

(1999) 03 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 805 of 1993 and others

Indrajit Boral and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (2000) 1 LLJ 57 : (1999) 2 ShimLC 367

Hon'ble Judges : D. Raju, C.J.;Lokeshwar Singh Pantia, J

Bench : Division Bench

Advocate : Harish Behal, Ajay Sharma, Sunita Sharma, K.D. Sood, R.P. Singh and Lokendra Thakur, for the Appellant; Abhilasha Kumari, for Respondent Nos. 1 and 2; B. Dutta and D. Shreedhar for respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—This batch of writ petitions may be dealt with together since not only they involve common and identical issues for consideration but the learned counsel appearing on either side also made common submissions. For appreciation of the respective contentions of parties, the factual details noticed in C.W.P. No. 805 of 1993 and C.W.P. No. 1458 of 1995 as disclosed from the pleadings of parties may be adverted to.

C.W.P, No. 805 of 1993

2. This writ petition has been filed jointly by two petitioners. The first of the petitioners claims to be Personnel Officer in the National Hydro Electric Power Corporation Ltd. (for short NHPC or Corporation), Chamera Hydro Electric Project and is said to be posted at the time of the filing of the writ petition at Khairi, Chamba District in Himachal Pradesh. He was said to have been appointed with effect from June 2, 1989 as Probationary Executive (Personnel) under an appointment order dated June 2, 1989 filed as Annexure P-I, in the pay scale of Rs. 700-40-900- EB-40-1100-50-1300. Under the terms of the said order he was

obliged to complete a period of probation for one year and after such completion he was regularised as Personnel Officer with effect from July 12, 1990, by a proceeding dated October 15, 1990 on the terms and conditions contained in his original order of appointment. It is stated in the said appointment order itself that the pay scales are under revision and a High Powered Pay Committee has been constituted by Government of India for revision of scales of pay, allowances etc. and in the event of such revision he will be placed in the revised pay scales corresponding to the pay scales mentioned in the appointment order, from the date of revision or date of joining, whichever is later. So far as petitioner No. 2 is concerned, he was stated to have been appointed as Assistant Manager (Personnel) in NHPC in December 1989 in the pay scale of Rs. 1100-50-1600 and is said to be working at the time of the filing of the writ petition at Chamera Hydro Electric Project, Banikhet, Chamba District. It is admitted by this petitioner that his services were regularised, according to the appointment order, and the conditions similar to the one with reference to the revision of pay scales, as noticed earlier, was incorporated in the order of appointment relating to this petitioner also. It is also the claim of the petitioners that they were being paid the pay scales and allowances on the Central Dearness Allowance (C.D.A.) pattern. Reference is made also to the submission of the report by the High Powered Pay Committee in November 1983 and to the initial inaction of the same by the Government of India resulting in several associations of the employees belonging to Public Sector Enterprises approaching the Supreme Court of India for appropriate directions to implement the recommendations of the High Powered Pay Committee and the decision rendered thereon by their Lordships of the Apex Court on May 3, 1990, which is also reported in *Jute Corporation of India Officers' Association Vs. Jute Corporation of India Ltd. and Another*. According to the petitioners, the Apex Court directed, among other things, the extension of the benefits of the scales of pay and Dearness Allowance as recommended therein to those employees who have been appointed with specified terms and conditions for grant of Central Dearness Allowance and that the same will equally be applicable to the employees, who by the rules laid down by the concerned Public Sector Enterprises are being paid on C.D.A. pattern. It is also claimed that consequent upon the judgment of the Apex Court and the guidelines issued thereafter by way of implementation of the directions of the Apex Court by the Department of Public Enterprises dated June 12, 1990, the respondent Corporation released the pay scales and allowances on C.D.A. pattern to its employees with effect from January 1, 1986 and inasmuch as the petitioners were appointed in the year 1989 they were even allowed the revised pay scales on C.D.A. pattern with effect from the dates of their appointments and were also paid the arrears towards the revised pay scales on C.D.A. pattern. It is claimed that prior to such release of the revised pay scales, the petitioners were being paid unrevised pay scales and allowances on C.D.A. pattern also and an assertion is made that at no point of time, they were paid pay scales and allowances on any other pattern than the C.D.A. pattern.

3. While that be the position, according to the petitioners the respondent has issued an order dated May 19, 1993 filed as Annexure P-4 of the decision to adopt scales of pay, allowances and other perquisite on Industrial Dearness Allowance (IDA) pattern with effect from January 1, 1989 in respect of the employees, excluding Board Level functionaries, appointed or promoted on or after January 1, 1989, who are existing in the old scale of Rs. 550-900 and above (3rd Central Pay Commission). This decision was said to have been taken in pursuance of the order dated June 12, 1990 and the further approval conveyed by Ministry of Power in their communication dated May 11, 1993. It was also informed therein that in view of the communication dated May 10, 1993 by the Ministry of Power the earlier office Order No. 10/92 and dated May 7, 1992 stood withdrawn and consequently such of those employees who were given revised pay scales of Rs. 1640-2900 and above under the earlier order dated May 7, 1992, shall be brought back to the status quo ante in the respective 3rd Central Pay Commission Pay Scales and that they will be fixed in, the correspondingly adopted I.D.A. Pay Scales with effect from January 1, 1989 onwards. It may be useful to advert to the order No. 10/92 dated May 7, 1992 under which it has been decided that the employees appointed on or promoted to 3rd Central Pay Commission Pay Scales during the period January 1, 1989 will be allowed the HPPC pay scales and related allowances/benefits and those appointed on or promoted to the 3rd Central Pay, Commission scales of pay on or after July 1, 1990 will be deemed to have been appointed on IDA scales of pay and Industrial Dearness Allowances and that since the Scales of Pay and Allowances on IDA pattern are being formulated for such employees and pending finalisation and implementation of IDA pay scales and allowances these employees appointed on and promoted to, on or after July 1, 1990 shall continue to draw pay and allowances provisionally on the existing terms and conditions. The grievance of the petitioners is that as a result of office order dated May 19, 1993 the pay scale admissible to the petitioners on revised CDA pattern is being withdrawn and the difference in the pay scales and allowances in the I.D.A. and CDA scales of pay is also being deducted from their future salary and they have been informed about the disbursement of pay and allowances for the months of June 1993 onwards, according to IDA pattern of pay scales and allowances and the said decision is illegal, arbitrary, unjust and discriminatory besides being unconstitutional. It is stated on behalf of the petitioners that the scales recommended by the High Powered Pay Committee on CDA pattern having been adopted and allowed by the respondent Corporation, the withdrawal of the same under the order dated May 19, 1993 amounts to clear violation of the terms and conditions stipulated in the very appointment letters of the petitioners. It is also stated for the petitioners that the said order dated May 19, 1993 is violative of the orders of the Apex Court reported in (1990) 3 SCC 346, particularly, in view of the fact that the appointment orders of the petitioners stipulated that they will be allowed revised pay scales on CDA pattern and withdrawal of such scales on subsequent date would constitute breach of conditions of order of appointment besides constituting alteration of conditions of service. It is also asserted that

doctrine of estoppel would also operate against the respondent-Corporation for doing so. Allegation of discrimination, violative of Articles 14 and 16 of the Constitution of India is also made on the supposition that the withdrawal has been made in respect of the employees appointed on or after January 1, 1989 and not in the case of those who have been appointed before January 1, 1989.

4. Respondents 3 and 4 have filed a common counter-affidavit contending, for these respondents that there are about 245 Public Sector Enterprises under the Central Government and most of which are said to be followed the IDA pattern and related scales of pay and allowances and due to certain historical reasons only the employees in some of the Public Sector Undertakings numbering about 69 as on January 1, 1986 were following C.D.A. pattern and the scales of pay of these Undertakings either conform to the 3rd Central Pay Commission Scale of pay or depend marginally improved upon the 3rd Central Pay Commission Scales of pay. It is also stated that the Government has formulated a policy that the Public Sector Enterprises should adopt IDA pattern and related scales of pay and allowances as against CDA pattern, which was applicable to Government servants and this decision taken by the Government in March, 1984 was said to have been challenged before the Apex Court and when the matter came up for hearing on March 14, 1986 the Government of India was said to have expressed its willingness to recommend to the High Powered Committee the question regarding the revision of pay scales, Additional Dearness Allowance, Compensatory and other allowances and such other incidental aspects relating to the employees governed by the CDA pattern and that the Apex Court accepted the same and on the directions of the Court to Government of India constituted a High Powered Pay Committee to go into the various aspects relating to pay scales and other incidental matters including Interim Relief to those employees governed by CDA pattern and in April, 1986 the High Powered Pay Committee said to have been set up has submitted its report on November 24, 1988. It is stated that the Government took some time to examine the recommendations and the Court was informed about the recommendations made by the Committee and was accepted to be implemented in the manner indicated in the affidavit filed before the Court on April 17, 1990.

It is only after hearing the respective parties on the proposals contained in the affidavit, the directions resulting in an order reported in *Jute Corporation of India Officers' Association Vs. Jute Corporation of India Ltd. and Another*, were said to have been made. While adverting to the directions contained in paragraph 7, and more particularly, direction No. (ii), it is contended for the respondent-Corporation that as far as the employees of Public Sector Undertakings appointed on or after January 1, 1989 are concerned they had to be governed by such pay scales and allowances as may be decided by the Government in its discretion and consequently the recommendations of HPPC in respect of CDA were to be extended to the employees who had been appointed before January 1, 1989 and in respect of those who were appointed on or after January 1, 1989 they were to be governed by such pay scales and allowances as may be decided by the

Government, in its discretion. It is also contended that this direction is based on sound logic and reasons inasmuch as there has to be a uniform D.A. pattern to avoid an anomaly. The order dated June 12, 1990 issued by the second respondent, particularly, in paragraph 3(iii), it is claimed that the second respondent has exercised its discretion to extend IDA pattern in respect of the employees of Public Sector Undertakings appointed on or after January 1, 1989. Reference is also made to the fact that in spite of clear cut directions contained in the order dated June 12, 1990 some of the Public Sector Enterprises continued to release for posts on CDA pattern or promoted their employees in open/departmental competitive examinations on CDA pattern even beyond January 1, 1989 and these were the subject matters of litigation in the form of I.A. Nos. 1 to 3 of 1991 in Writ Petition (Civil) No. 15688 of 1984 filed by the employees of the Mining and Allied Machinery Corporation and the Officers Association of other Public Sector Enterprises were also said to have joined such a move and the proceedings have been filed in a representative capacity representing the employees appointed, promoted, absorbed, recruited etc., after January 1, 1989 but before June 12, 1990 and their contention was said to be that they should be treated as existing incumbents and not further incumbents for the purpose of implementation of the directions issued by the Supreme Court on May 3, 1990 inasmuch as they have been appointed before the issue of the formal orders by the second respondent on June 12, 1990 implementing the report of HPPC. They appear to have stated in the said proceeding before the Apex Court that they have received 10% payment as ordered by HPPC as well as payments under the orders of the Apex Court without any demur from the Central Government and the petitioners have stated therein that in the interregnum period, namely, January 1, 1989 to June 12, 1990 the Public Sector Undertakings had continued to appoint, absorb, promote, confirm and recruit employees on CDA pattern and no objection has been raised to the cut off date as proposed by the Government of India in their affidavit dated April 17, 1990 filed before the Apex Court. Reference is made at length to the averments contained in the affidavit filed in support of I.A. Nos. 1-3 of 1991 to demonstrate that the grievances raised by the petitioners in the said IA before their Lordships of the Apex Court were identical to the grievances now raised by the petitioners in the present batch of writ petitions and when the said applications were taken up for hearing before the Apex Court on August 28, 1991, they were dismissed as withdrawn and, therefore, the present writ petitions for the very same relief cannot be maintained. It is also claimed for these respondents that their action in giving IDA pattern of pay and allowances to the petitioners is on the basis of the directions of the Supreme Court given on May 3, 1990 and, therefore, the petitioners cannot challenge the same by filing a writ petition in the High Court. Similarly, according to these respondents the orders dated August 28, 1991 dismissing as withdrawn petitions filed in the Apex Court for identical issues will constitute constructive res judicata. It is also, stated for these respondents that since the decision taken by the Government of India in their order dated May 19, 1993 was to ensure proper and effective implementation of the directions of the

Apex Court by achieving uniformity and rationalisation of pay scales for employees of Public Sector Enterprises, any claim to the contrary, if countenanced, will defeat the very object of the appointment of HPPC, the directions of the Apex Court and also the orders passed in implementation of the same and it is not given to the petitioners to claim to an exception from the normal and general rule devised for uniform application and rationalisation of pay scales. These respondents further contend that in view of the specific terms and conditions of the orders of appointments itself, clause in paragraph 1.1 of the appointment order could not be enforced by the petitioners and they have been rendered infructuous in view of the subsequent orders and directions of the Apex Court as also that of Government of India that the employees appointed on or after January 1, 1989 would get only IDA pattern of pay scales and allowances. It is also contended that even on a proper construction of paragraph 1.1 of the appointment order, they are bound by the HPPC/Central Government recommendations and orders. The grievance on the alleged change in the pattern of pay and allowances has no merit, the same having been made under the directions of the Apex Court and the Government of India, and therefore the same is quite in accordance with law and unassailable. These respondents further claim that erroneous and mistaken disbursement of revised pay and allowances on CDA pattern with effect from January 1, 1989 or thereafter, which came to be rightly rectified thereafter, strictly in terms of the directions of the Apex Court and the orders of the Government of India, cannot be taken advantage of by the petitioners to assert any claim whatsoever to the contra. These respondents also contend that the manner and method of implementation of the directions of the Apex Court sought for by the petitioners would amount to misquoting the judgment out of its context by placing reliance upon direction No. 1, whereas, according to these respondents the said directions have no application to the petitioners, who were appointed on or after January 1, 1989, in respect of whom only direction No. 2 would get attracted, as for the follow up orders issued by the Government of India, the order No. 10/92 dated May 7, 1992 was said to have been issued under bona fide mistake and wrong interpretation of the direction of the Supreme Court and the same was rightly rectified by the issue of the subsequent order dated May 19, 1993, which is said to be fully in accordance with the directions contained in the order of the Supreme Court dated May 3, 1990. It is also contended that the respondent-Corporation has formulated and implemented the pay structure for employees appointed on or after January 1, 1989 strictly in accordance with the orders of the Government of India and no exception could be taken to the same by the petitioners. The alleged violation of Articles 14 and 16 of the Constitution of India is also stoutly denied by contending that the cut off date has been fixed and approved by the Apex Court itself and the petitioners cannot make any grievance out of the same, in these proceedings at this stage.

5. The Union of India has filed their counter in C.W.P. No. 837 of 1993 and it is useful to advert to the same before undertaking a consideration of the claims

projected in these writ petitions. Respondents Nos. 1 and 2 also, on the pattern of the details furnished in the counter-affidavit filed by the respondent-Corporation, have set out in detail the circumstances, which led to the appointment of High Powered Pay Committee, the orders of the Apex Court made on May 3, 1990 reported in Jute Corporation of India Officers' Association Vs. Jute Corporation of India Ltd. and Another, detailed instructions issued by the Government of India vide office memorandum dated June 12, 1990, the filing of interlocutory applications Nos. 1 to 3 of 1991 and their dismissal on being withdrawn on August 28, 1991 and the filing of the present writ petitions, therefore, preliminary objections, such as, the lack of right to the petitioners to challenge by means of writ petitions before the High Court, an action taken in accordance with the directions of the Supreme Court, and the plea of constructive res judicata have also been reiterated. Even on the merits, identical objections, as are taken by the respondent-Corporation have been taken to defend the decision taken for implementing the IDA pattern of pay scales and allowances to persons appointed on or after January 1, 1989 and continuing the other pattern for those who were appointed before January 1, 1989. It is contended for respondents 1 and 2 that so far as those employees who were appointed on or after January 1, 1989, are concerned it is only the IDA pattern that would apply in view of the judgment of the Apex Court rendered on May 3, 1990, the instructions and guidelines issued on June 12, 1990 and the office order dated May 19, 1993, which are said to be quite in accordance with the directions of the Apex Court. Respondent Nos. 1 and 2 also reiterated that proceedings issued in office order No. 10/92 dated May 7, 1992 allowing HPPC pay scales and related allowances to the petitioners were on account of an obvious mistake and the same cannot be taken advantage of to base or assert any rights as such in this proceeding. It is also contended that since pay structure for the employees who were appointed on or after January 1, 1989 was formulated by the third respondent and implemented with the approval of the Government of India, the same are quite in accordance with law and the earlier directions of the Apex Court and, therefore, any wrong payment made to the petitioners on CDA pattern are liable to be adjusted and excess payment recovered as a necessary consequence of applicability of IDA pattern to the petitioners. It is also contended for respondents Nos. 1 and 2 that not only the directions issued by them and implemented by the respondent-Corporation are quite in accordance with the judgment of the Apex Court but the allegation of discrimination to unreasonableness and arbitrariness have no merit whatsoever, and they are misconceived and untenable.

6. The learned counsel for the petitioners made specific reference to C.W.P. No. 1458 of 1995 to highlight what according to the petitioners is said to be a resultant anomaly in a junior said to be drawing more pay than the senior. To highlight the same, it is stated that the petitioners in this writ petition, who are three in number, who got appointed on July 16, 1980 as Stenographer Grade-II, as Senior Accountant Grade-II with effect from March 20, 1988 and as Senior

Accountant Grade-II from September 21, 1988, respectively, but promoted to Grade-I pay scales only w. e. f. July 1, 1992, July 1, 1991 and June 23, 1989, respectively, are said to suffer by the application of the principle of extending IDA pattern to all those who were appointed on January t, 1989 taking into account their promotion as first appointment by making them draw less salary than Mr. Hari Singh, who was working as Senior Accountant Grade-I and was promoted as Accounts Officer with effect from July 1, 1993. It is stated with reference to this particular instance Mr. Hari Singh that he is junior to Petitioner No. 2, namely, Kishore Singh Dogra, on his present post as well as on Senior Accountant Grade I, and has been fixed in CDA pattern of pay scales making the second petitioner in this writ petition draw less salary than his junior Hari Singh. In addition to the above, the petitioners in this writ petition contended that the respondent- Corporation in switching over to the implementation of IDA pattern of pay scales seriously affect and jeopardize the lives and living of the petitioners, and which are said to be violative of Article 21 of the Constitution of India. As for the anomaly pointed out as above, with reference to the second of the petitioners in CWP No. 1458/1995, respondents Nos. 3 and 4 contend that the petitioners have to be treated as a fresh appointee on the higher post in officer cadre and there can be no comparison of the petitioners in this writ petition with the case of Mr. Hari Singh. It is also contended that individual instances peculiar to the persons concerned with varying and justifying reasons necessitating a junior to get more pay cannot be pressed into service to undermine the attempt of the respondents to ensure uniform and rationalised pay scales to the employees of the Public Sector Enterprises.

7. We have carefully considered the submissions of the learned counsel for the petitioner. Apart from taking us through the judgment of the Apex Court issuing the directions and reported in *Jute Corporation of India Officers' Association Vs. Jute Corporation of India Ltd.* and Another, catena of decisions have been brought to our notice to get over the hurdle of plea of res judicata pleaded on behalf of the respondents against the petitioners. Having regard to the facts and circumstances, as disclosed, we consider it unnecessary and inappropriate to refer to those decisions. In our view, the dismissal, as withdrawn of the applications filed before the Supreme Court, be it, added to be urging similar grounds as are raised in the present writ petitions by some of the employees' associations cannot in any manner constitute either res judicata or constructive res judicata and hit by the principles governing the same. So far as the decision reported in *H.L. Trehan and Others Vs. Union of India (UOI) and Others*, is concerned, learned counsel for the petitioners placed reliance upon the same to contend that the action of the respondents has the effect of altering the condition of service as envisaged u/s 9-A of the Industrial Disputes Act and before effecting any such change to the disadvantage of the petitioners/the member of the petitioners' union, a pre- decisional hearing is a condition precedent and post-decisional hearing is no effective substitute to cure the infirmity for not affording a pre-decisional hearing. In our view, we are unable to comprehend or

appreciate the relevancy of the said decision to the facts of the case. So far as the petitioners are concerned, their appointment orders themselves carried out sufficient indication and stipulation that their scales of pay would be finally settled in terms of the recommendations of the HPPC and the action taken in these cases are pursuant to the directions of their Lordships of the Apex Court and also pursuant to the orders of the Government of India issued for the purpose of carrying out and implementing the directions of the Apex Court. Therefore, in our view, the grievance of alleged alteration within the meaning of Section 9-A of the Industrial Disputes Act cannot at all be urged and even assuming for the purpose of argument, if it is to be so, that inasmuch as the same is pursuant to the directions of the Apex Court and the petitioners as well as their respective associations and unions were well aware of all the details of the proposed revision and finalisation in order to ensure parity and rationalised scales of pay and allowances, taking into account the practicalities of the situation and exigencies of service, no grievance can also be made as to alleged non-compliance with Section 9-A inasmuch as in such cases the said provision has no application, whatsoever.

8. The learned counsel for the petitioner also invited our attention to the catena of decisions starting from the decision reported in D.S. Nakara and Others Vs. Union of India (UOI), concerning the alleged arbitrariness involved in fixing the cut off date in these cases to differentiate the employees appointed on or -after January 1, 1989 as also for the purpose of highlighting the grievance that the principle governing - equal pay for equal work - stood violated in the case on hand and the same constitutes deprivation of the rights of the parties secured under Arts. 14, 16 and 21 of the Constitution of India besides resulting in alleged discrimination and unreasonableness. The principles in this regard are well settled and do not require any specific reference to the entire case law on the subject except dealing with the present claim, to see whether the action of the respondents constitute really any violation of those principles.

9. In Fertilizer Corporation of India Ltd. and another Vs. Sarat Chandra Rath and others, their Lordships of the Apex Court held that in the matter of fixation of pay in revised pay scale of officers, it was permissible to adopt different principles for workmen placed in that scale before the specified date and the workmen so placed thereafter. Their Lordships of the Apex Court, after adverting to the fact that such groups are found to be different and two distinct classes altogether, it was also open to the Stated or a State Undertaking to change the conditions of service unilaterally by fixing the salary and/or the pay scale as also terminal benefits/pensionary benefits and that the power to specify a date on which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power and so long as such date specified is reasonable, no interference can be called for on the ground of alleged discrimination, between the similarly situated persons. In Union of India (UOI) and Another Vs. P.V. Hariharan and Another, their Lordships of the Apex Court observed that fixation of pay scales is the function of the Government

or Government Undertaking concerned and not that of even Administrative Tribunals functioning under the Administrative Tribunals Act, 1985 and unless a clear cut case of discrimination is made out, there is no scope for judicial interference with the pay scales fixed by the Government on the recommendations of the Pay Commission. So far as the case on hand is concerned, indisputedly the impugned revision of the pay scales and the implementation sought to be made is of not only the recommendations of HPPC which itself came to be appointed during the pendency of a comprehensive litigation instituted in the Apex Court in representative action by the Service Associations of State undertakings but also pursuant to the directions issued by their Lordships of the Apex Court in the matter of carrying out the recommendations of the HPPC, as also the orders of the Government of India issued by way of implementing, in turn, not only the recommendations of the HPPC but also by way of carrying out the directions of their Lordships of the Apex Court. Consequently, the grievance of the petitioners cannot be said to be either just or reasonable or sustainable in law.

10. So far as the cut off date to classify the employees appointed on or after January 1, 1989 and those before, are concerned, it is not as though the respondent undertaking or the Government of India by itself invented the date on their own but the same came to be fixed by the HPPC and approved by the Apex Court also in the directions issued in the matter of carrying out the recommendations of the High Powered Pay Committee. That being the position, it is not only not permissible for the petitioners to challenge the said cut off date stipulated for the purpose of differential classification on the ground of alleged unreasonableness or arbitrariness or on the ground of the said date being discriminatory in nature but in the absence of any challenge by the employees' Unions before the Apex Court itself when their Lordships have chosen to issue the directions, accepting the recommendations of the High Power Pay Committee as also to the proposals submitted by the Government before the Apex Court, the petitioners, as also the various Associations and their constituent members are estopped from challenging the same subsequently by means of any collateral proceedings before other forums and permitting such challenge to be raised and undertaking any such consideration by the High Courts would in our view not only constitute transgression of judicial properties but even border on judicial indiscipline. Consequently, we are unable to persuade ourselves to agree with the challenge made to the adoption of the cut off date or with reference to the manner of implementation of the HPPC recommendations by the directions of their Lordships of the Apex Court and also the orders of the Union of India in implementation thereof, as of any substance or merit.

11. The petitioners cannot also, in our view, take advantage of the mistake committed initially in not properly implementing the orders of the Apex Court and that of Government of India dated June 12, 1990 by issuing the Office Order No. 10/92 dated May 7, 1992. Realising the mistake the subsequent order dated May 19, 1993 has been issued and no exception could be legally taken to the

subsequent order in the absence of any proof that the order dated May 19, 1993 is not in accordance with law. It is well settled that no proceeding passed on a mistaken view and be taken advantage of to claim or assert any rights on the basis of such mistaken order by denying even the right to rectify the same and that too, through the process of Court, when the rectification was not only justified but quite in accordance with law and consequently no rights can be claimed by the petitioners or any one of the service Associations or their constituent members on a proceeding which was passed labouring under a mistake and which could never be otherwise said to be inconformity with the law declared nor is justified or warranted in law.

12. In the light of our conclusions as above we are unable to share the view expressed by a learned single Judge of the J & K High Court dated December 29, 1997 in S.W.P. No. 1040/1997 (Ashwani Kumar Sapolia v. Union of India). The grievance sought to be highlighted by advertng to the case of Mr. Hari Singh in C. W.P. No. 1458 of 1995 also has no merit. The service particulars given in the reply filed by the respondents and adverted to by us supra, would go to show that the cut off date has been properly applied with reference to the date of appointment to the post in the officer cadre carrying the particular scales of pay, which have come up for revision and rationalisation. There can be no comparison of such cases with other instances by taking into account the dates of initial appointment in a different and lower category or class of posts. Similarly, the stand taken for the petitioners that the cut off date cannot be applied with reference to appointment by promotion and it has to be taken into account with reference to the original date of appointment only, does not also merit out acceptance as long as the relevant criteria is the date of appointment to officers cadre. The word, "appointment" would take within its fold the initial appointment either directly to the officers cadre or by way of promotion and an appointment by promotion cannot be said to be any the less an appointment and the date of such appointment by promotion cannot be ignored in implementing the HPPC recommendations even by taking into account appointment to lower cadre (sic) as also the directions of the Apex Court. Equally, the plea of the learned counsel on behalf of the petitioners that direction No. 1 alone contained in the judgment of the Apex Court would apply to the petitioner has no merit. On the other hand, we are of the view that orders contained in direction No. 2 in the judgment of the Apex Court as elucidated and explained in paragraph 3(iii) of the orders of the Government of India dated June 12, 1990 alone, will apply to the cases of the petitioners. These directions and orders are in tune with and in full conformity and also very much accord with the historical background and the object and purpose as also the scope of the reference made to HPPC and the spirit and substance of the recommendations as also eliminate the anomalies sought to be rectified in the process by effectively rationalising the wage structure, to be adopted and applied in all the State Undertakings all over the country. Otherwise the very object of HPPC, and the efficacy of the directions of the Apex Court will stand defeated altogether.

13. For all the reasons stated above, we see no merit, whatsoever, in any of the grievances sought to be projected before us in these writ petitions. The writ petitions, therefore, fail and shall stand dismissed, but there will be no order as to costs.

14. Interim orders granted earlier in all these cases shall stand vacated.