
(2017) 02 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4992 of 2012

Adarsh Kumar Sharma

APPELLANT

Vs

Punjab & Haryana High Court, Chandigarh

RESPONDENT

Date of Decision : 23-02-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 39(d)
High Court Establishment (Appointment and Conditions of Service) Rules, 1973 — Rule 24, Rule 26, Rule 27, Rule 28, Rule 34(1)(A), Rule 9(1)(c)

Citation : (2017) 2 SCT 743

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Amandeep Singh Talwar, Advocate, for the Petitioner; Ashish Aggarwal, Senior Advocate with Naresh Kumar Joshi, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—The issues raised in this petition are rather complex and at the same time apparently simple depending on how and from where to approach the problem this petition presents for determination. The law on its visible surface appears to be settled against the petitioner that two incumbents on posts composing the same cadre can enjoy different pay within the same pay scale coming from different feeder categories of employees to higher posts. But the nagging question is if another dimension is required to be examined and path opened on the special facts of this case and would justice be served thereby to hold in favour of the petitioner, as I am inclined to do, after hearing arguments on both sides. I have tried to understand and reflect on the rights of the petitioner as asserted by him to step his pay on par with his admitted junior and would attempt to answer the moot point as to whether, indeed, he has any actionable claim against the respondent High Court claiming equal pay by stepping-up his pay being senior to one Sarv Mitter Sharma carrying more pay on account of earning annual increments in the feeder posts,

but interestingly both selected in the common process of selection on merit after limited competition was held, the petitioner coming before the other to occupy the post of Reader due to superior merit achieved in the examination. The one lower in merit occupying future vacancy and selected in advance by High Court preparing a select list of successful candidates drawing a panel. Presently, both officers have retired from service as Special Secretaries (Reader Line) to the Hon'ble Judges of this Court. The facts are not disputed but have to be addressed briefly to form a background for the discussion to follow.

2. The petitioner was a Special Secretary on the establishment of this Court, when he brought the petition claiming stepping up of his pay equivalent to his junior, namely, Sarv Mitter Sharma w.e.f. 11.01.1995 in terms of the judgment of this Court in CWP No.6609 of 2006 titled `Mrs. Krishna Goyal v. High Court of Punjab & Haryana' decided on 03.08.2006. Krishna Goyal was granted similar benefit from the date her juniors started receiving higher pay than her. The orders have attained finality and stand implemented. Following the ruling in Krishna Goyal's case, the issue of juniors getting more salary than seniors in the cadre of Special Secretaries had become a common grievance which engaged the attention of a Committee of Hon'ble Judges in which the case of the petitioner was a part of the consideration. The representationists before the Committee were Sarvshri Shashi Bhushan Kaushik, Hemant Singh Walia, Adarsh Kumar Sharma - the petitioner and Sham Lal Sharma. Their grievance was that Sarv Mitter Sharma, who was also a Special Secretary and who was junior to them was drawing more salary than them. Sarv Mitter Sharma was appointed as a Reader in January, 1995 on a monthly salary of Rs. 3300/-. On the date of appointment, barring Sham Lal Sharma, the others including the petitioner were already serving as Readers. As to how Sarv Mitter Sharma came to receive higher pay has been narrated in the proceedings of the Hon'ble Committee.

3. Sarv Mitter Sharma joined as Clerk in 1968 on a monthly salary of Rs. 110/-. He was promoted as Assistant in 1976 and his salary increased to Rs. 140/- + Rs. 85/-. He was promoted to the post of Judgment Writer in 1982 on a salary of Rs. 570/- + Rs. 370/- and further promoted as Private Secretary in 1988 on a salary of Rs. 2640/- and thereafter appointed as Reader in 1995 on a salary of Rs. 3300/-. The petitioner and Sarv Mitter Sharma were promoted as Court Secretaries on the same date in 2006 and thereafter became Special Secretaries on the same date in 2007. Since Sarv Mitter Sharma was drawing more salary as a Reader in 1995, he continued to draw more salary than his seniors including the petitioner.

4. The question before the Committee was; whether salaries of the aggrieved employees etc. ought to be stepped up to the level being drawn by Sarv Mitter Sharma, who was admittedly junior to them. Personal hearing was given to the parties by the Hon'ble Committee. The Committee applied the law in Krishna Goyal case, which was by then available. In Krishna Goyal case, the Division Bench concluded that she was entitled to re-fixation of pay at different stages

from the dates when those were granted to her junior Hardev Singh along with consequential relief such as arrears of pay, increments etc. The dispute to be resolved in the present case was that the petitioner and Sarv Mitter Sharma came from two different streams of service. The petitioner etc. became Readers from the ministerial/translator line, while Sarv Mitter Sharma was from the Stenography line. It was the accepted position that all the streams merged in the post of Reader, which is a selection post. There are indeed different streams from which Readers are picked up on merit.

5. While considering the similar issue, the previous Committee on the administrative side on had opined 05.12.1996 that appointment to the post of Reader by competitive examination was also an "appointment by promotion" while referring to the provisions of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973. The Committee was of the view that the rules give sufficient indication that the selected candidate is promoted from one grade to another and that appointment to the post of Reader/Judgment Writer by competitive examination is an appointment by promotion. The Committee held that appointment to the post of Reader cannot be taken as a direct appointment because in cases of direct appointment, the choice would not be limited to the persons working in the High Court or in the Subordinate Courts, as the post had to be thrown open to all eligible candidates to compete from the open market. The Committee read Rule 24 of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 and thought that it clearly laid down that no promotion in the High Court establishment from one grade to the next higher shall, except in cases where competitive examination is prescribed, be by selection and none shall have a right to claim promotion merely on the basis of seniority. The difference between the case of Sarv Mitter Sharma and the petitioner is that the latter was appointed as Reader after becoming Judgment Writer and Private Secretary, whereas the petitioner and his ilk were appointed as Readers without going through the steps of Judgment Writer or Private Secretary. The Committee recommended that the appointment of Sarv Mitter Sharma as a Reader was not a direct appointment in the real sense of the word and was an appointment by way of promotion. Once both come into the cadre of Reader, they cannot be treated differently, if they get promoted as Readers through different promotional streams.

6. Keeping the above in view, the Committee of two Hon"ble Judges" vide their Lordships" report dated 27.04.2009 recommended acceptance of the representation of Sarvshri Shashi Bhushan Kaushik, Hemant Singh Walia and Adarsh Kumar Sharma. However, when the file was put up before Hon"ble the Chief Justice for approval, Hon"ble the Chief Justice was pleased to notice that in terms of previous office note dated 18.12.2006, the two-Judges" Committee was required to examine the representations made by about 150 employees praying for stepping up of their pay to bring the same on par with their juniors. When the file was put up, His Lordship, Hon"ble the Chief Justice was informed that the representations qua some of the employees had been rejected by the Committee

while the same was pending qua others. The petitioner was not part of the group of original 150 employees, but the cases were put up before the Committee without there being a specific order referring the said representations for consideration. Hon''ble the Chief Justice found that there is some amount of confusion as to why the cases are being posted for consideration before the Committee on a selective basis and why could not the issue be examined and resolved by taking a holistic view of the matter so that all those who are similarly placed are dealt with on a similar and uniform basis. Hon''ble the Chief Justice, in the absence of one of the Members of the Committee, discussed the matter with the other Hon''ble Judge, who had made recommendations on 27.04.2009 as part of the earlier two Judge Committee, who advised that the matter could be re-examined and a fuller report sought on the subject matter with proper recommendations qua the entire batch of employees claiming the benefit in question i.e. of stepping up of pay in view of the wide ramifications of the issue involved for resolution. This is how the matter was placed before a larger Committee of Hon''ble Judges of this Court.

7. Meanwhile, a round of litigation was initiated by Paramjit Singh, Reader by way of filing CWP No.15078 of 2009 titled 'Paramjit Singh v. Punjab & Haryana High Court', which was disposed of on 26.02.2010 by the learned Single Judge with a request to the Registrar General to pursue the matter personally so that the representations of all concerned are considered and decisions taken thereon expeditiously. The Court noticed the decision of Hon''ble the Chief Justice dated 01.07.2009 (Annex R- 3). Paramjit Singh had made the same prayer for stepping up of his pay equivalent to his junior, namely, Kanwal Rampal, Reader. Paramjit Singh relied upon the decision rendered by the Division Bench of this Court in Chhajju Ram Hans v. High Court of Punjab & Haryana, 2005 (4) SCT 208 claiming that his case is squarely covered by the said judgment. Accordingly, Paramjit Singh's case was taken up on the administrative side and an office order was passed on 16.07.2010 in the light of the directions issued by the learned Single Judge accepting the prayer of Paramjit Singh regarding stepping up of his pay equal to that of Kanwal Rampal .

8. A year after Paramjit Singh had approached this Court the present petitioner filed CWP No.18445 of 2010 titled 'Adarsh Kumar Sharma v. Punjab & Haryana High Court, Chandigarh' making similar prayer. Along with him, Shashi Bhushan Kaushik filed CWP No.11405 of 2010 also claiming stepping up of his pay in the light of the office order passed in Paramjit Singh's favour. Both these writ petitions were taken up together and decided on the same day i.e. on 26.05.2011. Ten days" before the learned Single Judge passed the order in the two petitions, LPA No.1781 of 2010 titled 'Punjab & Haryana High Court v. Rajan Nanda & others' was decided on 16.05.2011 by the appellate bench upholding the opinion of the Single Judge on the judicial side granting the same benefit to Rajan Nanda & others. Therefore, the learned Single Judge directed the Registrar General to consider the representations of Shashi Bhushan Kaushik and the present petitioner and pass a speaking order thereon taking into consideration

the decision of the appellate bench in Rajan Nanda's case.

9. Central to this case is the decision in Krishna Goyal case, since it is a decision clearly in favour of the petitioner and it is now the stand of the High Court that the decision is sub silentio and per incuriam (without actually saying so) since it does not notice earlier case law handed down by the Supreme Court and the rules of service. Some of the rules of service had not been dealt with or noticed by the Division Bench which decided the case by noticing Rule 4.14 (1) & (2) read with Rule 2.48 and 4.4(a)(i) of the Punjab Civil Services, Volume-I, Part-I. The Division Bench passed the order relying on an earlier ruling on the point delivered by another Division Bench in CWP No.16117 of 2004 titled `Chhaju Ram Hans v. Hon'ble High Court of Punjab & Haryana at Chandigarh" (decided on 01.09.2005) in the same vein. The Division Bench quoted in its order the reasoning and conclusion arrived at by the Division Bench in Chajju Ram Hans case. The same requires reproduction in the present order to take the case forward, which is as follows:

"A perusal of the aforesaid Rules would show that the petitioner was entitled to draw the presumptive pay of the post of Reader from the date he was of ficiating as such. The aforesaid pay is to be fixed on the presumption that the petitioner held the post substantively. Under these rules, the petitioner would clearly be entitled to the re-fixation of his pay over and above the pay which was being drawn by his junior Prem Singh. The petitioner would also be entitled to all the consequential benefits. In the case of Bahadur Singh (supra), the Supreme Court examined a similar situation and that senior employee cannot be paid less than his junior colleague. In view of the above, we are of the considered opinion that the order passed by the High Court on 18.03.2004 (Annexure P-1) is not sustainable.

In view of the above, the writ petition is allowed. The order dated 18.03.2004 (Annexure P- 1) is quashed. The petitioner is held entitled to the re-fixation of his pay at different stages from the dates the same was granted to his junior Prem Singh. The petitioner shall be entitled to all the consequential benefits such as arrears of salary etc. let the consequential benefits such as arrears of salary etc. be paid to the petitioner within a period of two months of the receipt of a certified copy of this order. No costs."

10. A few words on Chhaju Ram Hans case would enlighten the debate since the present stand of the High Court is converse to the stand taken by it in Krishna Goyal and Chhaju Ram Hans cases. The important background to be kept in mind is that Sarv Mitter Sharma had the benefit of increments earned before he was appointed as Reader. But the present petitioner came directly as a Reader and therefore, did not have the benefit of past increments like Sarv Mitter Sharma, which has caused the disparity in pay and the imbalance and became the bone of contention in this case.

11. Indisputably, Sarv Mitter Sharma, who was selected as Reader in the same

selection process, joined after the present petitioner, thereby enjoying higher pay by virtue of annual increments added to his pay in the scale. There would be cases where before coming in as Readers, the employee's promotion could involve more than one step rise i.e. prior to promotion as Reader. A senior person is entitled to all those benefits which a junior in the cadre is getting and the pay of a senior cannot be less than that of his junior as a proposition cannot be disputed, but has to be seen, viewed and interpreted in the light of the relevant rules and instructions in the matter and the changed/shifting stand of the High Court from the days of Krishna Goyal case. The Division Bench in reaching the conclusion in favour of Chhaju Ram Hans claiming stepping up of his pay relied upon the judgments in Chanan Singh v. PSEB, Patiala, 1992 (2) RSJ 451 and Surinder Kumar Nauhria v. The Registrar, Cooperative Societies, Punjab, Chandigarh, 1993 (2) RSJ 800. The contention put forward that the executive instructions dated 21.06.1990 would negate the case of the petitioner was an improper and erroneous view according to the Hon"ble Committee. It was these instructions that were used against Chhaju Ram Hans to deny him relief of stepping up of pay equal to his junior. These instructions however, deal with the subject matter of `removal of anomaly" by stepping up of pay of senior employee drawing less pay than a junior employee and the Government have announced therein that in such cases the pay of senior employee will have to be stepped up to the level of pay of the junior, if it is by the operation of normal pay fixation rules and option exercised, whereas the petitioner therein claimed pay fixation under Rule 4 (supra). The Division Bench read Rules 4.14, 2.48 and rule 4.4(a)(i) to conclude that Chhaju Ram Hans was entitled to draw the presumptive pay of the post of Reader from the date he was officiating as such. The aforesaid pay was to be fixed on the presumption that the petitioner-Hans held the post substantively. Under these circumstances, the petitioner- Hans would clearly be entitled to the re-fixation of his pay over and above the pay which was being drawn by his junior Prem Singh with all consequential benefits. The Division Bench applied the law laid down by the Supreme Court in Civil Appeal No.9943 of 1995 titled `High Court of Punjab & Haryana v. Bahadar Singh Batta" decided on 25.04.2001, which was rendered in a somewhat similar situation where the Supreme Court held that senior employee cannot be paid less than his junior colleague. The Division Bench did not agree with the High Court"s order adverse to the petitioner and found it not sustainable and accordingly allowed the writ petition on 01.09.2005.

12. The High Court sought opinion of Mr. Anupam Gupta, Advocate (presently designated Senior), whether to appeal against the order of the Division Bench to the Supreme Court. His advice was against the filing of SLP, as it may turn out to be a futile exercise despite the financial implications involved. Ultimately, a decision was taken on 05.10.2005 by the Hon"ble Mr. Justice J.S.Khehar (when His Lordship was a Hon"ble Judge of this Court) not to file SLP. The advice of the learned counsel was accepted. The judgment and order attained finality.

13. At this stage, it would be necessary to reproduce the relevant Rules:

"Rule 4.14

Subject to the provisions of Rules 4.13 and 4.16, a Government employee who is appointed to officiate in a post shall draw the presumptive pay of that post.

On an enhancement in the substantive pay, as a result of increment or otherwise, the pay of such Govt. employee shall be refixed under sub- rule (i) from the date of such enhancement as if he was appointed to officiate in that post on that date were such re-fixation to his advantage."

"Rule 2.48 Presumptive pay of a post When used with reference to any particular Government employee, means the pay to which he would be entitled, if he held the post substantively and were performing i ts duties, but i t does not include special pay unless the Government employee performs or discharges the work or responsibility, on consideration of which the special pay was sanctioned."

"Rule 4.4 (a)(i)

When appointment of the new post involve the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of Rule 4.13) than those attaching to such permanent post he will draw as initial pay the stage of the time scale next above his substantive pay in respect of the old post."

14. Going back to the narration of events, it is noticed that as directed by Hon"ble the Chief Justice, a two-Judges" Committee was set up as a fall-out of His Lordship"s earlier order dated 01.07.2009 tasking the Committee to make its recommendations for the entire batch of employees claiming the benefit in question. The Committee deliberated on the issues involved. In the minutes of the meeting of the Commit tee held on 06.10.2010, the following questions were framed to be answered:

"(i) Framing of comprehensive uniform policy/guidelines for stepping up of pay of the officers/officials of this Court in perspective of orders dated 01.07.2009 passed by the Hon"ble the Chief Just ice in a case of stepping up of pay of the officers of Readers" line.

(ii) Consideration of Demand Notice/Representation dated 15.05.2009 of Sh. Shubash Chander Malik and three other Secretaries for stepping up of their pay at par with their junior in view of judicial direction given by the Hon"ble High Court in CWP No.127 of 2010.

(iii) Consideration of representation dated 10.10.2006 of Sh. R.S. Rattol, Joint Registrar (Retd.) for stepping up his pay at par with his juniors Sh. S.K.Puri and Shri R.S.Gill, now retired as Deputy Registrars, in view of directions given by the Hon"ble High Court in CWP No.6614 of 2010."

15. In short, the Committee had to fix uniform "criteria" to follow in all the cases while considering stepping up the pay of senior employees who were drawing less pay than their juniors. The first premise delineated by the Committee was; whether the issue required to be fixed by either taking into consideration the

length of service from the particular cadre post or on the basis of the judicial verdict or instructions of the Punjab Government. The Committee read, in addition to the ones noticed and dealt with in Chhaju Ram Hans case; Rule 26 of 1973 Rules, which provides for pay; Rule 27 which deals with `special pay", Rule 28 which deals with `increments" and Rule 34(1)(A) providing method of `pay fixation". These Rules are reproduced below in succession:

"Pay

26. (1) The rates of scales of pay to which the holders of posts specified in the third column of the First Schedule are respectively entitled, shall be those specified in the sixth column of the said schedule.

(2) The posts on the establishment of the High Court shall be treated as equivalent to the corresponding comparable posts in the Punjab Civil Secretariat shown in Schedule - I - A in all matters relating to their conditions of service including scales of pay, special pay and allowance.

Special Pay

27. Members of the High Court Ministerial Establishment who are holding special pay posts shall be entitled to such special pay as may be sanctioned from time to time in addition to pay to which such persons are entitled under rule 26. The present special pay as sanctioned from time to time is in addition to pay to which such persons are entitled under rule 26. The present special pay as sanctioned for such posts is noted in column 9 of the First Schedule.

Increments

28. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld, from a Govt. Servant by a competent authority, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the competent authority shall state the period for which it is withhold and whether the postponement shall have the effect of postponing future increment .

xx xx xx

Pay Fixation

34. (1)(A) In the matter of fixation of pay in the revised pay scales, the employees of this Court, who have been promoted w.e.f. 13.9.88 onwards shall be governed under Rule 8 of the Punjab Civil Service (Revised Pay) Rules, 1988 and any subsequent instructions issued by the Punjab Government thereunder, from time to time."

16. There apart, the Committee again read Rules 4.14 and 4.4 of the Punjab Civil Services Rules. The Committee referred to the Division Bench judgments and other precedents which are considered in Krishna Goyal, Chhaju Ram Hans and Paramjit Singh cases. A large number of judgments were considered by the

Committee, both of the Supreme Court and the High Court on the point in issue. The Committee particularly noticed the judgments of the Supreme Court in *Commissioner and Secretary to Government of Haryana & others v. Ram Sarup Ganda & others*, 2007 (2) SCT 476 and *Gurcharan Singh Grewal v. Punjab State Electricity Board*, (2009) 3 SCC 94. The Committee observed that the concept of stepping up of pay of a senior in order to maintain parity with his junior is a facet of directive principles enshrined in Article 39(d) of the Constitution, which guarantee "equal pay for equal work". The High Court Rules provide for promotion from different feeder cadres having different lengths of service, educational qualification and experience as the criterion. The Committee also ruled out applicability of circular dated 21.06.2000 and the subsequent circular dated 12.08.2010 issued by the Government of Punjab, which deal with removal of anomalies, which is not the case in the representations under consideration. Hence, it could not be said that the senior earning higher salary was not in accordance with the Rules.

17. In *State of A.P. v. G. Sreenivasa Rao*, (1989) SCC 290, the Supreme Court considered a somewhat similar case of pay parity. The Supreme Court observed that the High Court and the Tribunal had in an omnibus manner come to the conclusion that whenever and for whatever reasons a junior is given higher pay, the doctrine of "equal pay for equal work" is violated and the seniors are entitled to the same pay. The Supreme Court did not agree with the High Court or the Tribunal where the case arose, that the doctrine of "equal pay for equal work" cannot be put in a strait-jacket. The Supreme Court relied on its earlier dicta to observe that "equal pay for equal work" is an accompaniment of the equality clause enshrined in Articles 14 & 16 of the Constitution. Nevertheless, the abstract doctrine of "equal pay for equal work" cannot be read in Article 14 because reasonable classification based on intelligible criteria having nexus with the object sought to be achieved is permissible. "Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre, the constitutional mandate of "equal pay for equal work" is satisfied. The Supreme Court observed as follows:

"15. Ordinarily grant of higher pay to junior would ex-facie be arbitrary, but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promoted from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or incentive for efficiency, are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of "equal pay for equal work". The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be

achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal ."

18. Therefore, there can well be exceptions to the ordinary rule of equality of pay. There appears no doubt that in many situations the principle would not apply. Ordinarily, the rule is that grant of pay to a junior higher than the senior would ex facie be arbitrary.

19. The search for applicable legal principle in the present case essentially is for a pragmatic solution supporting justifiable departure from the ordinary rule and the consideration of possible and reliable reasons which allow senior and junior to remain clearly distinguishable on the basis of length of service earning annual increments or promotional increments and being placed in higher pay scale as a matter of right by virtue of promotions before becoming Reader. Can there be a departure is what begs an answer? The exceptions to the normal rule will arise in cases where monetary benefits are brought forward to the post of Reader earned according to pay rule. But this is all very well in cases of simpliciter promotion, direct recruitment, appointment by promotion, where birth-marks will remain and be carried forward to deny pay parity when an employee who is senior is injected into the cadre, say of Readers. The Committee observed that the sole claim of the representationists for their stepping up of pay was based on the principles of natural justice and on the principle of "equal pay for equal work". However, it is not their case that the pay of any of the juniors has been wrongly fixed, remarked the Committee. No doubt reasoned the Committee, whose work is impugned, the juniors who are getting higher pay is because of their length of service or on being promoted to the higher cadre or pay fixed by granting one increment in terms of Rule 4.4 of the Rules. The Committee held that since promotion on a higher post is based upon recruitment from different feeder posts, it is but natural that the officials having different lengths of service and carrying different pay scales in the feeder cadres being eligible persons and are promoted on the basis of eligibility and promotional opportunities available to such feeder cadres, although after promotion all officials are placed in the same pay scale could draw different salaries.

20. The Hon"ble Committee observed that there was reasonable classification in the differentiation when the pay in the feeder cadre and length of service are kept in view, by which they meant could be discordant by source but reconciled by different birth marks when merging in the post of Reader. The Committee observed that the employees in one cadre are entitled to same "pay scale", but not the same pay, as the pay fixation of an employee is dependent upon a host of factors, which may be either length of service or higher pay scale in feeder cadre necessitating higher pay fixation on promotion etc. The principle of "equal pay for equal work" is a general rule, but such principle can be deviated from for good and justifiable reasons and for this conclusion the Committee applied the law laid down in *Government of A.P. v. Veera Raghavan*, (1999) 9 SCC 266 that if there are justified grounds to do so, departure can well be made without forming

an actionable claim for stepping up of pay. Having considered the issues involved and after forming opinion the Committee directed the office to process the representations by keeping the following principles in mind:

"(i) In terms of Rule 26(1) of the High Court Establishment (Appointment and Conditions of Services) Rules, 1973, the scale of pay payable to the employees of the High Court shall be as per the First Schedule to the Rules;

(ii) In the said pay scale, the pay shall be fixed in terms of Rule 34(1)(a) keeping in view the Rule 4.4 and Rule 4.14 of the Punjab Civil Services Rules such as by pay protection in case of an employee promoted to higher post in a lower scale of pay and pay fixation by granting additional increment on account of promotion and such similar reason;

(iii) The employees of one cadre will be placed in the same 'pay scale' irrespective of sources of promotion of feeder cadre;

(iv) The pay of a senior is not required to be stepped up, if the pay of both senior and junior is fixed as per pay fixation rules and instructions, and when junior draws higher pay on account of his length of service or pay fixation or some other reason including personal pay etc."

21. On 11.07.2011, the petitioner was conveyed the impugned memorandum (Annex P-11) informing him that after considering his representation dated 14.12.2007 for stepping up of his pay with Sarv Mitter Sharma (since retired as Special Secretary), Hon'ble the Acting Chief Justice and the Judges have been pleased to decline the request being not covered under the policy framed by this Court in the matter and also being not fulfilling the requirements of pay stepping up instructions issued by the Government of Punjab. Since the order was non-speaking, the petitioner made a written request to the Registrar General of this Court to the effect that the speaking order passed was not communicated to him while declining his request. He prayed that the same may be supplied to him since there were directions of the Court in CWP No.18545 of 2010 that the petitioner's representation would be decided by passing a speaking order while taking into consideration the judgment passed in LPA No.1781 of 2010 titled 'Punjab & Haryana High Court v. Rajan Nanda & others' on 16.05.2011. The reasons were supplied vide memo dated 13.02.2012 (Annex P-13). I am afraid to say that there is no meaningful discussion on the cases of Rajan Nanda, Krishna Goyal, Chhaju Ram Hans and Paramjit Singh cases, all of which have attained finality and unambiguously decide the issue in favour of persons like the petitioner. All that the memo dated 13.02.2012 notices and deals with is the Rajan Nanda case. I hesitate to say there is want of applying the ratio of these four cases in the report of the Committee drawing up the criteria on the issue involved except in noticing those cases but not dealing with them as one would take the bull by the horns and to that extent the impugned memo dated 13.02.2012 (Annex P-13) is non-speaking in character, while the impugned order dated 11.07.2011 (Annex P-11) conveyed to the petitioner suffers from the same

shortcoming admitting of further interpretation and that is the salient purpose of rendering this judgment and order. All that the order dated 11.07.2011 and the memo dated 13.02.2012, contain is that the petitioner's case for stepping up his pay is not covered by the "policy framed by the Court and he does not fulfil the requirements of instructions issued by the Government of Punjab". I assume, the referred to law are the instructions of 21.06.2000, which have been held non-applicable in the judicial precedents (supra) and even in the report of the Committee, it is recognised that they only deal with the cases in respect of 'removal of pay anomalies' and not 'stepping up of pay' which are both different subject matter for the intents and purposes set out and considered by Government therein, and I say so with respect as I read the minutes of the meeting which led to forming of the impugned criteria.

22. It is well settled legal proposition that the base of a judicial verdict should not be removed by executive action. The decisions rendered in Krishna Goyal, Chhaju Ram Hans and Paramjit Singh cases are binding on the High Court as res judicata having attained finality and the principle culled out in the rulings are clearly in favour of the petitioner. Moreover, those decisions have been implemented when not appealed against and consequential benefits paid to the beneficiaries.

23. The real issue, as I observe from facts and the law in point, is that Sarv Mitter Sharma and the petitioner were unequal while they were in their respective streams of service in ministerial/translator and the stenography lines. To repeat, Sarv Mitter Sharma came from the stenography line, while the petitioner from the ministerial side. They both competed for the post of Reader by way of competitive examination, but which was limited to in-service candidates drawn from different cadres in the High Court and the Subordinate Courts offering candidature for the prescribed examination as permitted by the Rules. This is not a case of promotion on the basis of seniority or promotion on principle of 'seniority-cum-merit'. Rule 9 of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 governs the appointment to the post of Reader to a Judge. The said Rule is emphatic on appointment to the post of Reader and reads as follows:

"9. (i) Appointment to the post of Reader to a Judge shall be made from the following sources:

(i) (a) From amongst the Law Graduates members of the High Court Establishment serving in the grade not lower than the grade of Senior Assistant or its equivalent for a minimum period of 5 years.

(i) (b) From amongst the Law Graduates working in the Courts of the District Judge in Punjab & Haryana and in Subordinate Courts having five years experience in a grade not lower than of "B" Grade Assistant, Judgment Writer (Senior Grade) and Judgment Writer (Junior Grade)/Stenographer to the District Judge in the State of Punjab and Haryana;

(i) (c) Superintendents Grade- II, Senior Assistants, Revisors, Translators and Senior Scale Stenographers serving in the High Court and the employees of Lower Courts in the States of Punjab, Haryana and Chandigarh (U.T.), working in the grade of Assistant, Judgment Writer (Senior Grade) and Judgment Writer (Junior Grade)/Stenographer to the District Judge, who are graduate and have put in more than 20 years of service.

(ii) A list of approved candidates for the post of Reader will be prepared as a result of Competitive Examination confined to the sources mentioned in Sub-Rule (i) of this Rule and appointments shall be made in order of merit there from;

(iii) The Chief Justice shall from time to time decide the number of candidates to be brought on the list as result of a single Competitive Examination. The syllabus for the examination shall be as follows: -

No.

Subject

Max. Marks

1

Written paper relating to knowledge of law and procedure as laid down in Civil Procedure Code, Criminal Procedure Code, Limitation Act, Court Fees and Suits, Valuation Act and Stamp Act together with the rules made by Government and High Court under these Acts and High Court Rules and Orders, Volume I, Volume II and Volume V relating to procedure of Courts

100

2

Practical Test (Oral) regarding familiarity with records of the High Court and lower Courts and Registers maintained in the Judicial Department and by Readers.

10

3

Oral examination Shikasta reading in languages of the lower Courts viz. Hindi and Punjabi, Special importance being attached to the ability of candidates to read shikasta.

10

4

Viva Voce, including familiarity with law reports and other law books.

5

Total

125

24. In this case, we are concerned with Rule 9(i)(c) of the rules. The plinth of eligibility is broad, accommodating many posts and services in different cadres with different qualifications and experience prescribed etc. The Rule, as it is structured, by virtue of its own terms confirms the belief on plain language employed therein that the transition is an "appointment" and not a mere "promotion". The opening gambit of the Rule is "appointment" to the post of a Reader to a Judge and what more can be said, added or subtracted from it, I can hardly witness. If the language of the rule is plain and unambiguous it should be given full effect. The provisions in Rule 9(i)(c) ought not to be read up or read down to admit promotion as a word of its own in the lexicon of service jurisprudence as developed by the Courts. Therefore, all cases of "promotion" as contra distinguished from "appointment" from different feeder categories to any other non- competitive post [non-selection] would preserve past financial benefits including annual increments etc. from the respective feeders without any right conferred on anyone to pay protection when they are promoted to a further promotional post stand on a different footing, then only the principle against stepping up of pay will apply and no employee can have a heartburn on this score as against another working shoulder to shoulder. This is by applying the general rule but would not be true if there is an exception to the rule and Article 14 & 16 of the Constitution steps in to fill the gap. This is the area I wish to carefully tread and see if relief to the petitioner is possible and plausible.

25. For example, a Senior Assistant, like the petitioner, having 5 years service can compete for the post of Reader. His ordinary channel of promotion is to the post of Superintendent Grade-II and thereafter Superintendent, Assistant Registrar, Deputy Registrar & Joint Registrar etc. A Senior Assistant, who qualifies the competitive examination of Reader, on appointment will amount to change of cadre. The appointment itself equalizes him with others selected as Readers from different sources. The selected candidates merge into a single homogeneous cadre of Readers on appointment separating them from others on principle of merit. The selection involves appointment to the post of Reader. Indisputably, it cannot be termed promotional rights as none possess such rights except through the single door of competition which may be razor sharp accommodating the best persons to sit in Court before a Judge to discharge duties of a special nature and supreme confidentiality. It is a misnomer to equate this transition/ metamorphosis as an "appointment by promotion" though limited to candidates from the High Court or the Subordinate Judiciary, as who wish to apply and compete for the post of Reader to a Judge. The legislative intent in Rule 9 must be given its full amplitude and nothing can be read into the provision, including exceptions like promotion etc. Sarv Mitter Sharma was in the pay scale of Rs. 3300/- + Rs. 120/-, while the petitioner was in the pay scale of Rs. 2270/- + Rs. 20/- at the relevant time. When merit alone is the criteria for appointment to the

post of Reader, the previous birth marks, I believe, stand obliterated forever. A single competitive examination in Rule 9(iii) has a syllabus prescribed which is rather daunting to foretell result. The post of Reader I think is virtually impossible to fill by direct recruitment from freshmen who have not the requisite experience or are not already steeped in the peculiar culture of the Court and its business. It would be testing providence to throw the Class I post open to all and sundry that have not hands-on past experience. I do not think any Judge would be inclined to accept a Reader who will see in the inside of the Court for the first time. On a personal note I would refuse such an offer. Therefore, the post is an exception to Article 16 of the Constitution. Past experience in feeder posts is in-built in Rule 9 of the rules. Verily, all promotions are appointments but all appointments are not promotion. The rule making authority selected the word 'appointment' and built the rule around it.

26. Once again a few facts are revisited. Sarv Mitter Sharma was promoted to the post of Private Secretary w.e.f. 19.03.1988 and appointed to the post of Reader on 11.01.1995 i.e. after the petitioner, who was appointed as Reader on 03.12.1994. The post of Private Secretary and that of Reader are treated as equivalent, both being in Class-I service and are placed in the same pay scale. Therefore, Sarv Mitter Sharma's appointment as Reader would be a change in line/cadre. However, the pay of Sarv Mitter Sharma was fixed at the same stage since as a Private Secretary, he was in the pay scale of Rs. 3300/- + Rs. 120 Addl. Pay as on one day prior to his appointment as Reader though loosely called "appointment/promotion" in papers/office orders. Rule is printed on paper but paper is not rule.

27. The moot point, which falls for consideration is that when the candidates selected and appointed to the post of Reader through competitive examination, then would the principles of 'equal pay for equal work' apply to make out a case of stepping up of pay when indisputably the petitioner was senior than the employee claimed against.

28. The demand of the petitioner does not mean reduction in the pay of Sarv Mitter Sharma and this is the misconception which appears to have run its thread through the reasoning in all the papers placed on the file. The financial impact of a decision does not paralyse Court. If it does, then justice may be the victim. For plea of financial burden as a ground of defence; see, for rejection of such contention by the Supreme Court in a case involving "equal pay for equal work", Gopal Krishna Sharma v. State of Rajasthan, AIR 1992 SC 81. Similarly, in State of Maharashtra v. Manubhai Pragati Vashi, AIR 1996 SC 1 : (1995) 5 SCC 730.

29. If an over simplistic view is taken, then there will be Readers taking home different pay packets, higher or lower than each other, as the case may be, from the feeding sources/cadres, but the equality regime in Article 14 of the Constitution when read with Article 39(d) of the Constitution goes beyond the rules of service. Equality is to the post in a pay scale that all Readers should be seen drawing the same pay and because of the prescription in Rule 9 offering

equal opportunity to different cadres of employees in the High Court to appear for the examination or from the Subordinate Courts will not take away the right of the petitioner to claim, receive and enjoy the same pay as that of his junior. It will not be possible to read hostile discrimination in Rule 9 merely because it allows competition from different sources comprising employees in different pay scales and stages of pay with different lengths of service. Articles 14 & 16 of the Constitution may demand "one rank one pay" and not just "one rank one pay-scale" in the scenario of Readers. The pay has to be equalized on parity to bring equality provided there is no absolute bar in the rule, the pay scale of Reader remaining fixed as per pay rules. This is a constitutionally imperative issue arising because of the structure of Rule 9 of the Rules which requires equipoise and the only way possible is to step up the pay because the reverse is not possible. The High Court expected the best available talent to fill the post of Reader, which has special demands of service of trust and confidentiality with the Judges they are posted with. This is a very special status conferred on the selected candidates, altering the nature and character of their past services on the establishment of this Court by elevating their position in the establishment to work in proximity with Judges in the discharge of their constitutional, judicial and administrative obligations.

30. As I say this, I am conscious that there are many exceptions to the rule that a senior should not get less pay than his junior, but I fail to see how those cases apply to this case and this appears to me to have been the philosophy in Krishna Goyal, Chhaju Ram Hans and Paramjit Singh cases, which cases are of superior importance because they decide the specific issue raised in this petition with respect to the same post and leave it no longer res integra or open to doubt. The pursuit, in this case, is to find or exclude justifiable grounds and to discern if there is any intelligible differentia as to whether seniors can invoke the equality doctrine and claim stepping up of pay in limited competitive appointment. Rather than using the expression "stepping up of pay" the better would be to apply the doctrine of equality in Article 14 of the Constitution to bring both on par of who have by dint of their merit become equal and their seniority governed by merit determined by the recruiting agency and not by length of service in the cadre of Readers for purposes of further appointment or promotion. When the rules permitted such appointments, the consequences on pay are to be borne by the employer/rule-making authority as would flow naturally like a stream of water and should not be contained in a sump.

31. Strange as it may seem, the appointment notification dated 13.12.1994 making the petitioner Reader uses conjointly the expressions/terms "appointment/promotion" which have different connotations in service law and from where it plainly appears that the High Court is itself unsure as to the nature of the transformation and changed status. The word "promotion" cannot be added in Rule 9 to re-write it. That Court cannot do. Generally speaking, all promotions are appointments to shoulder the duties and responsibilities of the higher post, but conversely all appointments are not promotions, as said before.

32. Mr. Ashish Aggarwal, learned senior counsel appearing for the High Court submits that Chhaju Ram Hans and Krishna Goyal cases were decided when the judgments of the Supreme Court in *State of Andhra Pradesh & another v. G.Sreenivasa Rao & others*, (1989) 2 SCC 290; *Union of India v. R. Swaminathan*, AIR 1997 SC 3554 and *Government of A.P. v. V. Veera Raghavan*, AIR 2000 SC 3440 were not brought to the notice of the Division Bench and therefore, the Division Bench did not lay down the correct law. It is submitted that a Division Bench of this Court in *D.K. Monga v. State of Punjab & another*, 2013 (1) RSJ 16 in Para. 22 of the judgment commented that these three judgments of the Supreme Court were not brought to the notice of the Bench by the respondent High Court and therefore, Chhaju Ram Hans and Krishna Goyal cases cannot be relied upon as precedents and stare decisis on the moot point of stepping up of pay. To my mind, in none of the three cases decided by the Supreme Court (supra) was an appointment to the post of Reader to a Judge involved in the setting of Rule 9, which assignment bears special features and characteristics as no other post possesses in the Punjab & Haryana High Court or its Subordinate Courts. The general principles in those judgments no doubt are binding precedents, but their ratio would not, to my mind, apply to the peculiar and special facts of this case, where appointment came from single competitive examination by way of selection, forming on appointments made, a single unified cadre. It is not that anything is being taken from Sarv Mitter Sharma in terms of money, the question is of hiking the pay of the petitioner to the level of his junior on the principle of 'equal pay for equal work' on one rank and status. In terms of stepping up the financials are insignificant of say an increment. I will return to this point a little later to proliferate the principle which I am inclined to apply to determine the rights of the petitioner in this case.

33. There can be no doubt that this is not a case of anomaly of pay and pay scale requiring stepping up of pay of the senior on that avowed principle. The petitioner does not press his case on anomaly. He places trust, faith and allegiance to the principle of 'equal pay for equal work' and by reason of merit and competition limited to in-service candidates as the bridge to success in search of relief that he craves to remove all signs of inequality in all respects. The rules and the instructions are silent on the point and can be of no help to deprive the petitioner of his right to the same pay and not just the pay scale. There can be no dispute that in the cadre of Readers, there is no distinguishing feature in degrees of performance of work. In the discharge of duties, they are equal in all respects for the reason that they form a single cadre of Readers to do the same thing and at the same time in the same workplace though posted in different courtrooms as per choice and acceptance by the respective Hon'ble Judges. A case of promotion is materially different from that of appointment and if the petitioner and Sarv Mitter Sharma had been 'promoted' to the post of Reader, then the position would have been entirely different and the petitioner would have had no case. The Rule confirms it to be a case of 'appointment'. Both Sarv Mitter Sharma and the petitioner were appointed as Readers in the

same batch by way of competitive examination, but the petitioner is more meritorious than Sarv Mitter Sharma in the select list and, therefore, senior even on the length of service as Reader having been inducted earlier on the post.

34. To test the argument, take for example, a case of appointment or promotion to the post of Additional District & Sessions Judge. A direct recruit gets a quick start weightage of additional increments in the pay scale of the Additional District & Sessions Judge bringing more pay to him than the promotee of the same batch/year. The additional increment is given as an incentive for experience gained at the Bar before selection and joining, which is recognised as a factor enriching the performance of a candidate as a Superior Judge. This naturally leads to higher salary of a direct recruit than a promotee of the same date would earn, but the promotee cannot claim pay of a direct recruit getting higher pay in the same pay scale due to the head start of extra increments by applying the theory of stepping up. This is what happened in D.K.Monga's case. Therefore, a promotee officer cannot claim stepping up of pay to that of a direct recruit from the Bar in a situation of the kind presented in D.K.Monga's case. But here the case is quite different. There is no past weightage to carry forward. Appointment to the post of Reader is an in-house selection based on merit notched in competitive examination which is open though to only certain categories of employees with the requisite experience etc. as prescribed in the Rules.

35. When unequal in-service candidates compete for the post of Reader and the appointment is by limited competition and selection is akin to direct recruitment/appointment but without the openness that Article 16 (1) of the Constitution allows. Once they [disparate elements] from different feeder categories decide to compete for the same post on their personal skill and talent tested in the examination and interview etc. they acquire rights on equal footing on the same standards of evaluation and when successful, they form a single unified cadre of Readers by fusion. A person carrying higher pay because of longer length of service by accretion of annual increments, may get pay protection, but an equalizer would, I think, have to be found and given to a person like the petitioner, who competed from the post of Senior Assistant and was selected in the same selection process and appointed earlier on availability of a vacancy, while thereafter came the private respondent when vacancy arose. Even the timing in joining the subject post matters little to the principle of equality. The petitioner was senior as per merit list prepared by the recruiting authority having secured more marks in the competitive examination than the private respondent. In D.K.Monga's case, there was an intelligible differentia to treat equals unequally in the matter of pay.

36. But I fail to see any signs of an intelligible differentia distinguishing the co-competitors of an examination/selection on merit when the competitors leave their erstwhile birth-marks and comprise by appointment the same post borne in the new cadre to shoulder the same duties and responsibilities of the higher post. Then both I believe should draw the same pay [not just the pay scale

attached to the post of Reader] on first principles as also on the principle that a senior should normally not take less pay than his junior. The assumption that if the pay should be the same amongst Readers and because salary of the private respondent cannot be downgraded and the same has to be protected by operation of rules on the subject of pay protection, then the extra hard earned pay of Sarv Mitter Sharma may be personal to the him but still his pay creates an imbalance and a dichotomy resulting unfairly to two equals holding the same post at the same time on equal footing, in the same pay scale, in the same cadre.

37. Then the fairer thing to do is to strike a golden balance to meet a peculiar situation arising in this case in a competition scenario by applying just and equitable principles on presumptive pay and step up the pay of the petitioner to bring both on par.

38. However, the principle laid down in this order, I think, would be applicable only to those posts in the High Court which are filled by in-house competition, where different categories and classes of employees compete on merit and identical to the post of Reader. The judgments of the Supreme Court cited by the respondents do not cover the ground of an extraordinary situation of the kind involved in this case and are, therefore, distinguishable on facts. They seem to demolish rather than solidly build the case of the respondents. No doubt, the general principles in the three cases prevail as law when the rule is that an employee carrying increments by longer length of service on promotion will continue to reap the higher salary and no promotee from the feeder category can claim stepping up of pay when inducted to same post in cases where there is more than one source for promotion based on seniority and merit. But all the same, there are exceptions to the rule and this case presents one such exception. However, this principle of stepping up pay will not apply across board to all the categories of employees in the High Court and the principle adopted herein is confined alone to the post of Reader and I have considered none other, nor was called upon to.

39. With great respect to the Committee of two Hon''ble Judges, it is observed that their recommendations made to Hon''ble the Chief Justice by the decision dated 06.10.2010 lie rooted on the assumption that the post of Reader is a promotion post. The thread of the line of this reasoning, I dare say, based on promotion is stamped across the latent face of the recommendations and pervades the thinking processes. Nevertheless, the rule of appointment apparently speaks otherwise when the rule uses the specific opening word 'Appointment' and the office order bringing them as Readers also suggests the same, but with the ambiguity of two different elements clubbed together to read 'appointment/promotion' leaving it open to interpretation. The High Court itself was not quite certain whether the offer was an 'appointment' or 'promotion' and if that is so, there is sufficient room left for thinking and applying legal reasoning to solve the problem. If it were promotion, then without doubt the recommendations are correct and the petition has to be dismissed. Then the

principles laid down by the Supreme Court in the three judgments referred to by the Committee and pressed by the learned counsel for the respondents would hold the fort. To have succeeded on his point, it was not for the petitioner to discharge the onus and the burden to show that as an aggrieved person, the pay of any of his junior colleagues has been wrongly fixed.

40. Needless to say, the petitioner did not claim a negative right but a one which was positive. On the other hand, the petitioner while asking for stepping up of his pay did not and could not doubt the right to pay of Sarv Mitter Sharma with annual accretions by increments. Quite apart from that, the Committee with utmost respect somewhat erred in literally applying the principle of pay differentiation based only on different feeder cadre posts having regard to the principle [and not rule] that length of service towards gradual increase of salary must prevail in all circumstances within the same 'pay scale', but in the same salary/pay should be in relation to pay fixation of an employee. The case of the petitioner was not dependent on the general principle of 'equal pay for equal work' for carrying the past shortage to a forward advantage. It was one of the reasons to base the claim.

41. The petitioner indisputably has not questioned the past emoluments of Sarv Mitter Sharma and need not have, but seeks only to apply the principle of parity at workplace in the same cadre being senior as enshrined in the equal opportunity principles guarded by the pillars of Articles 14, 16 and 39 (d) of the Constitution, which have primacy over all rules, regulations and instructions of the Government. After all, the laws are to be tested on the Constitution and not otherwise. I think I would be failing in my duty in not applying the principles of equality of opportunity and equity which comprise the most cherished provisions of the Constitution in service matters that keep administrative action to veer off the path of fostering inequality and visible injustice. If equals cannot be treated unequally, then it goes without saying that un-equals also cannot be treated equally. Here un-equals have become equal by homogeneity battling for a berth in the coveted cadre post of Readers working directly under Hon'ble Judges in the everyday business of the Courts.

42. When the principle is applied to this case practically, it appears to pervade through the sinews of the lis and lends its vigour by leaning heavily in favour of the petitioner in persuading the Court to hold that once both were stationed in the cadre of Readers, they could not be treated unequally in the matter of pay/salary and not just the pay scale, their birth marks lost o time and tide. I may hastily add that it is not the case that the petitioner has any inherent right of stepping-up of his pay, but he has an affirmative right of equal treatment on equal standards and on equal footing vis-a-vis Sarv Mitter Sharma on principles of 'equal pay for equal work', equal rank and equal status from the date Sarv Mitter Sharma joined as Reader. Once the two streams get merged in a common cadre by dint of merit in competition albeit limited to employees coming only by way of a writing a difficult examination prescribed in rules and after facing a viva

voce before a Committee comprising Hon''ble Judges nominated by Hon''ble the Chief Justice exercising authority under Article 229 of the Constitution.

43. Then I think it ought to follow a prior by discarding all general principles that merit alone determines inter se rank and should bring same pay for doing the same thing in the same degree of shouldering duties and responsibilities. Those who were once unequal in terms of salary become equal by operation of Rule 9 read with the principles in Article 39 (d) of the Constitution and the guiding principles in the maxim *ex aequo et bono* on appointment [as distinguished from promotion] to bring both equal pay for equal work with equal responsibilities of office as they are unequivocally the same persona in every degree of performance.

44. This appears to me to be the natural fallout of the rule even though the results may not have occurred in the mind of the rule-making authority when it designed Rule 9 allowing candidates from different sources to compete on common ground for a pure selection post where junior could supersede senior by merit position and higher marks scored in the examination.

45. Increase in pay of the petitioner is a small price to pay in search of the golden mean to justify the means to the end, but not the end to the means. This may be a another dimension that I have been persuaded by that needs to be introduced to preserve peace and harmony in service in the cadre of Readers, where one should not be made to feel littler than the other by fortuitous circumstances. Pay of Sarv Mitter Sharma cannot be reduced, but the petitioner''s pay can always be stepped-up, which conceivably is the only workable way to my mind to act as an equalizer or equitable levelling tool forged by Court adding to an expanding horizon of the doctrine of equality wide enough to accommodate space for abiding peace, harmony and wellbeing amongst those who have become equal in rank and status as Readers of this Court by their dint of merit determined by the High Powered recruiting authority. One rank, one pay and no quarrel or rancour left within a classified group. This cherished hope of equality of pay and position is what meritocracy must beget. All of this hitherto fore is what has troubled and persuaded me for many sittings on the draft opinion to add a new plausible and practical dimension or facet to the Rule under consideration and of giving full effect to the equality principles in the Constitution. The structure of Rule 9 is what appears to free the hand with no inhibitions contained therein. No codified law has been brought to my notice to deny relief to the petitioner by a short order on general compulsions in the law. More than one conclusion is eminently possible and I chose the more equitable one on first principles without there being any restraint in the rules indicating only one path to follow and, therefore, I have been unable to persuade myself to the view of the Committee.

46. This order, albeit, is confined only to the post of Reader for the reason it bears it own peculiar stamp and attributes with special features of induction into service at the level of Reader and has the distinctive characteristics, which post

has no other parallel similarity while transiting from one post to the other in the High Court establishment by appointment at senior level where two or more streams compete with each other on inter se merit determined by tough written examination followed by searching interview. There is no gainsaying that the petitioner is senior to Sarv Mitter Sharma for further "promotion" [not appointment] to the higher posts on account of filling prior vacancy of Reader by appointment within the select panel, if the turn comes. However, the right to pay on par fructifies only when Sarv Mitter Sharma was actually appointed and joined as Reader and became a member of that cadre, but not prior thereto.

47. The frontiers of law can always be reasonably extended by unconventional methods provided they bring peace and harmony in service. In *Jagdev Sharma v. State of Punjab*, 2015 (2) PLR 570. I had occasion to introduce the unconventional process in decision-making in order to venture to do justice as appealed to me to save an appointment to the post of Draftsman of given to a young woman afflicted by polio from childhood as against an old physically handicapped candidate who was injured by motor accident challenging the appointment where one of the criterion was changed at the last minute before the interviews were conducted even though the decision was susceptible to interference. I had observed:-

"The writ court sits in equity where the rules of prudence preside and occupy the field of vision when known legal principles may not come to the rescue or be of any intrinsic help to cull out the relief or to deny it. Equity in its brightest and the most sublime form is a jealous mistress which may not want to share its bed and be betrayed by pedestrian rules, shackled by plebeian legal principles which may be found insufficient whilst venturing to do unconventional justice in a case. It is often said that a case to be decided *ex aequo et bono*, overrides the strict rule of law and requires instead a decision based on what is fair and just, given the circumstances. Life and its vicissitudes are larger than the law."

48. For the variety of reasons recorded above, I would accept the petition and grant the prayers from the date of incumbency of Sarv Mitter Sharma as Reader without disturbing any of his accrued rights. This would necessarily lead to upsetting the impugned administrative decision which I do with the greatest respect to the Hon"ble Judges who made the report and humility at my command and whom I hold in high esteem. However, the operation of this order will remain suspended till limitation expires for appeal, in view of the complexity of the subject matter and the territory charted in this opinion.