



W.M.P.No.27077 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2015

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CORAM:
THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.A.Nos.352, 390, 398, 577, 578, 579, 580 to 582, 601 to 611, 622 to 632, 678 to 688, 612 to 621, 959, 1058, 1217 of 2014

W.P.Nos.6489 & 8497/2014, 21566 & 21568/2012, 34554/2012, 21928, 24479, 25181, 26470 to 26472, 26829, 26944, 26945, 27115, 27219, 28094, 28137, 28179, 30952, 30953, 33256, 33316, 33443 of 2013

W.P.Nos.232, 1701, 2292, 2984, 3326, 3351, 3427, 3669, 3724, 3804, 4047, 4864, 4836, 5096, 5097, 5193 to 5197, 6154, 6217, 9468, 6457, 7521, 9809 to 9817, 10030, 10533, 10723 to 10729, 10785 to 10787, 10822, 10985, 11000 to 11003, 11086 to 11093, 11146, 11149, 11177, 11178, 10922, 11532 to 11534, 11547 to 11558, 11579 to 11591, 11701, 11720, 11721, 11732 to 11734, 11862 to 11864, 12069, 12071, 12158 to 12163, 12164 to 12166, 12260 to 12271, 12363 to 12369, 12560, 12680, 12686, 12717 to 12724, 12903, 13372, 14744, 14745, 15126 to 15132, 15516 to 15524, 15774, 15775, 15866 to 15872, 15880 to 15884, 15895, 16065 to 16068, 16131 to 16134, 16253, 16307 to 16311, 16766, 16783 to 16786, 16845 to 16849, 17123, 17236, 17332, 17489, 17517, 17720, 17893, 17894, 17920 to 17929, 17937 to 17946, 18013, 18457 to 18459, 18597 to 18606, 19119 to 19125, 19648, 19889, 20149, 20152, 20161, 20251, 20582, 20672, 21918, 21928, 21929, 21995, 21996, 21924, 21945, 21706, 21707, 21705, 21858 to 21860, 21303, 22099, 22074, 22075, 21708, 22081, 22079, 22033, 22077, 22100, 22142, 22078, 22798, 22799, 22737, 22715, 22740, 22815 to 22817, 22697, 22698, 21377, 22371, 22392, 23007, 22974, 23351, 23352, 23250 to 23257, 13121, 13122, 23295, 24840, 23091, 23092, 23803, 13130 to 13134, 24328, 19753, 19754, 18273, 18022, 21674, 11299 to 11302, 22683, 22684, 9467, 25282, 26066, 26067, 26074, 26112, 25196, 25753, 25529, 25623, 25624, 17237, 14940, 19833, 24463 and 25298 to 25301 of 2014 & W.P.(MD) No.8558 of 2014



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W.A.No.352 of 2014 :

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1. G. Easwaran
2. M. Vasantha
3. S. Venkataraman
4. M. Nageshwari
5. Palaniswami
6. J. Kasthuri
7. K. Govindarajan
8. R. Veerammal
9. Natchimuthu
10. P. Dharmalingam
11. S. Sakunthala
12. A.J. Radhakrishnan
13. G.S. Subramani
14. S. Indirani
15. R. Mohan
16. Robert M. Joseph
17. V. Subramanian
18. A. Adimoolam
19. K. Pichaiyapillai
20. Namagiri G.
21. L. Alponsa
22. D. Paneerselvam
23. R. Renuka
24. K.R. Nirmala
25. V. Venkatesan
26. M.R. Kamakshi
27. A.P. Duraisamy

... Appellants

vs.

1. The Government of Tamilnadu
rep. by the Secretary,
School Education Department,
Fort St. George, Chennai 600 009.
2. The Director of School Education
(Higher Secondary),



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College Road, Nungambakkam,
Chennai 600 006.

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3. The Chief Educational Officer,
Vellore, Vellore District.
4. The Chief Educational Officer,
Tiruvallur, Tiruvallur District.
5. The Chief Educational Officer,
Chennai South, Chennai District.
6. The Chief Educational Officer
Coimbatore, Coimbatore District.
7. The Chief Educational Officer
Thanjavur, Thanjavur District.
8. The Chief Educational Officer
Perambalur, Perambalur District.
9. The Chief Educational Officer
Tiruppur, Tiruppur District.
10. The Chief Educational Officer
Trichy, Trichy District.
11. The Chief Educational Officer
Dharmapuri, Dharmapuri District.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 18.11.2012 made in W.P.No.4355 of 2013 and thereby allow the Writ Petition directing the respondents to extend the benefits of G.O.Ms.No.216 Finance (PC) Department dated 22.03.1993 in the light of the orders of the Hon'ble Division Bench in W.P.No.8747 of 2009, dated 14.07.2009 confirmed by the Hon'ble Supreme Court of India in C.C.No.2746 of 2010 dated 23.04.2010 and accordingly award selection/special grade scale of pay w.e.f. 01.06.1988 and revision of pensionary benefits and pay arrears.



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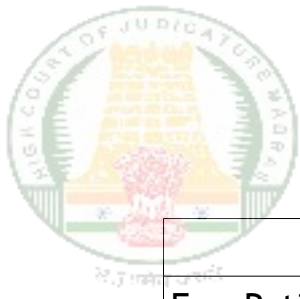
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Appearance of Counsel	
For Appellants in Writ Appeals Nos.352 of 2014, 601 to 611 of 2014, 622 to 632 of 2014, 678 to 688 of 2014 and 612 to 621 of 2014	Mr.R.Viduthalai, Senior Counsel for Mr.V.Thirupathi
For Petitioners in Writ Petition Nos.24479/2013, 10985/2014, 11000 to 11003/2014, 11177 & 11178/2014, 11532 to 11534/2014, 11701/2014, 11720 & 11721/2014, 11732 to 11734/2014, 11862 to 11864/2014, 12069/2014, 12071/2014, 12164 to 12166/2014, 21918/2014, 21928/2014, 21929/2014, 21924/2014, 21706/2014, 21707/2014, 21705/2014, 21858 to 21860/2014, 22099/2014, 21708/2014, 22081/2014, 22079/2014, 22077/2014, 22100/2014, 22078/2014, 22737/2014, 22715/2014, 22815 to 22817/2014, 23351/2014, 23352/2014 & 11299 to 11302/2014	
For Appellants in W.A.Nos.390 & 398/2014	Mr.R.Singaravelan
For Petitioners in W.P.Nos.25181, 33256 & 33316/2013 & W.P.(MD) No.8558/2014	
For Appellant in W.A.Nos.577 & 578/2014	Mr.A.R.Suresh
For Petitioners in W.P.Nos.12560 & 24840/2014	
For Appellants in W.A.Nos.579 to 582/2014	Mr.P.Wilson, Senior Counsel for Mr.A.Rajendiran
For Petitioners in W.P.Nos.11146 & 11149/2014, 11579 to 11599/2014, 12260 to 12271/2014, 22074 & 22075/2014	
For Appellant in W.A.No.959/2014	Mr.V.Chandrakanthan
For Petitioner in W.P.No.21978/2013	
For Appellants in W.A.No.1058/2014 & 1217/2014	Mr.K.R.Gunasekar
For Petitioners in W.P.Nos.15774/2014, 15775/2014, 16065 to 16068/2014, 16131 to 16134/2014, 16253 to 17236/2014, 17332/2014, 17720/2014, 18013/2014, 20152/2014, 20161/2014, 20672/2014,	



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Appearance of Counsel	
22798 & 22799/2014, 23803/2014, 18273/2014, 18022/2014, 25196/2014, 25753/2014, 25529/2014 & 17237/2014	
For Petitioners in W.P.No.6480/2014, 3804/2014 & 4864/2014	Mr.N.Umapathy
For Petitioners in W.P.No.8497/2014 & 4836/2014, 5193 to 5197/2014	Mrs.Dakshayini Reddy
For Petitioners in W.P.No.21556 to 21568/2012, 26829/2013, 27219/2013, 28094/2013, 28137/2013, 28179/2013, 6154/2014, 9467/2014, 9468/2014, 25623 & 25624/2014 & 14940/2014	Mr.A.Bobblie
For Petitioner in W.P.No.34554/2012	Mr.M.Ramadoss
For Petitioners in W.P.Nos.26470 to 26472/2013, 3351/2014, 21995 to 21996/2014, 22392/2014, 26944 & 26945/2013	Mr.M.Thamizhavel
For Petitioner in W.P.No.27115/2013	Mr.J.Antony Jesus
For Petitioners in W.P.Nos.30952 & 30953/2013	Mr.J.Prakasam
For Petitioners in W.P.Nos.33443/2013, 232/2014, 1701/2014, 2292/2014, 3326/2014, 3724/2014, 15895/2014, 16766/2014, 19648/2014, 19889/2014, 20149/2014, 20852/2014, 22371/2014, 22974/2014, 19833/2014	Mrs.M.Srividhya
For Petitioner in W.P.No.2984/2014	Mr.V.Manisekaran
For Petitioners in W.P.Nos.3427/2014, 6217/2014, 9809/2014, 16307 to 16311/2014	Mr.S.Prasath
For Petitioners in W.P.Nos.3669/2014, 10723 to 10729/2014, 13372/2014, 16783 to 16786/2014, 20251/2014, 22740/2014, 26066/2014	Mr.G.Punniyakotti
For Petitioner in W.P.No.4047/2014	Mr.G.Justin
For Petitioners in W.P.Nos.5096 & 5097/2014 & 10030/2014	Mr.G.Sankaran
For Petitioner in W.P.No.6457/2014	Mr.S.Vijayan
For Petitioners in W.P.Nos.10533/2014, 7521/2014	Mr.K.Rameshkumar



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Appearance of Counsel	
For Petitioners in W.P.Nos.10785 to 10787/2014, 11086 to 11093/2014, 11547 to 11558/2014, 12158 to 12163/2014, 12363 to 12369/2014, 14744 & 14745/2014, 15126 to 15132/2014, 15516 to 15524/2014, 15866 to 15872/2014, 16845 to 16849/2014, 17517/2014, 18457 to 18459/2014, 19119 to 19125/2014, 21303/2014, 23250 to 23257/2014, 19753 & 19754/2014 & 26112/2014	Mr.R.Sreedharan
For Petitioners in W.P.Nos.10822/2014 & 22142/2014	Mr.A.S.Kaizer
For Petitioner in W.P.No.10922/2014	Mr.S.Joel
For Petitioners in W.P.Nos.12680/2014, 12686/2014	M/s.Jayasubha Associates
For Petitioners in W.P.Nos.12717 to 12724/2014	Mr.C.S.Vijayakumar
For Petitioners in W.P.Nos.21674/2014 & 25282/2014	Mr.M.Deivanandam
For Petitioner in W.P.No.26067/2014	Mr.G.Amalraj
For Petitioner in W.P.No.24463/2014	Mrs.C.Uma
For Petitioners in W.P.Nos.25298 to 25301/2014	Mr.K.Thennan
vs.	
For Respondents in all Writ Appeals & Writ Petitions	Mr.A.L.Somayaji Advocate General assisted by Mr.D. Krishnakumar Special Govt. Pleader (Education) and Mr.K.Karthikeyan, Government Advocate

* * * * *

Date of Reserving Judgment in Batch cases : 25.09.2014

Date of Pronouncing the Judgment :



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04.02.2015

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COMMON JUDGMENT

V.DHANAPALAN,J.

Since all these matters involve one and the same issue, they are altogether taken up for disposal by a common judgment.

2. Heard the learned Senior Counsel and also the other counsel appearing for the appellants/petitioners and Mr.A.L.Somayaji, learned Advocate General, representing Mr.D.Krishna Kumar, learned Special Government Pleader (Education), appearing for respondents.

3. The appellants herein were Secondary Grade Teachers in Government High Schools and Higher Secondary Schools. They are governed by the Tamil Nadu Educational Subordinate Service Rules and are under the control of the Directorate of School Education. On completion of 10 years and 20 years of their service, they claim Selection Grade and Special Grade pay as that of Primary School Headmasters. But the Primary School Headmasters belong to a different service and governed by Tamil Nadu Elementary Education Subordinate Service Rules and they are under the control of the



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Directorate of Elementary Education. The Government of Tamilnadu accepted the recommendations of the V Pay Commission and issued orders in G.O.Ms.No.666 Finance (Pay Commission) Department, in and by which, the scheme of selection/Special Grade on completion of 10/20 years of service for all State Government employees was dispensed with, with retrospective effect from 01.06.1988.

4. It is the case of the appellants that insofar as Secondary Grade Teachers are concerned, in the Elementary Schools, the posts of Secondary Grade Teachers and Headmasters were interchangeable and carried same scale of pay and only a personal pay (Special Pay) was given for those Teachers while they are posted as Headmasters. By the said Government Order, i.e. the 5th Tamilnadu Pay Commission, the post of Headmaster was kept in a higher pedestal and a higher scale of pay was fixed and the post of Secondary Grade Teachers was made as Feeder Category for Headmaster Post that too in a lower scale of pay. It is their further case that Secondary Grade Teachers in High/Higher Secondary Schools do not have any promotional avenues. Pursuant to representations being made by Service Associations to continue the scheme of awarding Selection/Special Grade on completion of 10/20 years of service, G.O.Ms.304 Finance (PC) Government, dated



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28.03.1990 was issued reintroducing and continuing the scheme of Selection/Special Grade on completion of 10/20 years of service and was restricted to the promotional post's ordinary grade.

5. The Government took a policy decision to place all the Secondary Grade Teachers alike and issued G.O.Ms.No.216 Finance (PC) Department, dated 22.03.1993 that in respect of Secondary Grade Teachers employed under High/Higher Secondary Schools, there is no promotional avenue as that of O.As. although there is a promotional post for the same Secondary Grade Teachers in Elementary Schools. As a measure of uniformity in respect of all Secondary Grade Teachers, Government directed that the Teachers be made eligible for Selection/Special Grade as in Annexure-I to G.O.Ms.No.304.

6. Some of the Teachers working in High Schools filed O.A.Nos.7908/1997 and 8276/1997 before TAT for fixing the scale of pay in Rs.2000-3200 as per G.O.Ms.No.216 and the Tribunal, by its order dated 07.10.1998 allowed the Original Applications. Some of the Secondary Grade Teachers from High Schools filed O.A.No.88 of 1996 & batch for a different prayer to create promotional avenue which was dismissed vide order dated



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03.04.2002. While so, the Government filed W.P.No.8747 of 2009 against the order in O.A.No.8276/1997 dated 07.10.1998 and the Hon'ble Division Bench dismissed the Writ Petition with a direction to comply with the order of the Tribunal in O.A.No.8276/1997 within six weeks' time. S.L.P.(CC) No.2746 of 2010 filed by the respondents was also dismissed. Pursuant thereto, the Government issued consequential order in G.O.Ms.No.28, School Education Department and restricted the benefits only to the applicants before the Tamilnadu Administrative Tribunal. Aggrieved by the said G.O., similarly placed persons filed Writ Petitions since their representations were not considered for extending the same benefits and this Court directed the respondents to dispose of the representations. The respondents considered their representations, but rejected the same. Challenging the same, they filed W.P.No.9752/2012 & batch before this Court and the same were allowed. Similarly, before the Madurai Bench of this Court, W.P.(MD) No.4858 of 2012 (batch) were disposed of with a direction to extend the benefits to the writ petitioners. Aggrieved by the said order, the respondent preferred W.A.No.1566 of 2012 and the same was dismissed by a Division Bench of this Court. Further, W.A.No.1943 of 2012 (batch) filed by the respondents were dismissed by the Hon'ble First Bench of this Court. Also, S.L.P. (Civil) C.C.No.2680/2013 filed before the Hon'ble Supreme Court was dismissed.



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7. The claim of the appellants is that they are entitled to Selection Grade and Special Grade pay as that of Primary School Headmasters as per G.O.Ms.No.216, Finance (Pay Cell) Department, dated 22.03.1993. In this regard, when the appellants approached this Court in a batch of Writ Petitions, the learned Single Judge, on analysis of the question as to whether G.O.Ms.No.216, Finance (PC) Department, dated 22.03.1993 grants the writ petitioners, who were Secondary Grade Teachers in the Government High Schools and Higher Secondary Schools, the Selection Grade and Special Grade pay of a Primary School Headmaster on completion of 10 years and 20 years of service with effect from 01.06.1988, dismissed the Writ Petitions with the following observation:

"60(i) On the other hand, learned Advocate General submitted that the S.L.P.(CC)No.2746 of 2010 preferred against the order dated 14.07.2009 in W.P.No.8747 of 2009 was dismissed on 23.04.2010 *in limine* at the admission stage and hence, the same cannot be considered as a binding precedent laying down the law that the Secondary Grade Teachers in Government High Schools and Higher Secondary Schools are entitled to the Selection Grade and Special Grade pay of the Primary School Headmaster. He placed



reliance on the judgment of the Apex Court in **Union of India V. Jaipal Singh**, reported in (2004) 1 SCC 121 in this regard.

61(i). Further, the Division Bench also in the order dated 14.07.2009 in W.P.No.8747 of 2009 did not confirm the order dated 07.10.1998 in O.A.No.8276 of 1997 on merits. Moreover, I have held that the judgment in W.P.No.8747 of 2009 is opposed to the judgment of the Apex Court in **Director of School Education V. A.N.Kandaswamy and Another** reported in (1998) 8 SCC 26. Therefore, in the facts and circumstances of the case, the judgment in W.P.No.8747 of 2009 cannot be taken as binding precedent for the proposition that the Secondary Grade Teachers in the Government High Schools and Higher Secondary Schools are entitled to the Selection Grade and Special Grade pay of Primary School Headmaster. In this regard, the learned Advocate General placed reliance on the judgment of the Apex Court in **U.P. SEB V. Pooran Chandra Pandey**, reported in (2007) 11 SCC 92 and more particularly paragraphs 12 to 15.

62. In view of these judgments, I am in entire agreement with the submissions of the learned Advocate General that the dismissal of the Special Leave Petition at the threshold without any detailed reasons



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therefor does not constitute any declaration of law and thereby constitute a binding precedent.

63. Applying the principle enumerated in the above decisions of the Apex Court, I am of the view that the order dated 14.07.2009 in W.P.No.8747 of 2009 and the the judgment dated 23.04.2010 in S.L.P.(CC)No.2746 of 2010 cannot be relied on by the petitioners as a "binding precedent" in support of their claim, particularly, in view of the order of the Apex Court in **Director of School Education V. A.N.Kandaswamy and Another** reported in (1998) 8 SCC 26.

64. I would like to make it clear, at this juncture, that the order in O.A.No.8276 of 1997, which in turn, was confirmed by the Apex Court on 23.04.2010 in S.L.P.(CC)No.2746 of 2010 is binding between the parties and the State is bound to implement the order. In fact the Government issued G.O.Ms.No.258, School Education Department, dated 04.09.2010 implementing the order of the Tribunal in O.A.No.8276 of 1997 after it lost before the Apex Court. Likewise, the other orders passed by this Court following the judgment in W.P.No.8747 of 2009 is binding between the parties to those orders. But the same cannot be relied on by the petitioners to claim, as a matter of right, the Selection



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Grade / Special Grade pay of Primary School Headmaster, particularly, in view of the judgment of the Apex Court in **Director of School Education V. A.N.Kandaswamy and Another** reported in (1998) 8 SCC 26 and the judgment of the Division Bench of this Court in **Director of School Education & Another V. R.S.Srinivasan and another** reported in 2004 WLR 526.

65. For all the aforesaid reasons, the writ petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

8. Aggrieved by the dismissal of the above Writ Petitions, the writ petitioners are before this Court by way of the present Appeals.

9. Learned Senior Counsel appearing for the appellants/petitioners would submit that when a law is laid down by the Hon'ble Supreme Court and this Court to the effect that when there is a judgment in favour of similarly placed persons either by a Single Judge or a Division Bench, which is confirmed upto Hon'ble Supreme Court and has become final by implementing the judgment even if it is wrong, the same has to be followed in the case of other similarly placed persons. They would further submit that in order to have a



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measure of uniformity, the Government issued G.O.Ms.No.216, dated 22.03.1993, according to which, the Secondary Grade Teachers employed in High School/Higher Secondary Schools were also eligible for the scale of pay on par with the scale of pay of the Primary School Head Masters.

10. The learned Senior Counsel appearing for the appellants/writ petitioners have relied on the following decisions :

(i) **Inder Pal Yadav and others vs. Union of India and others [(1985) 2 SCC 648]**

“5. ... There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part 5.1 (a) (i) by modifying the date from 1.1.1984 to 1.1.1981. With this modification and



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consequent rescheduling in absorption from that date onward, the Scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by re-casting the stages consistent with the change in the date as herein directed.”

(ii) Smt. Prem Devi and another vs. Delhi Administration and others
[1989 Supp (2) SCC 330]

“4. The facts as are not in dispute the case of one of the employees having been decided by this Court it was expected that without resorting to any of the methods the other employees identically placed would have been given the same benefit, which would have avoided not only unnecessary litigation but also of the waste of time and the movement of files and papers which only waste public time. Learned counsel only read out the counter and stated that it was thought that the case of Smt. Rekha Mehta will not be applicable to the case of the present petitioners although learned counsel had no argument in law to support such a contention. The petitions are therefore allowed and it is directed that the petitioners shall be paid their pensionary benefits within 3 months from today. It is further directed that the petitioner shall be entitled to costs of Rs. 2500 in each case. It is also directed that the matter will be considered at the appropriate level to see that such things do not happen in future so that unnecessary litigation is avoided and costs to the public exchequer is saved. ”

(iii) Govind Ram Purohit and another vs. Jagjiwan Chandra and others [1999 SCC (L & S) 788]

“3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not



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parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.”

**(iv) Bihar State Government Secondary School Teachers Association
vs. Bihar Education Service Association and others [(2012) 13 SCC 33]**

“43. In the same vein we may state that when the judgment of a Court is confirmed by the higher court, the judicial discipline requires that Court to accept that judgment, and it should not in collateral proceedings write a judgment contrary to the confirmed judgment. We may as well note the observations of Krishna Iyer, J. in *Fuzlunbi Vs. K. Khader Vali* and another reported in 1980 (4) SCC 125:-

“.....No judge in India, except a larger Bench of the Supreme court, without a departure from judicial discipline can whittle down, wish away or be unbound by the ratio of the judgment of the Supreme Court.”

**(v) Director of School Education, Chennai and another vs.
R.S. Srinivasan and another [2004 Writ L.R. 526]**

“14. According to Fundamental Rule 9(28), “Substantive Pay” means the pay other than the Special Pay, Personal Pay or Emoluments classed as pay by the Government under Rule 9(21)(a)(iii), to which the Government servant is entitled on account of the post to which he has been appointed substantively or by regularisation of his substantive position in the cadre. Thus, the claim of the first respondent that he joined as



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Elementary School Headmaster and as such, that post is substantive post, is unsustainable both in law and on facts.”

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(vi) Director of School Education and another vs.

A.N.Kandaswamy and another [(1998) 8 SCC 26]

“6. The material on record also discloses that primary schools, middle schools and high schools were earlier run by Local Bodies. After 1981, the Govt. started upgrading middle schools run by the Panchayat Union or the District Board as High Schools. Simultaneously the Government was also taking over those schools. What was to happen to the teachers working in such upgraded high Schools has been stated by the Chief Education Officer in his reply affidavit filed in the Tribunal. He has stated therein that the teachers on being absorbed in such Government High Schools became a part of the secondary education service of the Government and ceased to be the members of the education service of the Panchayat Union/District Board and that the rules and regulations governing their service conditions were different. Instead of taking note of this factual position the Tribunal relied upon G.O. dated 27.1.1960, which really had no relevance. As the schools were earlier under Local Bodies, the government by that order dated 27.1.1960 had accepted the recommendation of the Director of Public Instruction to have a common seniority list of all secondary grade teachers whether serving in the elementary schools or in the secondary schools. Obviously, the said G.O. had no application where the schools were taken over by the Government from the Local Bodies. By G.O. dated 1.6.1978 what the Government had decided was that the total service put in by a B.T. Assistant/teacher in a particular category should be taken into account for the purpose of computing the length of service for giving selection grade on percentage basis. The government had taken that decision because as a result of the take-over of the Panchayat Union schools by the District Boards in certain districts, the teachers had lost the benefit of service under



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the Panchayat Union. This G.O. of 1978 had also no relevance to the new situation that emerged after 1981 as a result of taking over of the schools by the Government. It also indicates that the teachers of the Panchayat Union Higher Schools when absorbed into the District Board service on account of take-over of those schools by the District Board lost their service under the Panchayat Union and their seniority was fixed on the basis of the dates on which they were absorbed into the District Board service.”

(vii) Official Liquidator vs. Dayanand and others [(2008) 10 SCC 1]

“93. The respondents' claim for fixation of pay in the regular scale and grant of other monetary benefits at par with those appointed against the sanctioned posts has been accepted by the High Courts on the premise that their duties and functions are similar to those performed by regular employees. In the opinion of the High Courts, similarity in the nature of work of the company paid staff on the one hand and regular employees on the other hand, is by itself sufficient for invoking the principle of equal pay for equal work, In our view, the approach adopted by the High Courts is clearly erroneous and directions given for bringing about parity between the company paid staff and regular employees in the matter of pay, allowances etc. are liable to be upset.

94. The principle of equal pay for equal work for men and women embodied in Article 39(d) was first considered in [Kishori Mohanlal Bakshi vs. Union of India](#) [AIR 1962 SC 1139] and it was held that the said principle is not capable of being enforced in a Court of law. After 36 years, the issue was again considered in *Randhir Singh Vs. Union of India* (supra), and it was unequivocally ruled that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India.



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95. The ratio of *Randhir Singh Vs. Union of India* (supra) was reiterated and applied in several cases - *Dhirendra Chamoli vs. State of U.P.* (supra), *Surinder Singh and Another vs. Engineer-in-Chief, CPWD and Others* (supra), *Daily Rated Casual Labour vs. Union of India* (supra), *Dharwad District P.W.D. Literate Daily Wage Employees' Association vs. State of Karnataka* (supra) and *Jaipal vs. State of Haryana* [1988 (3) SCC 354] and it was held that even a daily wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in *Federation of All India Customs and Central Excise Stenographers (Recognized) Union vs. Union of India* [1988 (3) SCC 91], *Mewa Ram Kanojia vs. A.I.I.M.S.* [1989 (2) SCC 235], *V. Markandeya vs. State of A.P.* [1989 (3) SCC 191], *Harbans Lal and others vs. State of Himachal Pradesh and others* [1989 (4) SCC 459], *State of U.P. and others vs. J.P. Chaurasia and others* [1989 (1) SCC 121], *Griha Kalyan Workers' Union vs. Union of India* [1991 (1) SCC 619], *Ghaziabad Development Authority vs. Vikram Chaudhary* [1995 (5) SCC 210], *State of Haryana and others vs. Jasmer Singh and others* [1996 (11) SCC 77], *State of Haryana vs. Surinder Kumar* [1997 (3) SCC 633], *Union of India vs. K.V. Baby* [1998 (9) SCC 252], *State of Orissa vs. Balram Sahu* [2003 (1) SCC 250], *Utkal University vs. Jyotirmayee Nayak* [2003 (4) SCC 760], *State of Haryana and another vs. Tilak Raj and others* [2003 (6) SCC 123], *Union of India vs. Tarit Ranjan Das* [2003 (11) SCC 658], *Apangshu Mohan Lodh vs. State of Tripura* [2004 (1) SCC 119], *State of Haryana vs. Charanjit Singh* [2006 (9) SCC 321], *Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh* (supra), *Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara* (supra) and *Canteen Mazdoor Sabha vs. Metallurgical & Engineering Consultants (India) Ltd.* [2007 (7) SCC 710], the Court consciously and repeatedly deviated from the ruling of *Randhir Singh Vs. Union of India* (supra) and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode



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of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc.

96. [In State of Haryana and others vs. Jasmer Singh and others](#) (supra), the two-Judges Bench laid down the following principle :

"8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

(viii) **Maharaj Krishan Bhatt and another vs. State of Jammu and Kashmir and others, (2008) 9 SCC 24**, wherein, it is held thus:

"14. The learned counsel also submitted that the impugned action was clearly violative of Articles 14 and



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16 of the Constitution. It was submitted that initially such violation had been committed by the State Authorities i.e. Director General of Police and State Government inasmuch as though cases of all the Constables were similar and representations were made on one and the same day, the Director General of Police, Jammu & Kashmir recommended the name of only Hamidullah Dar who was appointed as PSI and cases of other similarly situated applicants were rejected. The appellants and other adversely affected Constables approached the High Court and a Single Judge allowed the petitions and directed the Government to consider the cases of the writ petitioners. In spite of such an order, the Government did not appoint the applicants as PSIs without any reason whatsoever. Contempt Petitions were required to be filed but even those orders were not complied with. In Letters Patent Appeal, again direction was issued by the Division Bench. In any case, after the decision in SWP No. 519 of 1987 (Abdul Rashid Rather), the Government ought to have granted benefits to the appellants which was not done. The learned Single Judge was, therefore, right in allowing the petition. By setting aside the judgment and order of the learned Single Judge and in allowing Letters Patent Appeal as also in dismissing Review Petition, the Division Bench of the High Court had committed an error of law as well as of jurisdiction and the present appeals deserve to be allowed.

”

11. Mr.A.L.Somayaji, learned Advocate General appearing for the respondents would submit that the appellants misconstrued G.O.216 and are praying to extend the benefits equivalent to that of Primary School Headmaster without performing the duties of the said post after a lapse of more than 21 years is highly illegal, arbitrary, unreasonable, being violative of the rules and principles of natural justice. It is his contention that the appeals



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are liable to be dismissed on the ground of delay and laches and the appellants

are not entitled to get any discretionary relief as held by the Hon'ble Supreme Court. He would further submit that even the respondent in W.P.No.8747 of 2009 sought dismissal of the Writ Petition on the ground of delay and laches and the Division Bench dismissed the writ petition, since the Government filed the writ petition after 11 years. It is his further submission that the Apex Court also dismissed the Special Leave Petition at the admission stage and it did not decide the issue on merits and it was not a speaking order. It is also his submission that based on the order of the Division Bench, referred to above, hundreds of Secondary Grade Teachers in Government High Schools and Higher Secondary Schools filed writ petitions and obtained orders and with the threat of contempt proceedings, the Government issued orders to implement the same.

12. Learned Advocate General also submitted that the order dated 07.10.1998 in O.A.No.8276 of 1997 was solely based on the order dated 08.05.1996 in O.A.Nos.1113 to 1133 of 1995. Except relying on the order in O.A.Nos.1113 to 1133 of 1995, no other reason was given by the Tribunal in the order dated 7.10.1998 in O.A.No.8276 of 1997. By its order dated 08.05.1996 in O.A.Nos.1113 to 1133 of 1995, the Tribunal interfered with the order



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cancelling the stagnation increments given to the Secondary Grade Teachers in High Schools and Higher Secondary Schools and the same has nothing to do with the grant of Selection Grade and Special Grade pay of Primary School Headmasters to the Secondary Grade Teachers in Government High Schools and Higher Secondary Schools.

13. In support of his stand, the learned Advocate General appearing for the respondents has relied on the following decisions :

(i) Harpal Kaur Chahal (Smt) vs. Director, Punjab Instructions, Punjab and another [1995 Supp (4) SCC 706]

“3. It is next contended that along with the appellant two more candidates were selected and were appointed and their appointmentes were upheld by the High Court. Denial to her is violative of Article 14 of the Constitution. We find no force in the contention. The view of the High Court is obviously illegal and the judgment rendered would not form the ground for our holding that the others who got the benefit by illegal orders will be extended in favour of other candidates though illegally appointed. Article 14 cannot be extended to legitimise the illegal orders though others had wrongly got the benefit of the orders. Under these circumstances, we find no ground to uphold the recruitment of the appellant as a Physical Training Instructor. However, the fact remains that from 28-1-1971 the appellant has been continuing in service even till date, no doubt by orders obtained from the Court and pending litigation, we cannot give any specific direction as sought for to regularise her appointment.



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However, the dismissal of the appeal does not preclude the Government to consider her case if they so choose. Therefore, it is open to the appellant to make a representation to the Government to consider her case and the Government to take a decision in that behalf. We direct that the appellant's service may not be terminated for a period of three months from today and in the meanwhile, the appellant should apply to the Government for consideration and her representation may be disposed of within that period. With the above observations, the appeal is dismissed.”

(ii) **Secretary, Jaipur Development Authority, Jaipur vs.**

Daulat Mal Jain and others [1997 (1) SCC 35]

“27. In Chandigarh Administration & Another v, Jagjit Singh & Another, [1995] 1 SCC 745, allotment of the sites was subject matter under several proceedings in the High Court; ultimately some persons had the benefit of allotment while others were denied of the same. When Article 14 was pressed into service, this Court in paragraph 8 at page 750 had held, that the basis of the principle, if it can be called one, on which the writ petition had been allowed to be taken, was unsustainable in law and indefensible in principle. The mere fact that the respondent- authority had passed a particular order in the case of another person similarly situated, can never be the ground for issuing a writ in favour of petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-authority to



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repeat the illegality to cause another unwar-ranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose.

28. A host of other decisions in that context have laid the same principle. It is not necessary to burden the judgment any further. Suffice to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.”

(iii) **State of Maharashtra vs. Digambar [(1995) 4 SCC 683]**

“14. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decisions of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain



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laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

16. We are unable to appreciate the objection raised against the prosecution of this appeal by the appellant or other S.L.P's filed in similar matters. Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in Writ



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petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where S.L.P's are filed by the State against judgments of High Court, such S.L.P's may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some S.L.P's in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an S.L.P. or S.L.P's in other similar matter/s where it is considered on behalf of the State that non-filing of such S.L.P. or S.L.P's and pursuing them is likely to seriously jeopardise the interest of the State or public interest.

17. In any event, in our considered view, the non-filing of appeals before this Court by the State in similar matters or rejection of S.L.P's by this Court in limine or otherwise in similar matters, by themselves cannot operate as a bar or a fetter for this Court in entertaining S.L.P's subsequently filed even if they are considered to relate to similar matters where it finds, as in this case, that the High Court was wholly wrong in granting relief of compensation to a writ petitioner by the judgment under appeal by not considering his entitlement for such relief under Article 226 of the Constitution on account of laches or undue delay on his part or where such wrong judgment is followed for granting similar relief by rendering 191 judgments, which are the subject of S.L.P's in this Court and where there is every possibility of the High Court granting similar relief at the instance of



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persons who may go before it with similar complaints, which ultimately may result in the estimated loss of Rs. 400 crores to the State, as stated on behalf of the State, and cause grave injustice to the interests of the State. Hence, non-filing of appeals before this Court against certain judgments of the High Court or rejection of appeals filed before this Court against certain judgments of the High Court, cannot be held to come in the way of exercise of this Court's wide discretionary power, with which it is especially invested under Article 136 of the Constitution of entertaining an appeal or appeals against a similar judgment or judgments at the instance of an aggrieved party including the State when it is found necessary to remedy manifest injustice.”

(iv) Smt.Pujari Bai etc., vs. Madan Gopal (dead) L.Rs. Viz.

Smt.Jaiwanti and others [AIR 1989 SC 1764]

“22.Transfer of property referred to in this Section is either by a landowner or by a tenant, and it has no reference and indeed cannot have a reference to transfer of Sanad under Section 10 of the Displaced Persons (Compensation & Rehabilitation) Act of 1954. The conferment of rights in lieu of compensation under Section 10 stands on a different footing which could not be contemplated within the language of Section 30 of the aforesaid Act. This contention advanced by learned counsel for the respondent is, therefore, rejected.

23. This takes us to the question of res judicata. The question is whether the suit of the appellant was barred by res judicata in view of the summary dismissal of her writ petition earlier. It is not disputed that the writ petition filed by the appellant against the order of the Assistant Consolidation Officer was dismissed in limine. This order dated 14.4.1969 was passed by the Division Bench of Punjab & Haryana High Court. It was a one word order. The question or resjudicata apparently



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arises when a controversy or an issue between the parties has been heard and decided. This Court in [Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust & Another](#), [1978] 3 SCR 97 1 considered this principle and observed (at 977):

"But the technical rule of res judicata al- though a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceedings merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of res judi- cata to such an extent so as to found it on mere guess work. To illustrate our view point, we may take an example. Suppose a writ petition is filed in a High Court for grant of a writ of Certiorari to challenge some order or decision on several grounds. If the Writ Petition is dismissed after contest by a speaking order obviously it will operate as res judicata in any other proceeding, such as, of suit, Article 32 of Article 136 directed from the same order or decision. If the Writ Petition is dismissed by a speaking order either at the threshold or after contest, say, only on the ground of laches or the availability of an alternative remedy, then another remedy open in law either by way of suit or any other proceeding obviously will not be barred on the principle of res judicata."

24. It thus becomes clear that when a writ petition after contest is disposed of on merits by a speaking order, the question decided ,in that petition would operate as res judicata, but not a dismissal in limine or dismissal on the ground of laches or availability of alternative remedy. The High Court and the courts below, therefore, were not right in throwing out the suit



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of the appellant on the ground of resjudicata.”

WEB COPY (v) Shankara Cooperative Housing Society Limited vs. M.Prabhakar and others [(2011) 5 SCC 607]

“46. Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances.

54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone



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the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.

38] (vi) **Municipal Corporation of Delhi vs. Gurnam Kaur [AIR 1989 SC**

“11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a PG NO 939 pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:



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"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. ... Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority. "

(vii) **State of U.P. and another vs. Synthetics and Chemicals Ltd. and another [1991] 4 SCC 139]**

"41. Does this principle extend and apply to a conclusion of law, Which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here



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again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind' (Salmond 12th Edition). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.*, [1941] IKB 675 the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in [Municipal Corporation of Delhi v. Gumam Kaur](#), [1989] 1 SCC 101. The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In [Shama Rao v. State of Pondicherry](#), AIR 1967 SC 1680 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

42. Effort was made to support the conclusion, indirectly, by urging that the State having raised same objections by way of review petition and the same



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having been rejected it amounted impliedly as providing reason for conclusion. Law declared is not that can be culled out but that which is stated as law to be accepted and applied. A conclusion without reference to relevant provision of law is weaker than even casual observation. In the order of brother Thommen, the extracts from the judgment of the Constitution Bench quoted in extenso demonstrate that the question of validity of levy of sales and purchase tax was neither in issue nor was it raised nor is there any discussion in the judgment except of course the stray argument advanced by the learned Attorney General to the following effect.

"But alcohol not fit for human consumption are not luxury and as such the State Legislatures according to Attorney General will have no power to levy tax on such alcohol."

Sales tax or purchase tax under Entry 54 is levied on sale or purchase of goods. It does not contemplate any distinction between luxury and necessity. Luxuries are separately taxable under Entry 62. But that has nothing to do with Entry 54. What prompted this submission is not clear. Neither there was any occasion nor there is any constitutional inhibition or statutory restriction under the legislative Entry nor does the taxing statute make any distinction between luxuries and necessities for levying tax. In any case the Bench did not examine it nor did it base its conclusions on it. In absence Of any discussion or any argument the order was founded on a mistake of fact and, therefore, it could not be held to be law declared. The Bench further was not apprised of earlier Constitution Bench decisions in *Hoechst Chemicals v. State of Bihar*, AIR 1983 SC 1019 and *Ganga Sugar Mill v. State of U.P.*, [1980] 1 SCR 769 which specifically dealt with the legislative competence of levying sales tax in respect of any industry which had been declared to be of public importance. Therefore, the conclusion of law by the Constitution Bench that no



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sales or purchase tax could be levied on industrial alcohol with utmost respect fell in both the exceptions, namely, rule of sub-silentio and being in per incurium, to the binding authority of the precedents.”

**(viii) Union of India and another vs. Ranchi Municipal Corporation,
Ranchi and others [(1996) 7 SCC 542]**

"4. The controversy is no longer res integra. This Court in [Union of India v. Purna, Municipal Council & Ors.](#) [(1992) 1 SCC 100] had held that Section 135 of the Railways Act is subject to the provisions of Article 285 of the Constitution. Therefore, the respondent-Municipality was restrained from demanding any payment by way of service charges from the Railways. Shri M.P. Jha, learned counsel appearing for the Municipality sought to rely on Clause (4) of Section 135 of the Railway Act which contemplates a contract between the Central Government and the Municipality and payment thereof on the basis of the said contract. In this case the contract now sought to be relied upon is only to relieve distress warrant pending disposal of the dispute in the High Court. Therefore, it cannot be construed that there is any contract between the Union of India and the Municipality. In view of the fact that the Municipality has no right to demand service charges from the Union of India, the demand made by the Municipality is clearly ultra vires its power. It is true that earlier W.P. No.2844/92 was filed and was dismissed by the High Court and the special leave was refused by this Court on the ground of gross delay.

5. It is now settled law that the summary dismissal does not constitute res judicata for deciding the controversy. Moreover, this being recurring liability which is ultra vires the power, earlier summary



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dismissal of the case does not operate as a res judicata.

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(ix) **Daryao and others vs. State of U.P. And others [AIR 1961 SC**

1457 (1)]

“11. ... The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed "subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences" Halsbury's Laws of England, 3rd Ed., VOL. 22, P- 780, paragraph 1660. Similar is the statement of the law in Corpus Juris: "the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction. This rule is subject to the Limitation that the judgment in the former action must have been rendered by a court or tribunal of competent jurisdiction" (1). "It is, however' essential that there should have been a judicial determination of rights in controversy with a final decision thereon" In other words, an original petition for a writ under Art. 32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Art. 226. There can be little doubt that the jurisdiction of this Court to entertain applications under Art. 32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High



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Courts pronounced in writ petitions under Art. 226. Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Art,. 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.”

(x) The Secretary, Saliar Mahajana Higher Secondary Schools,

Aruppukottai vs. G. Subburaj & others [2005 (1) CTC 8]

“7. In our opinion, the above direction of the Supreme Court cannot be treated as a precedent. It may be mentioned that every direction of the Supreme Court is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent. Often, the Supreme Court issues directions with out laying down any principle of law, in which case, it is not a precedent. For instance, the Supreme Court often directs appointment of someone or regularization of a temporary employee or payment of salary, etc. without laying down any principle of law. This is often done on humanitarian considerations, but this will not operate as a precedent binding on the High Court. For instance if the Supreme Court directs regularisation of service of an employee who had put in



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5 years' service this does not mean that all employees who had put in 5 years' service must be regularised. Hence such a direction is not a precedent."

(xi) Bansi and another vs. Additional Director, Consolidation of Holdings, Rohtak and others [AIR 1967 Punjab & Haryana 28]

"9. Apart from the judgment of the Supreme Court in Daryao's case, AIR 1961 SC 1457 (supra) learned counsel for the appellants has also relied upon certain observations in Piara Singh v. Punjab State, 1962 Pun LR 547: (AIR 1962 Punj 498). This was a Letters Patent appeal against the order of a Single Judge whereby the writ petition of Piara Singh under Article 226 of the Constitution was dismissed on the sole ground that a writ petition filed by another person named Sikander Singh on the same facts and on the same grounds had been dismissed earlier by the Division Bench. The Letters Patent Bench inter alia referred to some observations in Daryao's case, AIR 1961 SC 1457 (supra) and remarked that it could be plausibly argued that since Sikander Singh's petition was dismissed by this Court in limine without making a speaking order, the bar of res judicata would not be attracted at all, but the ground on which the Letters Patent Appeal was allowed was that Piara Singh was not a party to Sikander Singh's petition and by no stretch of reasoning his petition could be dismissed because Sikander Singh's petition containing similar allegations and facts had been previously dismissed in limine. Obviously, dismissal in limine does not give rise to any decision involving any principle and so it cannot be a precedent for a case in which the petitioner is a different person. So far as Daryao's case, AIR 1961 SC 1457 is concerned, reasons have already been given earlier in this judgment for distinguishing it."

(xii) Ramnik Vallabhdas Madhvani and others vs. Taraben Pravinjal

Madhvani [AIR 2004 SC 1084]



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“20. It follows that disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order on Special Leacial petition is also never res judicata. In the present case we are at a stage where we are hearing appeals i.e. leave to appeal has already been granted and these are full fledged appeals against the judgment of the High Court before us. Therefore, we are entitled to go into the question of legality and correctness of the impugned judgment.”

(xiii) **S. Shanmugavel Nadar vs. State of T.N. And another [(2002) 8**

SCC 361]

“16. In the present case, the order dated 10.9.1986 passed by this Court be said to be a declaration of law limited only to two points -- (i) that in a petition putting in issue the constitutional validity of any State Legislation the State is a necessary party and in its absence the issue cannot be gone in to, and (ii) that a belated prayer for impleading a necessary party may be declined by this Court exercising its jurisdiction under Article 136 of the Constitution if the granting of the prayer is considered by the Court neither necessary nor proper to allow at the given distance of time. By no stretch of imagination can it be said that the reasoning or view of the law contained in the decision of the Division of the High Court in *M. Varadaraja Pillai's* case had stood merged in the order of this court dated 10.9.1986 in such sense as to amount to declaration of law under Article 141 by this Court or that the order of this Court had affirmed the statement of law contained in the decision of High Court.

17. We are clearly of the opinion that in spite of the dismissal of the appeals on 10.9.1986 by this Court on the ground of non-joinder of necessary party, though the operative part of the order of the Division Bench stood merged in the decision of this Court, the remaining part of the order of the Division Bench of the High Court



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cannot be said to have merged in the order of this Court dated 10.9.1986 nor did the order of this Court make any declaration of law within the meaning of Article 141 of the Constitution either expressly or by necessary implication. The statement of law as contained in the Division Bench decision of the High Court in M.Varadaraja Pillai's case would therefore continue to remain the decision of the High Court, binding as a precedent on subsequent benches of coordinate or lesser strength but open to reconsideration by any bench of the same High Court with a coram of judges more than two.

18. The Full Bench was not dealing with a prayer for review of the earlier decision of the Division Bench in M. Varadaraja Pillai's case and for setting it aside. Had it been so, a different question would have arisen, namely, whether another Division Bench or a Full Bench had jurisdiction or competence to review an earlier Division Bench decision of that particular Court and whether it could be treated as affirmed, for whatsoever reasons, by the Supreme Court on a plea that in view of the decision having been dealt with by the Supreme Court the decision of the High Court was no longer available to be reviewed. We need not here go into the question, whether it was a case of review, or whether the review application should have been filed in the High Court or Supreme Court. Such a question is not arising before us.

19. Under Article 141 of the Constitution, it is the law declared by the Supreme Court, which is binding on all Courts within the territory of India. Inasmuch as no law was declared by this Court, the Full Bench was not precluded from going into the question of law arising for decision before it and in that context entering into and examining the correctness or otherwise of the law stated by the Division Bench in M. Varadaraja Pillai's case and either affirming or overruling the view of law taken therein leaving the operative part untouched so as to



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remain binding on parties thereto.”

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(xiv) **Union of India and others vs. Jaipal Singh [(2004) 1 SCC 121]**

“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also,



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without advertent to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The re-instatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.”

(xv) Director of School Education and another vs.

A.N.Kandaswamy and another, [(1998) 8 SCC 26]

“6. The material on record also discloses that primary schools, middle schools and high schools were earlier run by Local Bodies. After 1981, the Govt. started upgrading middle schools run by the Panchayat Union or the District Board as High Schools. Simultaneously the Government was also taking over those schools. What was to happen to the teachers working in such upgraded high Schools has been stated by the Chief Education Officer in his reply affidavit filed in the Tribunal. He has stated therein that the teachers on being absorbed in such Government High Schools became a part of the secondary education service of the Government and ceased to be the members of the education service of the Panchayat Union/District Board and that the rules and regulations governing their service conditions were different. Instead of taking note of this factual position the Tribunal relied upon G.O. dated 27.1.1960, which really had no relevance. As the schools were earlier under Local Bodies, the government by that order dated 27.1.1960 had accepted the recommendation of the Director of Public Instruction to have a common seniority list of all secondary grade teachers whether serving in the



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elementary schools or in the secondary schools. Obviously, the said G.O. had no application where the schools were taken over by the Government from the Local Bodies. By G.O. dated 1.6.1978 what the Government had decided was that the total service put in by a B.T. Assistant/teacher in a particular category should be taken into account for the purpose of computing the length of service for giving selection grade on percentage basis. The government had taken that decision because as a result of the take-over of the Panchayat Union schools by the District Boards in certain districts, the teachers had lost the benefit of service under the Panchayat Union. This G.O. of 1978 had also no relevance to the new situation that emerged after 1981 as a result of taking over of the schools by the Government. It also indicates that the teachers of the Panchayat Union Higher Schools when absorbed into the District Board service on account of take-over of those schools by the District Board lost their service under the Panchayat Union and their seniority was fixed on the basis of the dates on which they were absorbed into the District Board service.

7. The Tribunal was therefore wrong in inferring from those Government Orders that the teachers working in the Primary and Middle schools run by the Panchayat Union and the teachers working in High Schools taken over and run by the Government constituted one service. Reliance placed upon G.O. dated 22.3.1971, by the learned counsel for the respondents is equally misplaced. No order passed by the Government subsequent to 1981 has been pointed out by the respondents in support of their contention.

8. The respondents had willingly joined Government High School service, and therefore, they thereafter belonged to a separate cadre known as Secondary Education service. On their absorption in Government service they ceased to be a part of the cadre of teachers serving in schools run by the Panchayat Union. Merely



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because their past services were counted for the purpose of protecting their 'Pay' and awarding selection or special grade, it cannot be said that they continued to belong to the same old cadre. The very basis on which the tribunal proceeded was wrong and therefore its decision stands vitiated."

14. We have gone through the voluminous records available with the case bundles.

15. The whole controversy in these cases revolves around G.O.Ms.No.216, Finance (Pay Cell) Department, dated 22.03.1993. The said G.O.reads as under :

"GOVERNMENT OF TAMIL NADU
ABSTRACT

Tamil Nadu Revised scales of Pay Rules, 1989-
Selection/Special Grades in the revised pay scales-
executive instructions-issued.

FINANCE (PAY CELL) DEPARTMENT

G.O.Ms.No.216
Dated 22.3.1993.

Aangeerasa, Panguni 9,
Thiruvalluvar Aandu,2024.

Read :

1.G.O.Ms.No.666, Finance (PC) Department, dated
27.6.89.



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- 2.G.O.Ms.No.304, Finance (PC) Department, dated 28.3.90.
- 3.Govt.Finance Department, letter No.10181/PC-II/91-91 dated 20.2.91.
- 4.From the Directions of the Tamil Nadu Administrative Tribunal in O.A.No.1625 of 91 and order dated 13.11.93.
- 5.G.O.Ms.No.215, Finance (PC) Department, dated 22.3.93.

ORDER :

In the Government Order second read above, Orders are issued reintroducing Selection Grade and Special Grade in the improved scales of pay. It has also been ordered that the Selection Grade should be restricted to the promotion post scale of pay. Accordingly, the Selection Grade Scale of pay for Office Assistants has been restricted to Rs.775-1039, the pay scale of their promotion post viz., Record Clerk.

2. In its judgment delivered, the Tamil nadu Administrative Tribunal in O.A.No.1625 of 92 filed by Tamilnadu Government Office Assistants and Basic Servants Association, has observed that the post of Record Clerk is not an avenue of promotion for Office Assistants for the reason that only persons with the prescribed qualification are appointed by transfer to the post of Record Clerk. Hence, the Tribunal has ordered that the proviso to para 4 of the G.O.Ms.No.304, Finance (PC) Department dated 28.3.90 will not be applicable to Office Assistants. The Tribunal has also pointed out the special dispensation shown to the Teachers in the matter of Selection Grade. The Tribunal has therefore set aside the entire para 4 of the Government Order second read above and ordered that, it is open to Government to issue orders afresh by suitably incorporating the basis that Selection Grade for a post cannot be higher than that of the promotion post so as not to leave room for any ambiguity and to provide for special cases when appointment to



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higher post in the hierarchy in the department is not by promotion but by transfer. Accordingly, orders were issued in the Government Order fifth read above.

3. The above directions of the Tribunal has been examined by the Government and it has been decided to issue the following orders to protect certain special categories in the matter of awarding Selection Grade.

(i) Government accept the direction of the Tribunal that the post of Record Clerk is not a regular promotion post for the Office Assistants for the reasons that only persons with the prescribed qualification are appointed to the post of Record Clerk by transfer. Accordingly, Government direct that the proviso to para 4 of the G.O. Second read above as modified in G.O. fifth read above shall not be applicable to the post of Office Assistant and they shall be allowed Selection / Special Grades as in Annexure-I to the G.O. second read above.

(ii) In respect of Secondary Grade Teachers in High Schools there is no promotion post for them as on 28.3.90 (i.e. the date of issue of the G.O. Second read above), although there is promotion post in Primary Schools. As a measure of uniformity in respect of all Secondary Grade Teachers, Government direct that the Teachers be made eligible for Selection / Special grades as in Annexure-I to the G.O. second read above.

(By order of the Government)

N.NARAYANAN,

SECRETARY TO GOVERNMENT"

16. This Court has dealt with the issues connected to the above

G.O. on many an occasion. That being the position, the order of a Division



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Bench of this Court in W.P.No.8747 of 2009, dated 14.07.2009, is much relevant. Therefore, we feel it necessary to extract the entire order of the said Division Bench, for disposal of this huge batch of cases. The said order goes thus :

"The petitioners have filed the writ petition for the issuance of a writ of certiorari to call for the records relating to O.A.No.8276 of 1997 dated 07.10.1998 on the file of Tamil Nadu Administrative Tribunal and to quash the same.

2. The 1st respondent herein was appointed as Higher Grade Teacher in the Board Primary School in the year 1955 and he worked as Primary School Headmaster in Board Primary School, Annur and thereafter, he was transferred to Board High School, Unjalur, in the year 1959 and from 1967 onwards he worked as Secondary Grade Teacher in Government High Schools. Lastly, he worked as Secondary Grade Teacher in Government Higher Secondary School, Kundadam, Erode District. He was awarded Selection Grade in the post of Secondary Grade Teacher with effect from 01.07.1974 and he was given Special Grade in the post of Secondary Grade Teacher on 01.06.1981.

3. As far as the Secondary Grade Teachers working in High/Higher Secondary Schools are concerned, there is no promotional opportunity and they served only as Secondary Grade Teacher throughout their service. The Government, while re-introducing Selection Grade / Special Grade with improved scale of pay as per G.O.Ms.No.304, Finance (Pay Commission) Department, dated 28.03.1990, have directed that the Selection Grade / Special Grade pay shall be restricted to the scale of pay prescribed for the promotion post. In order to remove certain ambiguity in



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awarding Selection Grade/ Special Grade pay in respect of the posts for which there is no promotional opportunity, the Government have issued G.O.Ms.No.215, Finance (Pay Commission) Department, dated 22.03.1993 introducing uniform scale of pay for all the Secondary Grade Teachers and as per Annexure-1, the Ordinary Grade, Selection Grade and Special Grade scales of pay are fixed at Rs.1400-2600, 1640-2900 and 2000-3200 respectively, based on which, the 1st respondent claims entitlement for those scales of Selection Grade and Special Grade.

4. According to the petitioners herein, the 1st respondent's pay was fixed at Rs.1640-60-2600-75-2900 in terms of the orders issued in G.O.Ms.No.215, Finance (Pay Commission) Department, dated 22.03.1993 and the pension was also fixed accordingly. But the 1st respondent approached the Tribunal by filing O.A.No.8276 of 1997 seeking a direction to refix his scale of pay at Rs.2000-60-2300-75-3200 prescribed for the post of Primary School Headmaster (Special Grade) and pay arrears and consequential benefits on such refixation with effect from 01.06.1988.

5. Before the Tribunal, the applicant/ 1st respondent herein has pleaded that teachers, who are in the same grade and are doing similar work, were given the scale of pay of Rs. 2000-3200, whereas, the applicant was paid only Rs.1640-2900. The applicant also relied on the earlier decision of the Tribunal dated 08.05.1996 in O.A.Nos.1113 to 1133 of 1995, wherein the Tribunal pointed out that the Government extended the Selection/Special Grade Pay scales to the applicants like Secondary Grade Assistant Teachers appointed in the High School and having more than 10 to 20 years of service and also issued G.O.Ms.No.216, Finance (Pay Commission) Department, dated 22.03.1993 extending the benefits awarded in the aforesaid G.O. to the applicants therein and pay was directed to be refixed in terms of the said G.O.

6. The Tribunal, on consideration of the



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aforesaid facts and circumstances of the case, allowed the original application with a direction to the respondents therein to refix the scale of pay of the applicant as Rs.2000-3200 with effect from 01.06.1988 in terms of G.O.Ms.No.216, Finance (PC) Department, dated 22.03.1993 and further directed that all the pay arrears are to be disbursed within a period of three months from the date of receipt of that order.

7. Aggrieved of the said order of the Tribunal, the petitioners have filed the present writ petition with the aforesaid prayer.

8. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the 1st respondent.

9. The learned Special Government Pleader appearing for the petitioners submitted that in view of the judgment of the Supreme Court dated 29.10.1998 made in C.A.No.4582 of 1992, the 1st respondent herein, who worked as Secondary Grade Teacher in High School and belonged to Secondary Educational Service, cannot draw any analogy with the Secondary Grade Teachers working in Primary Schools coming under different service for the purpose of claiming pay fixation. It is also submitted that the 1st respondent is not having any right whatsoever to claim pay fixation on par with the Secondary Grade Teachers working in Primary Schools and got promotion as Primary School Headmaster merely on the ground that such promotional opportunity is not available for the Secondary Grade Teachers working in High Schools and belong to Secondary Educational Service. It is further submitted that to be eligible for Selection / Special Grade, the 1st respondent has to serve in the same post for a period of 10 years / 20 years respectively and in the instant case, the 1st respondent never completed 10 years /20 years of service in the post of Primary Headmaster to be eligible for Selection Grade / Special Grade. In view of the aforesaid reasons, the learned Special Government Pleader submitted



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that the order passed by the Tribunal is liable to be set aside.

10. The learned counsel appearing for the 1st respondent submitted that against the common order passed by the Tribunal in O.A.Nos.7908 and 8276 of 1997, dated 07.10.1998, a review petition was filed before the Tribunal in R.A.No.182 of 2002 and the same was dismissed on 05.12.2002, against which, a writ petition, W.P.No.17187 of 2003, was filed before a Division Bench of this Court, in which, Justice Eliphe Dharma Rao was a party and the writ petition was dismissed by order dated 28.11.2007, holding that when the review petition is dismissed, the said order merges with the order passed in O.A.No.8276 of 2007 and hence, the writ petition filed against the review petition is not maintainable. According to the learned counsel for the 1st respondent, thereafter, a contempt application in C.A.No.170 of 2009 was filed for implementation of the order of the Tribunal and notice was ordered to the respondents on 13.04.2009. According to the learned counsel for the 1st respondent, though the limitation starts from the date of dismissal of the original application, viz., 07.10.1998, the Government, after a period of 11 years, filed the present writ petition and obtained an order of interim stay on 30.04.2009. The learned counsel for the respondent vehemently contended that the writ petition is liable to be dismissed on the ground of inordinate and unexplained delay.

11. We have perused the entire materials placed on record. When the Tribunal has passed an order, which is impugned in the writ petition, based on its earlier judgment dated 08.05.1996 in O.A.Nos.1113 to 1133 of 1995, the Officer, who has taken a decision to file the present writ petition, should have considered that there is no point in filing the present writ petition against a covered matter. By taking such a decision to file a writ petition against the order passed by the Tribunal following its own earlier judgment, which has become final, the Officer has driven the 1st respondent to Court and to engage a counsel



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more so, after the date of his retirement, i.e., 31.08.1993.

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12. In similar circumstances, a Division Bench of this Court, in a judgment reported in ***Secretary to Government, Health Department, Government of Tamil Nadu, Chennai and others -vs- Dr.P.A.Adalarasu and others {(2006) 1 M.L.J. 696}***, dismissed the said petition, which was filed after expiry of four years, with an observation that even though there is no period for filing writ petition is specified, it is well settled in law, that such a writ petition is required to be filed as expeditiously as possible without discernible delay, laches or acquiescence.

13. In the instant case, the writ petition has been filed after expiry of 11 years. As submitted earlier, a retired school teacher was driven to approach the Tribunal by filing the original application for extension of benefits granted under G.O.Ms.No.216, Finance (PC) Department, dated 22.03.1993 in his favour and after obtained the order from the Tribunal, the respondents therein filed a review petition. After the dismissal of the review petition, they have again driven the 1st respondent to file a contempt petition for implementation of the order passed by the Tribunal in O.A.No.8276 of 1997. But on receiving notice in the said contempt petition, the respondents therein have chosen to file the present writ petition and obtained an order of interim stay of operation of the order of the Tribunal and thereby causing great prejudice to the applicant/1st respondent herein and further depriving him to have the fruits of the order passed by the Tribunal as early as in 1998.

14. In such circumstances, the Hon'ble Supreme Court has observed that while the right to move the Supreme Court under Article 32 of the Constitution of India is itself a fundamental right, the right to move the High Court under Article 226 of the Constitution of India is one calling for the exercise of discretionary power. Bearing this in mind, if we look into the law laid down by the Hon'ble Supreme Court, while construing limitation for filing a Writ



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Petition, reported in **C.Bhushan -Vs- Dy. Director, Consolidation, U.P. (AIR 1967 SC 1272)** it has been held that ordinarily in the absence of a specific Statutory Rule, the High Court may not be justified in rejecting a petition for a Writ of Certiorari against the Judgment of a Tribunal, if on a consideration of all the circumstances it appears that there is an undue delay. In the said case, the Hon'ble Supreme Court was considering the validity of an order passed by the Allahabad High Court which has consistently laid down a practice that the period of ninety days, which is the period fixed for appeal to the High Court from the Judgment of the Lower Court, should be taken as a period for an Application for issue of Writ of Certiorari and time can be extended only when circumstances of special nature, which are sufficient in the opinion of the Court, are shown to exist. While construing the decision of the Allahabad High Court, the Hon'ble Supreme Court observed that in the absence of Statutory Rule, the period prescribed for preferring an appeal to the High Court is a rough measure and in each case, the primary question is whether the applicant has been guilty of laches or undue delay. On the facts of the case, the Hon'ble Supreme Court interfered in the matter.

15. In yet another case reported in **Kamini Kumar -vs- State of West Bengal (AIR 1972 Supreme Court 2060)**, with regard to the matter pertaining to the dismissal of a public servant, the Hon'ble Supreme Court held that if a public servant wants to invoke the extraordinary remedies available under Article 226, he should come to Court at the earliest reasonably possible opportunity and every case depends upon its own facts.

16. The Hon'ble Supreme Court also, while construing the power of the Appellate Tribunals and Revisional Authorities, where no specific time limit was prescribed for preferring the appeal or revision, held that such right should be exercised within a reasonable time.

17. Therefore, the law, which emanates from



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these Judgments referred above, postulates that in the absence of any specific limitation for exercise of the power under Article 226 of the Constitution of India, the same has to be exercised within a reasonable time, which is a question of fact in each case and depending upon the facts and circumstances and nature of order.

18. From the dates in the instant case as given above, it is to be seen that the delay is gross and unexplained. As we have already held that in such matters, especially when Writ Petitions are filed against orders of the Tribunals, the same has to be done within a reasonable time, which in our opinion could be safely held as one year.

19. In view of the inconvenience caused to the 1st respondent by the petitioners and also in view of the fact that instead of filing the writ petition as expeditiously as possible, at least, within a reasonable time of one year from the date of the impugned order passed by the Tribunal, we consider it appropriate to hold that the writ petition is liable to be dismissed either by imposing costs or compensation of Rs.10,000/- on the petitioners with a further caution to them that not to resort to this type of action of filing writ petition with abnormal delay by overburdening the Court. Moreover, on merits also, the writ petition has no legs to stand, as the learned Special Government Pleader strongly relied on ground No.(6), i.e., for extending the benefit of Selection / Special Grade, the 1st respondent has to serve in the same post for a period of 10 years / 20 years, which is not contemplated in G.O.Ms.No.216, Finance (PC) Department, dated 22.03.1993 and therefore, the said contention is irrelevant.

20. In view of the discussion made above, the writ petition is dismissed with costs of Rs.10,000/- to be payable by the petitioners and six weeks time is granted to pay cost and to comply with the order passed by the Tribunal in O.A.No.8276 of 1997 dated 07.10.1998. Connected M.P. is closed."



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17. In the above context, it is also significant to mention that the above order of the Division Bench of this Court was upheld by the Supreme Court in a Special Leave Petition in C.C.No.2746 of 2010, by an order dated 23.04.2010.

18. The Government of Tamil Nadu had arrived at a policy decision to reintroduce Selection Grade and Special Grade in the improved scales of pay in G.O.Ms.No.304, Finance (PC) Department, dated 28.03.1990, wherein it was ordered that Selection Grade should be restricted to the promotion post. Accordingly, Selection Grade scale of pay for Office Assistants and the pay scale of their promotion posts namely Record Clerk had been determined. However, the matter had gone to the Tamil Nadu Administrative Tribunal, as it then was, and, on consideration, the Tribunal observed that the post of Record Clerk is not an avenue of promotion for Office Assistants for the reason that only persons with the prescribed qualification are appointed by transfer to the post of Record Clerk. Therefore, the Tribunal ordered that the proviso to para 4 of the G.O.Ms.No.304, Finance (PC) Department dated 28.3.90 will not be applicable to Office Assistants. The Tribunal also pointed out the special dispensation shown to the Teachers in the matter of Selection Grade and set aside the entire para 4 of the Government Order as stated above



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and ordered that it was open to Government to issue orders afresh by suitably incorporating the basis that Selection Grade for a post cannot be higher than that of the promotion post so as not to leave room for any ambiguity and to provide for special cases when appointment to higher post in the hierarchy in the department is not by promotion but by transfer. In Clause 3 (ii) of G.O.Ms.No.216, it has been stated that in respect of Secondary Grade Teachers in High Schools, there is no promotion post for them as on 28.3.90 (i.e. the date of issue of the G.O. second read above), although there is promotion post in Primary Schools and as a measure of uniformity in respect of all Secondary Grade Teachers, Government direct that the Teachers be made eligible for Selection / Special grades as in Annexure-I to the G.O. second read above, which is G.O.Ms.No.304. In that context, some of the teachers moved the Tribunal by way of O.As. in O.A.Nos.7908 and 8276 of 1997, wherein the Tribunal passed the following order :

"Applicants are Special Grade Secondary Teachers. In G.O.Ms.No.304, Finance (P.C.) Department dated 28.3.90, paragraph 4 stipulates that wherever the promotion post happens to be on a lower scale of pay than the selection grade scale of pay given in Annexure-I employees in such posts are eligible for the selection grades scales as applicable to promotion post only. However, in respect of teachers the selection grade scale and special grade shall be as indicated in the Annexure I to the said order. Subsequently, in G.O.Ms.No.215, Finance (Pay Cell) Department dated 22.3.93 executive instructions regarding selection grade/special grade in the revised pay scales have



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been issued. Paragraph 3 (ii) of this Government Order stipulates that in respect of Secondary Grade Teachers in High Schools there is no promotion post for them as on 28.3.90 ie., when G.O.Ms.No.304 dated 20.3.90 was issued, although there is promotion post in primary schools. As a measure of uniformity in respect of all Secondary Grade Teachers, Government direct that the Teachers be made eligible for Selection/Special Grade as in Annexure I to the said G.O.Ms.No.304, dated 28.3.90. In the annexure 1 to the said G.O.Ms.No.304, the ordinary Grade, Selection Grade and the Special Grade scales of pay are Rs.1400-2600,1640-2900 and 2000-3200 respectively. So, the present applicants are entitled for these scales of selection grade and special grade. On the basis of G.O.Ms.No.216, Finance (PC) Department dated 22.3.93, applicants seek refixation of their pay as Rs.2000-3200 with effect from 1.6.1988.

2. Applicants plead that teachers who are in the same grade and are doing similar work were given the scale of pay of Rs.2000-3200. Whereas the applicants are paid only Rs.1640-2900. Learned Counsel for the applicants also draws our attention to an earlier decision of this Tribunal dated 8.5.96 in O.A.Nos.1113 to 1133/95. There, this Tribunal pointed out that the Government extended the Selection/Special Grade pay scales to the applicants like Secondary Grade Assistant Teachers appointed in the High School and having more than 10 to 20 years of service and issued G.O.Ms.No.216, Finance (Pay Cell) Department, dated 22.3.93 and the benefits awarded in G.O.Ms.No.216, Finance (PC) Department dated 22.3.93 were extended to those applicants and pay was directed to be fixed in terms of the said G.O. While so, we find no reason for not conceding the claim of the applicants.

3. In the result, both the applications are allowed and the respondents are directed to refix the scale of pay of the applicants as Rs.2000-3200 with effect from 1.6.1988 in terms of G.O.Ms.No.216, Finance (PC) Department dated 22.3.93. All the pay arrears are to be disbursed within a



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period of three months from the date of receipt of a copy of this order."

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Aggrieved over the said order of the Tribunal, the State filed W.P.No.8747 of 2009, which was dismissed by the Division Bench, as extracted above.

19. The learned single Judge, in the order impugned, has held that the order in O.A.No.8276 of 1997, which in turn, was confirmed by the Apex Court on 23.04.2010 in S.L.P.(CC) No.2746 of 2010 is binding between the parties and the State is bound to implement the order and that the Government issued G.O.Ms.No.258, School Education Department, dated 04.09.2010 implementing the order of the Tribunal in O.A.No.8276 of 1997 after it lost before the Apex Court and also that the other orders passed by this Court following the judgment in W.P.No.9747 of 2009 is binding between the parties to those orders. The learned single Judge further held that the same cannot be relied on by the petitioners to claim, as a matter of right, the Selection Grade/Special Grade pay of Primary School Headmaster, particularly, in view of the judgment of the Apex Court in Director of School Education in **A.N.Kandaswamy and Another reported in (1998) 8 SCC 26** and the judgment of the Division Bench of this Court in **Director of School Education**



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and Another v. R.S.Srinivasan and another, reported in 2004 WLR 526.

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20. When a policy has been taken by the Government to extend certain benefits, the same has to be extended to the eligible persons as per the scheme. Such extension of benefits may be by automatic process by the Government itself or at times in deserving cases, the beneficiaries also may approach this Court and seek for the relief.

21. While implementing the orders of the Court, perhaps for the applicants before the Court or those not before the Court, the benefits may be extended by the State itself. Till the decision is arrived at by the forum concerned, some of the left out beneficiaries may wait and approach the Court belatedly and in such cases the consequences will be the payment of arrears and the interest thereon, which is a matter for serious concern. In that event, waiving the benefits to the parties and the delay attributed to that effect may not be proper for any Government. Normally, the benefits of the scheme could be extended to the eligible persons. Therefore, we are of the considered opinion that mere laches on the part of the petitioners would not deprive the benefits as per the scheme. At the same time, we are also concerned with the State exchequer in payment of arrears.

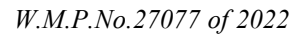


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22. In this context, we feel it appropriate to refer to a recent decision of the Supreme Court in ***State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others***, (2015) 1 SCC 347, wherein, the Apex Court dealt with the issue as to the entitlement of benefit of judgment *in rem* with an intention to benefit all similarly situated persons irrespective of whether they had approached the court or not. It is held therein that when a particular set of employees is given relief by court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India.

23. It is true, implementation of the Government Order in question to the teachers/individuals will cause enormous burden to the State exchequer and it is, certainly, a matter for concern. However, the views taken by the earlier Benches of this Court for extending the benefit to the employees therein are equally applicable to these cases in hand, as these individuals also are similarly placed to those in the earlier litigations. But, the only point to be considered in these cases is, the individuals have approached the Court belatedly, which delay, according to them, was due to the pendency of the



24. Subject to the above observation, following the Division Bench decision of this Court in W.P.No.8747 of 2009, dated 14.07.2009, and also the subsequent decision of the Supreme Court in Special Leave Petition in C.C.No.2746 of 2010, dated 23.04.2010, these Writ Appeals and Writ Petitions are allowed to the extent indicated. No costs. Consequently, the connected M.Ps. are closed.

(V.D.P.,J.) (P.S.N.,J.)

04-02-2015

abe/dixit



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To:

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1. The Secretary,
Government of Tamilnadu
School Education Department,
Fort St. George, Chennai 600 009.
2. The Director of School Education
(Higher Secondary),
College Road, Nungambakkam,
Chennai 600 006.
3. The Chief Educational Officer,
Vellore, Vellore District.
4. The Chief Educational Officer,
Tiruvallur, Tiruvallur District.
5. The Chief Educational Officer,
Chennai South, Chennai District.
6. The Chief Educational Officer
Coimbatore, Coimbatore District.
7. The Chief Educational Officer
Thanjavur, Thanjavur District.
8. The Chief Educational Officer
Perambalur, Perambalur District.
9. The Chief Educational Officer
Tiruppur, Tiruppur District.
10. The Chief Educational Officer
Trichy, Trichy District.
11. The Chief Educational Officer
Dharmapuri, Dharmapuri District.



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**V.DHANAPALAN,J.
AND
PUSHPA SATHYANARAYANA,J.**

Abe/dixit

Common Judgment in
W.A.No.352 OF 2014 & Batch

Dated: 04.02.2015



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W.M.P.No.27077 of 2022

W.M.P.No.27077 of 2022

in

W.P.No.21859 of 2014

R. SUBRAMANIAN, J.

and

K.KUMARESH BABU, J.

(Order of the Court was made by **R.SUBRAMANIAN,J.**)

The claim of the petitioner is that her name has been wrongly entered as C.Glory Hepziba instead of S.Glory Hebziba.

2. In support of her claim that her initial is S and not C the petitioner has produced the Government Gazette dated 21.09.2005, wherein, a publication has been made stating that she will henceforth be known as S.Glory Hebziba instead of S.Glory Hebziba Vedamani. In the vakalat in the writ petition also she had signed only as S.Glory Hebziba. Hence, it appears that the error is bonafide.

3. Registry is directed to correct the name of the 33rd petitioner in W.P.No.21859 of 2014 as S.Glory Hebziba instead of C.Glory Hepziba and issue fresh certified copy.

(R.S.M., J.) (K.B., J.)
07.11.2022

dsa



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W.M.P.No.27077 of 2022

R. SUBRAMANIAN, J.
and
K.KUMARESH BABU, J.

dsa

W.M.P.No.27077 of 2022
in
W.P.No.21859 of 2014

07.11.2022