

**(2011) 04 SHI CK 0221**

**In the High Court Of Himachal Pradesh**

**Case No :** CWP No's. 2415 of 2008 and 18 of 2009 and COPC (T) No. 43 of 2009

Jeet Ram Sharma and Another

APPELLANT

Vs

State of H.P. and Others <BR> Joginder Singh Vs Dr. Y.S.  
Parmar University of Horticulture and Forestry and Others  
<BR> Jeet Ram Sharma and Others Vs Arvind Mehta and  
Others

RESPONDENT

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**Date of Decision :** 20-04-2011

**Acts Referred:**

Constitution of India, 1950 — Article 14, 15(1), 16, 16(1), 16(2)  
Himachal Pradesh Civil Services (Revised Pay) Rules, 1998 — Rule 20  
States Reorganisation Act, 1956 — Section 115, 115(1), 115(2), 115(3), 115(7)

**Citation :** (2011) 04 SHI CK 0221

**Hon'ble Judges :** Kurian Joseph, C.J.;Rajiv Sharma, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

Rajiv Sharma, J.—Since common questions of law and facts are involved in all these petitions, the same were taken up together for hearing and are being disposed of by a common judgment. However, in order to maintain the clarity, the facts of CWP-T No. 2627/2008 have been taken into consideration.

2. The post of Agriculture Sub Inspector was redesignated as Field Assistant Grade-I on 25.8.1986. Petitioners were promoted to the post of Technical Assistant Grade-I. They were paid the pay scale at par with Agriculture/Horticulture Inspectors (now re-designated as Agriculture/Horticulture Development Officers) with effect from 1.1.1978 and 1.1.1986. State Government issued notification dated 24.4.1993 whereby three tier pay scales were introduced for the post of A.D.O./H.D.O. However, Petitioners were allowed pay scale of ? 2200-4000 on 1.10.1993, vide Annexure A-1, subject to following conditions:

i) The pay in the revised scale will be fixed in accordance with the provisions of

audit instruction (1) below FR-22 and the officials concerned will be entitled to exercise option in accordance with provisions of FR-23.

ii) The entry qualifications of Technical Assistant Grade-I (Field), in future, be B. Sc. (Hort). Further no promotion to the rank of Technical Assistant Grade-I (Field) from the lower Cadre shall be made in future unless the incumbent is at least B. Sc. (Hort). As such the Recruitment and Promotion Rules are to be framed accordingly and made applicable from the date of grant of scale of Rs. 2200-4000.

3. Since the Petitioners were not paid three tier pay scales, they made representations to the Respondent-University, which led to issuance of letter dated 31.10.1994 by the Secretary (Horticulture). The general revision of pay scales took place on the basis of notification issued by the State Government on 20.1.1998. Respondent-University adopted the same on 22.9.1998. Respondent-University on the basis of letter dated 2.2.2000 granted Petitioners pay scale of Rs. 7220-11660 on 9.6.2000. Respondent-State issued another notification on 31.5.2001; vide Annexure A5, whereby the Himachal Pradesh Civil Services (Revised Pay) Rules, 1998 were amended. State Government decided to revise the pay scale of the Deputy Director (Agriculture) from Rs. 2200-4000 to Rs. 7220-11660 and the pay scale of the post of Horticulture Inspector was revised to Rs. 5480-8925. Respondent-University decided to grant three tier pay scales to the Petitioners vide notification dated 17.8.2002, vide Annexure A-6 with the following remarks:

The existing incumbents as on 31.5.2001 in the pay scale of Rs. 2200-4000/7220-11660 are allowed the time pay scale of Rs. 2200-4000, Rs. 3000-4500 and Rs. 3700-5300 further revised w.e.f. 1.1.1996 to Rs. 7220-11660 (entry scale), Rs. 10025-15100 (after 8 years of regular service in the entry scale) and Rs. 12000-16350 (after 16 years of regular service in the entry scale) respectively vide notification No. FIN (PR) B (7)-1/98 dated 1.9.1998 shall continue to draw the same scale as they were drawing as on 31.5.2001 as a measure personal to them. Such incumbents shall not be allowed the next higher pay scale on completion of 8/16 years of service after 31.5.2001. For future the scale of the posts will be the same as specified in Col. No. 3 above.

4. State Government issued notification dated 8.2.2005 (Annexure A-8) whereby existing pay scales of the Himachal Pradesh Horticulture Services (Class-I) were revised from Rs. 2200-4000 to Rs. 7220-11660 (entry scale), Rs. 10025-15100 (after 8 years regular service in entry scale) and Rs. 12000-16350 (after 16 years regular service in entry scale). It was also stipulated in the remarks column that for future recruitment to H.P. Horticulture Services (Class-I) the minimum qualification shall be Post Graduation I Ind Class in the concerned field/discipline. Respondent-University did not pay three tier pay scales to the Petitioners at par with H.P. Horticulture Services (Class-I). The Board of Management of the Respondent-University on the recommendations of the Finance Committee dated 27.6.2006 issued notification on 17.7.2006 whereby

those appointed after 31.5.2001 and did not fulfill the basic qualification of B. Sc. (Horticulture/Forestry/Agriculture) and were in the scale of Rs. 5480-8925 were to continue in the said scale of Rs. 5480-8925 and those who were already granted the pay scale of Rs. 7220-11660/10025-15100 but did not possess the requisite qualification B. Sc. (Horticulture/Forestry/Agriculture) were to continue in the pay scale already given as a measure personal to them and they were not entitled to three tier pay scales. The three tier pay scales were made admissible to the incumbents who fulfilled the following conditions:

a. They possess the requisite minimum qualification (B.Sc. Horticulture/Forestry/Agriculture).

b. They were already in the pay scale of Rs. 7220-11660/10025-15100.

c. They were already granted the three tier pay scale structure by the Board of Management in its 59th meeting held on 24.7.2002 as notified vide No. Bud.2-7/50th/2K-4947-5006 dated 17.8.2002 and shall be designated as Farm Manager.

5. Ms. Pratima Mahlotra has strenuously argued that the Petitioners were entitled to get three tier pay scales on the analogy of letter dated 8.2.2005 issued by the State Government whereby three tier pay scales were made applicable to the Himachal Pradesh Horticulture Services (Class-I). She further contended that the conditions of services of the Petitioner could not be altered to their detriment by amending the conditions as contained in notification dated 17.7.2006.

6. Mr. Onkar Jairath has vehemently argued that notification dated 17.7.2006 has been issued to improve the efficiency in the Respondent-University, particularly in the area of research.

7. We have heard the learned Counsel for the parties and have perused the pleadings and record carefully.

8. It is not in dispute that the Petitioners were granted the same pay scales, which were paid to A.D. Os/H.D. Os. on 1.1.1978 and 1.1.1986. Respondent-State, for the first time, as noticed above, granted three tier pay scales to the category of A.D. Os/H.D. Os with effect from 24.4.1993. Petitioners were only allowed pay scale of Rs. 2200-4000 on 1.10.1993. General revision of the pay scales took place on 20.1.1998 and the Respondent-University adopted the same on 22.9.1998. Petitioners were granted pay scale of Rs. 2200-4000 on the basis of letter dated 2.2.2000. Petitioners and similarly situate persons as on 31.5.2001 placed in the pay scale of Rs. 2200-4000/7220-11660 were allowed the pay scale of Rs. 2200-4000, Rs. 3000-4500 and Rs. 3700-5300, further revised with effect from 1.1.1996 to Rs. 7220-11660 (entry scale), Rs. 10025-15100 (after 8 years of regular service in the entry scale) and Rs. 12000-16350 after 16 years of regular service, as a measure personal to them vide notification dated 17.8.2002. However, a rider was put in notification dated 17.8.2002 that such incumbents shall not be allowed next higher pay scale on

completion of 8/16 years service after 31.5.2001 and for future the scale of the posts will be the same as specified in column No. 3, i.e. Rs. 5480-8925.

9. State Government, in its own wisdom, has issued notification dated 8.2.2005 whereby as many as 28 categories were clubbed together and were termed as H.P. Subordinate Services (Class-I), including Deputy Director. The existing pay scales of Rs. 2200-4000, Rs. 3000-4500 and Rs. 3700-5300 were revised to Rs. 7220-11660 (entry scale), Rs. 10025-15100 (after 8 years of regular service in the entry scale) and Rs. 12000-16350 (after 16 years of regular service in the entry scale, with a further condition that for future recruitment to H.P. Horticulture Services (Class-I) the minimum qualification shall be Post Graduation IInd Class in the concerned field/discipline. 28 posts, including H.P. Subordinate Services (Class-I) are distinct from the post of Field Assistant Grade-I. The qualifications prescribed for these 28 posts, clubbed together, are higher. The hierarchy for filling up the posts of Technical Assistant (Field) begins from lowest post, i.e. Field Assistant to Field Assistant Grade- I, Field Assistant Grade-I to Technical Assistant Grade-II and thereafter from Technical Assistant Grade-II/ Field Assistant Grade-I to Technical Assistant Grade-I (Field). Thus, the posts, Petitioners held, i.e. Field Assistant Grade-I cannot be equated with H.P. Subordinate Services (Class-I). In the notification dated 8.2.2005, it has been specifically mentioned that the Department will take further necessary steps to frame the Recruitment and Promotion Rules. In the reply, Respondent-University has also undertaken that after the issuance of notification dated 17.7.2006, Recruitment and Promotion Rules shall be suitably amended. The State Government has already clubbed 28 posts and have constituted "Himachal Pradesh Horticulture (Class-I) Services". The Respondent-University has not taken decision to constitute such like cadre. Statute 5.6 only prescribes that conditions and rules for the release of higher scales of pay, for admissibility of special pay and other allowances to the employees shall be the same as applicable from time to time to the employees holding, corresponding posts in the concerned Department of the Himachal Pradesh Government with which the present scales have been equated and as far as the technical staff is concerned, the same was equated with the Department of Agriculture/Horticulture/Animal Husbandry/Fisheries. In view of this, the Petitioners cannot claim pay scale, which is being paid by the State Government to the Himachal Pradesh Horticulture (Class-I) Services.

10. Ms. Pratima Mahlotra has strenuously argued that Petitioners were required to be granted the same pay scales, which have been paid to their counterparts. There is no merit in this contention. State has decided to merge in single cadre all the posts mentioned in Annexure A-8 dated 8.2.2005. Respondent-State has decided that those appointed after 31.5.2001 and who did not fulfill the basic qualification of B.Sc. (Horticulture/Forestry/Agriculture) shall remain in the pay scale of Rs. 5400-8925 and those who were already granted the pay scale of Rs. 7220-11660/10025-15100 but did not possess the requisite qualification of B.Sc. (Horticulture/Forestry/Agriculture) shall continue in the pay scale already given

to them as a measure personal to them.

11. The three tier pay scales have been granted by the Respondent-University on the basis of notification dated 8.2.2005 only to those incumbents, who possessed requisite minimum qualification of B.Sc. (Horticulture/Forestry/Agriculture) and were in the pay scale of Rs. 7220-11660/10025-15100 and were already granted the three tier pay scales structure by the Board of Management on 24.7.2002 notified on 17.8.2002 (Annexure A-6). The Respondent-State has also decided that for future the minimum qualification for recruitment to H.P. Horticulture Services (Class-I) shall be B.Sc. (Horticulture/Forestry/Agriculture) in the concerned field/discipline. The three tier pay scales have been paid to the incumbents on the basis of their higher qualification of B. Sc. and after fulfilling condition No. 4 of Annexure A-9 dated 17.7.2006.

12. Ms. Pratima Mahlotra has also argued that Petitioners' chances of promotion have been taken away on the basis of Annexure A-9 dated 17.7.2006. There is no merit in this contention. The Petitioners will be eligible to three tier pay scales as well as promotion in case they fulfill the minimum educational qualification prescribed. The classification has been made in Annexure A-9 on the basis of qualification. There is intelligible differentia with the object sought to be achieved as far as the laying down of higher qualification is concerned. The object of laying down the higher qualification is to improve research work in the Respondent-University. The persons, who are in possession of B.Sc. degree, form a distinct and separate class. It is also made clear that the incumbents, who had been granted higher pay scale of Rs. 7220-11660 but did not possess requisite qualification of B.Sc. are covered under the Assured Career Progression Scheme to remove their stagnation. Providing of higher qualification cannot be termed either as unreasonable or arbitrary. Even in earlier notification dated 17.8.2002, whereby three tier pay scales were granted, possession of B.Sc. (Horticulture/Forestry/Agriculture) was a condition precedent.

13. The Constitution Bench of the Hon''ble Supreme Court in the State of Mysore and Another Vs. P. Narasing Rao, have held that classification of two grades of tracers, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Article 14 or 16 of the Constitution of India. Their Lordships have held as under:

3. The first question to be considered in this appeal is whether the creation of two pay scales of tracers in the new Mysore State who were doing the same kind of work amounted to a discrimination which violated the provisions of Articles 14 and 16 of the Constitution.

4. The relevant law on the subject is well settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office there under. Article 16 of the Constitution is only an incident of the application of the concept of equality

enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. This Court in dealing with the extent of protection of Article 16(1) observed in *The General Manager, Southern Railway Vs. Rangachari*, at p. 596 : (AIR 1962 SC 36 at pp. 40-41).

Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression "matters relating to employment" in Article 16(1).... This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens who enter service.... In this connection it may be relevant to remember that Article 16(1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior and subsequent, to the employment which are incidental to the employment and form part of the term and conditions of such employment.

The argument was stressed on behalf of the Respondent that success in the S.S.L.C. examination had no relevance to the post of tracer and the tracers of the erstwhile State of Hyderabad who were allotted to the new State of Mysore were persons similarly situated and there was no justification for making a discrimination against only some of them by creating a higher pay scale for tracers who had passed the S.S.L.C. examination. It was contended for the Respondent that all the tracers who were allotted to the new State of Mysore were persons who were turning out the same kind of work and discharging the same kind of duty and there was no rational basis for making two classes of

tracers, one consisting of those who had passed the S.S.L.C. examination and the other consisting of those who had not. In our opinion there is no justification for the argument put forward in favour of the Respondent. It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated, Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured; Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. It is true that the selective test adopted by the Government for making two different classes will be violative of Articles 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidates who have better educational qualifications besides technical proficiency of a tracer. The relevance of general education even to technical branches of public service was emphasised long ago by Macaulay as follows:

Men who have been engaged, up to one and two and twenty, in studies which have no immediate connection with the business of any profession, and the effect of which is merely to open, to invigorate, and to enrich the mind, will generally be found, in the business of every profession, superior to men who have at eighteen or nineteen devoted themselves to the special studies of their calling. Indeed, early superiority in literature and science generally indicates the

existence of some qualities which are securities against vice- industry, self-denial, a taste for pleasures not sensual, a laudable desire of honourable distinction, a still more laudable desire to obtain the approbation of friends and relations. We, therefore, think that the intellectual test about to be established will be found in practice to be also the best moral test that can be devised.

(Hansard, Series 3, CXXVIII, 754, 755). In our opinion, therefore, higher educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Articles 14 or 16 of the Constitution.

5. We proceed to consider the next question raised on behalf of the Respondent viz., that the condition of service of the Respondent has been adversely affected by the creation of two new pay scales and that there was a violation of the provisions of Section 115 of the States Reorganisation Act, 1956 (Act No. 37 of 1956) which states:

115. Provisions relating to other services - (1) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Lieutenant-Governor or Chief Commissioner in any of the existing State of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.

(2) Every person who immediately before the appointed day is serving in connection with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other successor State.

(3) As soon as may be, after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-section (2) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(4) Every person who is finally allotted under the provisions of Sub-section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon between the Governments concerned, and in default of such agreement, as may be determined by the Central Government.

(7) Nothing in this Section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

It was stated that in the erstwhile Hyderabad State the Respondent was kept in one grade along with matriculate tracers and there has been a violation of the proviso to Section 115(7) of the States Reorganisation Act, 1956, because in the new Mysore State the Respondent has been made to work in a separate grade of non-matriculate tracers. We do not think there is any substance in this contention. We do not propose, in this case, to consider what is the full scope and meaning of the phrase "Conditions of service" occurring in the proviso to Section 115 of the States Reorganisation Act. It is sufficient for us to say that, in the present case, there is no violation of the proviso and the Respondent is not right in contending that his condition of service is adversely affected because he is made to work in the grade of non-matriculate tracers in the new Mysore State. It was alleged by the Respondent that according to Hyderabad rules 20 per cent of the vacancies of Sub- Overseers were to be from the grade of tracers and for those who were not promoted there was another grade of Rs. 90 -120 and if the order of the Superintending Engineer dated March 19, 1958 was to stand, the Respondent's chance of promotion would be affected. In their counter-affidavit the Appellants have said that 10 per cent of the tracers in the new State of Mysore are entitled to be promoted to the grade of Assistant Draftsmen in the scale of Rs. 110-220. The basis of promotion to the higher grade was the inter-State seniority list prepared under the provisions of the States Reorganisation Act. It was stated that the seniority of the Respondent was not affected and he had not been deprived of any accrued benefits. The basis of promotion to the higher grades was selection based on meri-cum-seniority. In other words, both matriculates and non-matriculate tracers were eligible for promotion on the basis of the inter-State seniority list prepared for this Department. In our opinion, Counsel on behalf of the Respondent is unable to make good his submission on this aspect of the case.

14. Their Lordships of the Hon"ble Supreme Court in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, have held that it is always open to the State Government to put its employees in the same service in different categories for the purpose of the scale of pay according to the qualifications possessed by them. Their Lordships have further held that in most of the services the scale of pay is linked with the academic performance and experience and it cannot be held that for one service there should be only one scale of pay ignoring the persons who possess the higher qualifications. Their Lordships have

held as under:

8. The basis of the claim of the Petitioners is that prior to January I, 1973 there was only one scale of Rs. 130-240 for Pharmacists who possessed the qualifications mentioned in Clauses (a) to (c) of Section 31 as well as those who were covered by Clause (d) of Section 31 i.e. who did not possess the qualifications mentioned in Clauses (a) to (c). It is always open to the State government to put its employees in the same service in different categories for the purpose of the scale of pay according to the qualifications possessed by them. When Section 31 itself conceives of different types of Pharmacists with reference to their academic qualifications and experience, then no fault can be found either with the Third Pay Commission or the Respondents in putting the Pharmacists Grade-B in two categories with reference to their qualifications and experience and prescribing two scales of pay. In most of the services the scale of pay is linked with the academic performance, experience and it cannot be held that for one service there should be only one scale of pay ignoring the persons who possess the higher qualifications.

15. It is settled law by now that higher educational qualification is permissible basis of classification and the higher educational qualification can be the basis not only for barring promotion but also for restricting the scope of promotion. Their Lordships of the Hon''ble Supreme Court in T.R. Kothandaraman and Others Vs. Tamil Nadu Water Supply and Drainage BD and Others, have held as under:

16. From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in public service:

(1 Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case. (2 Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion. (3 Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.

16. Their Lordships of the Hon''ble Supreme Court in Gabriel Saver Fernandes and Others Vs. State of Karnataka and Others, have held that higher pay scale for Talatis and Village Accountants possessing S.S.L.C. qualification and lower pay scale for those without such qualification does not involve invidious discrimination. Their Lordships have held as under:

3. It would appear that the government made a distinction between Talatis and Village Accountants who possessed S.S.L.C. qualification and those who are non-S.S.L.C. candidates. For the candidates who are having S.S.L.C. qualification, pay scale of Rs. 90-200 has been provided for. Admittedly, the Appellants are not in that category as they are non-S.S.L.C. candidates. The government, therefore,

thought it expedient to make a distinction between qualified and unqualified persons and prescribed different scales of pay. Hence, we do not find any invidious discrimination made between the two categories to club together and grant them same scale of pay of Rs. 90-200. However, since the Appellants have already been paid the scale of pay of Rs. 90-200 while they were in service and are retired now, it would be appropriate that the government may not recover from them the salary which they had already received though they are not eligible to the scale of pay of Rs. 90-200.

17. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the petitions and the same are dismissed with no order as to costs.

COPC(T) No. 41/2009 and COPC No. 43 of 2009

18. In view of the dismissal of the writ petitions on merit, both these petitions have become infructuous and the same are dismissed having become infructuous.