(2007) 04 GAU CK 0036

In the Gauhati High Court

Laishram Ibomcha Singh APPELLANT

Vs

State of Manipur and Another RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:
Constitution of India, 1950 — Article 14, 309

Citation : (2007) 3 GLT 724

Hon'ble Judges : T. Nanda Kumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nanda Kumar Singh, J.—The petitioner being aggrieved by the artificial classification of Senior Accountants who were appointed under the same Recruitment Rules i.e. Departments/Offices of the Govt. of Manipur (Senior Accountant) Recruitment Rules, 1981 discharging the same duties and carrying out the same works for the purpose of revision of pay and allowances, filed the present writ petition.

2. Heard Mr. M. Roshni Piba learned Counsel appearing for the petitioner as well as Mr. R.S. Reisang, learned Govt. Advocate for the respondent Nos. 1 and 2.

3. A short fact in thumbnail leading to the filing of the present writ petition is that in super session of all previous orders in this regard and in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Manipur makes the rules regulating the methods of recruitment to the post of Senior Accountant in the Departments/Offices under the Govt. of Manipur called the "Departments/Offices of the Govt. of Manipur (Senior Accountant) Recruitment Rules, 1981 "vide Order No. 1/35/80-RR/DP, Imphal dated 1.9.1981 notified in the Manipur Gazette, September 23,1981. Under the said Recruitment Rules for the post of Senior Accountant, 1981, the methods of recruitment are by promotion, failing which by direct recruitment (limited to department''s candidates) and failing both, by deputation. The essential

qualifications for appointment by promotion to the post of Senior Accountant under the said Recruitment Rules, 1981 (Column-11) are:

Column 11. Promotion:

(1) Head Clerk/Accountant (405-675) of the Deptt. With 3 (three) years'' ''regular service in the grade.

(2) Junior Accountant/UDC (335/575) of the Deptt with five years'' regular service in the grade; who have passed.

(a) The Accounts Test conducted either by the A.G., Assam or Government of Manipur and

(b) Office Procedure Examination conducted by the Govt. of Manipur.

DEPUTATION:

Officers holding analogous post under the Govt. of Manipur (period of deputation ordinarily not exceeding three years extendable upto five years)

4. Admittedly, the said Recruitment Rules for the post of Senior Accountant 1981 is still in force and the Junior Accountant/UDC (335-575) of the department with five years regular service in the grade who have passed the Accounts Test conducted either by the A.G., Assam or Government of Manipur and Office Procedure Examination conducted by the Govt. of Manipur are eligible for appointment by promotion to the post of Senior Accountant. The essential qualification of the department''s candidates for appointment by direct recruitment are: Graduate UDC/LDC/Jr. Accountant of the concerned department who has passed (a) Accounts Test conducted by the A.G., Assam or by the Govt. of Manipur and (b) the Departmental Examination in Office Procedure conducted by the Govt. of Manipur.

5. The petitioner was earlier serving as Graduate UDC in the Directorate of Lotteries and having passing the Accounts and also the Departmental Examination in Office Procedure conducted by the Govt. of Manipur on 17.6.81 and 31.7.81 respectively, had been recommended by a duly constituted D.P.C. for appointment as Senior Accountant in the scale of pay of Rs. 640/- to 1410/- per month plus usual allowances as admissible under the ailes on regular basis against the post created vide Govt. of Manipur Orders No. 13/112/83-FD (L) dated 12.1.1987. As such, as recommended by the duly constituted DPC, the petitioner was appointed under the orders of the Govt. of Manipur being No. 2/168/87-FD(L) dated 15.4.87 as Senior Accountant on regular basis in the office of the Directorate of State Lotteries (Finance Department), Govt. of Manipur with effect from 15.4.87 in the scale of pay of Rs. 640/- to 1410/- per month plus other usual allowances as admissible under the rules.

6. When the petitioner was appointed to the post of Senior Accountant under the said order of the Govt. of Manipur dated 15.4.87, the Manipur Services (Revision of pay) Rules, 1982 was in force and the post of Senior Accountant was at SI.

No. 8 of Accounts and Audit under Schedule-I, Part-B of the Manipur Services (Revision of Pay) Rules, 1982, published vide Notification No. 2/PC/FD/79(II) dated 17.12.82. The said ROP of 1982 was superseded by another ROP called Manipur Services (Revised Pay) Rules, 1990, published vide Notification No. 1/18/90-PIC (C) dated 21.11.90, which came into effect notionally from 1st day of January, 1986. As per ROP of 1990, the Senior Accountants who were enjoying the scale of pay Rs. 640-1410/- under the 1982 ROP were allowed to enjoy the pay scale of Rs. 1400-2300/-per month. In the year 1999, the Govt. of Manipur, Department of Finance (Pay Implementation Cell) had published another notification vide notification No. 1/115/98-PIC, dated 11.1.99 revising the scales of pay of all the employees under the Govt. of Manipur. The said notification dated 11.1.99 i.e. Manipur Services (Revised Pay) Rules, 1999 was amended vide the Rules, "Manipur Services (Revised Pay) (1st Amendment) Rules, 1999 vide notification No. 1/115/98-PIC, dated 10.3.99". Under the said Manipur Services (Revised Pay) (1st Amendment) Rules, 1999 which hereinafter called as ROP 1999, (1st Amendment), the pay scale of the Senior Accountants had been revised by prescribing 2 (two) pay scales i.e. Rs. 5000-8000/-for those who are promoted from Head Clerk or Accountant (Rs. 1400-2300/-) according to the RRs the posts would be designated as Senior Accountant and No. 2 Rs. 4500-7000/- for others.

7. By prescribing two different pay scales for the Senior Accountants who are recruited under the same Recruitment Rules and discharging the same duties and carrying out the same works under the said ROP, 1990 (1st Amendment), the petitioner who all along enjoying same pay scale of the Senior Accountant, in as much as, there is only one class of Senior Accountants recruited under the same Recruitment Rules discharging the same type of duty and work just before the implementation of the ROP 1999 (1st Amendment), was not allowed to enjoy the pay scale of Rs. 4500-7000/- only on the reason that the petitioner was appointed from the UDC to Senior Accountant.

8. The Joint Director (Lotteries), Manipur under his letter dated 24.11.99 sought the clarification from the Joint Secretary (Finance/PIC), Govt. of Manipur, Imphal, that how the Senior Accountants who are promoted/appointed under same RRs can be provided two different scale of pay in R.O.P. 1999. In reply to the said letter of the Joint Director (Lotteries), Manipur dated 24.11.99 regarding clarification on the pay scale for the post of Senior Accountant under ROP 1999, the Joint Secretary (Finance/PIC), Govt. of Manipur, Imphal under his letter dated 29.12.99 clarified that in terms of provisions of ROP 1999, Senior Accountant promoted from UDC shall be in the pay scale of Rs. 4500-7000/- while those Senior Accountants who are promoted from Head Clerk or Accountant shall be in the scale of Rs. 5000-8000/-.

9. Being aggrieved by the said discriminations in revising pay scale of the Senior Accountants recruited under the same Recruitment Rules and also discharging the same duties and performing the same works by creating two artificial two

classes of Senior Accountants i.e. No. 1 class of Senior Accountant promoted/ appointed from UDC and No. 2 Senior Accountant promoted from Head Clerk or Accountant, the petitioner filed the present writ petition for quashing the said artificial classification of Senior Accountants in revising the pay scale.

10. The main grounds for challenging the two artificial classes of Senior Accountants for the purpose of revising the pay scale under the said ROP 1999 (1st Amendment) and the impugned letter dated 29.12.99 are that No. 1, there is only one homogenous class of Senior Accountants recruited under the same Recruitment Rules i.e. Departments/Offices of the Govt. of Manipur (Senior Accountant) Recruitment Rules, 1981 which is still in force and No. 2, all the Senior Accountants promoted/appointed under the said Recruitment Rules, 1981 are discharging the same duties and performing the same works. No. 3. No. 3, there should be "equal pay for equal work" and No. 4, all the Senior Accountants serving under the same Government i.e. State Government of Manipur recruited under the same Recruitment Rules, i.e., RRs 1981 shall have the same scale of pay.

11. In order to support the above grounds, the learned Counsel appearing for the petitioner had referred to the following decisions of the Apex Courts:

(i) Randhir Singh Vs. Union of India (UOI) and Others,

(ii) D.S. Nakara and Others Vs. Union of India (UOI),

(iii) P. Sabita and Ors. v. Union of India, Ministry of Defence (Department of Defence) New Delhi and Ors. 1985 (Supp.) SCC 94.

(iv) Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others,

(v) State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others,

(vi) Shri Alvaro Noronha Ferriera and Others Vs. Union of India and Others,

(vii) State of West Bengal and Others Vs. Pantha Chatterjee and Others,

(viii)State of Haryana and Anr. v. Ramchander and Anr. (1997) SCC 253.

12. The Apex Court in (i) Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. and Another, held that judgment is to be understood in the facts and circumstances of the case without adding anything to it and no more should be read into it than what it actually says, (ii) In Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, the Apex Court held that any essence of the decision and its ratio is binding and not every observation found therein. Every decision must be read as applicable to the particular facts proved. A precedent of long recognition matured into rule of stare decisis, (iii) In General Manager Northern Railways and Another Vs. Sarvesh Chopra, the Apex Court held that a decision of the Supreme Court is only an authority for a proposition which it decides. Proposition should not be extracted from that which the court has not really decided.

13. The Apex Court in Union of India and Ors. v. Dharmawati Devi and Ors. (supra) held that "equal pay for equal work" for both the men and women has been accepted as a "constitutional goal" capable of being achieved through Constitutional remedy. In Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, 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.

14. Normally whether two posts are equal or should carry equal pay depend upon several factors and it does not just depend upon either the nature of work or the column of work. Primarily, it requires amongst others, evaluation of duties, responsibility of the respective jobs. Equation of post or equation of pay must be left to the Executive. They are the best judge to evaluate nature of duties and responsibility of post. Reference maybe made to State of U.P. and Ors. v. J.P. Chaurasia and Ors. (supra). The Apex Court in Supreme Court Employees Welfare Asson. v. Union of India and Ors. (supra) held that if unequal pay is based on no classification, it would be violative of Article 14 of the Constitution of India, Para 38 of the AIR in Supreme Court of Employees Welfare Asson. v. Union of India and Ors. (supra) reads as follows:

It follows from the above decisions that although the doctrine of ''equal pay for equal work'' does not come within Article 14 of the Constitution as an abstract doctrine, but if any classification is made relating to the pay scales and such classification is unreasonable and/or if unequal pay is based on no classification, then Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of ''equal pay for equal work'' as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved the doctrine of ''equal pay for equal work'' will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of ?equal pay for equal work'' as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Dhirendra Chamoli and Another Vs. State of U.P., is a case of ''equal pay for equal work'', as envisaged by Article 14, and not of the abstract doctrine of equal pay for equal work''.

15. The Apex Court in State of Maharashtra v. Association of Court Steno PA PS and Anr. (supra) held that the High Court in its discretionary jurisdiction under Article 226 of the Constitution cannot itself examine the nature of the work discharge of its employee and issue a mandamus directing a particular pay scale to be given to such employee. The Court, further, clarifies--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 an appropriate case.

16. Keeping in view of the decisions of the Apex Court in Sarva Shramik Sangh, Bombay v. Indian Hume Pipe Co. Ltd. and Anr. (supra), Union of India and Ors. v. Dharmawati Devi and Ors., General Manager, Northern Railway and Anr. v. Savesh Chopra, I may require to see the ratio laid down by the Apex Court in Randhir Singh Vs. Union of India (UOI) and Others, . In Randhir Singh v. Union of India and Ors. (supra) 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 in 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/Organizations under the Delhi Police Administration and their claimed had been entertained by the Apex Court by directing the concerned authority to extend the scale of pay similar to that of the Drivers of Departments/offices under the Delhi Administration to the Drivers in Delhi Police Force under the Delhi Administration.

17. 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. Pramod Bhartiya & Alvaro Noronha Perriera v. Union of India (supra) and held that the principle of equal pay for equal work'' has gained judicial reorganization. The principle is not an abstract doctrine but one of substance. Parameter for invoking the doctrine would include, interalia, nature of work and common employer. Para 10,11 and 12 in the case of Alvaro Noronha Perriera v. Union of India (supra) runs 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 they pay the 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 Distinct and Sessions Judges is the same though in some areas pendency of cases would be higher than others. Difference 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 cader 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.

The Apex Court in State of West Bengal v. Pantha Chatterjee (supra) held that the Central Government cannot wrangle out of its liability to meet the expenditure in the payment of pay and allowances basing on the principle of ''equal pay for equal work'' by raising technical plea of the absence of master-servant relationship.

18. I, may recall the decision.of the Apex Court in Roshan Deen Vs. Preeti Lal, 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 Corpn. v. Union Labour Union and Ors. reported in 1997 (2) SC 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.

19. Learned Counsel appearing for the petitioner also submits that there are number of posts under the Govt. of Manipur and under the relevant Recruitment Rules of those posts there are different feeder posts and for those posts there are only one scale of pay scale irrespective of the incumbents promoting or appointing from different feeder posts, inasmuch as, there is only one scale of pay scale under the Recruitment Rules. The learned Counsel by referring to the Recruitment Rules for the post of Sub-Deputy Collector in the Revenue Department vide notification No. 3/12/73-RR/DP dtd. 12.6.1981 submitted that the Sub Deputy Collector is a promotional post of the different posts. Column 11 of the said notification dated 12.6.1981 read as follows:

Column 11. (1). Superintendent D.C.''s Office with 3 years regular service in the grade.

(2) Head Clerk, Treasury with 3 years regular service in the grade.

(3) Head Clerk Settlement Department with 3 years regular service in the grade.

(4) Sadar Accountant with 3 years regular service in the grade.

(5) Revenue lr persons with 8 years regular service in the grade for undergraduate and with 5 years in the case of graduates.

(6) Accountants, D.C. office with 8 years regular service in the grade for under graduates and with 5 years regular service in the case of graduates.

(7) U.D.Cs of Revenue Department with 8 years regular service in the grade for under graduates and with 5 years in the case of graduates.

(8) Settlement Supervisor with 4 years regular service in the grade.

20. Learned Counsel also further submitted that there is only one pay scale for the post of Sub-Deputy Collectors and all the said Sub-Deputy Collectors are allowed to enjoy same pay scale irrespective of the incumbents holding the post of Sub-Deputy Collectors are appointed from different feeder posts. But in the instant case, the learned Counsel also further submitted that all the Senior Accountants promoted/appointed under the same Recruitment Rules, 1981 should be allowed to enjoy the same scale of pay irrespective of the incumbents holding the post of Senior Accountants were promoted or appointed from different feeder posts. The learned Counsel also by referring to the decision of the Apex Court in P. Savita and Ors. v. Union of India, Ministry of Defence (Department of Defence Production), New Delhi and Ors., submitted that there should not be discrimination amongst the persons holding identical posts and discharging identical duties and also that classification of Senior Accountants into 2 groups under the ROP 1999 (1st Amendment) for the purpose of revision of pay scale is illegal. Para 11, 12 and 13 of the SCC in P. Savita and Ors. (supra) read as follows:

Para 11: It has to be borne in mind that this differentiation is not based on any intelligible ground. The group of Draughtsmen entitled to the higher scale of pay, is not selected by any process nor is it based on any merit-cum-seniority basis, but is based only on seniority-cum-fitness. There is no denial anywhere that both these types of Draughtsmen do the same work and discharge the same functions and duties. According to the recommendations of the Third Pay Commission, a Draughtsmen has to get Rs. 330-1--380-EB-12-500-EB-15-560, while Senior Draughtsmen, like the appellants, who have become so on promotion, will continue to get the same scale of pay and not the higher scale of pay. In other words, the promoted persons like the appellants, are without any monetary benefit to them. The pay that they would get as Senior Draughtsmen, would be the same as a Draughtsman would get under the Third Pay Commission. That is, for the same work and same functions, the appellants would get less pay than the other group of Senior Draughtsmen. The explanation is that this division is based on seniority. This cannot be accepted as sufficient to meet the requirements of law. By seniority, a Senior Draughtsman will get higher pay with the increment that he earns proportionate to the number of years he is in service. Here that is not the case. It is the classification of the Senior Draughtsmen into two groups, that is responsible for the higher pay. For two groups, that is responsible for the higher pay. For this classification, the Government must be able to satisfy the court of certain other tests which are non-existent, in this case, since it is not in dispute that Senior Draughtsmen, belonging to the two Divisions, do equal and same work. In view of the total absence of any plea on the side of the respondents, that the Senior Draughtsmen who are placed in the advantageous group, do not perform work and duties more onerous or different from the work performed by the appellants'' group, it will have to be held that this grouping violates Article 14 of the Constitution.

12. The High Court did not have the advantage of a decision of this Court in Randhir Singh v. Union of India, to which one of us was a party, which evolved the equality doctrine embodied in Article 39(d) and read Article 14 into it; while considering the complaint of a driver who was originally in the Army but later employed as a driver constable in Delhi Police Force under the Delhi Administration and who was denied the same pay as was available to the other drives in the service of the Delhi Administration. This Court allowed the writ petition and directed the concerned authorities to pay the petitioners in that case. Salary at least equal to the drivers of the Railway Protection Force. Disagreeing with the plea, put forward by the Union of India this Court observed as follows: (SCC pp. 621-22, para 6).

The counter-affidavit does not explain how the case of the drivers in the Police Force is different from that of the drivers in other departments and what special factors weighed in fixing a lower scale of pay for them. Apparently in the view of the respondents, the circumstances that persons belong to different departments of the Government is itself a sufficient circumstance to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities. We cannot accept this view. If this view is to be stretched to its logical conclusion, the scale of pay of officers of the same rank in the Government of India may vary from department to department notwithstanding that their powers, duties and responsibilities are identical. We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the pay Commission and not for courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

13. This Court however observed that a differential treatment in appropriate cases can be justified, when there are two grades based on reasonable grounds, and stated as follows: (SCC p. 622, Para 7).

It is well known that there can be and there are different grades in a service, with varying qualification for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of ''equal pay for equal work'' would be an abstract doctrine not attracting Article 14 if sought to be applied to them.

21. This Court after taking into consideration of the peculiar facts and circumstances of the present case and also keeping in view the ratio laid down by the Apex Court in the cases discussed above, is of the considered view that there should not be artificial classification of two classes amongst the Senior Accountants who are promoted/appointed under the same Recruitment Rules discharging the same duties and performing the same work, inasmuch as, there is no reasonable classification of the Senior Accountant for the purpose of revision of pay scale by the ROP 1999 (1st Amendment) and also that the Recruitment Rules, 1981 for the post of Senior Accountant speaks only one Senior Accountant. In other words, artificial classification of Senior Accountants recruited under the same Recruitment Rules is not permitted by the relevant Recruitment Rules, 1981. In order to substantiate this point, learned Counsel has placed heavy reliance on a decision of the Apex Court in Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, , wherein and where under the Apex Court held that a constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing any act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the constitutional provision.

22. The Apex Court in P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, (Constitution Bench), observed that legislation is a colourable one, what it means is that the Legislature has transgressed its legislative powers in a covert or indirect manner, if it adopts a device to outstep the limits of its powers. This Court is of the considered view, that the said offending portion of ROP (1st Amendment) prescribing different pay scales for the Senior Accountant/Officer recruited under the same Recruitment Rules in derogatory of the relevant Recruitment Rules, 1981 is a colourable one.

23. For the reasons discussed above, this Court is of the considered view, that the petitioner appointed on regular basis according to the Recruitment Rules for the post of Senior Accountant 1981 and discharging the same duties and performing the same work with those of the Senior Accountant recruited/ promoted from the post of Head Clerk/Accountant shall also enjoy the pay scale of Rs. 5000-8000/- per month enjoyed by the Senior Accountants appointed or recruited from Head Clerk under the ROP1999. Accordingly, the said offending portion of the ROP (1st Amendment prescribing different pay scales i.e., Rs. 4500 to 7000/- for the Senior Accountant, appointed/promoted from UDC is held illegal and hereby quashed. In the result, the said letter of the Joint Secretary (Finance/ PIC) Govt. of Manipur dated 29.12.99 is also quashed.

To the extent mentioned above, this writ petition is allowed.

