
(2009) 02 GAU CK 0066
In the Gauhati High Court
Case No : Writ Petition (C) No. 139 of 1999

Jyotsna Rani Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 39

Citation : (2009) 2 GLT 513 : (2009) 5 SLR 145

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : B.N. Majumder, for the Appellant; S. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. B.N. Majumder, learned Counsel appearing for the Petitioner as well as Mr. S. Chakraborty, learned Addl. Govt. Advocate for the State-Respondents.

2. The short factual matrix leading to the filing of the present writ petition is that on 22.04.1987 the Petitioner was served with an offer of appointment for the post of "Cook" by the Commandant CTI (HG and CD), Govt. of Tripura, Agartala, under his offer letter No. 167/CTI/RSV-1/Apptt./TAP-2/86, dated 22.04.1987. The Petitioner accepted the said offer of appointment for the post of Cook and, accordingly, the Respondent No. 3, Commandant CTI (HG and CD), Govt. of Tripura, was pleased to issued the appointment order No. 172-76/CTI/87, dated 25.04.1987, for appointing the Petitioner as Cook in the pay scale of Rs. 330-460/-(EB after 8th and 15th stages) plus other allowances as admissible under the Rules against the post of a Cook created for C.T.I. (HG and CD), Tripura. For easy reference, the appointment order dated 25.04.1987 is quoted below:

ORDER

In pursuance of PHQ Memo No. 10408-13/Estt. (Class IV)/PHQ/86, dated, 10

April, 1987, Smt. Jyotsna Rani Das, W/O Late Home Guard Mati Lal Das of Laxmibill, P.S. Bishalgarh, Tripura, West Tripura is hereby appointed as a Cook on temporary basis in the pay scale of Rs. 330-6-390-7-460/- (EB after 8th and 15th stages) plus other allowances as admissible under rules against the post of a cook created for C.T.I. (HG and CD), Tripura.

Her services may be terminated at any time without assigning any reason, by giving one month's notice from either side.

She will report for duties in the office of the Commandant, C.T.I. (HG and CD), Tripura, Arundhutinagar, Agartala, immediately.

Sd/- (D.D. Swami) Commandant, CTI (HG and CD), Tripura, Agartala.

Pursuant to the said appointment order dated 25.04.1987 for appointing the Petitioner as Cook, the Petitioner joined her service as Cook and continued to serve as Cook in the CTI (HG and CD) till date.

3. The revised ROP Rules, 1982 was in force at the time of appointment of the Petitioner as Cook and the scale of pay of Cook was Rs. 330-460/- per month and the pay scale of the Cooks of Raj Bhavan Establishment and Tripura Houses at Kolkata and New Delhi were different. Admittedly, as per the revised ROP Rules, 1988 of the State of Tripura, the status of Cook of all the Departments are guided as per the graded scale No. 8 of Part-C Schedule-III. Under the revised ROP Rules, 1988, the scale of pay of Junior Cook was revised from Rs. 370-650/- to Rs. 850-2130/- per month and accordingly, the Petitioner received the revised salary as per ROP Rules, 1988, which came into effect from 25.04.1987.

4. Admittedly, the Petitioner has been serving as Cook since the date of her appointment as Cook under the said order dated 25.04.1987 without any break till date in the CTI (HG and CD), Govt. of Tripura. Without giving any opportunity or without any prior notice, the Commandant CTI(HG and CD), Govt. of Tripura, issued an order No. 990-94/ CTI (HG and CD)/97, dated 20.08.1997, that the Commandant CTI (HG and CD) had done re-fixation of pay of the Petitioner and the Petitioner was reverted to the scale of pay of Rs. 775-1130/- w.e.f. 25.04.1987. By the same order dated 20.08.1997, a sum of Rs. 23,675/- said to have been overdrawn by the Petitioner from 01.01.1988 to 20.04.1997, is to be recovered in 180 instalments from the month of September, 1997. On 3rd September, 1997, the Commandant CTI (HG and CD) issued another order vide No. 1051-55/ CTI(HG and CD)/97, which is almost repetition of the earlier order dated 20.08.1997 excepting that the amount of instalments to be recovered has been reduced to Rs. 127/- per month and the earlier order dated 20.08.1997 is treated to be cancelled. The Petitioner also filed representation dated 27.08.1997 to the Commandant CTI(HG and CD) stating, inter alia, that she had not been given any opportunity to explain and/or she was not heard prior to issuance of the impugned order dated 03.09.1997 for re-fixation of her scale of pay and recovery of the alleged overdrawn payment. The Petitioner also requested for the reasons for re-fixation of her salaries to the lower scale for the post of Grade-IV.

The Commandant CTI (HG and CD) did not consider the representation as it was simply kept pending nor give any reply to the Petitioner. The Petitioner again preferred an appeal on different grounds and reasons to the Director General of Police, Govt. of Tripura, stating that the fixation of scale done by the Commandant CTI (HG and CD) is illegal, bad and arbitrary and also the action for recovering the excess amount alleged to have been drawn by the Petitioner is also illegal inasmuch as the scale of pay of the Petitioner for working as Cook had been revised by the competent authority as per the ROP Rules, 1988, whereunder the revised pay scale of the Junior Cook is Rs. 850-2130/- per month, which the Petitioner enjoyed as Cook and also there was no fault on the part of the Petitioner in enjoying the revised pay scale of the Junior Cook under the ROP Rules, 1988. The Petitioner being aggrieved by the said order dated 03.09.1997 issued by the Commandant CTI(HG and CD), demoting the Petitioner to a lower pay scale and also for recovering the amount mentioned therein alleged to have been overdrawn by the Petitioner, filed this writ petition.

5. In the present writ petition, the Petitioner not only sought for quashing the impugned order dated 03.09.1997 of the Commandant CTI(HG and CD) but also for a direction to the Respondents to allow the Petitioner to enjoy the said pay scale of the Cook i.e. Rs. 850-2130/- per month.

6. The Respondents also filed affidavit-in-opposition stating that the Petitioner was approved for appointment as Class-IV employee and not as a Cook and accordingly, the scale of pay of the Petitioner had been refixed to the lower scale of the post of Class-IV. The Respondents, in their affidavit-in-opposition also stated that the question of giving opportunity to the writ Petitioner before issuing the impugned order dated 03.09.1997 for fixing the pay scale of the Petitioner to the lower scale for the post of Class-IV does not arise as the Respondents had done refixation of her pay as per the instruction/guideline issued by the PHQ but the Respondents are not denying that the Petitioner has been working as the only Cook in the CTI(HG and CD) since the date of her initial appointment as Cook till date.

7. In *Roshan Deen Vs. Preeti Lal*, , the Apex Court observed that purpose of power conferred in High Court under Article 226 and 227 of the Constitution of India is to advance justice, not to thwart it. even when justice is the by-product of an erroneous interpretation of law. High Court ought not to wipe out such injustice in the name of correcting the error of law. Apex Court in *Air India Statutory Corporation v. United Labour Union and Ors.* reported in 1997 (2) SCC 165 , held that the founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitation. The arm of the Court is long enough to reach injustice whenever it is found. In *State of Maharashtra Vs. Digambar*, , the Apex Court held that the power of the High Court to be exercised under Article 226 of the Constitution, if it is discretionary, its exercise must be judicious and reasonable admits of no controversy.

8. The Apex Court in *State of Maharashtra Vs. Association of Court Stenos., P.A., P.S. and Another*, , held that the High Court in its discretionary jurisdiction under Article 226 of the Constitution cannot itself examine the nature of the work of its employees and issue a mandamus directing a particular pay scale to be given to such employee. The Court, further, clarifies that this may not be construed as total ouster of jurisdiction of the High Court under Article 226 to examine the nature of duties of an employee and apply the principle of "equal pay for equal work" in appropriate case.

9. The Apex Court in *K.T. Veerappa and Others Vs. State of Karnataka and Others*, , held that Court should interfere with administrative decision pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factor. Para 13 of SCC (K.T. Verrapa) is quoted below:

13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Govt. and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* And *Union of India v. S.B. Vohra*. There is no dispute nor can there be any to the principle as settled in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* That fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the Courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

10. Mr. B.N. Majumder, learned Counsel appearing for the Petitioner strenuously contends that since the Petitioner is admittedly working and discharging the duties of Cook, she cannot be denied the pay scale for the post of Cook under the ROP Rules, 1988, which she had been enjoying from the date of enforcement of the ROP Rules, 1988 according to the principle of "equal pay for equal work". In order to substantiate his submission, the learned Counsel appearing for the Petitioner relied on the decision of the Apex Court in:

- i) *Randhir Singh Vs. Union of India (UOI) and Others*, ;
- (ii) *D.S. Nakara and Others Vs. Union of India (UOI)*, ;
- (iii) *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, ;
- (iv) *State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others*, and
- (v) *Shri Alvaro Noronha Ferriera and Others Vs. Union of India and Others*, .

11. In *Randhir Singh v. Union of India and Ors.* (supra), the drivers of the Departments/Offices other than those in the police force under the Delhi

Administration are allowed to enjoy the higher scale of pay even if all the drivers under the Delhi Police Administration are carrying out similar works and duties. The Drivers of the Delhi Police Force basing on the principle of equal pay for equal work" claimed the similar scale of pay as had been paid to the Drivers under different Department/Organisations under the Delhi Administration. The Apex Court had directed the concerned authority to extend the scale of pay similar to that of the Drivers of the Department/Offices under the Delhi Administration to the Drivers in Delhi Police Force under the Delhi Administration. The Apex Court in *Randhir Singh* (supra) fairly held that "equal pay for equal work" for both men and women" as Article 39(d) of the Constitution means equal pay for equal work for everyone and as between the sexes. The word "Socialist" in the preamble to the Constitution must mean something. Even it does not mean to each according to his need", it must at least mean "equal pay for equal work". The Directive principles have to be read into the fundamental rights as a matter of interpretation. The principle of "equal pay for equal work" is not an abstract doctrine but one of substance. But in cases of unequal scales of pay based on no classification or irrational classification, a breach of the principle is clearly made out. Para 9 of *Randhir Singh* (supra) is quoted below:

9. There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the "powers, functions and privileges of a police officer", their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the Respondents in their counter that the duties of the driver-constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the Respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of "equal pay for equal work" is not a principle which the Courts may recognise and act upon. We have shown that the answer is unsound. The clarification is irrational. We, therefore, allow the writ petition and direct the Respondents to fix the scale of pay of the Petitioner and the driver-constables of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from January 1, 1973, the date from which the recommendations of the Pay Commission were given effect.

12. In *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , the Apex Court held that the Central Government like all other organs of the State has committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work. The Central Government, the State Government and like otherwise, all the Public Sector Undertakings are expected to function like model and enlightened employer and argument such as that the Principle of equal pay for equal work is an abstract doctrine which could

not be enforced in a Court of law should ill come from the mouth of the State and State Undertaking. The Government and Public Sector Undertakings should not adopt anti-socialistic stand. In *Dhirendra Chamoli and Another Vs. State of U.P.*, , the Apex Court held that it is not open to the Government to deny the benefit of equal pay for equal work to casual workers on the ground of the reacceptance of employment with full knowledge of their disadvantage.

13. The ratio laid down in *Randhir Singh v. Union of India and Ors.* (supra) are followed in *D.S. Nakara v. Union of India* (supra), *Surendra Singh v. Engineer-in-Chief, CPWD*(supra), *State of M.P. v. Pradmod Bhartiya and Alvaro Noronha Perriera v. Union of India* (supra) and held that the principle of "equal pay for equal work" has gained judicial recognition. The principle is not an abstract doctrine but one of substance. Parameter for invoking the doctrine would include, inter alia, nature of work and common employer. Para-10, 11 and 12, in the case of *Alvaro Noronha Perriera v. Union of India* (supra) run as follows:

10. The principle of "equal pay for equal work" has gained judicial recognition. The principle incorporated in Article 14 when understood from the angle provided in Article 39(d) of the Constitution is held to be the recognition of the aforesaid doctrine. It has been held in *Randhir Singh v. Union of India* that the principle "equal pay for equal work" is not an abstract doctrine but one of substance. Their lordships pointed out:

To the vast majority of the people in India the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.

11. The parameters for invoking the said principles would include, inter alia, nature of the work and common employer. There can be no two views that the nature of work of District and Sessions Judges is the same though in some areas pendency of cases would be higher than others. Differences in the backlog are not uncommon even in two different stations of the same Territory, may, in two different Courts of the same station. Such lopsidedness is hardly the ground to conclude that the nature of work done by one judicial officer at one place is different from other. The duty hours would be substantially the same, the powers to be discharged are in no way different, whether they are District Judges in Goa or in Delhi. It would be a futile exercise to make an endeavour for drawing a distinction between the work pattern at the two different places, for such differences are discernible everywhere. But that would not make the nature of work different. It was not necessary to cast the burden of proof on the Appellants to establish.

the pendency of litigation or the norms fixed for disposal of cases by the Delhi Court to enable comparison between the nature of duties and the responsibilities carried by the officers of the Delhi Territory and the Goa Territory.

12. One admitted fact which looms large is that till hike in the pay scale was

brought about in 1982 for Delhi Judges the parity maintained as between the Union Territories of Goa and Delhi applied to the same cadre of judicial officers. Nobody doubted till then that the nature and dimension of work discharged by the officers of the same cadre of judicial officers at two different Territories were different from any perceptible standard. It is for the contesting Respondents to show that there was change in the nature of work which necessitated the Government to keep two different levels of pay to the same officers working at two different places.

14. Keeping in view of the ratio laid down by the Hon"ble Apex Court in the *Randhir Singh v. Union of India*, *D.S. Nakara v. Union of India*, *Surendra Singh v. Engineer-in-Chief, CPWD, State of M.P. v. Pradmod Bhartiya*, and *Alvaro Noronha Perriera v. Union of India* (supra), this Court in the present given case is of the considered view that there is no justifiable reason in denying the scale of pay of the Cook to the Petitioner who had been appointed as Cook and continuing to discharge the duties and function of the Cook under the impugned order dated 03.09.1997.

15. The learned Counsel speaking for the Petitioner submits that an administrative order which involves civil consequences must be made consistently with the Rules expressed in the Latin maxim "*Audi Alteram Partem*" and there must be fairness and fair procedure in the administrative actions. In support of his contention, he placed reliance on: 1) *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, ; 2) *S.N. Mukherjee Vs. Union of India*, of *Km. Neelima Mishra v. Dr. Harinder Kaur Paintal* (supra) reads as follows:

22. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim *audialteram partem*. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. *Ridge v. Baldwin* (1963 (2) All ER 66) (supra); *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, .

23. The shift now is to a broader notion of "fairness" or "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See: *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, ; *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, ; *Swadeshi Cotton Mills Vs. Union of India (UOI)*, and *Management of M/S M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar* (Civil Appeal No. 1102 of 1990 decided on February 9, 1990). For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have *lites inter partes*. There need not be any struggle between two opposing parties giving rise to a "*lis*". There need not be resolution of *lis inter partes*. The duty to act judicially or to act fairly may arise in

widely differing circumstances. It may arise expressly or in impliedly depending upon the context and considerations. All these types of nonadjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept.

16. By placing reliance on the ration down by the Apex Court in *Km. Neelima Mishra v. Dr. Harinder Kaur Paintal* (siipra) and also *S.N. Mukhejee v. Union of India* (supra), the learned Counsel appearing for the Petitioner contends that the impugned order dated 03.09.1997 involve civil consequences inasmuch as the writ Petitioner has been demoted to a post of lower scale from the post of Cook. In order to fortify this submission, the learned Counsel for the Petitioner had placed reliance on the decision of this Court in *Jibeswar Das and Others Vs. State of Assam and Others*, , wherein the total emolument enjoyed by the Petitioner as Sericulture Demonstrator had been reduced to the lower pay scale by way of refixation of the pay scale in the course of revision of pay scale without giving any show cause notice. This Court in para 6 of the judgment held that as the reduction in pay scale was made without giving any opportunity to the Petitioner, the order for reduction of pay scale cannot sustain, and para 6 of the judgment reads as follows:

6. Mr. Sarma, learned Sr. counsel has submitted that this cancellation of refixation of pay scale of the Petitioners without giving any opportunity itself is contrary to the settled law. In support of his submission, he has cited three decisions of the Apex Court namely (i) *Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others*, , (ii) *H.L. Trehan and Others Vs. Union of India (UOI) and Others*, and (iii) *Bhagwan Shukla Vs. Union of India and others*, . The ratio laid down in those cases is that there is a flagrant violation of principles of natural justice in reduction/alteration of the basic payoff the employees without giving any opportunity of being heard to the Petitioner. This is what has exactly happened in this case. On a bare perusal of the impugned order dated 16.09.98 it clearly goes to show that some has been passed without giving any opportunity to the Petitioners or without assigning any reason whatsoever.

17. In *Rajesh Basfor Vs. Tura Town High School and Others*, , the pay scale of the Petitioner also had been reduced without giving any opportunity of being heard by issuing the impugned order and this Court had set aside the impugned order on the ground of failure on the part of the authority concerned to act reasonably, fairly and justly. Relevant extract of the judgment and order of this Court in *Rajesh Basfor v. Tura Town High School and Ors.* (supra) reads as follows:

4. ...

(v) As discussed above, once a right has been conferred and given upon a person or persons, if it is to be withdrawn, at least those persons should be given a chance or opportunity of being heard or say in the matter and, if such opportunity is not given before withdrawing such rights conferred upon him or her then, the action of the Respondent amounts to violation of the principles of natural justice. This is the law of the land. In the case in hand, according to me, reduction of scale of pay of the writ Petitioner from higher pay to consolidated pay of Rs. 1,100/- per month amounts to reduction in rank and status of the writ Petitioner.

(vi) In the instant case, the action of the State Respondents while passing the impugned orders amounts to civil consequence undoubtedly covered infraction of legal right of the writ Petitioner.

18. The learned Counsel for the Petitioner submits that post-decisional hearing is not a substitute of pre-decisional hearing and he placed reliance on the decision of the Apex Court in *Canara Bank and Others Vs. Shri Debasis Das and Others*, . By placing reliance on the decision of the Apex Court in *Canara Bank and Ors. v. Debasis Das and Ors.* (supra), learned Counsel, further submits that even an administrative order which involves civil consequences must be consistent with the Rule of natural justice. Para 19 of the *Canara Bank and Ors. v. Debasis Das and Ors.* (supra) reads as follows:

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or provisional right but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

19. The learned Counsel appearing for the Petitioner also referred the decisions of this Court in (1) *Safoir Rahman and Ors. v. Union of India and Ors.* : 2007(4) GLT 922 ; (2) *Jayashree Dutta Choudhury Vs. State of Tripura and Another*, , wherein this Court held that the impugned action/orders towards refixation of the pay/pension of the writ Petitioner and recovery of alleged excess payment made to the Petitioner without providing any opportunity of being heard to the Petitioner, are liable to be quashed. In the present case, the grant of higher pay i.e. pay scale of Cook to the Petitioner, as it is clear from the record, is a conscious decision of the competent authority and for no fault of the Petitioner. Therefore, this Court is of the considered view that it would be unfair to reverse

the decision after a long lapse of time and order of recovery of the excess pay alleged to have been drawn by the Petitioner. The Apex Court in *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, held that it shall not be just and proper to recover any excess amount which has already been paid to the employee for no fault of theirs. Para 11 of *Shyam Babu Verma and Ors. v. Union of India and Ors.* (supra) reads as follows:

11. Although we have held that the Petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the years 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the Petitioners due to the fault of the Respondent, the Petitioners being in no way responsible for the same.

20. The ratio laid down by the Apex Court in *Shyam Babu Verma and Ors. v. Union of India and Ors.* (supra) is also followed by the Division Bench of this Court in *All Manipur Degraded Teachers' Association Vs. State of Manipur and Others*, . Para Nos. 5, 6 and 8 of *All Manipur Degraded Teachers Association v. State of Manipur and Ors.* runs as follows:

5. It is contended by Mr. A. Bimal Singh, learned Counsel for the Appellants that the Appellants have no grievance against such direction for framing of the said guideline and appropriate actions taken thereafter upon the same, but their only prayer is that the pay and allowances drawn by the Appellants as the graduate teachers at the time of upgradation shall not be recovered pursuant to the impugned orders. Praying for quashment of the impugned orders, he has placed reliance on two decisions of the Apex Court, namely, (1) *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, and (2) *Jaswant Singh Vs. Punjab Poultry Field Staff Association and Others*, , wherein the Apex Court ruled that since the Petitioners therein received the higher scale due to no fault of theirs, it should only be just and proper not to recover any excess amount paid to them. For discharging their duties in a higher post, the incumbent was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties (para 11 of both the cited cases).

6. It is settled law that higher pay scale given erroneously to the incumbents without any default of theirs shall not be recovered. The interest of justice demands that where service of an employee has been utilized by the State in particular post after upgradation, he shall upon degradation from the said post, be entitled to get the salary and allowances of that higher post for the period during which he was holding the same.

8. Upon hearing the learned Counsel for the parties and also having regard the

settled position of law as laid down in the above cited cases, we are of the view that the State Respondents are not entitled to make recovery of the excess pay including D.A. and other allowances as mentioned in the impugned orders that had been paid to the Appellants for their services rendered during those periods from the date of their upgradation to graduate teachers till their degradation, from the Appellants. Accordingly the impugned orders are hereby quashed and set aside.

21. For the reasons discussed above, this Court is of the considered view that the impugned order dated 03.09.1997 is not sustainable in the eye of law. Accordingly, the same is quashed. It is made clear that the Respondents shall not recover the alleged excess amount said to have been drawn by the Petitioner under the impugned order dated 03.09.1997 from the Petitioner and the Respondents shall extend the pay scale of Cook to the Petitioner. The writ petition is allowed accordingly.