

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 30.06.2023,
13.07.2023 & 14.07.2023

DELIVERED ON: 14.07.2023

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 20201 of 2022

Supriyo Kumar Mondal & Ors.

Vs.

Union of India & Ors.

Appearance:-

Mr. Swapan Kr. Dutta, Sr. Adv.

Mr. Anindya Lahiri

Ms. Pranati Das

.....for the petitioners

Mr. Soumya Majumdar

Ms. Sanjukta Dutta

Ms. Manjuri Ghosh

.....for the Jadavpur University

Mr. Dhiraj Trivedi

Mr. S.N. Dutta

.....for the Union of India

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioners have prayed for issuance of a writ of mandamus directing the respondent authorities to release the benefits as per the recommendations of the 5th Pay Commission and other consequential benefits to the petitioners after setting aside, cancelling the order dated 2nd November, 2021.

2. The Under Secretary to the Government of India by the order dated 2nd November, 2021 rejected the prayer of the petitioners for grant of the recommendations of the 5th Pay Commission.
3. Shorn of unnecessary details, the facts are that the petitioners were employees of National Instruments Limited (hereinafter referred to as 'NIL'). Pursuant to the directives issued by the Hon'ble Supreme Court on 14th March, 1986, the Government of India appointed a High Power Pay Committee (hereinafter referred to as 'HPPC') which gave its final report to the Government of India on 24th November, 1988 recommending implementation of Central Government pay structure for the employees of all the 69 Public Sector Enterprises including the NIL following Central Dearness Allowance (hereinafter referred to as 'CDA') pattern and upon consideration of the same the Hon'ble Supreme Court ultimately delivered the judgment on 3rd May, 1990 issuing directions for implementation of the said HPPC report and in compliance of such directives, the Government of India, Ministry of Programme Implementation, Department of Public Enterprises (hereinafter referred to as 'DPE') issued memoranda dated 12th June, 1990 and 24th October, 1997 observing, inter alia, that the pay scales in respect of employees of all the 69 Public Sector Enterprises including the NIL would be revised with effect from 1st January, 1996. NIL was, however, declared a Sick Industrial Company on a reference to the Board for Industrial and Financial Reconstruction (hereinafter referred to as 'BIFR') and after protracted discussions and negotiations between the management of NIL and Unions for rehabilitation, a memorandum of settlement was arrived at on 6th October, 1997 and the employees, in the best interest of

revival of NIL agreed that the status quo in respect of existing pay scales would be maintained for a period of at least 3 years. Regarding treatment of sick enterprises, the Pay Revision Committee, inter alia, observed that irrespective of their financial position, the Public Sector Enterprises that followed the CDA pattern would get the benefit of the recommendations of the 5th Central Pay Commission as per orders of the Hon'ble Supreme Court. Subsequent thereto, NIL issued salary bills to the petitioners showing accrual of emoluments according to the recommendations of the 5th Pay Commission and interim relief was granted. In the midst thereof, the BIFR by an order dated 12th November, 2002 concluded that the NIL was not likely to become viable on long term basis and that it would be wound up. Against the said order an appeal was preferred. Subsequent thereto, the Calcutta University and Jadavpur University submitted their individual proposals to the Department of Heavy Industry expressing the desire to take over their assets and liabilities of NIL and that in a meeting held on 24th June, 2005, decision was adopted to take over the assets and liabilities of NIL by Jadavpur University and the Department of Heavy Industry agreed to take the responsibility of all the dues pertaining to the employees of NIL up to the last date. Subsequent thereto, a representation was made on 6th July, 2006 claiming the benefit of revised pay scales. It was categorically pointed out by the petitioners that employees similarly situated who had retired/resigned under Voluntary Retirement Scheme had been disbursed their dues of the revised pay scales and that they are entitled to the similar benefits. Since such claim of the petitioners was not attended to by the respondents, the petitioners were constrained to prefer

an application under Article 226 of the Constitution of India being W.P. No. 985(W) of 2007 and the same upon contested hearing was disposed of by a judgment dated 30th October, 2009 directing the respondents to re-evaluate the grievance of the petitioners and to re-appreciate the same in the light of the observations made in the said judgment. The respondent no. 3 thereafter passed an order on 9th April, 2010 rejecting the petitioners' claim.

4. Thereafter the petitioners challenged the order dated 9th April, 2010 passed by the respondent no. 3 by filing a writ petition being W.P. No. 15173(W) of 2010. The said writ petition was however, disposed of by a coordinate Bench by an order dated 14th October, 2015 by directing the 3rd respondent therein to consider the petitioners' claim afresh strictly in the light of the observations made in the judgment dated 30th October, 2009 passed in W.P. No. 985(W) of 2007. The said order dated 14th October, 2015 passed in W.P. No. 15173(W) of 2010 was challenged by the writ petitioners as well as the respondent authorities by preferring two appeals. The appeal preferred by the writ petitioners was registered as F.M.A. 999 of 2016 and that preferred by the Union of India was registered as M.A.T. 780 of 2016. Both the appeals were heard analogously by an Hon'ble Division Bench of this Court and by a judgment and order dated 8th August, 2019 the appeal preferred by the Union of India being M.A.T. 780 of 2016 stood dismissed. In connection with the appeal preferred by the petitioners being F.M.A. 999 of 2016, the Hon'ble Division Bench passed a direction upon the relevant public authority to exercise its discretion in a proper and lawful manner and to take a decision within the time limit specified thereunder.

5. Union of India preferred a Special Leave Petition (Civil) No. 7997 of 2020, which was dismissed by an order dated 5th June, 2020.
6. Pursuant to the order passed by the Division Bench dated 8th August, 2019, the impugned order dated 2nd November, 2021 was passed. Being aggrieved by such order, the petitioners have filed this writ petition.
7. Mr. Dutta, learned senior counsel representing the petitioners submits that the retired employees of NIL were given the benefits of the recommendations of the 5th Pay Commission but the petitioners, who were then serving employees, were deprived of such benefits. He, therefore, submits that the petitioners have been discriminated against by the respondent authorities in the matter of extension of the benefits of the recommendations of the 5th Pay Commission. He further submits that the learned single Judge of this Court by an order dated 30th October, 2009 in W.P. No. 985(W) of 2007 specifically observed that the petitioners have been discriminated in the matter of extension of the benefits of the recommendations of the 5th Pay Commission and such order had already attained finality as the parties to such proceedings did not challenge that order before a superior authority.
8. He submitted that even thereafter, the authorities were directed to exercise their discretion in the light of observations made in the order dated 30th October, 2009 but the respondent authorities frustrated the object of the order passed by the Division Bench by passing the impugned order.
9. Mr. Dutta submits that the respondent authorities have failed to exercise their discretion in a proper manner in spite of repeated opportunities being granted by this Court and, therefore, prays that a writ of mandamus be

issued. In support of his contention that the High Court in such circumstances can issue a writ of mandamus, Mr. Dutta, learned senior counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Comptroller and Auditor-General of India, Gian Prakash, New Delhi & Anr. vs. K.S. Jagannathan & Anr.** reported at **(1986) 2 SCC 679**.

10. Mr. Dutta submits that though the writ petitioners were all serving employees at the time of filing of the writ petition but presently they have all retired. He further submits that some of the similarly situated employees have died in the meantime and the heirs and legal representatives of such deceased employees are also entitled to the benefits of the pay revision as per the recommendations of the 5th Pay Commission.
11. Mr. Trivedi, learned counsel representing the Union of India referred to the wage policies of the Government, wherein it was specifically stated that the benefit of pay revision may be allowed only to the employees of those CPSEs that are not loss making and are in a position to absorb the additional expenditure on account of pay revision from their own resources without any budgetary support from the Government. He further submits that NIL was a loss making company and, therefore, did not have the capacity to absorb the additional expenditure on account of pay revision. He submits that the respondent authorities are bound by the policies of the Government and, therefore, no direction can be passed upon such authorities to act in violation of the policies of the Government and extend the benefits of the recommendations of the 5th Pay Commission.
12. He next submitted that the Hon'ble Division Bench of this Court directed the authorities to exercise their discretion and take a decision. He thus,

submits that since the authorities were directed to consider the case of the petitioners and take a decision thereupon, the authorities, after taking into consideration the wage policies of the Government passed the impugned order.

13. He submits that the petitioners, at the relevant point of time were still in service and, therefore, they cannot claim that they stand on the same footing with that of the retired/resigned employees of NIL. He submits that extension of certain benefits to some retired or resigned or expired employees cannot justify extension of similar benefits to the serving employees. He further submits that the decision to extend benefits to the employees, who have since retired, was an erroneous decision and this Court cannot direct the authorities to extend such benefits as the petitioners cannot claim negative equality. In support of such submission, Mr. Trivedi placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Chowgule and Company Limited vs. Assistant Director General of Foreign Trade & Ors.** reported at **(2023) 1 SCC 320**.
14. Mr. Trivedi lastly relied upon the decision of the Hon'ble Supreme Court in the case of **Directorate of Film Festivals & Ors. vs. Gaurav Ashwin Jain & Ors.** reported at **(2007) 4 SCC 737** in support of his contention that the Courts cannot act as an appellate authority while examining the correctness, suitability and appropriateness of a policy nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate.
15. Mr. Majumdar, learned advocate representing the Jadavpur University submits that NIL was taken over by the Jadavpur University w.e.f. 1st

January, 2009. He submits that only the assests and employees of NIL were transferred to the Jadavpur University. He further submits that the claim of the petitioners relate to a period prior to such take over and, therefore, the Jadavpur University cannot be saddled with any liability insofar as the petitioners' claim for extension of the benefits of recommendations of the 5th Pay Commission is concerned.

16. Heard the learned advocates for the parties and perused the materials on record.
17. The challenge in the instant writ petition is as to whether the respondent authorities while taking a decision pursuant to the direction passed by this Court exercised its discretion in a manner directed by this Court. For the purpose of deciding such issue, it would be relevant to take note of the operative portion of the impugned order dated 2nd November, 2021, which reads as follows:

“.....As regards the benefits given to retired /deceased/separated employees by the management of “NIL”, as mentioned earlier, it was a wrong and illegal act committed by the management. Since this payment was made to retired/deceased/separated employees, recovery of the excess amount paid is not possible. This wrong act cannot become the basis for giving benefits of increased pay to the present employees which were not due to them as per GOI policies. This would also set a wrong precedent as employees of other ineligible loss making CPSEs may follow suit and claim for pay increase leading to disputes and huge financial burden on GOI resources.”

18. After going through the said order, this Court finds that the concerned authority in the impugned order observed that NIL was a loss making organization. As per the office memorandum dated 14th October, 2008, the benefit of pay revision to employees of those CPSEs, which are loss making,

cannot be extended to such employees. It further appears from the said order that the authorities observed that the benefits given to the retired employees were pursuant to a wrong decision taken and such wrong act cannot become the basis for giving benefits, which are not due as per the Government policies. It was further observed in the said order that the employees of other loss making CPSEs will claim same benefits resulting in huge financial burden.

19. For the purpose of deciding as to whether the order dated November 2, 2021 can be said to have been passed in terms of the directions contained in the judgement and order dated 8th August, 2019 passed by the Hon'ble Division Bench, it would be relevant to extract paragraph 29 of the said judgement, which reads as under:-

“The facts of the case are not such that the Government/the relevant public authority should not be given one last opportunity to exercise its discretion in a proper and lawful manner. We hope and trust that an appropriate order shall be passed in the light of the unchallenged findings/observations contained in the judgment and order dated October 30, 2009 as early as possible but not later than 3(three) months from date of service of a copy of this judgment and order.” (emphasis supplied).

20. From a bare reading of paragraph 29 of the aforesaid judgment, it appears to this Court that the Hon'ble Division Bench directed the respondent authorities to exercise its discretion in a proper and lawful manner. What appears from the said order is that the Hon'ble Division Bench reposed hope and trust upon the authority that it will exercise its discretion in a proper and lawful manner and pass an order in the light of the unchallenged findings or observations contained in the judgment and order

dated 30th October, 2009. Therefore, the authorities were under a bounden duty to exercise its discretion in the light of the unchallenged findings/observations contained in the judgment and order dated 30th October, 2009.

21. Now, this Court has to take into consideration the unchallenged findings/observations contained in the judgment and order dated 30th October, 2009 for which it is relevant to take note of some of the observations contained in the said order. The learned Single Judge in the order dated 30th October, 2009 specifically observed as follows on the issue as to discrimination.

“This Court finds it is difficult, if not possible, to brush aside the grievances as ventilated on behalf of the writ petitioners regarding alleged discrimination. It is true that there cannot be any equality amongst unequals. But, so far the present case is concerned, I find it difficult to hold that the present writ petitioners stand on a footing different from those who had been given the benefits, which are now being claimed by the writ petitioners. Another very significant aspect is that the concerned organization has always been consistent in keeping provision for such benefits in the budget assessment.”

22. After making aforesaid observation, the learned Single Judge thereafter held as follows:-

“The plea of absence of any direct role cannot be raised in order to permit the respondent to wash its hands of when there is clear discrimination, Article 14 of the Constitution does not, perhaps, allow the State to raise that plea and having regard to the fact that a good number of employees standing on the identical footing have been given the benefits of the recommendations of the 5th Pay Commission, it would not be just and proper on the part of the State respondents to deny the same to the present writ petitioners”

23. After taking into consideration all the aspects, the learned Single Judge thereafter observed as follows:-

“Considering all these aspects and in view of the fact that the contradictions are essentially non-antagonistic in nature, the respondent authorities must re-evaluate the entire grievances, as ventilated in the application under Article 226 of the Constitution and reappreciate the same in the light of observations made hereinbefore.”

24. On the question as to huge financial involvement, the learned Single Judge in the said order made the following observations:-

“But there remains more things to be taken care of. While the State cannot certainly scream and say ‘who am I to take up arms against the sea of troubles’, the Court also need to take a cautious approach – when there is huge financial involvement. Our laws do not permit the authority to act arbitrarily and extend benefits to a section of employees while denying the same to others. It cannot derive inspiration from George Orwell and say that all are equals but some of more equal than others.”

25. In course of his argument Mr. Trivedi placed strong reliance on the office memorandum dated 9th July, 2003. After going through the said office memorandum, it appears that the said office memorandum was issued in terms of the observations made by the Hon’ble Supreme Court in the case of **A.K. Bindal & Ors. vs. Union of India** reported at **(2003) 5 SCC 163**. Mr. Trivedi, in particular, referred to clause (iii) of the said office memorandum, which states that the economic viability or financial capacity of the employer company should be taken into consideration in the matter of revision of pay scales of the employees.
26. He next referred to the office memorandum dated 14th October, 2008 , wherein it was also stated that the benefit of revision may be allowed only to employees of those CPSEs that are not loss making and are in a position

to absorb the additional expenditure on account of pay revision from their own resources without any budgetary support from the Government. Therefore, the endeavour of Mr. Trivedi was to impress upon this Court that the policy of the Government was to extend the benefit of pay revision only to those employees of CPSEs that are not loss making and are in a position to absorb the additional expenditure on account of pay revision from their own resources. It would be relevant to point out at this stage that the learned Single Judge in his order dated 30th October, 2009 specifically took note of the observations of the Hon'ble Supreme Court in the case of *A.K. Bindal & Ors. vs. Union of India & Ors. (supra)*.

27. The learned Single Judge while arriving at positive findings, as has been indicated hereinbefore, took into consideration the aforesaid policies of the Government, which were also relied upon by the Union of India when the matter was moved before the learned Single Judge in W.P. No. 985(W) of 2007. The order dated 30th October, 2009 had already attained finality as the parties to such order did not challenge the same in any higher forum. On the contrary, pursuant to the said order dated 30th October, 2009, the authorities passed an order dated 9th April, 2010, which was the subject-matter of challenge in W.P. No. 15173(W) of 2010, which ultimately culminated in the order passed by the Hon'ble Division Bench and the Special Leave Petition against such order also stood dismissed.
28. It is well-settled that if an issue or the entire lis is concluded upon a finding being rendered and such finding remains unchallenged, it is not open to a party to undo the effect of such an order at any subsequent stage or even in a collateral proceeding unless it can be demonstrated that such finding

was vitiated by fraud or that the Court, which passed that order lacked jurisdiction to decide the lis. To support such proposition it would be relevant to refer to a decision of the Division Bench of this Court in the case of **Indu Bhusan Jana vs. Union of India & Ors.** reported at **2009 (1) CHN 27**. The Hon'ble High Court held thus:

“11. Upon an order attaining finality, it matters little as to whether it was erroneous. A party aggrieved by an order has to work out his remedies within the legal framework. If an issue or the entire lis is concluded upon a finding being rendered and such finding remains unchallenged, it is no longer open to the party to undo the effect thereof at any subsequent stage or collaterally unless it is demonstrated that the finding was obtained by fraud or the Court lacked jurisdiction to pass the order. The hierarchy in the judiciary exists to afford litigants to climb up the ladder in pursuit of justice and to right a wrong committed at a lower level. But if a litigant accepts an order, he does it to his prejudice and binds himself thereby.”

29. Therefore, at this stage, it is not open to the Union of India to re-open the issues, which were finally decided by the order dated 30th October, 2009.
30. Mr. Trivedi would contend that since the Hon'ble Division Bench directed the authorities to consider the matter, the entire issues were left open for a fresh decision.
31. It is well-settled that when the High Court in a writ petition finds that there is infirmity in the decision making process and in course of such proceeding, after considering issues involved therein decides the matter by making findings and observations on the issues involved in the writ petition, it goes without saying that an authority while considering the issues in terms of the direction passed by this Court has to take into consideration the unchallenged and uncontroverted findings arrived at by

the High Court in the earlier proceedings and decide the matter by exercising its discretion in a proper manner. The expression 'consider' has been considered by the Hon'ble Supreme Court in the case of **A.P. State Road Transport Corporation vs. G. Srinivas Reddy** reported at **(2006) 3 SCC 674**. The relevant portion of the said decision is quoted hereinbelow:

"14. We may, in this context, examine the significance and meaning of a direction given by the court to 'consider' a case. When a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to 'consider' the claim/case/ representation of the petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by ma fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may."

32. In the case on hand, the Hon'ble Division Bench while directing the authorities to exercise its discretion in a proper and lawful manner observed that an appropriate order is to be passed in the light of the unchallenged findings or observations contained in the judgment and order dated 30th October, 2009. After going through the impugned order, this Court finds that the authority while passing the order dated 2nd November, 2021 made observations, which in the considered view of this Court, is contrary and contradictory to the unchallenged findings and observations contained in the judgment and order dated 30th October, 2009.
33. For such reasons this Court is of the considered view that the order dated 2nd November, 2021 is liable to be set aside.
34. There is, however, no quarrel to the proposition of law laid down in *Gaurav Ashwin (supra)* that while exercising the powers of judicial review, Courts

do not and cannot act as Appellate Authorities to examine the correctness, suitability and appropriateness of the policy. The Courts while examining a policy of the Government is to check whether it violates the fundamental rights of the citizen or is opposed to the provisions of the Constitution, or opposed to any statutory provision or is manifestly arbitrary.

35. The scope of inquiry in the instant writ petition is restricted to examining whether the authority while passing the impugned order has exercised its discretion in a proper and lawful manner in the light of the order which had attained finality. Therefore, the aforesaid decision is of no assistance to the respondents in the case on hand.
36. The decision in the case of *Chowgule (supra)* has no manner of application to the facts of the case on hand as the said reported decision dealt with the doctrine of promissory *estoppel*.
37. Now the question arises whether a writ of mandamus is to follow or the authorities are to be directed to take a fresh decision in the light of the findings and observations contained in the order dated 30th October, 2009. For deciding such issue, it would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of **Comptroller and Auditor General of India (supra)**. In paragraph 20 of the said report the Hon'ble Supreme Court held thus:

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and

materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and given directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."(emphasis supplied).

38. This is the third round of litigation. By the order dated 30th October, 2009, the learned Single Judge directed the authorities to take necessary action after arriving at positive finding and make observations on the issues raised in the writ petition. Thereafter the authorities passed the order dated 9th April, 2010, which was also set aside by the learned Single Judge in W.P. No. 15173(W) of 2010 and on an appeal arising from the order passed in the said writ petition, the authorities were again directed by the Hon'ble Division Bench to exercise their discretion in a proper and lawful manner in the light of the unchallenged findings/observations contained in the judgment and order dated 30th October, 2009.
39. After going through the impugned order dated 2nd November, 2021, this Court is of the view that the action of the concerned authority amounts to sitting in appeal over the decisions passed by this Hon'ble Court from time to time. From the action of the authorities it appears to this Court that the respondent authorities are acting in a manner to frustrate the object of conferring discretion upon such authority to act in a proper and lawful manner.

40. Though it is well-settled that in ordinary cases, the High Court instead of issuing a writ of mandamus should have directed the authorities to take a fresh decision but the case on hand is an exceptional case in view of the chequered history, as observed hereinbefore and, therefore, this Court thinks fit and proper to issue a writ of mandamus.
41. For the reasons as aforesaid, the impugned order dated 2nd November, 2021 passed by the Under Secretary to the Government of India is set aside and quashed. The authorities of the Union of India are directed to release the benefits as per the recommendations of the 5th Pay Commission and other consequential benefits, which the petitioners may be entitled to as expeditiously as possible but positively within a period of twelve weeks from the date of receipt of server copy of this judgment and order.
42. In case any employee of NIL similarly situated as the writ petitioner has died in the meantime, it would be open to the legal heirs and representatives of such deceased employee to lodge a claim in terms of this order before the appropriate authority and if such a claim is lodged, the authorities shall take a decision thereupon by passing a reasoned order in the light of the observations contained in this judgment and order.
43. The writ petition accordingly, stands allowed.
44. There shall be, however, no order as to costs.
45. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Pallab AR(Ct.)