

**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWPOA No.8076 of 2019
Reserved on: 16.06.2026
Announced on: 08.10.2026.

Shashi Pal Thakur and others

...Petitioners

Versus

State of Himachal Pradesh and others

...Respondents

Coram:

Hon'ble Mr. Justice Vivek Singh Thakur, Judge

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting? Yes.*

For the petitioners: Mr. K. S. Banyal, Senior Advocate
with Mr. Uday Singh Banyal,
Advocate.

For the respondents: Mr. Ramakant Sharma, Additional
Advocate General for Respondents-
State.

Ranjan Sharma, Judge

Petitioner, Shashi Pal Thakur and 57
others, being Health Educators in Health Department
of the Respondent-State, initially filed an Original
Application No 4590 of 2016, before Learned State
Administrative Tribunal and after abolition of Tribunal,
the matter stood transferred to this Court as CWPOA
No 8076 of 2019, seeking the following reliefs:

“(i) That the impugned Notification dated

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

30.01.2016 Annexure A-1 may very kindly be set-aside and further direct the respondents to revise the Grade Pay of the applicants to Rs 5000/- w.e.f. 01.01.2006 with all consequential benefits.

- (ii). That the entire record of this case including other categories of the Health Department may kindly be ordered to be summoned for the kind perusal of this Hon'ble Tribunal for an appropriate adjudication of the matter.
- (iii). That the respondents be directed to bear the cost of this Original Application as this litigation is a result of their omission and commission. They have failed to give justice to its employees. Respondents No. 2 and 3 were aware about the scale, qualification and inter-se hierarchy of different categories and their duties and responsibilities. Para 6(a) to (g) supra clearly depicts the injustice done to the category of the applicants who have been given lowest Grade Pay inspite of the fact that they were more qualified, experienced and having more job responsibility than other categories, which ultimately resulted in the present litigation.

FACTUAL MATRIX:

2. Case as set up by Learned Senior Counsel is that the petitioners possess the qualifications of Graduate and Diploma in Health Education from a recognized University or Institute and by virtue of these qualifications, petitioners being eligible had a right to be considered for appointment/promotion to posts of Health Educators in health department of the Respondent State in terms of the Recruitment and Promotion Rules of Health Educators notified on 29.10.1999, ***Annexure A-2***, {referred to as the ***Rules for the posts of Health Educators***}, in the pay-scale of Rs 5800-9200. It is averred that after due selection, in terms of the R & P Rules of 1999, the petitioners were appointed/promoted as Health Educators in pay scale of Rs 5800-9200 and after the revision of pay scales in terms of the Himachal Pradesh Civil Services [Revised Pay] Rules notified on 26.08.2009, ***Annexure A-3***, applicable w.e.f. 01.01.2006 {referred to as the ***Revised Pay Rules of 2009***}, and Conversion Table in the Schedule to these Rules,

the pay-scale of Health Educators was revised from Rs 5800-9200 to Rs 10300-34800 + 3800 Grade Pay w.e.f. 1.1.2006; and thereafter on issuance of the Himachal Pradesh Civil Services (Category/Post-wise Revised Pay) Rules on 24.09.2012 **{referred as the Re-revised Pay Rules of 2012}**, **Annexure A-12**, the pay scale of other categories of employees of the Respondent-Health Department, Senior Laboratory Technicians and Ward Sisters {who were in the lower revised pay scale of Rs 10300-34800 + 3800 GP w.e.f. 1.01.2006} were given the re-revised pay scale of Rs 10300-34800 + 4800 GP w.e.f. 1.9.2014, **Annexure A-7**, whereas, the benefit of the re-revised pay scale under the Re-revised Pay Rules of 2012 was initially not granted to the petitioners-Health Educators at the relevant time.

2(i). It is averred that in addition to the categories spelt out in Para 2 supra, there existed category of Female/Male Health Supervisors [later re-designated as Male/Female Multipurpose Health Supervisors] **[referred to as the feeder category]**

and the State Authorities notified the Recruitment and Promotion Rules for this category on 12.10.1999, **Annexure A-6**, giving them the pay scale of Rs 5480 -8925 w.e.f. 01.01.1996, which was revised to Rs 10300-34800+3600 GP w.e.f. 1.1.2006 in terms of the HPCS Revised Pay Rules notified on 26.08.2009, **Annexure A-3**, and this pay scale was Re-revised under Re-revised Pay Rules dated 24.09.2012, by issuing notification on 28.09.2012, **Annexure A-12**, to Rs 10300-34800+4200 GP w.e.f. 1.10.2012. It is averred that the category of Male Health Supervisors [redesignated as Male/Female Multipurpose Health Supervisors] were included in the feeder category in promotional cadre of Health Educators to extent of 75% posts as per the Recruitment and Promotion Rules notified by the State Government on 29.10.1999, **Annexure A-2**.

2(ii). It is further averred that on 01.10.2012, an anomaly in pay arose between the pay of the feeder post holders and the promotional post holders whereby, feeder category incumbents i.e. Female/

Male Health Supervisors, [redesignated as Male/Female Multipurpose Health Supervisors] who were in revised pay scale of Rs 10300-34800+3600 GP w.e.f. 1.1.2006. were later given the Re-revised pay scale of Rs 10300-34800 + 4200 GP w.e.f. 1.10.2012 under the HPCS Re-revised Pay Rules of 2012 by issuing Notification on 28.09.2012, Annexure A-12, *whereas, on the other hand*, the petitioners, who were holders of higher-promotional post of Health Educators, who were given the revised pay scale of Rs 10300-34800 + 3800 GP w.e.f. 1.1.2006 were neither considered nor granted the benefit of the re-revised pay scale/structure under the Re-revised Rules w.e.f. 01.10.2012 resulting in giving less pay to the petitioners, who were holders of promotional posts while giving higher pay to incumbents holding feeder posts.

2(iii). Feeling aggrieved against the inaction of neither considering nor granting proportional higher grade pay w.e.f. 01.10.2012, the petitioners submitted representation to the State Authorities on 23.01.2014

Annexure A-9, on which the matter was processed and even Respondent No 3-Director Health Services after convening a meeting with the Association of Health Educators on 17.07.2015, referred the matter to the Respondent No 2-Additional Chief Secretary (Health) on 14.08.2015, **Annexure P-13**, to examine the claim of petitioners for removing the anomaly. For this purpose, an Expert Committee was constituted and respondents forwarded a Proposal-Memorandum No. Fin-(PR)-B(7)-64/2010-II-Loose undated **Annexure A-10**, admitting that an anomaly in pay existed between the pay of the petitioners-Health Educators vis-à-vis the holders of lower-feeder post and post of Health Educator did not exist in State of Punjab and once the lower-feeder post holders i.e. Male/Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] were given the re-revised pay of Rs 10300-34800 + 4200 GP w.e.f. 1.10.2012 therefore, the petitioners-Health Educators may be given the benefit of the re-revised pay of Rs 10300-34800+ 4200 GP with prospective effect. It

is averred that the proposal [as contained in the memorandum Annexure A-10], was placed before an Expert Committee consisting of Additional Chief Secretary [Finance], Special Secretary [Finance] and Controller [F & A] and **Expert Committee submitted report on 20.10.2015 [at page 81 of paper book, part of Annexure A-10],** *admitting anomaly, as the feeder post holders of Male/Female Health Supervisors [redesignated as Multipurpose Health Supervisors] were given the higher rerevised pay structure of 10300-34800+4200 GP w.e.f. 1.10.2012 whereas petitioners-Health Educators-holders of higher-promotional posts were granted lower pay structure of 10300-34800 + 3800 GP w.e.f 01.01.2006. The Expert Committee recommended to grant the re-revised pay structure prospectively with further recommended that in the event of granting an equivalent pay structure to petitioners-Health Educators as granted to the feeder post then, it was advised to amend the Recruitment and Promotion Rules for post of Health Educators, by changing the nomenclature from promotion to*

placement, by placing these recommendations for consideration and approval of the State Cabinet and State Cabinet in its meeting held on 14.01.2016 approved the Report-recommendations made by the Expert Committee on 15.01.2016 [at page 75 of the paper book]. Sequel to this, the Respondent No 1-Additional Chief Secretary [Finance] issued the Notification on 30.01.2016, **Annexure A-1**, granting re-revised pay scale of Rs 10300-34800 + 4200 GP to the petitioners-Health Educators w.e.f. 01.02.2016.

The petitioners have prayed for quashing and setting aside the Notification dated 30.01.2016 [Annexure A-1] granting the Grade Pay of Rs 4200 in the re-revised pay structure of Rs 10300-34800+ 4200 GP w.e.f. 01.02.2016 to the petitioners-Health Educators i.e. holders of higher-promotional posts under HPCS Re-revised Pay Rules of 2012, whereas, same very Grade Pay of Rs 4200 in the re-revised pay structure of Rs 10300-34800+ 4200 GP was given to holders of lower-feeder post holders i.e. Male /Female Health Supervisors [redesignated as

Multipurpose Health Supervisors] from an earlier date w.e.f. 1.10.2012 under HPCS Re-revised Pay Rules 2012 as per Notification issued on 28.09.2012, Annexure A-12; with the prayer to give proportional higher re-revised grade pay to the petitioners-Health Educators, over and above the Grade Pay of Rs 4200 to petitioners w.e.f. 1.10.2012 as was granted to feeder post holders and to various other categories in Respondent Department and in other government departments under the HPCS Re-revised Pay Rules 2012 ; with prayer to allow the writ petition with all consequential benefits.

STAND OF STATE AUTHORITIES IN REPLY-AFFIDAVIT:

3. Pursuant to the issuance of notice, the State Authorities-Respondents 1 to 3 filed the Reply -Affidavit dated 11.01.2017 of Director Health Services, Himachal Pradesh.

3(i). In Reply-Affidavit the claim of petitioners-Health Educators has been opposed on the ground that Respondent-State Authorities is under no legal obligation to follow the pattern of pay scales existing

in other States. It is averred that in terms of the judgements passed by the Hon'ble Supreme Court in cases of P.U. Joshi and others vs Accountant General, Ahmadabad and others (2003) 2 SCC 632 and Union of India and others vs Basudeba and others (2003) 2 SCC 632, prescription of pay scales and determination of service conditions lie exclusively within the realm of the Government. It is further averred that Courts should not interfere in the grant of pay scale or pay fixation or parity in terms of the judgements passed by this Court in Chamera Hydroelectric Project vs Labour Court and another Latest HLJ 2004 (HP) 212 and judgement passed by the Hon'ble Supreme Court in Shiba Kumar Dutta and others vs Union of India and others (1997) 3 SCC 545 and the judgement passed in LPA 146/2013 State of Himachal Pradesh and others vs Navneet Gupta and the judgement of this Court in LPA No 11 of 2012 titled as State of Himachal Pradesh vs Pratap Thakur decided on 22.09.2014 with the plea that equation of posts with similar nomenclature

-designation or similar duties is not subject to judicial review.

3(ii). Reply-Affidavit states in Para 5 that there is no parity between the category of the petitioners who are Health Educators vis-à-vis other categories of Senior Laboratory Technicians/Ward Sisters and Male Health Supervisors and merely because these posts carried the same pay scale at one point of time therefore, the claim for parity is not tenable in terms of the judgements in the cases of Steel Authority of India Ltd. and others vs Dibyunda Bhattacharya, AIR 2011 SC 897, State of Madhya Pradesh and others vs Ramesh Chandra Bajpai, (2009) 13 SCC 635, State of West Bengal vs West Bengal Minimus Wages Inspector Association, (2010) 5 SCC 225.

3(iii). Reply-Affidavit states in Para 6 to 8 that State Government constituted an Expert Committee on 13.07.2012 to consider the case relating to the revision of pay scales recommending to grant the re-revision to the State Government employees and

resultantly Himachal Pradesh Civil Services (Category /Post-wise Revised Pay) Rules 2012 were notified on 24.09.2012. It is averred that State Government decided in principle that the benefit of re-revised pay scale/ pay-structure /any financial benefit shall be given prospectively. It is averred that the State Government has extended the benefit of re-revised pay scale/structure to 41 different departments from 01.10.2012 and therefore prescription of cut-off date for giving this benefit lies within the realm of State Government and it cannot be claimed retrospectively.

3(iv). Reply Affidavit states that State Government gave the re-revised pay scale-structure of Rs 10300 -34800 + 4200 Grade Pay to the petitioners-Health Educators w.e.f. 01.02.2016 from prospective effect at par with the re-revised pay structure and grade pay as was given to the feeder post holders i.e. Male/Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] after approval of State Cabinet.

3(v). Reply states in Para 9 of the Preliminary

Submission and Para 6(1) of the reply on merits that as per Rule 8 of the HPCS (Category/Post-wise Revised Pay) Rules 2012, the pay rules have overriding effect over Recruitment and Promotional Rules [Annexure A-2] and in view of the overriding effect of the re-revised rules, the petitioners have no right with respect to the claims raised in the instant petition to seek higher grade pay benefits vis-à-vis feeder category. Reply-Affidavit states in Para 6 that equation of posts or the prescription of pay scales has to be considered on several factors, such as, source of appointment, recruitment, qualifications, nature of work, value thereof, the responsibilities, reliabilities, experience, confidentiality, functional need of feeder and promotional category, etc. and based on these factors the petitioners-Health Educators have been given the re-revised pay band and grade pay on 30.01.2016 [Annexure A-1] w.e.f. 01.02.2016. In this backdrop, prayer is made for dismissing the writ petition.

REBUTTAL BY PETITIONERS:

4. Petitioners filed a rejoinder denying the averments made in Reply-Affidavit. It was averred that even after granting the re-revised scale of Rs 10300-34800+4200 GP w.e.f. 01.02.2016, anomaly in pay still existed in pay of the petitioners-Health Educators (holding higher-promotional posts vis-à-vis the holders of feeder-lower posts of Male/Female Health Supervisors [redesignated as Multipurpose Health Supervisors] by giving same re-revised pay structure to unequal and dissimilar. It was averred that the petitioners were not seeking parity in pay with other categories of employees i.e. Senior Laboratory Technician, or Ward Sisters, or Male/Female Multipurpose Health Supervisors, TGTs etc.

4(i). It was averred that the petitioners have questioned decision making process in prescribing different cut-off dates for giving re-revised pay scales and this action defeats the object/intent of granting Re-revised scales. It is contended that the operation, scope, applicability and the rights accruing under the Recruitment and Promotion Rules notified under

the provisio to Article 309 can neither be curtailed, restricted, whittled down in any manner nor can Statutory Rules be supplanted by a mere executive decision taken by State Cabinet and then notified on 30.01.2016 [Annexure A-1]. It was contented that nomenclature of the post of the petitioners-Health Educators, being a promotional post, in Recruitment and Promotion Rules notified under the provisio to Article 309 on 18.11.1999, Annexure A-2, cannot be changed from “promotion to placement” without amending the Statutory Rules of 1999 and when, no amendment in the Rules has been carried out till July 2021, in view of the fact that as per the office order dated 02.07.2021, **Annexure P-15**, feeder category incumbents i.e. Male/Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] were promoted as Health Educators and such feeder category incumbents were allowed to avail promotional increments under Fundamental Rule 22 (1) (a) (i) also.

4(ii). It was contented that Rule 8 of the HPCS

Re-revised Pay Rules has been misconstrued by State Authorities. It was contented that Rule 1(ii) and Rule 9 of the HPCS Re-revised Pay Rules of 2012, enabling the State Authorities to notify the Schedule and to prescribe the cut-off date from which the re-revised pay scale/pay structure was to be granted to its employees, yet, State Authorities *cannot pick and choose the prescription of cut-off dates* for giving the re-revised pay structure when, the object of granting the Re-revised Pay Structure and enhanced Grade Pay] is common to all the categories/posts irrespective of departments, so as to ensure better service conditions and also to bring efficiency in service, in lieu of stagnation on the same post-scale-grade pay to employees, who have rendered two years regular service, which is clearly borne out from the Notification issued on 27.09.2012 whereby, the re-revised pay scale was given to 26 categories {Taken on record} and as per Notification issued on 28.09.2012, **Annexure A-12**, was given to 14 categories {including feeder category incumbents}

in respondent-Health department w.e.f. 01.10.2012,
whereas, the petitioners were given the re-revised pay scale by issuing a Notification on 30.01.2016 [Annexure A-1] w.e.f. 01.02.2016; and the action of the State Authorities in carving out different dates for releasing the Re-revised Pay benefit under the Common Re-revised Pay Rules of 2012 and the differential treatment meted out to the petitioners by giving the re-revised pay scale to them from 01.02.2016 while giving the re-revised pay benefit to others categories, including feeder category and other lower categories from 01.10.2012, is not based on any classification and the differential treatment meted to petitioners by granting the benefits belatedly has no object which is sought to be achieved.

It is contented that the belated release of re-revised pay benefit to the petitioners, by resorting to pick and choose criteria is alleged to be discriminatory, unreasonable, defeating the intent and the object behind the grant of the re-revised pay was bad in law. In this backdrop, it contented that the decision

making process, which has led to gross anomaly in pay of the petitioners, despite being holders of higher-promotional post was alleged to be arbitrary, illegal and unconstitutional and the claims made in writ petition were reiterated.

**COMPLIANCE AFFIDAVIT FILED BY STATE
AUTHORITIES IN TERMS OF ORDERS DATED
29.12.2025 AND REBUTTAL-COUNTER THERETO:**

5. Upon listing of the matter on 29.12.2025 this Court directed the State Authorities to file an affidavit detailing the job profile of the feeder-lower post of Male/Female Multipurpose Health Workers and the job profile for the posts of Male/Female Health Supervisor [later redesignated as Multipurpose Health Supervisors] and the job profile of higher-promotional posts of Health Educators, being held by the petitioners- Health Educators within a week.

5(i). In compliance to orders dated 29.12.2025, the State Authorities filed a Supplementary Affidavit dated 05.01.2026, detailing the job profile of all three categories i.e. the foundational category of Male /Female Health Workers; and the feeder category

of Male/Female Health Supervisors, who were later re-designated as Multipurpose Health Supervisors and promotional-higher category of petitioners-Health Educators, is placed on record as **Annexure R-3/A (colly)**.

5(ii). Petitioners filed a counter affidavit thereto by reiterating their claim.

6. Heard, Mr. K.S. Banyal, Learned Senior Advocate assisted by Mr. Uday Singh Banyal, Advocate for the petitioners and Mr. Ramakant Sharma Learned Additional Advocate General, for the Respondents.

CONTENTIONS OF LEARNED SENIOR COUNSEL FOR PETITIONERS:

7. Learned Senior Counsel for the petitioners contends that the decision making process and the resultant decision borne out from the Impugned Notification issued on 30.01.2016 [Annexure A-1], in granting benefit of the re-revised pay scale-structure, under the HPCS Re-revised Pay Rules of 2012 to the category of the petitioners-Health Educators of Rs 10300-34800+4200 GP w.e.f. 01.02.2016 is be unsustainable, for the reason, firstly, the Impugned

Notification giving the same re-revised pay structure to the feeder post holders and the promotional post holders-petitioners is illegal; and secondly, the decision making process in equating the promotional post holders-petitioners-Health Educators *with* lower -feeder post holders-Male/Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] despite the two posts having wholesale dissimilarity and unequal in all respects is illegal; and thirdly, the decision making process undertaken by alleged Expert Committee in changing the nomenclature of the post held by the petitioners-Health Educators from “promotion to placement” and Recommendation made by the Committee on 20.10.2015 [at page 81 -82 of paper book] ignoring wholesale dissimilarity in both the posts, and yet, in placing the said recommendations before State Cabinet on 14.01.2016 leading to approval on 15.01.2016 and the action of ipso-facto implementing the said report/decision, by issuing the Impugned Notification on 30.01.2016, Annexure A-1, and even the decision making process

in implementing the said recommendations/approval but without satisfying the pre-conditions expressly mandated in said recommendations/ report and that too without amending the Statutory Rules notified on 18.11.1999, Annexure A-2 is illegal; and *fourthly*, action of the State Authorities in adopting a pick and choose criteria, for giving the re-revised pay scales defeats the very object of HPCS Re-revised Pay Rules of 2012, which is common to all categories/posts irrespective of departments and with this object, once the re-revised pay scale was given to 26 other categories w.e.f. 01.10.2012 by issuing a Notification on 27.09.2012 and then to 13 other categories in the Respondent-Health on 28.09.2012, Annexure A-12, and therefore, the grant of benefit to the petitioners belatedly on 30.01.2016 [Annexure A-1] w.e.f. 01.02.2016 is unconstitutional; and *fifthly*, the provision of Rule 1 (ii) and Rule 9 of HPCS Re-revised Pay Rules of 2012 conferring unfettered, uncanalised, unbridled and unrestricted discretion to prescribe cut-off dates, by notifying the

Schedule, for giving re-revised pay scales to employees is arbitrary, discriminatory illegal; and sixthly, Rule 8 of the HPCS Re-revised Pay Rules of 2012 has been misconstrued by the State Authorities; and contentions raised in reply-affidavit are ill-founded as discussed hereinafter; and therefore, the Impugned Notification issued on 30.01.2016 [Annexure A-1] may be directed to be modified by giving an appropriate proportional higher re-revised pay structure and Grade Pay to the petitioners-Health Educators, over and above the re-revised pay structure and grade pay of Rs 4200 w.e.f. 1.10.2012 as was granted to feeder post holders and to other categories in the Respondent Department and also to various other categories in other government departments under Re-revised Pay Rules of 2012 from 01.10.2012, with prayer that the decision making process undertaken by ignoring relevant considerations and in issuing resultant Notification on 30.01.2016, Annexure A-1, by changing the nomenclature of post of petitioners-Health Educators from promotion to placement dehors

the extant Statutory Rules is arbitrary and illegal with prayer to grant a proportional higher re-revised pay scale and grade pay, over and above the pay scale and grade pay of feeder category from the date it was given to feeder post incumbents and others w.e.f. 01.10.2012 instead of giving it to promotional post holders-petitioners belatedly w.e.f. 01.02.2016, with all consequential benefits.

STATUTORY RULES AND NOTIFICATIONS

8. For appreciating the controversy, it is necessary to have a recap of Statutory Recruitment and Promotion Rules for posts of Health Educators **[i.e. Promotional Post]** dated 29.10.1999/18.11.1999, Annexure A-2 ; **and** the Recruitment and Promotion Rules for posts of Male/Female Health Supervisors, later redesignated as Multipurpose Health Supervisors **[Feeder-Lower Posts]** dated 12.10.1999, Annexure A-6; **and** the Himachal Pradesh Civil Services (Category /Post-wise Revised Pay) Rules notified on 24.09.2012 **[referred to as the Re-revised Pay Rules of 2012]** giving the re-revised pay to its employees ; **and**

Notification dated 30.01.2016, Annexure A-1, giving re-revised pay scale of Rs 10300-34800+4200 GP w.e.f 01.02.2016 to the category of the petitioners-Health Educators [promotional post holders]; ***and the*** Notification dated 28.09.2012, Annexure A-12, giving the re-revised pay scale of Rs 10300-34800+4200 GP w.e.f 01.10.2012 to Male/Female Health Supervisors, who were later redesignated as Multipurpose Health Supervisors [feeder post holders] and to 13 other categories of the Respondent-Health department by same notification; ***and*** Notification dated 27.09.2012, giving the revised pay scales under Re-revised Pay Rules w.e.f. 01.10.2012 to 26 other categories reads as under:-

STATUTORY RULES FOR POSTS OF HEALTH EDUCATORS-PROMOTIONAL POST-PETITIONERS:

8(i). Respondents-State notified the Recruitment and Promotion Rules for post of Health Educators on 29.10.1999/18.11.1999 [Annexure A-2], being a ***“promotional post”*** consisted of 77 posts and the strength was increased to 85 posts. Rule 4 stated that pay scale of post of Health Educator was Rs

5800-9200. As per Rule 7, in the case of direct recruitment, these posts were to be filled up from persons possessing Bachelor's Degree and Diploma in Health Education or equivalent from recognized University or Institute. Rule 10 provides that posts of Health Educator were to be filled up 75% by promotion and 25% by direct recruitment and Rule 11 states that in case of promotion, posts were to be filled from Male Health Supervisors /Female Health Supervisors who possess Diploma in Health Education with five years regular service or regular combined with continuous adhoc service, failing which by promotion from Male/Female Health Workers/ Cinema Technicians who possess Diploma in Health Education with 10 years regular service or regular combined with continuous adhoc service. Relevant extract of Rules for post of Health Educators, read as under:-

ANNEXURE A-2
29.10.1999/18.11.1999

Recruitment and Promotion Rules for the **post of Health Educator** [Non-Gazetted], Class-III in the Department of Health and Family Welfare, Himachal Pradesh.

1.	Name of the post	Health Educator
2.	Number of posts	77 (Seventy Seven)
3.	Classification	Class-III (Non-Gazetted)
4.	Scale of Pay	Rs 5800-200-7000- 220-8100-275-9200
5 to 6	...not relevant..	
7.	Minimum educational and other qualification required for direct recruits.	Essential Qualification: (i). Bachelor's Degree or its equivalent from a recognized university. (ii). Diploma in Health Education or its equivalent from a recognized University or institute duly recognized by the Central /State Government.
10.	Method of recruitment whether by direct recruitment or by promotion, deputation, transfer and the percentage of vacancies to be filled in by various methods	(i) 75% by promotion. (ii). 25% by direct recruitment.
11.	In case of recruitment by promotion, deputation, transfer, grade from which promotion/deputation/transfer is to be made.	By promotion from amongst the Male Health Supervisor/ Female Health Supervisors who possess Diploma in Health Education with five years regular service or regular combined with

		continuous adhoc (rendered upto 31.3. 1998) service, if any, in the grade failing which by promotion from amongst the Male Health Workers/ Female Health Workers/Cinema Technicians who possess Diploma in Health Education with 10 years regular service or regular combined with continuous adhoc (rendered upto 31.3.1998) service, if any in the grade;
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**STATUTORY RULES FOR POSTS OF MALE/
FEMALE HEALTH SUPERVISORS [RE-DESIGNATED
AS MULTIPURPOSE HEALTH WORKERS]-FEEDER
-LOWER POST:**

8(ii). State Authorities notified the Recruitment and Promotion Rules for the post of Male Health Supervisors notified on 12.10.1999 [Annexure A-6], being a **“feeder-post”** for post of Health Educator. Rule 4 prescribes that post is in the pay scale of Rs 5480-8925. As Rule 10, this post was to be filled 100% by promotion from Male Multipurpose Health Workers, who have undergone six months training of Male Health Supervisor from a recognized training

Institute and possess five years of regular service or regular combined with continuous adhoc service in the grade. Relevant extract of the Rules for post of Male Health Supervisor, read as under:-

ANNEXURE A-6
Dated: 12.10.1999

Recruitment and Promotion Rules for the **post of Male Health Supervisor** [Non-Gazetted], Class-III in the Department of Health and Family Welfare, Himachal Pradesh.

1.	Name of the post	Male Health Supervisor
2.	Number of posts	325 [Three hundred and Twenty-five]
3.	Classification	Class-III [Non-Gazetted]
4.	Scale of pay	Rs. 5480-160-5800-200-7000-220-8100-8925
8.	Whether age and educational qualifications prescribed for direct recruitments will apply in case of promotes	Age: Not applicable. Education Qualification: Not applicable.
10.	Method of recruitment whether by direct recruitment or by promotion, deputation, transfer and the percentage of vacancies to be filled in by various method.	100% by promotion.

11.	In case of recruitment by promotion, deputation, transfer, grades from which promotion / deputation /transfer is to be made	By promotion from amongst the Male Multipurpose Health Workers who have undergone six months training in Male Health Supervisor from a recognized training school /institute and possess five years regular service or regular combined with continuous adhoc [rendered upto 31.3.1998] service, if any, in the grade.
12 to 18	...not relevant...	

HPCS (CATEGORY/POST WISE REVISED PAY) RULES - REREVISED PAY RULES OF 2012:

8(iii). While working as such, State Authorities notified Himachal Pradesh Civil Services (Category/ Post-wise Revised Pay) Rules on 24.09.2012 ***[referred to as the Re-revised Pay Rules 2012]*** giving the re-revised pay scales to its employees from the date mentioned in Column No 6 of the Schedule to be notified by State Authorities; and relevant extract of Re-revised Pay Rules of 2012 read as under:

GOVERNMENT OF HIMACHAL PRADESH FINANCE
(PAY REVISION) DEPARTMENT

NOTIFICATION

No. Fin(PR)-B(7)-64/2010-loose Dated: **24.9 2012.**

In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, is pleased to make the following rules, namely:-

1. Short title and commencement:

- (i) These rules may be called the **Himachal Pradesh Civil Services (Category /Post-wise Revised Pay) Rules, 2012.**
- (ii) They shall come into force with effect from the **date as mentioned in Column 6 of the "Schedule"** appended to these rules.

2. Application:

Save as otherwise expressly provided by or under these rules; they shall apply to only such categories of Himachal Pradesh Government employees as mentioned in the aforesaid Schedule;

Provided that the Himachal Pradesh Civil Services (Revised Pay)Rules, 2009 notified vide No. Fin-(PR)B(7)-1/2009 dated: 26th August, 2009 and subsequent amendments thereto shall not apply to the category/ post of employees as mentioned in the 'Schedule' with effect from the date mentioned in Column No. 6 of the said Schedule.

4. Drawl of pay in the different Pay Structure:

Save as otherwise provided in these rules, a government employee shall draw pay in the respective pay structure applicable to

the post to which he is an appointee as on the date of commencement of these rules or thereafter.

5. to 7. ...not relevant...

8. Overriding effect:

The provisions of **Fundamental Rules** and various orders issued thereunder, from time to time, and the **Himachal Pradesh Civil Services (Revised Pay) Rules, 2009, as well as various orders issued thereunder** by the Himachal Pradesh Government with regard to pay revision & fixation of pay shall not save as otherwise provided in these rules, apply to cases where pay is regulated under these rules, to the extent they are inconsistent with these rules.

9. Power to amend the Schedule:

The **Government, may by notification, add to or delete** from the Schedule any entry or otherwise amend the Schedule, and thereupon the Schedule shall be deemed to have been amended accordingly.

10. Power to relax:

Where the Government is satisfied that the operation of these rules causes undue hardship to any individual existing Government employee, it may, by an order in writing, relax or dispense with any of the provisions of these rules to such extent and subject to such conditions, as it may consider

necessary.

11. Interpretation:

If any question arises relating to the interpretation of any of the provisions of these rules, the Government shall decide the same.

BY ORDER

Sd/-

PRINCIPAL SECRETARY (FINANCE) TO
GOVT OF HIMACHAL PRADESH

**NOTICATION DATED 30.01.2016 [ANNEXURE A-1]
GIVING BENEFIT OF RE-REVISED PAY SCALE
TO PETITIONERS-HEALTH EDUCATORS W.E.F.
01.02.2016**

8(iv). Pertinently, in terms of the Recruitment and Promotion Rules for Health Educators of 1999 vide Annexure A-2, Health Educators **[i.e. promotional post holders]** were given the pay scale of Rs 5800 -9200 w.e.f. 1.1.1996. After the revision of pay scale as per the HPCS (Revised Pay) Rules notified on 26.08.2009 [Annexure A-3], they were given revised pay scale of Rs 10300-34800+3800 GP w.e.f 01.01. 2006 but after issuance of the Himachal Pradesh Civil Services (Category/Post-wise Revised Pay) Rules on 24.09.2012 [referred to as the **Re-revised Pay Rules of 2012**], petitioners, who were initially not granted re-revised pay benefits, were granted the

re-revised pay scale of Rs 10300-34800+4200 GP w.e.f. 01.02.2016, by issuing a Notification on 30.01.2016, **Annexure A-1**, reads as under:-

ANNEXURE A-1
Dated: 30.01.2016

GOVERNMENT OF HIMACHAL PRADESH
FINANCE (PAY REVISION) DEPARTMENT
NOTIFICATION

NoFin(PR)-B(7)-64/2010-II-Loose Dated: 30.01.2016

In exercise of the powers conferred by Rule 9 of **Himachal Pradesh Civil Services (Category/Post wise Revised Pay) Rules 2012**, read with Rule 3 of rules *ibid*, the Governor Himachal Pradesh, **is pleased to add** the following words and figures after Sr No 15 under Heading **“12. HEALTH & FAMILY WELFARE DEPARTMENT” of the Schedule appended to the rules *ibid*** notified vide this Department's notifications of even number dated 28th September, 2012 and 30th August, 2014, categories/posts in the Schedule to the rules *ibid*, as under:

12. HEALTH & FAMILY WELFARE DEPARTMENT					
Sr. No.	Name of the category/post.	Pay Band	Grade Pay	Remarks, if any	Date from which applicable
(1)	(2)	(3)	(4)	(5)	(6)
16.	Health Educator	10300-34800	4200	To be given by placement	01.02.2016

By Order
Sd/-
Addl. Chief Secretary (Finance) to the
Government of Himachal Pradesh

**NOTIFICATION DATED 28.09.2012 [ANNEXURE A-12]
GIVING RE-REVISED PAY SCALE TO 13 OTHER
CATEGORIES INCLUDING FEEDER POSTS IN
HEALTH DEPARTMENT W.E.F. 01.10.2012:**

8(v). Notably, some of the incumbents who were working on posts of Male/Female Health Supervisors [redesignated as Male/Female Multipurpose Health Supervisors] ***[i.e. feeder post holders]*** in lower pay scale of Rs 5480-8925 w.e.f. 1.1.1996. After revision of pay scales as per the HPCS (Revised Pay) Rules notified on 26.08.2009 [Annexure A-3], were given revised pay scale of Rs 10300-34800+3600 GP w.e.f 01.01.2006 but on issuance of Himachal Pradesh Civil Services (Category/Post-wise Revised Pay) Rules on 24.09.2012 [referred to as *Re-revised Pay Rules of 2012*], these *feeder post holders were given the re-revised pay scales of Rs 10300-34800 + 4200 GP w.e.f. 01.10.2012 and besides the feeder category, as referred to above, 13 other categories of employees of Health Department were given the re-revised pay scales w.e.f 01.10.2012 on 28.09.2012* **[Annexure A-12]**, in following terms:-

Annexure A-12
Dated: 28.09.2012

GOVERNMENT OF HIMACHAL PRADESH
FINANCE (PAY REVISION) DEPARTMENT

NOTIFICATION

No. Fin (PR) – B (7) – 64 / 2010-Dated: Shimla
28.09.2012

In exercise of the powers conferred by Rule 9 of **Himachal Pradesh Civil Services (Category /Post wise Revised Pay) Rules 2012**, read with Rule 3 of rules ibid, the Governor, Himachal Pradesh, is pleased to add the following categories /posts in the Schedule to the rules ibid, as under:

Sr No (1)	Name of the category/ post (2)	Pay Band (3)	Grade Pay (4)	Remarks, if any (5)	Date from which applicable (6)
1.	Staff Nurse	(i) 10300-34800 (ii) 10300-34800	3200 4600	13500 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
2.	Sister Tutor/Public Health Nurse [Teaching]	10300-34800	4800	-----	01.10.2012
3.	Matron	15600-39100	5400	-----	01.10.2012
4.	Nursing Superintendent/ Principal Nursing Officer	15600-39100	6600	----	01.10.2012
5.	Multipurpose Health Supervisor (Male & Female)	10300-34800	4200	-----	01.10.2012
6.	Senior Laboratory Technician	(i) 10300-34800	3200	13500 Initial Start	Already existing

		(ii) 10300- 34800	3600	This PB &GP will be given after 2 years of regular service	01.10.2012
7.	Chief Pharmacist	10300- 34800	4600	-----	01.10.2012
8.	Pharmacist	(i) 5910- 20200 (ii) 10300- 34800	3000 4200	11470 Initial Start This PB &GP will be given after 2 years of regular service	Already existing 01.10.2012
9.	Multipurpose Health Worker [Male & Female]	(i) 5910- 20200 (ii) 10300- 34800	2800 3200	11170 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
10.	Radiographer	i) 5910- 20200 (ii) 10300- 34800	3000 3600	11470 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
11.	Senior Radiographer	10300- 34800	4200	-----	01.10.2012
12.	Operation Theatre Assistant	i) 5910- 20200 (ii) 5910- 20200	2000 2400	8240 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
13.	Food Inspector (H & FW)	i) 5910- 20200 (ii) 10300- 34800	3000 4200	11470 Initial Start This PB & GP will be given after 2	Already existing 01.10.2012

				years of regular service.	
14.	Trained Dais	i) 4900-10680	1400	6700 Initial Start	Already existing
	B y O r d	(ii) 4900-10680	1800	This PB & GP will be given after 2 years of regular service	01.10.2012

BY ORDER

Sd/-

Principal Secretary (Finance)
Government of Himachal Pradesh

NOTIFICATION DATED 27.09.2012 GIVING THE BENEFIT OF RE-REVISED PAY SCALE TO 26 OTHER CATEGORIES IN OTHER DEPARTMENT W.E.F. 01.10.2012:

8(vi). Besides the above, Learned Senior Counsel asserts that there were many other categories of employees of other departments, who were given the revised pay scales w.e.f. 1.1.1996 and on revision of pay scales as per the HPCS (Revised Pay) Rules notified on 26.08.2009 [Annexure A-3], their pay scales were revised w.e.f 01.01.2006 but on issuance of Himachal Pradesh Civil Services (Category/Post-wise Revised Pay) Rules on 24.09.2012 [referred to as the *Re-revised Pay Rules of 2012*], these categories were given the re-revised pay scales w.e.f. 01.10.2012 as per Notification issued by the State Authorities

on 27.09.2012 *[Taken on record]*, read as under:

GOVERNMENT OF HIMACHAL PRADESH
FINANCE (PAY REVISION) DEPARTMENT

NOTIFICATION

No.Fin(PR)-B(7)-64/2010-Dated: Shimla **7.09.2012**

In exercise of the powers conferred by Rule 9 of **Himachal Pradesh Civil Services (Category /Post wise Revised Pay) Rules, 2012**, read with Rule 3 of rules ibid, the Governor, Himachal Pradesh, is pleased to add the following categories /posts in the Schedule to the rules ibid, as under:

Sr No (1)	Name of the category/ post (2)	Pay Band (3)	Grade Pay (4)	Remarks, if any (5)	Date from which applicable (6)
1.	Junior Technician	(i) 5910-20200 (ii) 5910-20200	1900 2400	7810 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
2.	Technician Grade-II	5910-20200	2800	----	01.10.2012
3.	Technician Grade-I	10300-34800	3200	-----	01.10.2012
4.	Chargeman Grade-II/Assistant Foreman	(i) 5910-20200 (ii) 10300-34800	3000 3200	11470 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
5.	Chargeman Grade-I	10300-34800	3600	----	01.10.2012
6.	Foreman Grade-II	i)		13500	Already

		10300-34800 ii) 10300-34800	3200 3600	Initial Start This PB & GP will be given after 2 years of regular service	existing 01.10.2012
7.	Foreman Grade-I	10300-34800	3800	-----	01.10.2012
8.	Junior Draftsman	(i) 5910-20200 (ii) 10300-34800	3000 3200	11470 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
9.	Draftsman	(i) 10300-34800 (ii) 10300-34800	3800 4200	11590 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
10.	Restorer	(i) 5910-20200	2400	-----	01.10.2012
11.	Record Supervisor	5910-20200	2800	-----	01.10.2012
12.	Driver [Heavy, Light, Commercial vehicles & staff cars of various departments)	i) 5910-20200 (ii) 5910-20200	2000 2400	8240 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
13.	Peon, Chowkidar, Sweeper, Mali, Bhishti, Frash & all other Class-IV	(i) 4900-10680 (ii) 4900-10680	1300 1650	6200 Initial Start This PB & GP will be given after 2 years of regular service	Already existing 01.10.2012
14.	Head Mali, Jamadar & Record	4900-10680	1800	----	01.10.2012

	Lifter				
15.	Clerk	i) 5910- 20200 (ii) 10300- 34800	1900 3200	7810 Initial Start This PB & GP will be given after 2 years of regular service.	Already existing 01.10.2012
16.	Junior Assistant	10300- 34800	3600	----	01.10.2012
17.	Senior Assistant	10300- 34800	4400	----	01.10.2012
18.	Superintendent Grade-II	10300- 34800	4800	----	01.10.2012
19.	Superintendent Grade-I	15600- 39100	5400	----	01.10.2012
20.	Steno Typist	i) 5910- 20200 (ii) 10300- 34800	2000 3200	8240 Initial Start This PB & GP will be given after 2 years of regular service.	Already existing 01.10.2012
21.	Jr. Scale Stenographer	i) 10300- 34800 (ii) 10300- 34800	3200 3600	13500 Initial Start This PB & GP will be given after 2 years of regular service.	Already existing 01.10.2012
22.	Senior Scale Stenographer	10300- 34800	4400	----	01.10.2012
23.	Personal Assistant	10300- 34800	4800	----	01.10.2012
24.	Private Secretary	15600 39100	5400	----	01.10.2012
25.	Junior Auditor	i) 10300- 34800 ii) 10300-	3800 4400	14590 Initial Start This PB &	01.10.2012

		34800		GP will be given after 2 years of regular service.	
26.	Senior Auditor (Non-SAS)	10300-34800	4800	----	01.10.2012

By ORDER

Sd/-

Principal Secretary (Finance) to
Government of Himachal Pradesh

ANALYSIS OF CONTENTIONS OF PETITIONERS:

9. Now, this Court proceeds to analyze the contentions of Learned Senior Counsel for petitioners, hereinunder:

GIVING SAME RE-REVISED PAY STRUCTURE FOR PROMOTIONAL POST AND FEEDER POST ILLEGAL:

10. First contention of Learned Senior Counsel is that the action of the State Authorities in giving same re-revised pay scale to the petitioners-Health Educators i.e. holders of promotional-higher posts as was granted to holders of feeder-lower post of Male /Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] is illegal.

10(i). Minimal facts required for analyzing the above contention are the State Authorities notified the Recruitment and Promotion Rules for the post

of Health Educators [**i.e. promotional-higher post**] under the provisio to Article 309 of the Constitution of India on 29.10.1999/18.11.1999 [**Annexure A-2**], carrying the pay scale of Rs 5800-9200; and Rule 7 provided that these posts were to be filled up from persons possessing Bachelor's Degree and Diploma in Health Education or its equivalent from recognized University or Institute ; and further Rule 10 provided that posts of Health Educator were to be filled up 25% by direct recruitment and 75% by promotion, from feeder category of Male/Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] possessing qualification of Diploma in Health Education. After the revision of pay scales by virtue of HPCS (Revised Pay) Rules notified on 26.08.2009, [Annexure A-3], the *petitioners being Health Educators were given the revised pay scale of Rs 10300-34800 + 3800 GP w.e.f 01.01.2006;* and *thirdly*, even after the issuance of the Himachal Pradesh Civil Services (Category/Post-wise Revised Pay) Rules on 24.09.2012 [referred as the **Re-revised**

Pay Rules of 2012], the petitioners-Health Educators were given the re-revised pay scale of Rs 10300-34800 + 4200 GP w.e.f. 01.02.2016, by issuing a Notification on 30.01.2016, *Annexure A-1*. ***On the other hand,*** there existed another category of Male /Female Health Supervisors [**feeder-lower post**] for which, State Government notified the Recruitment and Promotion Rules on 12.10.1999, [**Annexure A-6**], prescribing the pay scale of Rs 5480-8925 to them. After the revision of pay scales by virtue of the HPCS (Revised Pay) Rules notified on 26.08.2009, [Annexure A-3], *the feeder-lower category was given the revised pay scale of Rs 10300-34800 + 3600 GP w.e.f 01.01.2006 ; and sixthly, even after issuance of the HPCS (Category/Post-wise Revised Pay) Rules on 24.09.2012 [referred as the **Re-revised Pay Rules of 2012***], they were placed in the re-revised pay scale of Rs 10300-34800 + 4200 GP w.e.f. 01.10.2012 by issuing a Notification on 28.09.2012, ***Annexure A-12***.

HIERARCHICAL STRUCTURE OF PROMOTIONAL POST OF HEALTH EDUCATORS ESTABLISHED

BY RECRUITMENT AND PROMOTION RULES VIOLATED:

10(ii). Above facts establish that once the posts held by the petitioners of ***Health Educators was a promotional post*** and though petitioners were granted the pay scale of Rs 5800-9200 in terms of the Recruitment and Promotion Rules notified on 29.10.1999/18.11.1999 [Annexure A-2], and were given the *Revised Pay Scale* of Rs 10300-34800 + 3800 GP w.e.f. 01.01.2006 and were the *Re-revised Pay Scale* of Rs 10300-34800 + 4200 GP w.e.f. 01.02.2016 as per Notification issued on 30.01.2016, Annexure A-1, **whereas**, the category of Male/Female Health Supervisors, later redesigned as Multipurpose Health Supervisors ***[i.e. feeder-lower post]*** in terms of the Recruitment and Promotion Rules notified on 12.10.1999 **[Annexure A-6]**, were placed in the pay scale of Rs 5480-8925 and were given the *Revised Pay Scale* of Rs 10300-34800 + 3600 GP from 01.01.2006 and they were given the *Re-revised Pay Scale* of Rs 10300-34800 + 4200 GP w.e.f. 01.10.2012 by issuing a Notification on 28.09.2012

Annexure A-12.

10(iii). Material on record establishes, that the petitioners despite being promotional post holders were given lower pay structure of Rs 10300-34800 + 3800 GP w.e.f. 01.10.2012 till 01.02.2016 whereas feeder post holders were given higher pay structure of Rs 10300-34800 +4200 GP w.e.f. 01.10.2012 till 01.02.2016. Action of the State Authorities in giving lower pay structure to petitioners, despite being holders of promotional posts while granting higher pay structure to the feeder posts holders is unsustainable, for the reason, *firstly*, this action establishes grave absurdity and anomaly between petitioners-promotional post holders vis-à-vis feeder post holders; and *secondly*, this action violates the established higher hierarchical status, rank, position and pay scale recognized by the Statutory Rules to the petitioners; and *thirdly*, the action of the State Authorities in giving the lower pay structure [pay scale and grade pay] to the promotional post holders-petitioners-Health Educators vis-à-vis feeder

post holders by granting them higher pay structure during the period from 01.10.2012 till 01.02.2016 was ex-facie violative of Articles 14 and 16 of the Constitution of India; and fourthly, the action of granting lower pay structure to promotional post holders {petitioners} while giving higher pay structure to feeder post holders is violative of Articles 14 and 16 of the Constitution, and lastly, the action of giving lower pay to the promotional posts holders {petitioners} and in giving the higher re-revised pay to feeder post holders is violative of the broad principles outlined in the cases of ***Sunder Lal Jain vs State of Haryana***, 1995 (1) SLR 215, [against which SLP © Diary No 9475 of 1995, titled as ***State of Haryana vs Sunder Lal Jain*** was dismissed by the Honble Supreme Court on 28.08.1995], and the reiteration of the similar principle in the case of ***Tarsem Singh vs State of Punjab***, (1994) 5 SCC 392, which was followed in the case of ***Mehar Chand & another vs State of Punjab***, 2013 SCC Online PH 20428 and reaffirmation of aforesaid principle

by the Honble Supreme Court in the case of **State of Uttar Pradesh and another vs Virendera Bahadur Katheria and others (2024) 15 SCC 1**, mandating that the State is obliged to ensure that the pay structure of a promotional/higher post is not lower than the pay structure of the feeder cadre, in the following terms:

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. Incidental grant of same pay scale to two or more posts, without any express equation amongst such posts, cannot be termed as an anomaly in a pay scale of a nature which can be said to have infringed the right to equality under Article 16 of our Constitution.

ANAMOUS SITUATION NEEDS TO BE REMEDIED:

10(iv). Considering the matter in aforesaid terms, the action of the State Authorities in giving a lower pay structure [pay scale and grade pay] to promotional post holders-petitioners-Health Educators but in giving higher pay structure to the feeder post holders for the period from 01.10.2012 till 01.02.2016 establishes gross anomaly in pay of promotional post of the petitioners-Health Educators vis-à-vis lower post of Male/Female Health Supervisors [redesignated as Multipurpose Health Supervisors] being wholly absurd, arbitrary and is contrary to foundational principles of service jurisprudence and is violative of Articles 14 and 16 of the Constitution of India.

Resultantly, this anomalous situation cannot sustain and is interdicted by this Court, with the directions to the State Authorities to remedy the illegality, with mandate to grant an appropriate proportional higher pay structure to petitioners, who are promotional post holders, over and above the

pay structure of the feeder post w.e.f. 01.02.2012 till 01.02.2016 and thereafter.

ACTION OF EQUATING TWO UNEQUAL AND DISSIMILAR POSTS - PROMOTIONAL POST AND FEEDER POST ILLEGAL:

11. Second contention of Learned Senior Counsel is that the decision-making process in equating two unequal posts, having wholesale dissimilarity i.e. the promotional post of the petitioners-Health Educators *with* the lower-feeder post of Male/Female Health Supervisors [as Multipurpose Health Supervisors] is illegal.

For appreciating the above contention, it is necessary to have a reap of broad legal principles governing invocability of “equal pay for equal work and equal value” and the exceptions thereto and “principles governing the pay fixation” and “equation and equivalence of posts” are detailed hereinunder.

MANDATE OF LAW APPROVING EVENTUALITIES FOR CARVING OUT DIFFERENTIAL TREATMENT TO EMPLOYEES:

11(i). In normal parlance, the determination and prescription of pay scales to employees lies within domain of executive. However, in case, an employee

asserts a claim for parity in pay and/or pay scales then, such a claim can sustain, in case an employee establishes “Equal Pay for Equal Work and Equal Value”.

Legal precedents, as discussed here in below, have carved out an exception, where principle of “Equal Pay for Equal Work and Equal Value” cannot be invoked, if educational qualifications are different; mode of selection is different, the quality of work produced and the nature of work assigned or performable make a difference; and the qualitative difference as regards reliability and responsibility make a difference.

11(ii). The foundational principles of Article 14 of the Constitution of India, cannot be applied, for purposes of pay scales, where an employee was not similarly placed or such an employee was given higher scale in view of his higher educational qualifications, which is valid classification having a reasonable differentia; with the mandate that the grant of two different pay scales is suggestive of the

fact that the duties and functions of a post are different, as mandated by the Three Judges of the Honble Supreme Court in the case of **Government of West Bengal vs Tarun Kumar Roy, (2004) 1 SCC 347**, in the following terms:-

15. In **State of J & K vs Triloki Nath Khosla**, this Court has held:

Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification."

16. The Post of Operator-cum-Mechanic and Sub-Assistant Engineers are technical posts. As noticed hereinbefore, whereas for the posts of Operator-cum-Mechanic the qualification of school final examination and a certificate obtained from the Industrial Training institute would be sufficient; for the posts of Sub-Assistant Engineer the person must have a diploma from a polytechnic apart from being a matriculate.

20. **Question of violation of Article 14** of the Constitution of India on the part of the State would arise only if the persons are similarly placed. **Equality Clause contained in Article 14, in other words, will have no application where the persons are not similarly**

situated or when there is a valid classification based on a reasonable differentia. Doctrine of 'equal pay for equal work', therefore is not attracted in the instant case.

22. The very fact that from the very beginning two different pay scales were being maintained is itself suggestive of the fact that the duties and functions are also different. **In fact it is not disputed that the two post of Sub-Assistant Engineer is a higher post.**

11(iii). Differentiation in pay scales on the basis of degree of responsibility, reliability confidentiality was approved by Three Judges of the Honble Supreme Court in the case of **SBI vs M R Ganesh Babu, (2002) 4 SCC 556**, in following terms:

16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystalized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the

same **but the responsibilities make a difference**. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bonafide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount of discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. **Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation...**

11(iv). Different pay scales given on the basis of qualities or characteristics having a reasonable relation with the object sought to be achieved on the basis of merit or experience and educational qualifications in combination with former or in

isolation shall be justified, as mandated by Three Judges of the Honble Supreme Court in the case of **State of Haryana vs Charanjit Singh, (2006) 9 SCC 321**, in the following terms:

19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. **But equal pay must be for equal work of equal value.** The principle of "equal pay for equal work" has no mechanical application in every case. **Article 14 permits reasonable classification based on qualities or characteristics** of persons recruited and grouped together, as against those who were left out. Of course, **the qualities or characteristics must have a reasonable relation to the object sought to be achieved.** In service matters, **merit or experience can be a proper basis** for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant

frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. **If the educational qualifications are different, then also the doctrine may have no application.** Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. **A classification based on difference in educational qualifications justifies a difference in pay scales.**”.

11(v). The equality clause in Article 14 can be invoked in the matter of pay scales, only when, there is wholesome/wholesale identity between the two posts, as has been mandated by Three Judges of the Honble Supreme Court in **Steel Authority of India and others vs Dibyendu Bhattacharya, (2011) 11 SCC 122**, in following terms:

31. ...Unless there is complete and wholesale

wholesome identity between the two posts they **should not be treated as equivalent** and the Court should avoid applying the principle of equal pay for equal work.

11(vi). The claim for parity or equation of posts Difference in pay scales shall entail on the basis of dominant and primary nature of duties of a post and once there is no comparison between two posts, then, in such an eventuality, unequal and dissimilar posts cannot be equated for purposes of pay, in terms of the broad principles mandated by the Honble Supreme Court in the case of **State of Punjab vs Jagjit Singh, (2017) 1 SCC 148.**

BROAD PARAMETRES FOR FIXING THE PAY SCALES AND FOR DETERMINING EQUIVALENCE VIOLATED:

11(vii). The factors for fixing the pay scales and for determining the equivalence of posts has been spelt out by the Honble Supreme Court in **Punjab State Power Corporation vs Rajesh Kumar Jindal and Others (2019) 3 SCC 547**, in following terms:

Burden of proof on the person claiming parity of pay scale:

20. Ordinarily, the **scale of pay is fixed** keeping in view the several factors i.e.
- (i) method of recruitment;
 - (ii) level at which recruitment is made;
 - (iii) the hierarchy of service in a given cadre;
 - (iv) minimum educational/technical qualifications required;
 - (v) avenues of promotion;
 - (vi) the nature of duties and responsibilities; and
 - (vii) employer's capacity to pay, etc.
21. It is well settled that for considering the **equation of posts** and the **issue of equivalence of posts**, the following factors had been held to be determinative :
- (i) The nature and duties of a post;
 - (ii) The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;
 - (iii) The minimum qualifications, if any, prescribed for recruitment to the post; and
 - (iv) The salary of the post (vide Union of India and Another vs P.K. Roy and Others AIR 1968 SC 850).
26. Considering the differences in the nature of duties and responsibilities performed by the Head Clerks and Internal Auditors Pay Anomaly Committee decided to

allow the revised scale for Internal Auditor at Rs. 1800-3200 with benefit of promotional increments and Rs 2000 -3500 for Head Clerks. Merely because Internal Auditors are categorized in Group XII along with Head Clerks, the **Internal Auditors cannot claim parity as the nature of duties and responsibilities of Internal Auditors are different from Head Clerks.**

FOUNDATIONAL TEST OF COMPLETE PARITY FOR EQUATION/EQUIVALENCE:

11(viii). Equation in pay scales can be invoked where, complete parity in source of recruitment, educational qualifications, and experience, mode of appointment through a Constitutional process, and the nature of responsibilities and accountability, is established and after taking note of the principles in **State of Bihar vs Bihar Secondary Teachers Struggle Committee, (2019) 18 SCC 301**, the Honble Supreme Court reaffirmed the scope of interference only in case of infraction of the principle of equal pay for equal work and equal value, in the case of **G P Sangeetha and Ors vs State of Kerela and Ors, Civil Appeal No 7565-7567 of 2021**, decided

on **08.09.2026 [2026 INSC 1004]** in the following terms:

8. In the last century, following the decision in *Randhir Singh v. Union of India* this Court treated equal pay for equal work as an expansive anti-exploitation principle under Articles 14 and 39(d), where the mere sameness of designation-teacher with teacher, accountant with accountant, clerk with clerk, driver with driver, etc. was sufficient to claim parity. In this century, however, beginning with the decision in *State Bank of India vs. M.R. Ganesh Babu* and ending with *State of Bihar vs. Bihar Secondary Teachers Struggle Committee*, the doctrine has been recast as a strict test based on service rules. Decisions are legion that equal pay cannot be claimed by merely showing identical work; the claimant-employee must establish complete parity in the source of recruitment, educational qualifications and experience, mode of appointment through a constitutional process, and nature of responsibilities and accountability. Mere functional similarity of work has been held to be no longer enough.
13. It is, therefore, clear on reading the relevant precedents that a mechanical

application of the doctrine of equal pay for equal work has to be eschewed. It is not the law that the doctrine can never be enforced; but, for such enforcement, a host of factors need consideration. If there is complete parity qua all such factors and **should equal pay be claimed for equal work of equal value,** the writ **court can intervene and grant appropriate relief; otherwise not.**

EQUATION-EQUIVALENCE OF PAY STRUCTURE WHICH LEADS TO ANAMOLY UNSUSTAINABLE:

11(ix). Parity or equation or equivalence of pay scales cannot be invoked, where, rationalization of pay structure throws up anomalies. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. Interference by the Courts is invokable in case a grave error had crept in, needs to be remedied, so as to undo justice, as mandated of the Honble Supreme Court in the case of **Secretary Finance Department and Others vs West Bengal West Bengal Registration**

Service Association, 1993 Supp (1) SCC 153, in the following terms:

12. We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well-settled that equation of posts and determination of pay-scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission, etc. **But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction.** Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be

kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharges of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay-scales to a reasonable number. Such reduction in the number of pay-scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job-charts in a common scale. Substantial reduction in the number of pay-scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so **care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies.** Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method

of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualification required (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasize that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. **Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well.** It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub- Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the registration service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of

salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a **firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice.**

Considering the factual matrix in the light of the mandate of law as discussed hereinabove, this Court is of the considered view, that claim of Learned Senior Counsel for the petitioners has force and the stand of the State Authorities cannot stand the test of judicial scrutiny, for the reason, firstly, it is established on record that the aforesaid two posts have different nomenclature in terms of Statutory Rules notified under the provisio to Article 309 of the Constitution of India ; and secondly, the historical genesis establish that both these posts were given different revised pay scales atleast w.e.f 01.01.1996 and difference in pay scales of two posts was duly recognized by the Statutory Rules i.e. the Recruitment and Promotion Rules of both respective

posts; and thirdly, even after revision of pay scales both these posts were given the different revised pay scales by virtue of HPCS (RP) Rules dated 26.08.2009 w.e.f. 01.01.2006; and fourthly, a perusal of the Recruitment and Promotion Rules for the posts of the petitioners-Health Educators notified on 29.10.1999/18.11.1999, Annexure A-2, mandates that promotional posts of Health Educators were to be filled 75% by promotion from amongst the feeder category of Male/Female Health Supervisors [redesignated as Male/Female Multipurpose Health Supervisors]; and fifthly, a comparative reading of Statutory Rules i.e. the Recruitment and Promotion Rules of both the posts i.e. promotional posts and feeder posts establish that both the posts have wholesome dissimilarity in relation to the foundational parameters of two posts; and sixthly, two posts are governed by separate Statutory Rules framed under the provisio to Article 309 of the Constitution of India; and seventhly, in terms of the Statutory Rules the aforesaid two posts have conceptually altogether

different conditions of service and *eighthly*, a bare perusal of Statutory Rules establish that the essential qualifications for both these posts at entirely at variance, as essential qualifications for promotional posts of Health Educator (petitioners) is Bachelor's Degree with Diploma in Health Education whereas essential qualifications for the feeder post of Male /Female Health Supervisors [redesignated renamed as Multipurpose Health Supervisors] is Matric with Science or Higher Secondary or equivalent with and one and a half year training certificate as Female Health Worker from a recognized institute ; and *ninthly*, even method of recruitment of two posts is at complete variance, as the promotional post of Health Educators has an element of direct recruitment and promotion and in both eventualities {direct or promotion} the requirement of essential qualifications of Bachelors and Diploma in Health Educator is mandatory whereas in case of feeder post, same is to be filled 100% by promotion from the next lower category of Male/Female Health Workers who

are matriculates with Science or Higher Secondary with training of Female Health Worker; and tenthly, material on record establishes wholesome functional dissimilarity between two posts, in relation to nature of work, job, duties, functions, responsibilities being at variance; and a perusal of Supplementary Affidavit dated 05.01.2026 filed by State Authorities, placing on record the job profile of promotional post of Health Educators {petitioners} and feeder category of Male/Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] and the basic feeder category of Female Health Workers is annexed as **Annexure R-3/A**, and perusal of the job profile of post of Health Educators {at page 259} establishes that this post is superior post at the Block Level at Primary Health Centre level, who has to provide support to all National Health and Family Welfare Programmes, having multifarious and arduous duties and functions including conducting training of the Health Workers under various schemes to organize in cooperation with Local Voluntary Agency, School

Teachers and to complete set of educational aids for training purposes, and to coordinate inter-sectoral coordination of Health Educators at Block Level Family Welfare Committee by acting as a resource person and to liaison with the media units for organizing mass communication programme and to conduct educational, motivational and communication programme in PHC's and to support, guide and supervise field workers and to ensure the utilization of information whereas on the other hand, the job profile of feeder post holders {at Page 252} of Male/Female Health Supervisors [redesignated as Multipurpose Health Supervisors] establishes that feeder post holders are to foresee six sub-centers and to supervise and guide the health workers by strengthening their knowledge and skills by visiting their health centers once a week. Job profile of feeder post holders-Health Supervisors provides that it is a team work and such supervisors are under obligation to check the stores of sub-centers and to scrutinize records maintained by health workers

in sub-centers under their control and to ensure /supervise malaria symptoms and take remedial measures for its control and to ensure environmental sanitation, female nutrition and medical care in primary health centers, inquire the health education, carry out educational activities for control of communicable diseases, etc. is to be ensured by them and the foundational-basic health workers are Male/Female Health Workers with job profile {at page 245 of the paper book and lastly, the material on record, including the Statutory Rules and the Job Profile of the two posts of Health Educators and Male/Female Health Supervisors [redesignated as Multipurpose Health Supervisors] establish that there is wholesale dissimilarity and variance in nomenclature, its hierarchical set-up, pay scales, educational qualifications, method of recruitment, job profile, and nature of work, job, functions, duties and degree of responsibilities and accountability both qualitatively and quantitatively are different and conditions of service including promotional avenues

of two posts are different and the two posts are unequal in all respects, and such dissimilarity was recognized by Statutory-Recruitment and Promotion Rules of two posts.

12. Third contention of Learned Senior Counsel is that the decision making process undertaken for changing the nomenclature of Health Educators {petitioners} from “promotion to placement” on the basis of the Recommendation made by Committee on 20.10.2015 [at page 81-82 of paper book] and acceptance of such recommendations by the State Cabinet on 14/15.01.2016 and issuance of Impugned Notification on 30.01.2016, Annexure A-1, but without satisfying the pre-conditions expressly mandated in aforementioned recommendations/report and too that without amending the extant Statutory Rules notified on 18.11.1999, Annexure A-2, is illegal.

ANAMOLY IN PAY WRIT LARGE FROM 01.01.2006 TILL 30/31.01.2016:

12(i). Material on record indicates that State Authorities, notified the Statutory Rules on 18.11.1999 Annexure A-2, for the post of Health Educators,

recognizing the “nomenclature of promotion” to post of Health Educators between from 01.01.1996 till 30/31.01.2016. Despite this the pay scale of the post of Health Educators was Rs 10300-34800 +3800 GP w.e.f 01.01.2006 and after issuance of the Re-revised Pay Rules of 2012 the pay scale of Health Educators (petitioners) was not revised for after issuance of the Re-revised Pay Rules of 2012 from 01.10.2012 to 30/31.01.2016. On the other hand, the feeder category of Male/Female Health Supervisors [Multipurpose Health Supervisors], who were in the lower pay scale of Rs 10300-34800 + 3600 GP w.e.f 01.01.2006, after the issuance of the Re-revised Pay Rules of 2012 were given the higher pay scale of Rs 10300-34800 +4200 GP w.e.f. 01.10.2012 whereas the petitioners were given the Re-revised Pay Scale under the Re-revised Pay Rules of 2012 on 30.01.2016, Annexure A-1.

The above facts establish that though the petitioners were holders of the promotional posts of Health Educators yet they were made to draw

pay in the lower pay scale from 01.10.2012 till 30/31.01.2016, whereas feeder category incumbents were granted higher pay in the higher pay structure during this period, without any rationale, is ex-facie anomalous, establishing brazen violation of Articles 14 and 16 of the Constitution of India.

**PROCESS NEGATING STATUTORY RULES BY
INFERRING EQUATION WITH FEEDER POST
FROM 01.01.2006 TO 30/31.1.2016- UNTENABLE:**

12(ii). The decision making process undertaken by the State Authorities, which tends to scuttle Statutory Rules notified on 18.11.1999, Annexure A-2, for the post of Health Educators (petitioners) cannot stand the test of judicial scrutiny, *for the reason, firstly,* the “nomenclature of promotion” was attached to post of Health Educators (petitioners) by the Statutory Rules of 1999 Annexure A-2 could neither be whittled down nor curtailed or negated by inferring equation or equivalence between promotional post of Health Educators with feeder post of Male /Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] w.e.f. 01.10.2012 till

30/31.01.2016 arbitrarily; and secondly, equation or equivalence in posts for the purpose of pay scales cannot be inferred; and thirdly, in the absence of any conscious express decision by State Authorities in granting equation or equivalence between two posts, the same can neither be inferred or assumed, as has been done in instant case; and lastly, the action of State Authorities in inferring or assuming equation or equivalence between the promotional posts of Health Educators vis-à-vis the feeder posts of Health Supervisors” by defeating and negating the statutory right of higher hierarchical set-up and right of higher rank, higher status and higher pay scale recognized by the Statutory Rules for posts of Health Educators notified on 18.11.1999 Annexure A-2, for period from 01.10.2012 till 30/31.01.2016; vitiates the decision making process, resulting in giving the lower pay in lower pay structure to the petitioners, despite being holders of promotional posts is highly arbitrary, unreasonable and is violative of Articles 14 and 16 of the Constitution of India.

**PROCESS OF CHANGING NOMENCLATURE FROM
PROMOTION TO PLACEMENT VITIATED BY
ARBITRARINESS:**

12(iii). Though the State Authorities notified the Re-revised Pay Rules of 2012 and initially though the State Authorities did not grant the benefit of the re-revised pay structure under the Re-revised Pay Rules whereas 14 categories in the Respondent-Health Department, including the feeder category of Male/Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] were granted benefit of Re-revised Pay structure w.e.f. 01.10.2012 on 28.09.2012, Annexure A-12. Feeling aggrieved, the petitioner represented the matter and thereafter the State Authorities constituted an Expert Committee and the said committee after ***admitting anomaly***, forwarded its Recommendation-Report on 20.10.2015 [at page 81-82 of paper book] for changing the nomenclature of post of Health Educators (petitioners) from **“promotion to placement”** yet in recommending the pay scale of Rs 10300-34800 + 4200 GP to the petitioners with prospective effect, leading to issuance

of the Notification on 30.01.2016, **Annexure A-1**, giving revised pay scale of Rs 10300-34800 + 4200 GP to petitioners-Health Educators w.e.f. 01.02.2016, speaks volumes of unreasonableness and arbitrariness in State action by neither considering nor granting the revised pay scale to promotional post holders -petitioner as was granted to others, including incumbents belonging to the feeder category w.e.f. 01.10.2012, is without any rationale, is whimsical and unsustainable and is accordingly, interdicted by this Court.

**NON-FULFILMENT OF THE PRE-CONDITIONS
BEFORE CHANGING NOMENCLATURE VITIATES
PROCESS AND IMPUGNED NOTIFICATION:**

12(iv). Process followed by the State Authorities for changing the nomenclature of posts of Health Educators (petitioners) from promotion to placement cannot sustain, for the reason, firstly, the State Authorities had constituted an Expert Committee and though the said committee had **admitting anomaly**, in pay, yet the recommendations made by the said committee in giving same pay structure as given

to feeder category arbitrary; and secondly, the Expert Committee Recommendations made on 20.10.2015 [at page 81-82 of paper book] indicates that the Committee made the **“conditional recommendations”** for changing the nomenclature of post of Health Educators (petitioners) from “promotion to placement” **subject to the condition that in the event of granting an equivalent pay structure** to petitioners -Health Educators as was granted to the feeder post holders then, *it was* **advised to amend the Recruitment and Promotion Rules** for the post of Health Educators; and thirdly, the State Authorities have neither satisfied nor fulfilled the terms spelt out in the form of “conditional recommendations” by the Expert Committee on 20.10.2015 by not amending the existing Recruitment and Promotion Rules for the post of Health Educators (petitioners) and therefore, the **process followed for changing nomenclature** of the category and post of petitioners -Health Educators from “promotion to placement” is vitiated by non-application of mind; and fourthly,

even the action of the State Authorities in placing the matter before State Cabinet on 14.01.2016 and approval given thereto on 15.01.2016 [at page 75 of paper book], without amending the Recruitment and Promotion Rules prior to the grant of approval and thereafter till the issuance of the Notification on 30.01.2016, **Annexure A-1**, establishes gross perversity in state action; and *fifthly*, the operation, scope, applicability, conditions of service and the nomenclature of the petitioners expressly mandated in Statutory Rules of 1999, Annexure A-2, notified under the provisio to Article 309 for the post of the petitioners-Health Educators cannot be curtailed restricted, negated by issuing a Notifications under HPCS Re-revised Pay Rules of 2012, but without amending the Statutory Rules of 1999 aggravates illegality; and *sixthly*, even the conditions of service, including the nomenclature prescribed for posts {promotional post or placement post etc.,} under Statutory Rules of 1999, Annexure A-2, cannot be altered ipso-facto by the Revised or Revised Pay

Rules of 2012 “which have restrictive applicability only qua pay scales”; and seventhly, the Revised or Re-revised Pay Rules cannot be invoked to the prejudice of the petitioners, so as to deprive them of the right for higher status, and the right for higher rank (promotional rank) and the right for promotional increment(s) under Fundamental Rule 22(1)(a)(i) attached to the promotional post of Health Educators by virtue of Recruitment and Promotion Rules of 1999.

In these circumstances, the decision making process undertaken by the State Authorities, has resulted in diminishing the core foundational fabric attached to the post of Health Educator under Statutory Rules, which recognizes this post as a promotional post; in a casual manner **and** by ignoring “relevant considerations” **and** also without complying with or satisfying the preconditions of “conditional recommendation and its approval” and “without amending the Statutory Rules of Health Educators” **and** therefore, changing the nomenclature

of the petitioners-Health Educators **[i.e. promotional posts]** from promotion to placement”, by “equating their posts with category and post of Male/Female Health Supervisors [Multipurpose Health Supervisors] **[i.e. feeder posts]** despite the fact two posts were unequal and had wholesale dissimilarity in all respects therefore, process undertaken by State Authorities, and the resultant Impugned Notification issued on 30.01.2016, Annexure A-1, is arbitrary, unreasonable and offending Articles 14 and 16 of the Constitution of India cannot sustain and accordingly, interdicted by this Court.

**PICK AND CHOOSE RELEASE OF RE-REVISED
PAY UNDER REREVISED PAY RULES IS PER-SE
DISCRIMINATORY AND UNTENABLE:**

13. Fourth contention of Learned Senior Counsel is that State Authorities have adopted a pick and choose criteria, for giving the re-revised pay scales under HPCS Re-revised Pay Rules of 2012, by giving this benefit to 26 other categories and to 14 other categories in the Respondent-Health w.e.f. 01.10.2012 but in giving benefit to the petitioners

on 30.01.2016 [Annexure A-1] w.e.f. 01.02.2016 is illegal, arbitrary and unconstitutional;

The above plea has force, for the reason, firstly, the State Authorities notified Statutory Rules for post of Health Educators, **[i.e. promotional post]** granting the pay scale of Rs 5800-9200 from date of issuance of these Rules in 1999 (Annexure A-2) and this pay scale was revised to Rs 10300-34800 + 3800 GP w.e.f 01.01.2006 but after issuance of Re-revised Pay Rules of 2012, the category of the Health Educators (petitioners) were given Re-revised Pay Scale Rules of Rs 10300-34800 + 3600 GP as per the Notification dated 30.01.2016, Annexure A-1, w.e.f 01.01.2006. **On the other hand**, the State Authorities notified the Statutory Rules for the post of Male /Female Health Supervisors [redesignated as Multipurpose Health Supervisors] **[i.e. feeder posts]** granting the pay scale of Rs 5480-8925 from the date of issuance of Statutory Rules on 12.10.1999 (Annexure A-6) and this pay scale was revised to Rs 10300-34800 + 3600 GP w.e.f 01.01.2006 but

after the issuance of the Re-revised Pay Rules of 2012, this category was given the Re-revised Pay Scale of Rs 10300-34800 + 4200 GP w.e.f. 01.10.2012; and secondly, the action of the State Authorities in giving the Re-revised Pay Scale under the Re-revised Pay Rules of 2012 **by applying pick and choose criteria** cannot sustain; and thirdly, once after the issuance of HPCS Rerevised Pay Rules on 24.09.2012, the action of State Authorities in issuing a Notification on 27.09.2012 giving the Re-revised Pay Structure w.e.f 01.10.2012 to 26 categories and further in issuing another Notification on 28.09.2012, Annexure A-12, giving Re-revised Pay Scale w.e.f. 01.10.2012 to 14 other categories, including the feeder category -post holders Male/Female Health Supervisors [later designated as Multipurpose Health Supervisors] in Respondent-Health Department **whereas** promotional post holders of the petitioners-Health Educators were given this benefit belatedly with immediate effect on 30.01.2016, Annexure A-1, is highly arbitrary, discriminatory and illegal; and fourthly, the State

Authorities had notified the Re-revised Pay Rules 2012 with the object of removing stagnation of those employees who had rendered two years of regular service and to bring efficiency in administration by providing them better service conditions in the form of rerevised-enhanced pay structure {including Grade Pay} under these Rules to its employees ; and fifthly, with above objective, the State Authorities had issued notifications giving benefit of Re-revised Pay Structure-Scale to majority of categories/posts, who had rendered two years of regular service w.e.f. 01.10.2012; and sixthly, even though petitioners-Health educators have rendered much more or several years of regular service as Health Educators {over and above 2 years regular of service} and the action of State Authorities in excluding the category of the petitioners from being given the benefit of Re-revised Pay Structure-Scale w.e.f 01.10.2012 has no rationale and such exclusion is not based on a valid classification and exclusion or differential treatment meted to the petitioners has no nexus with the object sought

to be achieved, by extending this benefit to category of the petitioners belatedly by issuing a notification on 30.01.2016 [annexure A-1] w.e.f. 01.02.2016 and therefore, the state action is wholly unreasonable, arbitrary, offending Article 14 of the Constitution of India; and seventhly, the object of giving Re-revised Pay Rules of 2012 [of removing stagnation and bringing efficiency in administration of employees by providing better pay incentives, to employees who have rendered two years of regular service as on the date of promulgation of the Rules in 2012 on 24.09.2012 and/or as on 01.10.2012] and factum of stagnation and corresponding right for better service conditions was common to all posts and categories in the State irrespective of departments, then, the action of State Authorities in releasing the Re-revised Pay Structure-Scale and Grade Pay belatedly to category of the petitioners-Health Educators w.e.f 01.02.2016 {on the basis of A-1} defeats the very object, rationale and intent behind the issuance of the Re-revised Pay Rules 2012 ; and eighthly, the action of the

State Authorities prescribing different dates for giving Re-revised Pay under HPCS Re-revised Rules of 2012 to its employees amounts to abuse of discretion, and prescription of different dates for granting this benefit is not based on any valid classification and grant of Re-revised Pay to the petitioner belatedly on 30.01.2016 w.e.f. 01.02.2016 **whereas** 14 other incumbents of the Respondent-Department and many others categories and posts in other department were given this benefit from 01.10.2012 then, belated release of re-revised benefits to the petitioners without there being any cogent and valid reason, offends Article 14 and 16 of the Constitution of India and State action is interdicted.

**RULE CONFERRING UNFETTERED DISCRETION
LEADING TO HOSTILE DISCRIMINATION BY
DEFEATING CORE OBJECT OF RE-REVISED
PAY CANNOT SUSTAIN:**

14. Fifth contention of Learned Senior Counsel is that Rule 1 (ii) and Rule 9 of the Re-revised Pay Rules of 2012, in prescribing date for notifying the Schedule, so as to give the re-revised pay scales to its employees is arbitrary, discriminatory and

illegal;

The contention has force, for the reason, *firstly*, though the provision of Rule 1 (ii) of the HPCS (Category /Post-wise Revised Pay) Rules notified on 24.09.2012 enabled the State Authorities to give/release the re-revised pay and grade pay to its employees from the date mentioned in Column 6 of the Schedule to be notified by State Authorities yet, this provision cannot be construed to give any leverage to the State Authorities to resort to discrimination and invidious treatment, amongst employees of the Respondents-Health department; and *secondly*, the provision of Rule 1(ii) and Rule 9 cannot be permitted to be invoked, at the mercy of the State Authorities ; and *thirdly*, the provision of Rule 1(ii) and Rule 9 of the Revised Pay Rules 2012 or a like provision, which gives unbridled, unfettered, and uncanalised discretion to the State Authorities to notify the Schedule so as to give /release the Re-revised Pay Structure and Grade Pay to its employees, {alike the petitioners} despite the

fact that the Re-revised pay Structure and higher Grade Pay was to be granted/released to those employees, who had rendered minimum two years of regular service on a post, on the date of the issuance of the Re-revised Pay Rules on 24.09.2012 or as on 01.10.2012 or any nearby date and based on this, once the State Authorities have granted /released benefit of the re-revised pay structure to 26 categories of other on 27.09.2012 and to 14 other categories of the Respondent-Health Department on 28.09.2012, Annexure A-12 including the feeder post holders w.e.f. 01.10.2012 whereas the petitioner was given this benefit w.e.f. 01.02.2016 in terms of Notification issued on 30.01.2016, Annexure A-1, then, the pick and choose method/criteria adopted by the State Authorities has seriously prejudiced a section of its employees alike petitioners offends Article 14 of the Constitution of India; and fourthly, the belated release of benefits to the petitioners also defeat the object of giving the Re-revised Pay Structure under the Re-revised Pay Rules of 2012

defeats the very object, rationale and intent behind issuance of the Re-revised Pay Rules 2012 ; and *lastly*, the abuse of discretion, resulting in gross discrimination and arbitrariness in State action cannot be permitted to operate hereinafter.

15. Considering the fourth and fifth contention collectively, this Court has no hesitation to hold that the pick and choose method-criteria adopted by the State Authorities and exercise of unfettered, unrestricted, uncanalised and unbridled discretion under the garb of Rule 1(ii) and Rule 9 of the Re-revised Pay Rules of 2012 has resulted in discrimination, and also by defeating the object of giving the Re-revised Pay Structure and Enhanced Grade Pay to its employees, after having rendered two years of regular service and based on this, once the benefits have been granted to others w.e.f 01.10.2012 but the action of granting such benefits to petitioners belatedly and that too prospectively w.e.f. 01.02.2016 Annexure A-1, is discriminatory, arbitrary and illegal. Even, Rule 1(ii) and Rule 9

of the Re-revised Pay Rules of 2012 is read down, for the reason, that application of such provision in existing form, has led to manifest invidious and hostile discrimination and arbitrariness in State action, offending Articles 14 and 16 of the Constitution of India. On facts, the exclusion of petitioners {in not giving benefit to them w.e.f. 01.12.2012} is not based on any valid classification and differential treatment meted to the petitioners has no object sought to be achieved. Rather, the differential treatment meted to the petitioners defeats the core object of issuance of the Re-revised Pay Rules, as discussed above, necessitating interference. Consequently, the Impugned Notification giving the benefit of the Re-revised Pay to petitioners belatedly w.e.f. 01.02.2016 {as in Annexure A-1} needs to be remedied, so as to mitigate the injustice meted out to the petitioners; and therefore, the petitioners are held entitled for the Re-revised Pay Structure w.e.f 01.10.2012 with all consequential benefits.

RELIANCE BY STATE ON RULE 8 OF REVISED PAY RULES 2012-MISPLACED:

16. Sixth contention of Learned Senior Counsel is that Rule 8 of the HPCS Re-revised Pay Rules of 2012 has overriding effect has been misconstrued by State Authorities.

The above contention, has force, for the reason, that firstly, Rule 8 gives an overriding effect to the Re-revised Rules of 2012 over Fundamental Rules and orders issued thereunder as well as Himachal Pradesh Civil Services [Revised Pay] Rules notified on 26.08.2009 [Annexure A-3] and orders issued thereunder with respect to pay revision and fixation of pay ; and secondly, the provision of Rule 8 in clear and unambiguous terms, expressly giving an overriding effect to Re-revised Pay Rules of 2012 “over aforementioned three rules/orders issued thereunder” as detailed therein and not qua any other Rule and orders issued by the Govt; and thirdly, the State Authorities can neither construe nor invoke “Rule 8 so as to invoke its overriding effect” contrary to the express mandate of the said

Rule; and *fourthly*, even the overriding effect of Rule 8 of the Re-revised Pay Rules 2012 was to be invoked /applicable “in case any inconsistency existed in pay regulated under Re-revised Pay Rules of 2012” vis-à-vis the “pay fixed under Fundamental Rules and orders issued thereunder as well as Himachal Pradesh Civil Services [Revised Pay] Rules notified on 26.08.2009 [Annexure A-3] and the *orders issued thereunder* with respect to pay revision and fixation of pay”; and *fifthly*, Rule 8, cannot be invoked so as to given an overriding effect to Re-revised Pay Rules of 2012 over the Statutory Rules i.e. the Recruitment and Promotion Rules for the post of petitioners-Health Educators notified under proviso to Article 309 of the Constitution on 29.10.1999, Annexure A-2, by negating the legal and statutory right of petitioners for higher nomenclature, higher rank, higher status and higher pay scale attached to post of petitioners-Health Educators is vitiated by non-application of mind ; and *sixthly*, moreover, “express mandate of Rule 8” also “nowhere gives

over-riding effect to Re-revised Pay Rules of 2012 over the Statutory Rules” cannot sustain; and seventhly, the Re-revised Pay Rules 2012 governs and regulate a situation-specific for giving the re-revised pay structure and grade pay then, the aforesaid Rule cannot in any manner be construed to override express conditions of service, including nomenclature, higher rank, higher status, higher hierarchical set-up and even the proportional higher scale to the petitioners-Health educators, who are holders of promotional posts vis-a-vis the feeder post; and eighthly, the provision of Rule 8 cannot be invoked, so as to render the Recruitment and Promotion Rules for post of Health Educators as nugatory and otiose; and besides the above, ninthly, State Authorities have given the benefit of Re-revised Pay Rules of 2012 and the Revised Pay Structure to 26 categories of employees in other departments on 27.09.2012 and to 14 categories of employees in the Respondent-Health Department {including the feeder post holders} on 28.09.2012

and to many other categories w.e.f. 01.10.2012, whose conditions of service were governed by their respective Recruitment and Promotion Rules notified under the provisio to Article 309, without invoking Rule 8, {which infact was not invocable/applicable}, as discussed hereinabove, then, the action of the State Authorities in applying/invoking Rule 8 in only in case of petitioners is just to wriggle out of its legal obligation for removing stagnation and to bring efficiency in service to the petitioners by giving the Re-revised Pay Structure and Grade Pay to 14 other categories in Respondents-health department and several other categories in other government departments w.e.f 01.10.2012 whereas petitioners have been singled out by giving re-revised pay benefit to them belatedly w.e.f. 01.02.2016. The denial of benefits to the petitioners by misapplying and misconstruing this rule, {which infact is not applicable}, reveals inherent unreasonableness, which smacks of legal malafides and thus the State action is quashed and set-aside.

17. ANALYSIS OF CONTENTIONS OF LEARNED STATE COUNSEL:

Now this Court proceeds to examine the contention of the State Authorities.

STAND OF STATE AUTHORITIES THAT RULES OF OTHER STATES ARE NOT TO BE FOLLOWED:

18. First Contention of Learned State Counsel is that in terms of Rule 1(ii) and Rule 9, the State Authorities had been vested with the authority to grant benefit of the HPCS Re-revised Pay Structure and Enhanced Grade Pay under the Re-revised Pay Rules 2012 to any post or category of employees from the date of issuing the Notification, by adding to Schedule to said rules.

The above contention cannot sustain, in view of the detailed discussion made in Paras 14 to 16 of this judgement, and the discretion conferred on the State Authorities by virtue of the aforesaid Rule, cannot be abused, so as to result in hostile discrimination, gross arbitrariness and unfairness to section of employees, alike the petitioners, ignoring material/germane factors, that the object of Re-revised

Pay rule of 2012 was common to all posts and categories, irrespective of departments then, the pick and choose method adopted by the State Authorities in granting the benefit of re-revised pay structure and enhanced grade pay to the petitioners w.e.f. 01.02.2016, after issuance of the Notification on 30.01.2016 [annexure A-2] whereas majority of other categories, including the feeder category were granted this benefit from 01.10.2012.

19. Second Contention of Learned State Counsel is that in terms of Rule 8 of the Re-revised Pay Rules 2012, these Rules shall have an overriding effect over all other Rules and therefore, the action of State Authorities in changing the nomenclature of the posts of the petitioners-Health Educators from “promotion to placement” was valid.

The above contention is misconceived, in view of the discussion in Para 17 of the judgement, as Rule 8 gives an overriding effect over the Fundamental Rules and orders issued thereunder as well as Himachal Pradesh Civil Services [Revised

Pay] Rules notified on 26.08.2009 [Annexure A-3] and orders issued thereunder with respect to pay revision and fixation of pay. Provision of Rule 8, can neither be construed nor invoked so as to whittle down, curtail, restrict and take away or alter the “conditions of service” and the legal and statutory right of petitioners for higher nomenclature, higher rank, higher status and higher pay scale attached to post of the petitioners-Health Educators by virtue of the Statutory Rules notified under the proviso to Article 309 of the Constitution on 29.10.1999, Annexure A-2. Rule 8 cannot be invoked, so as to render the Recruitment and Promotion Rules for post of Health Educators as nugatory and otiose. Rule 8 cannot be sought to be invoked so as to change the “nomenclature of petitioners-Health Educators from “promotion to placement but without amending the Statutory Rules” notified for the post in 1999 and even the Expert Committee made recommendations in its Report on 20.10.2015 making **“conditional recommendations”** that in

case, the petitioners-Health Educators [promotional post holders] were to be granted re-revised pay scale equivalent to that of the feeder posts, then, in such an eventuality, without adhering to the advise of the Committee and that too without *amending Statutory Rules*-Recruitment and Promotion Rules of 1999 then, the process followed by State [including Cabinet] in giving an ipso facto approval, “without amending the Rules” cannot sustain; and unless and until Statutory Rules were amended in accordance with law and until such time, the recommendation made by Pay Commission or Expert Body cannot be enforced to the prejudice or disadvantage of employees, as has been done in instant case, in view of the mandate of the Honble Supreme Court in the case of **Inder Singh and Ors vs Vyas Muni, 1987 (Supp) SCC 257** {Para 8 thereof}. Even a policy decision for merging or integrating cadres, which had different qualifications functions, duties and powers treating “unequals as equal” was violative of Article 14 of the Constitution of India and the

same can be enforced after issuing appropriate rules {by amending or substituting existing rules or by issuing the new rules} in view of the principle reinforced by the Honble Supreme Court in case of **P U Joshi and others vs Accountant General (2003) 2 SCC 632** [para 8 thereof]. Resultantly, Rule 8 being inapplicable, was misapplied by the State Authorities and therefore, the contention of Learned State Counsel is turned down,

20. Third Contention of Learned State Counsel is that the State of Himachal Pradesh is not bound to follow the pay pattern and pay structure of other States including the State of Punjab.

The above contention is misconceived and for the reason, that the prayer of the petitioners being Health Educators have not claimed parity in pay with their counterpart categories of Health Educators in the State of Punjab.

Besides, claim is against State Authorities, in not granting them the benefit of Re-revised Pay Structure and Grade Pay to them w.e.f. 01.10.2012,

on analogy on which benefit was extended to 26 categories in other departments on 27.09.2012 and 14 other categories in the Respondent-Health Department {including the feeder post holders} on 28.09.2012 whereas the petitioner was granted this benefit belatedly w.e.f. 01.02.2016 prospectively; and another claim is for removing the anomaly by restoring his legal entitlement for proportional higher grade pay over and above the grade pay to Rs. 4200, which was given to feeder category, as grant of same grade pay to petitioners-Health Educators [promotional post holders] vis-à-vis the feeder post holders, despite there being wholesale dissimilarity in all respects and treating unequals as equal, but without amending the Statutory Rules of 1999 cannot sustain, as discussed above.

RELIANCE ON THE JUDGEMENTS BY THE STATE IS MISCONCEIVED:

21. Last Contention of Learned State Counsel is this Court should not interference in matters relating to pay fixation, as per the mandate of the Honble Supreme Court judgements in the case

of **P.U.Joshi** and others vs Accountant General, Ahmadabad and others and the connected case of Union of India and others vs Basudeba and others and in **Shiba Kumar Dutta** and others vs Union of India and others (1997) 3 SCC 545 and judgement passed by this Court in State of Himachal Pradesh and others vs **Navneet Gupta**, LPA No 146/2013, and in State of Himachal Pradesh vs **Pratap Thakur**, LPA No 11 of 2012 decided on 22.09.2014.

21(i). The above contention is misconceived, for the reason, firstly, the judgements relied upon by Learned State Counsel are distinguishable on facts; and secondly, this Court is conscious of the limits of interference in matters relating to fixation of pay or pay scales and/or equivalence but, at the same time, the Honble Supreme Court has permitted interference in following situations:

**SCOPE OF INTERFERENCE- IN CASE EXCEPTION
MADE OUT:**

21(ii). Normal principle is that the Court should exercise restraint in matters relating to prescription of pay scale and fixation of pay but the Court

can show indulgence, by way of an exception, in case, sustainable reasons exist establishing hostile discrimination, in the case of **Union of India vs P V Hariharan (1997) 3 SCC 568**, in the following terms:

5.We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. 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 cascading effect. Several other categories similarly situated, as well as those situated above the below, put forward their claims on the basis of such change.**Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales....”**

21(iii). Courts can interfere if the decision of the Government is unjust, irrational and prejudicial to a section of employees and the Government has taken a decision by ignoring factors, which are relevant to the decision making process and the

end result, and in such an eventuality, the Court can direct the Government to reconsider the matter, in the case of **State of Haryana and Anr vs Haryana Civil Secretariat Personal Staff Association, (2002) 6 SCC 72**, in the following terms:

9. “There can therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body **unless there is cogent material on record to come to a firm conclusion that a grave error had crept in** while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice.
10.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.....”

21(iv). Normal principle that judicial review in matters relating to prescription of pay scales, on the recommendations of expert committee, having financial implication shall not ordinarily lie, but the Court can interfere if it is satisfied that the Governments decision is arbitrary, as mandated by Three Judges of the Honble Supreme Court in the case of **Union of India vs M V Mohanan Nair, (2020) 5 SCC 421**, in following terms:-

35. 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 Pay Commission and several relevant factors including financial implication and court cannot substitute its views. As held in Haryana Civil Secretariat Personal Staff Association (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.....

21(v). Courts can show indulgence in matters relating to economic policies, if the lawful authority is abused if the actions are wholly unreasonable or violate the Constitution or the Statute, as mandated by the Three Judges of the Honble Supreme Court in **Small Scale Industrial Manufacturers Association vs Union of India, (2021) 8 SCC 511**, in following terms:

69.Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala fide, arbitrariness, unfairness etc.

21(vi). Indulgence can be shown, where material on record establishes that error had crept in while

fixing the pay and such gross arbitrariness and unfairness needs to be rectified/remedied, as per the mandate of the Honble Supreme Court in the case of **Union of India vs Indian Navy Civilian Design Officers Association and Another, (2023) 19 SCC 482**, in following terms:-

20. The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance, are ordinarily not amenable to judicial review **unless a gross case of arbitrariness or unfairness is established by the aggrieved party.**

21(vii). Courts can interfere if the pay structure of the higher-promotional post is lower than the feeder post and the decision of government offends Articles 14 and 16 of the Constitution of India, in the case of **State of Uttar Pradesh vs Virender Bahadur Katheria, (2024) 15 SCC 01**, in following terms:

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...**

54. Equally well settled is that the creation, merger, de-merger or amalgamation of cadres within a service to bring efficacy or in the administrative exigencies, is the State's prerogative. The Court in exercise of its power of judicial review would sparingly interfere in such a policy decision, unless it is found to have **brazenly offended Articles 14 and 16 of the Constitution.**

21(viii). Considering the factual matrix and the material on record, this Court is of the considered view that that **decision making process** and the resultant action of the State Authorities in releasing Grade Pay of Rs 4200 in re-revised pay structure of Rs 10300-34800+ 4200 GP to the petitioners-Health Educators as per the Notification issued on 30.01.2016 [Annexure A-1] w.e.f. 01.02.2016 whereas the feeder post-lower post of Male/Female Health Supervisors [later redesignated as Multipurpose Health

Supervisors] were granted the same re-revised pay structure as per Notification issued on 28.09.2012, **Annexure A-12** w.e.f 01.10.2012; and the decision making process giving equivalence to the promotional post holders i.e. petitioners-Health Educators with lower-feeder post holders i.e. Male/Female Health Supervisors [later redesignated as Multipurpose Health Supervisors] when, ***both these posts had wholesome dissimilarity and were unequal*** in all respects; and the decision making process is vitiated by non-application of mind and perverse, as the Expert Committee made “conditional report-recommendations on 20.10.2015 [at page 81-82] but without satisfying -fulfilling the pre-conditions, the nomenclature of promotional post of the petitioners-Health Educators cannot be changed from “promotion to placement” by resorting to an artificial equivalence dehors the Statutory Rules and that too without amending the Statutory Recruitment and Promotion Rules for the post of Health Educators issued on 18.11.1999, Annexure A-2], ***establishes gross error, irrationality***

and perversity in decision making process. The action of the State Authorities in **applying pick and choose criteria** for releasing/granting re-revised pay structure under the HPCS Re-revised Pay Rules 2012, ignoring that the core object of giving the Re-revised Pay Rules, was so as to ensure better service conditions and to bring efficiency in service, in lieu of stagnation, for employees having rendered two years of regular service and once this object was “common to all employees, irrespective of posts and categories and departments” then, it is **highly unjust, irrational and prejudicial** on the part of the State Authorities to grant/release benefit to the petitioners belatedly by issuing a Notification on 30.01.2016 [Annexure A-1] w.e.f. 1.02.2016 and no cogent, convincing and sustainable explanation is forthcoming as to why petitioners were granted benefits belatedly and exclusion of the category of petitioners from being granted the benefits from 01.10.2012 is not based on valid classification and the differential treatment meted out to the

petitioners has no nexus with the object sought to be achieved therefore, in the absence of these foundational preconditions, the action of the State Authorities is ***arbitrary and unreasonable***, warranting interference by this Court. Even, the plea of the State Authorities in granting Re-revised Pay Structure to the petitioners from the date the Schedule was notified under Rule 1(ii) and Rule 9 of the HPCS Re-revised Pay Rules of 2012 cannot sustain and ***once the State Authorities have abused its lawful authority, inferring unfettered, uncanalised, unbridled and unrestricted discretion*** to prescribe dates for extending benefit of re-revised pay structure and grade pay by applying a pick and choose method and that too by ignoring relevant considerations of removing stagnation and bringing efficiency in service by giving better pay incentives to those who have rendered two years of regular service as on the date of issuance of the Re-revised Pay Rules on 24.09.2012, applicable w.e.f. 01.12.2012, by ***ignoring relevant and germane twin objective for granting***

the re-revised pay structure was common to all employees, throughout the State. The action of the State Authorities in denying and delaying the release of re-revised pay structure to the petitioners from 01.10.2012 till 31.01.2016 establishes manifest arbitrariness, offending constitutional ethos embedded in Article 14 and 16 of the Constitution of India. Rule 8 of the Revised Pay Rules 2012 cannot be applied/invoked so as to render the Statutory Rules notified for the post of Health Educator of 1999 redundant, nugatory or otiose and Rules 8 cannot be invoked/applied in arbitrary, discriminatory and whimsical manner so as to negate and defeat the rights of the petitioners for higher nomenclature, higher rank, higher status, and the hierarchical set-up vis-à-vis the feeder post and the conditions of service recognized by Recruitment and Promotion Rules-Statutory Rules of 1999; therefore, the Rule 1 (ii) and Rule 9 of the Re-revised Pay Rules of 2012 ***are read down; and*** Rules 8 cannot be invoked/applied so as to take away, whittle down

and defeat the rights, legal entitlements, conditions of service and benefits accruing under the Statutory Rules of 1999, when, these Statutory Rules occupied the field on the date of issuance of the Impugned Notification on 30.01.2016, Annexure A-1 and even thereafter, when, the similarly placed incumbents, who were inducted/promoted as Health Educators and were placed alike the petitioners were granted benefit of Fundamental Rules 22 (1) (a) (1) even till 2018.

ADMISSIBILITY OF RELIEF:

22. Consequently, the decision making process as well as the Impugned Order dated 30.01.2016, Annexure A-1, existing in present form, qua the grant of Grade Pay of Rs 4200 w.e.f. 01.02.2016 in the Revised Pay Structure of Rs 10300-34800+4200 GP, is quashed and set-aside ***and*** in view of the discussion made above, the State Authorities shall re-visit the issue and thereafter grant an appropriate proportional Re-revised Pay Structure and Grade Pay to the petitioners-Health Educators,

over and above the Re-revised Pay Structure and Grade Pay as granted to the feeder category **and** for removing the charge of hostile discrimination, arbitrariness, and to ensure parity in the light of the object of issuing the HPCS Re-revised Pay Rules of 2012; State Authorities shall also grant these benefits to the petitioners-Health Educators [promotional post holders] 01.10.2012 i.e. the date from which this benefit was granted/released to the feeder post incumbents and to other categories of employees in the Respondent-Health Department and to many other employees w.e.f. 01.10.2012.

23. In order carve out a balance between the rights of the petitioners and the interests of State Authorities, though the Impugned Notification dated 30.01.2016 [Annexure A-1], has been quashed, but in order to safeguard the right of the petitioners and to protect them reduction in pay structure and Grade Pay hereinafter, therefore, it is clarified that till the date, State Authorities issues the Revised/Modified Notification, in view of aforesaid

discussion, the petitioners-Health Educators, as an interim arrangement, shall continue to draw pay in Re-revised pay structure of Rs 10300-34800 + 4200 GP and accruals, till such time, the Modified / Revised /Amended Benefits are notified, hereinafter.

24. No other point was raised/argued.

DIRECTIONS:

25. In view of the above discussion and for reasons recorded hereinabove, the instant petition is ***allowed***, in following terms:

- (i). Impugned Notification dated 30.01.2016 [Annexure A-1] giving the re-revised pay structure of Rs 10300-34800 + 4200 Grade Pay w.e.f. 01.02.2016 to petitioners is quashed and set-aside; [to the extent it gives Grade Pay of Rs 4200];
- (ii). State Authorities shall re-visit the case of the petitioners and shall thereafter give an appropriate proportional higher Grade Pay, over and above the Grade Pay of Rs 4200, to petitioners-Health Educators, w.e.f 01.10.2012;
- (iii). Action of releasing the Re-revised Pay Structure and Grade Pay to petitioners prospectively from 01.02.2016 as in

Annexure A-1, is quashed and set-aside;

- (iv). Rule 1 (ii) and Rule 9 of the Himachal Pradesh Civil Services (Category/Post-wise Revised Pay) Rules 2012 conferring unfettered, unbridled uncanalised and unbridled discretion; and its abuse by adopting a pick and choose criteria, while granting re-revised pay structure; resulting in hostile discrimination, and arbitrariness, offending Articles 14 and 16 of the Constitution of India, is read down;
- (v). Rule 8 is held to be inapplicable in fact-situation of instant case;
- (vi). Action of giving the same Grade Pay of Rs 4200 to the petitioners-Health Educators [promotional posts holders] and the feeder post holders, is quashed and set-aside;
- (vii). Decision making process in changing nomenclature of Health Educators from “promotion to placement” but without amending Statutory Rules of 1999 [Annexure A-2], and that too by ignoring germane factors, or “preconditions as spelt out in Expert Committee Report dated 20.10.2015 [Pg 81-82 of paper -book] vitiates entire process and thus resultant decision, as in Notification Annexure A-1, is declared inoperative for all purposes hereinafter;

- (viii). Sequel to above directions, the State Authorities shall grant the appropriate proportional higher Grade Pay {as in direction no (ii) to the petitioners from 01.10.2012, **with** benefit of pay fixation in such modified/revisited Revised Pay Structure-Grade Pay from the due date [01.10.2012] notionally; **but** the actual monetary benefits shall accrue for three years preceding the filing of writ petition [on 15.09.2016] w.e.f. 15.09.2013 and thereafter with all consequential benefits;
- (ix) State Authorities shall comply with the directions and release all benefits within four weeks from today;
- (x). Till revised benefits in terms of this judgement are released, the directions contained in Para 23 shall operate;
- (xi). Parties to bear their own costs.

In the aforesaid terms, the instant petition is allowed and pending miscellaneous application(s), if any, shall accordingly stand disposed of.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

October 08, 2026

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