. The petitioner might have had the qualification of graduation with B. Ed. degree, but unless she is appointed to the related post of trained graduate teacher merely by having higher qualifications, she is not entitled to get the benefit of higher pay scale prescribed for such higher post. It is further noticed that the required qualification for Junior Teacher is intermediate or 10+2 standard and not graduate. The petitioner was appointed to the substantive post of Junior Teacher. It is the case of the respondents that the categories of post as trained graduate teacher is not available in the establishment of Assam Rifles. The petitioner having been appointed to the substantive post in the cadre of Junior Teacher and the posts of Junior Teacher and the trained graduate teacher being in different cadre and category, in our considered opinion, the claim of the petitioner is misplaced and she is not entitled to claim the pay scale of trained graduate teacher.”

27. The same situation exists in the present cases where the petitioners were appointed on the posts of Teacher in the LP/Junior Basic/Pre-Primary Schools or even in the Upper Primary Schools considering their qualification

as under-graduate and, therefore, the claim of the petitioners of a higher Grade Pay on the basis of their qualification of graduation cannot be accepted.

28. So far as the judgments on which the learned counsels for the petitioners have placed reliance are concerned, the same are of no help to the petitioners for the following reasons.

(i) In *Divisional Superintendent, Eastern Railway, Dinapur* (supra), the Hon'ble Supreme Court has held the action of the employers of reducing the Pay Scale of its employees as illegal on the ground that no opportunity was granted to them before doing so. However, in the present cases, this is not the position because the Anomaly Committee has considered the grievances of the individuals/Employees' Associations in detail and has thereafter submitted its recommendations.

(ii) In *Greed Corporation of Orissa* (supra), the Hon'ble Supreme Court has disapproved the action of the employer of depriving its employees from higher Pay Scale after attaining the age of 58 years on the ground that the service conditions of those employees were protected under Section 60 of the concerned Regulations. However, no such protection is available to the petitioners in the present cases.

(iii) In *Jagdish Pandey* (supra), the Hon'ble Supreme Court has held that the Pay Scale of an employee

cannot be varied until and unless valid and proper reasons are there. In the present cases, the Anomaly Committee has recommended for variation in the Pay Scale of the Graduate Teachers working in LP/Junior Basic/Pre-Primary Schools while giving reasons, which in our opinion, are just.

(iv) In *West Bengal Minimum Wages Inspectors Association* (supra), the Hon'ble Supreme Court has categorically held that the higher Pay Scale or lower Pay Scale is required to be fixed while taking into consideration the nature of duties and functions attached to the posts and mere fact that on earlier point of time 2(two) posts were carrying the same Pay Scale does not mean that after the implementation of the revision in the Pay Scales, they should necessarily have the same revised Pay Scale.

29. In the present cases, one of the claim of the petitioners is that with the coming into force of the APPPC Rules, 2017, their Pay Scale was fixed at par with the Graduate Teachers working in the Upper Primary Schools and the same cannot be varied by the State as the same is not permissible under the law but as held by the Hon'ble Supreme Court that simply because earlier the 2(two) posts were carrying the same Pay Scale does not mean that after implementation of the revision in the Pay Scale, they should necessarily have the same revised Pay Scale, the said claim of the petitioners cannot be accepted.

30. In view of the above discussions, we do not find any merit in these writ petitions, the same are, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant