

(1995) 09 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11053 of 1994

Md. Azamathulla Khan (Junior Asst.) and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1996) 1 ALT 432

Hon'ble Judges : Syed Saadatulla Hussaini, J;M.N. Rao, J

Bench : Division Bench

Advocate : K. Nageswara Rao, A. Bhaskara Chary, M. Mohan Rao, K. Lakshmanachary, K. Raji Reddy, Y. Rama Rao, S. Satyanarayana Prasad, S.A. Hussaini, G. Peddababu, P. Murali, S. Subrahmanyam, S. Ashok, Anand Kumar, R. Sridhar Rao, Mirza Nisar Ahmed Baig, K. Sesharajyam, K. Venkatesh, M.J. Vijayvardhan Rao, P. Pratap Reddy, B. Parameswara Rao, M. Dilip Rao, K. Raja Reddy, R. Subhash Reddy, D.V. Reddy, Vijai, N. Venkatrayudu, P.R. Ramana Rao, M.V. Durga Prasad, K.V. Sudhakar Reddy, V. Venkataramana and T. Niranjan Reddy, for the Appellant; Suryakiran Reddy and G.P. for the A.G. and C.V. Mohan Reddy and M. Jagannadha Sarma, for the Respondent

Judgement

M.N. Rao, J.—Whether Law graduates working in the High Court of Andhra Pradesh and the Subordinate Courts holding ministerial posts, for which a degree in Law is not a necessary qualification, are entitled to the advance increments allowed to certain other categories of State Government employees under G.O.Ms.No. 182, Finance & Planning (FW.PRC.I) Department, dated 17-7-1987, is at issue in this batch of writ petitions.

2. The petitioners, ministerial employees working in the High Court as well as subordinate courts, all Law graduates, filed these writ petitions seeking a mandamus to the State Government to treat them at par with certain categories of employees covered by G.O.Ms.No. 182 dated 17-7-1987 for the purpose of entitlement to advance increments. Because of commonality of the questions involved for decision, we are inclined to dispose of all the writ petitions by this

common judgment.

3. Among the High Court employees figuring as petitioners in this batch of writ petitions are Assistant Registrars, Court Officers/Section Officers, Court Masters, Deputy Section Officers, Assistant Section Officers, Junior Assistants, Typists, Examiners etc. The rest of the writ petitions pertain to the employees working in the subordinate courts occupying the posts of Sheristadars, Nazirs, Deputy Nazirs, Translators, Senior Assistants, junior Assistants, Typists, Copyists, Examiners etc. A degree in Law is not one of the essential qualifications prescribed for the posts all the petitioners are holding. Some of them acquired the degree in Law even before the date of their entry into the service and the others, after their entry into the service by studying in the evening Law Colleges.

4. For the post of Junior Assistant in all Departments, formerly known as Lower Division Clerk, the minimum general educational qualification prescribed, for over five decades, was a pass in Matriculation. Very recently, in the case of all Departments except the judicial ministerial service, the minimum general educational qualification was enhanced to a pass in Intermediate. Various Pay Revision Commissions, for over a period of two decades, had been recommending granting of advance increments, in posts of educational, specialist or technical character, to persons who acquire higher qualifications relevant for the post obviously with a view to achieve efficiency in administration. However, the State Government, while implementing these recommendations, had also extended the benefit of granting advance increments to graduates working as Lower Division Clerks/Junior Assistants presumably on the basis that graduation being a higher qualification was relevant for the post of Junior Assistant. The minimum general educational qualification for a Junior Assistant in the State Secretariat and Heads of Departments is graduation while Matriculation was the prescribed qualification for the said post in other Government Offices. There were differences in pay scales also between these categories of junior Assistants. In the year 1980, the State Government had introduced common pay scales for both the categories of junior Assistants despite the fact that graduation remained as the minimum qualification for the Secretariat posts while a pass in Intermediate was retained as the minimum qualification in other offices. To all graduate-junior Assistants, irrespective of the fact whether or not graduation is the prescribed minimum qualification, the Government granted one advance increment in 1980 by G.O.Ms.No. 114, Finance and Planning (Fin. Wing-PRC.I) Department dated 4th April, 1980.

5. The State Government issued G.O.Ms.No. 182 dated 17-7-1987 whereby the then existing scheme to grant advance increments was not only continued subject to the same terms and conditions except a slight modification that the advance increment should be treated as personal pay of the employees concerned, but also fresh sanction was accorded allowing advance increments to certain categories of employees mentioned in the Annexure to the G.O. Paragraph 4 of the G.O., which contains instructions issued by the Government,

is the central point of controversy in this batch of writ petitions. It reads :

"4. In this connection, the following instructions are issued:

(a) No advance increment shall be admissible to those possessing only the minimum qualification prescribed for the post.

(b) the higher qualification, the acquisition of which entitles one for additional increments now being sanctioned should be relevant to the post held by them.

(c) the advance increment is to be given only once in the category in which he was working at the time of acquiring the additional qualification.

(d) The advance increment in the Revised Pay Scales 1986 will be admissible only to those who acquire the additional qualification after 1-7-1986. This will also be admissible to those recruited directly after 1-7-1986 if they possess the requisite additional qualifications at the time of their appointment.

(e) In respect of those who acquire the qualifications after 1-7-1986, the advance increments will be admissible from the date of following the last date of examination and in respect of those recruited directly after 1-7-1986 the advance increments will be admissible from the date of appointment if they possess the requisite additional qualifications at the time of their appointment.

(f) As the advance increments are intended to provide adequate incentive to acquire the higher qualifications, the date of normal increment will not be disturbed and the subsequent increment will accrue on the normal date of increment.

(g) These orders shall not apply to those who have acquired additional qualifications before 1-7-1986.

(h) The advance increments under this order shall be admissible to everybody acquiring additional qualification irrespective of the fact whether higher qualifications are acquired either at their own cost or at the cost of the Government.

(i) The advance increments given for higher standards of study shall be treated as Personal Pay and shall be paid to the individual throughout the Service at that rate at which it was sanctioned.

(j) The Advance increment(s) shall be equal to the rate of increment (s) admissible on the date on which the employee becomes eligible for advance increment (s) under these orders."

6. The stand taken in the counter-affidavits filed on behalf of the State Government is that the advance increments contemplated by G.O.Ms.No. 182 are applicable only to employees who had earlier received such increments and also to the specified categories mentioned in the Annexure to the G.O., and that it had no general application to all the Government employees in the State. Acquisition of higher educational qualification by an employee would not entitle

him to claim advance increment as a matter of right and in order to claim this right, certain conditions have to be satisfied. The counter-affidavit, amplifying this idea says: One of the conditions is that the higher qualification should be relevant to the job requirement of the post held by him. An illustration of an inadmissible claim given in the counter-affidavit is:

"A L.D.C/junior Assistant possessing Ph.D qualification cannot claim advance increment simply on the ground that he is a holder of Doctorate".

7. The advance increments recommended by the Pay Revision Commission in 1986 are applicable only to those who acquired additional qualifications on or after 1-7-1986 and therefore, the others who happened to acquire the same prior to that date are not entitled to the advance increments. It is also asserted further in the counter-affidavit that no Pay Revision Commission has recommended advance increments for possession of Law degree.

8. Several writ petitions - W.P.No. 17584 of 1988 and batch - were filed in this court by the ministerial employees of the High Court and the subordinate courts possessing Law degree claiming advance increments under G.O.Ms.No. 182 dated 17-7-1987. A Division Bench of this court comprising the Hon'ble the Chief Justice and Upendralal Waghray, J., disposed of the writ petitions by a common order dated 13-11-1991 taking the view that the petitioners (employees) had no cause of action for straight-away filing the writ petitions without first approaching the Chief Justice on the administrative side and seeking the relief from him. The order reads:

"These writ petitions have been filed without first seeking redress in the concerned subject matter from the Chief Justice on the administrative side of the High Court. As the position stands, there is no contest, there is no denial and there is no lis. There was, indeed, no cause of action as such for straight away filing these writ petitions without first approaching the Chief Justice on his administrative side and seeking relief from him. It is only if relief is declined, further round can be sought against the same. In these circumstances, these writ petitions are converted into representations to the Chief Justice. The same be placed before the Chief Justice by the Registrar (Admn.,) for such orders thereon as the Chief Justice deems just, fit and proper. Registry is directed to expedite the process.

It is, in the interests of justice, further directed that the interim orders of this Court will continue to operate till such time as the Chief Justice passes appropriate orders on these matters..."

9. Even before the Division Bench judgment in the aforesaid batch of writ petitions, the Home (Courts.D) Department of the Government of Andhra Pradesh, on a reference from the High Court on the administrative side, issued the following proceedings on 2-11-1991 in U.O. Note No. 407/Ctg.D/A1/90.6 inviting the attention of the General Administration Department and Finance and Planning Department:

"This Department have examined the proposal of the Registrar, High Court received vide reference second cited and recommend that:

(i) the existing scheme may be continued in general for the categories in the Judicial Department if the same is going to be continued in general and

(ii) in the interest of efficiency while evolving new scheme, all the posts in the Judicial Department may be allowed to be sanctioned advance increments for possessing or on acquiring Law qualification".

10. Pursuant to the aforesaid order of the Division Bench in W.P.No. 17584 of 1988 and batch, the Hon"ble Chief Justice after considering the pleas raised by the employees and taking into consideration the entire facts and circumstances relating to the structural hierarchy on the ministerial side in the High Court as well as the subordinate courts, the nature of the duties performed and the responsibilities shouldered by the employees, the relevance of possession of law degree by those holding the posts for which such a degree is not the necessary qualification, opined:

"... the employees of the Judicial Department who have acquired the Law qualification after 1-7-1986 are entitled to the benefit of advance increments as per and in terms of G.O.Ms.No. 182 dated 17-7-1987..."

and accordingly granted advance increments, but rejected the claims of others who acquired non-legal higher qualification i.e., higher qualification other than law degree, as such higher qualification in a subject other than law is not relevant to the post held by an employee in the Judicial Department. It was also further observed in the order that the distinction drawn between employees who acquired Law qualification prior to and after 1-7-1986 was discriminatory and devoid of rational justification for the distinction sought to be made out between the two categories. Therefore, it was concluded:

"All employees in the judicial department who have acquired Law qualification prior to 1-7-1986 are also entitled to the benefit of advance increments on the principle underlying in G.O.Ms.No. 182 dt. 17-7-1987."

Incorporating these orders, proceedings were issued by the High Court on the administrative side in R.O.C.No. 1285/92-Estt.1 dated 6-3-1992 making it specific that all the employees of the High Court and Lower Courts belonging to Judicial Department who have acquired Law Degree irrespective of the date of passing of the Law Degree examination were entitled to two advance increments in terms of G.O.Ms.No. 182 dated 17-7-1987. When the employees falling within the ambit of the aforesaid proceedings issued by the High Court submitted pay-bills claiming advance increments, the same were not honoured by the Pay and Accounts Officer in Hyderabad and the Treasury Officers in the districts. The present writ petitions were, therefore, filed at that juncture claiming entitlement to advance increments. By virtue of the interim orders granted, all the petitioners were being allowed to draw the advance increments.

11. The State Government, in and by G.O.Ms.No. 356, General Administration (Spl.A) Department dated 22-6-1993, has constituted a Committee under the Chairmanship of the Principal Secretary to Government, Finance and Planning to review the functioning of the scheme regarding sanction of advance increments to various categories of employees pursuant to the recommendations of the Pay Revision Commission, 1993: the other members of the Committee being the Special Chief Secretary to Government, Health, Medical and Family Welfare Department, principal Secretaries to Government, Education, Irrigation and C.A.D. Departments and the Special Secretary to Government, Finance and Planning Department. When this batch of writ petitions came up for hearing on an earlier occasion, a representation was made on behalf of the Government that the aforesaid Committee would look into the matter and consider the case of the High Court and subordinate court employees also so as to enable the Government to take a decision. The hearing of the writ petitions was accordingly adjourned. The Committee invited the Registrar (Admn.,) of the High Court for discussions and after considering the information furnished by the Registrar in his D.O. Letter No. 3703/94. Estt.I dated 16-7-1994 regarding the qualifications prescribed to various categories of employees, the duties and responsibilities entrusted to them and the views expressed by the Hon"ble Chief Justice in the proceedings referred to supra, concluded that the claim put forth by the employees of the subordinate Courts and the High Court was untenable, and accordingly recommended to the State Government not to accede to the request of the High Court.

12. The ratiocination of the Committee for taking a negative view was based upon the following grounds viz., i) there are various categories of posts in the High Court coming under Division I, Category V and Division II, Categories 3 and 4 for which the minimum qualification prescribed is a degree in arts, commerce, science or law; or a degree in arts, science, commerce and a degree in law for direct recruitment. For certain categories like D.S.Os./Translators and Section Officers/Court Officers, for direct recruitment, the qualification prescribed is "a practising advocate for 3 years", which implies that "for certain posts, a degree in law is the minimum qualification". Like-wise, for the post of Sheristadar in the district Courts, a degree in law is a preferential qualification, (ii) The recruitment rules show that special tests - Civil and Criminal Judicial Tests - have been prescribed to enable the employees to acquire the requisite knowledge for promotion to higher categories and those in possession of Law degree are exempted from passing the said tests. This would indicate that "though the recruitment rules by themselves do not suggest in every situation possession of a degree in Law, the same purpose is sought to be achieved by prescribing the need to pass Special tests such as Criminal Judicial Test, Indian Evidence Act Test or Civil Judicial Test as the case may be and /or Departmental tests relevant to the Departmental functions." There are several categories of officers belonging to Revenue, Police, Registration and Stamps and Commercial Taxes Departments etc., charged with duty of administering several enactments and perform quasi-

judicial functions who require adequate knowledge of Law. The various Pay Revision Commissions taking these aspects into consideration "have not assigned any benefits to persons possessing Law degree, which is a universal qualification". iii) Every employee ought to acquaint himself with the basic principles of Law and the existing framework of the Departmental/special tests provided for the same and, therefore, no one irrespective of the department to which he may belong, may be given the benefit of advance increments for possessing such universal qualification. If advance increments are given for "possessing law degree in one area of the Government or Court, equity would require that all persons possessing such qualification in all departments of the Government will have to be given advance increments" and such a proposal would considerably increase the expenditure on salaries, wages and pensions which even now accounts for more than 85% of the total income realised by the State Government and, therefore, such a proposal is not in public interest. While making the aforesaid recommendations, the Committee observed that they have "kept in view the availability of the large reservoir of law degree holders in the State".

13. The Registrar (Admn.) of the High Court was informed by the Secretary to Government, Home Department by his letter No. 12203/Courts.D/A.1/92-16 dated 22-11-1994 that the Government had accepted the recommendations of the High Power Committee (Secretaries' Committee) on 10-10-1994 and the Governor of Andhra Pradesh did not agree with the proceedings issued by the Chief Justice on 6-3-1992 in his administrative capacity sanctioning advance increments and ordered that the amounts disbursed to the employees may be recovered from them. The Registrar was also requested to bring the same to the notice of the Chief Justice and take necessary action in the matter.

14. Sri Satyanarayana Prasad, learned counsel who advance leading arguments on behalf of the petitioners, has submitted that non-inclusion of the employees of the subordinate Courts and the High Court in the Annexure to G.O.Ms.No. 182 for the purpose of claiming the benefits of advance increments is arbitrary and violative of Article 14 of the Constitution. Clauses (d) and (g) of paragraph 4 of the aforesaid G.O., allowing advance increments to those who acquired additional qualifications after 1-7-1986 but denying the same to persons who acquired the same qualifications prior to 1-7-1986 are inconsistent with paragraph 2 which lays down that the advance increments "sanctioned in the revised scales of pay of 1978 to be continued beyond 1-7-1986 subject to the same terms and conditions". Fixation of the date 1-7-1986 as the cut-off date for entitlement to advance increments is arbitrary and irrational since it has no nexus with the object sought to be achieved namely, promotion of excellence by giving incentives to employees to acquire additional qualifications relevant to the posts held by them.

15. Controverting these contentions, Sri Surya Kiran Reddy, learned Government Pleader, has urged that the Hon''ble Chief Justice had no power, without the

approval of the Governor (the State Government), under Article 229 of the Constitution to issue proceedings in favour of the employees of the High Court and the subordinate courts sanctioning advance increments. Even if the order of the Hon"ble Chief Justice were to be construed as a rule under Article 229 relative to the conditions of service of officers and servants of the High Court, it would still require the approval of the Governor of the State. Even this limited power, the Chief Justice did not possess so far as the employees of the subordinate courts are concerned. Only in respect of certain specified categories of employees, the scheme of advance increments was extended taking into consideration the interests of administration - promotion of excellence by giving incentives to acquire higher knowledge by way of academic degrees and diplomas relative to the posts held by them - and this could not extend to law degree holders, whose number is unduly large in every department not only in the High Court and the subordinate Courts. G.O.Ms.No. 182 was not a general order made by the State Government granting incentives to employees of all departments for possessing higher qualifications relevant to the posts held by them as an incentive to promote excellence. All persons possessing law degrees in all departments were treated alike and so, there was no scope to contend that a particular section of the employees was discriminated in the matter of sanction of advance increments.

16. It is not the case of the petitioners that their entitlement to the benefits claimed in the writ petitions was grounded upon the orders passed by the Hon"ble Chief Justice of this Court. We, therefore, feel not called upon to go into the question whether the Chief Justice of a High Court has power to confer financial benefits on employees of the High Court and subordinate Courts without the concurrence of the Government under Article 229 or Article 235 of the Constitution.

17. The equality clause enshrined in Article 14 of our Constitution incorporating the English concept of equality before law and the American Constitutional tenet of equal protection of laws is the foundation upon which the petitioners have claimed the benefits. It permits reasonable classification and forbids discrimination. Two conditions that must be satisfied in order to pass the test of permissible classification are: i) "That the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that the differntia must have a rational relationship to the object sought to be achieved.." See: Budhan Choudhry and Others Vs. The State of Bihar, , when challenge to an action of the State was grounded upon Article 14, the State must "affirmatively satisfy the Court that the twin tests have been satisfied", See: D.S. Nakara and Others Vs. Union of India (UOI), . Arbitrariness and irrationality also are vitiating factors falling within the mischief of Article 14., See: E.P. Royappa Vs. State of Tamil Nadu and Another, .

18. In the light of this legal position concerning the scope and ambit of Article

14, we have to consider the rival contentions advanced by both sides.

19. What is the scope and object of G.O.Ms.No. 182 is the first aspect for our consideration. Paragraph 1 of the G.O., mentions that the Pay Revision Commissioner while recommending that the existing scheme of advance increments for acquisitions be continued also suggested the following two norms in that behalf.

"1. The advance increments for higher standards of study should be treated as special pay paid to the individual throughout the career.

2. As long as the higher qualification is acquired, no distinction should be made between those who have acquired the qualification at the expense of the Government and those who have done it on their own."

After considering the recommendations of the Pay Revision Commissioner, the Government while agreeing to continue the scheme of advance increments beyond 1-7-1986 subject to the same terms and conditions sanctioned fresh advance increments to certain categories of employees. Paragraph 3 which deals with this aspect reads:

"Government also hereby sanction advance increments afresh to the various categories as indicated in the Annexure to this order".

The annexure mentions only three departments/categories viz., i) School Education, ii) Ground Water Department; and iii) Indian Medicine and Homeopathy. After the revision of pay scales in the year 1978, the State Government issued G.O.Ms.No. 89, Finance and Planning (FW.PRC.I) Department dated 26-3-1980 incorporating a scheme for sanctioning advance increments for higher qualifications. This was the first G.O., which not only mentions the departments/categories for the benefit of advance increments but also the rationale for conferring such benefit. The maximum number of advance increments allowed under the scheme was limited to three. The sanction of advance increments was subjected, inter alia, to the following conditions:

"(i) No advance increment shall be admissible for those possessing only the minimum qualification prescribed for the post.

(ii) The higher qualification, the acquisition of which entitles one for additional increment now being sanctioned should be relevant to the post held by him.

(iii) The advance increment is to be given only once in the category in which he was working at the time of acquiring the additional qualification.

(iv) As the advance increments are intended to provide adequate incentive to acquire higher qualification, the date of normal increment will not be disturbed and the subsequent increment will accrue on the date of normal increment.

Although a few departments have been mentioned as entitling to this benefit - Medical and Health, Veterinary, Agriculture, Fisheries, School Education and

Engineering Department--, the State Government, from time to time extended the scope of the G.O., by including within its ambit several other departments. In the common counter affidavit filed on behalf of the Government by Sri E. Satyanarayana Murthy, Additional Secretary to Government, Finance and Planning, as many as twenty six departments/ categories were mentioned which are in addition to the three departments/categories contained in the Annexure to G.O. 182. A perusal of the table given in the counter-affidavit would show that not only poss which require persons with highly specialized skill and technical knowledge like Civil Assistant Surgeons (item No. 12), Executive Engineers (item No. 8) and Hydrologists (item No. 9), but also Secondary Grade Teachers (item No. 4), Junior Lecturers (item No. 2), Copyists/ Examiners in the High Court (item No. 10) and junior Auditors in the Local Fund Audit Department (item No. 11) were brought within the purview of the scheme of advance increments for possessing higher qualifications.

20. The only hypothesis, we think, for the justification of bestowal of the benefits of advance increments on such disparate departments/categories could be that the scheme was intended to "provide adequate incentive to acquire higher qualification" as was specifically mentioned in the earlier G.O., - G.O.Ms.No. 89 dated 26-3-1980. It was not the stated intention of the Government that only in certain departments specialised skill was called for and possessors of higher qualification relevant to the post in those categories alone should be singled out for the benefit. This is evident from the fact that several orders were issued by the Government from time to time bringing within the ambit of the scheme several departments/categories not originally specified in G.O.Ms.No. 89. Two instances we may point out in this regard: By G.O.Ms.No. 114, Finance and Planning (Fin. Wing PRC I) Department dated 4th April, 1980, one advance increment was sanctioned to Junior Assistant/ L.D.Cs./Typists/Steno-typists appointed after 1-1-1974 for degree qualification as well as to those who have acquired the said qualification after 1-1-1974 while working in the said categories. This benefit was extended to promotees also in the aforesaid categories by the clarification issued in Memo. No. 10019-G/38/PRC.I/82-1 dated 16-3-1982. Secondary Grade teachers who have acquired graduation qualification were granted one advance increment and if they happened to possess B.Ed., qualification also, one more increment was allowed in Memo No. 333/Ser.II.1 /94-11 dt. 28-6-1994 Education (Ser.II) Department. The rationale for giving these types of incentives appears to be that in the case of a typist or L.D.C., the acquisition of degree qualification would enable him to discharge his functions more effectively; a clerk can articulate his views in a better manner if he were to be a graduate than otherwise, and a typist would understand the subject matter entrusted to him for typing in a better way if he were to be a graduate than otherwise. An examiner in the High Court, whose main responsibility is to correct certified copies of the judgments, would be in a better position to detect mistakes were he to be a graduate than otherwise. Same was the case with regard to secondary grade teachers who became graduates and

also subsequently acquired B.Ed., degree. This supposition of ours is fully corroborated by Clause (b) of paragraph 4 of G.O.Ms.No. 182 which in categorical terms lays down:

"The higher qualifications, the acquisition of which entitles one for additional increments now being sanctioned should be relevant to the post held by him".

21. It, therefore, follows, that the twin factors for ascertainment of the right of an employee for the benefit of claiming advance increments under G.O.Ms.No. 182 are: i) whether he acquired a qualification higher than the one prescribed for the post held by him; and ii) whether such acquired higher qualification is relevant to the post held by him. When these two tests are satisfied, the employee is entitled to the benefit of advance increments.

22. The object of the scheme, it seems to us, is to classify the Government employees into two categories: (i) those who fulfil the prescribed qualifications; and (ii) those who acquire higher qualifications relevant to the posts held by them with reference to the departments/categories. The classification is rational and the differentia is intelligible. Promotion of excellence is what the classification seeks to achieve and this furnishes the rational nexus between the classification and the object sought to be achieved. This, in our comprehension, is the correct interpretation of G.O.Ms.No. 182 incorporating the scheme.

23. The reasoning of the High Power Committee comprising highly placed senior civil servants for recommending exclusion of employees of the High Court and the subordinate Courts from the benefits of advance increments, we think is dearly fallacious, It is true that for certain posts, to be filled by direct recruitment like Deputy Section Officers, Section Officers, Translators and Court Officers, the qualification prescribed is "a practising advocate for three years". Promotees in these posts need not acquire the qualification of degree in law. For more than two decades in the High Court, it was stated authentically at the Bar, there was no direct recruitment to any of the aforesaid posts. It is true that special tests - pass in civil and criminal judicial tests - have been prescribed for employees promoted to the aforesaid posts and exemption granted in favour of persons possessing a degree in law. It was totally unrealistic, as was done by the Committee, to equate a pass in civil and criminal judicial test with acquisition of a degree in law and on that supposition, reach the conclusion that law degree is the basic qualification for the incumbents in the aforesaid posts and so they are disentitled from claiming advance increments. This process of reasoning suffers from fatal infirmities; proceeding from questionable premises, the High Power Committee arrived at unquestionably wrong conclusions.

24. The second part of the reasoning of the High Power Committee that law degree being a universal qualification, and it is expected of every employee to acquaint himself with the basic principals of law and the existing framework of the departmental/special tests provided for the same and, therefore, equity. demands that every law degree holder irrespective of the department to which

he belongs will have to be given advance increments, which would considerably increase the expenditure on salaries, wages and pensions and so the same would not be in public interests does not merit acceptance tested through the lens of law. These considerations are not germane for the determination of the question at issue. Financial implications are integral to policy decisions taken by Government in the interests of good Governance. A policy measure like the scheme for sanctioning advance increments conceived of in the interests of promoting excellence cannot be kept out of operation in the case of certain departments/categories for no reason other than that the same would entail more financial burden. Such considerations, in our understanding of the law, cannot weigh with the Court in the determination of issues founded upon Article 14 of the Constitution.

25. In view of our analysis and interpretation of the scheme of advance increments as contained in the two G.O.s., G.O.Ms.No. 89 and G.O.Ms.No. 182 - we find no substance in the contention advanced by the learned Government Pleader that incentives created in favour of employees of one department/category cannot per se be made applicable to other departments/categories.

26. The High Power Committee had no doubts whatsoever that law degree is a higher qualification and also relevant in respect of certain categories of posts in the High Court and the subordinate Courts. Although, at the Bar, arguments are not advanced in respect of which categories LL.B., degree cannot be treated as a higher qualification relevant to the post-except in W.P.No. 7473 / 92, in the rest of the writ petitions, common arguments are advanced without inviting our attention to the particular posts held by the individual petitioners and their alleged entitlement with reference to the qualifications acquired and the relevancy of the same to the posts held by them - we cannot issue a general declaration that all employees in the subordinate Courts and the High Court should get this benefit In respect of posts like typists, copyists, examiners and record assistants, L.L.B., degree, in our considered view, is not relevant for the purpose of claiming entitlement to advance increments. A typist is required to possess sound knowledge of English to understand the words in the manuscripts he is required to type and if he is a graduate, it would help him a great deal in performing his duties more efficiently. Recognising this aspect, the Government had already sanctioned one advance increment to typists possessing graduation qualification, for whom the minimum general educational qualification prescribed was a pass in matriculation. Acquisition of a law degree in no way helps a typist to turn out his work in a better manner: it is not a higher qualification a typist is required to possess nor is it relevant to the post. The post or Record Assistant is a feeder post for Junior Assistant (L.D.C). He does not draft office notes nor is he required to independently articulate his views on any subject. A copyist does the work of a typist; he does only copying work - typing judgments, decrees and Court orders on copy stamps furnished by the advocates requesting for certified copies. Those typed copies are scrutinised by the examiner with reference to the originals. In respect of these two categories also, we find it difficult to hold that

law degree would be a relevant qualification nor was it a qualification higher than the one prescribed for them. The same reasons also would apply to all employees holding posts lower than Junior Assistant (L.D.C) like Amins, Baillifs, Process Servers etc. We, therefore, declare that no one holding a post lower than that of Junior Assistant would be eligible for the benefit of advance increments. Although persons holding the posts of Record Assistant, Typist, Copyist, Examiner, Amin, Baillif, Process Server etc., which are lower than the post of Junior Assistant, are borne on the establishments of the High Court and the subordinate Courts, they are not entitled to the benefit of advance increments since they do not satisfy the test laid down by G.O.Ms.No. 182.

27. As regards try other posts in the High Court - Assistant Registrar, Section Officer, Deputy Section Officer, Court Master, Court Officer, Translator, Assistant, both junior and senior - and all ministerial employees including Sheristadars but excluding copyists, typists, examiners, record assistants etc., in the subordinate Courts, in our judgment, they squarely fall within the ambit of G.O.Ms.No. 182. A law degree in the case of every one of these posts is a higher qualification and also a relevant one.

28. Successful administration of justice depends to a great deal, on effective court management. Knowledge of law is, therefore, essential to enable the Court employees to perform their duties more effectively. To put it differently, promotion of excellence in the administration of justice is inter-linked with the court staff comprising law degree holders. In a general way, it is undeniable, knowledge of law contributes to better understanding of all questions or disputes concerning civil and political rights as well as the structure of Government and political and democratic institutions. But this cannot be the touch stone for deciding the question as to the applicability of G.O.Ms.No. 182 to judicial employees. As already discussed by us supra, the test is whether LL.B., degree is a higher qualification and relevant for the posts held by the petitioners. The duties of Court employees in different branches - taking down dictation of judgments, preparing cases for hearing, preparing decrees in accordance with the judgments, supervising service of process and execution proceedings, translating depositions of witness and documents into English, to name only a few - are all but integral parts of effective Court management warranting high degree of proficiency, for the attainment of which the contributory factor is a degree in law. When the object of the scheme of advance increments as adumbrated in the two G.Os., - G.O.Ms.No. 89 and G.O.Ms.No. 182 - and several other subsequent orders, being promotion of excellence, exclusion of the judicial employees fulfilling the prescribed criteria clearly smacks of arbitrariness. It must be noticed that the scheme was not brought into existence for the first time by G.O.Ms.No. 182; it had been there for quite a few years and continued by G.O.Ms.No. 182 by adding three more departments/categories to claim the benefit.

29. The statement in the counter-affidavit filed on behalf of the Government in

W.P.No. 3858 of 1990 that "mere acquisition of any higher qualification in their (petitioners) own interest does not confer any right for sanction of advance increments to them when it was not specifically allowed in any of the existing orders issued by the Government from time to time" does not merit acceptance. Obtaining of higher qualification by the petitioners although might be construed incidentally to be in their own interest - knowledge, being an indispensable condition for expansion of mind, the acquisition of the same by any one whether or not a public servant is bound to be in his interest - in the present cases, the same must necessarily be tested as already adverted to supra, on the touch stone of the two conditions laid down in the scheme for claiming advance increments: a) whether the qualification acquired is higher than the one prescribed for the post held by the employee; and b) whether the same is relevant to the post held by him. Both the tests must be satisfied cumulatively and when that is done, the employee cannot be denied of the benefit. Refusal to accept the claims of those who fulfil the aforesaid criteria clearly amounts to arbitrariness falling with the inhibition of Article 14.

30. Another aspect that calls for judicial scrutiny concerns the instructions contained in Clauses (d) and (g) of paragraph 4 of G.O.Ms.No. 182. Clause (d) confines payment advance increments "only to those who acquire the additional qualification after 1-7-1986 and persons recruited directly after 1-7-1986". Clause (g), couched in peremptory language, says that "these orders shall not apply to those who have acquired additional qualifications before 1-7-1986". These two clauses of paragraph 4 are irreconcilably inconsistent with the object of the scheme as contained in paragraphs 1 and 2 of the said G.O., which is to the effect that the Government had accepted the recommendation of the Pay Revision Commissioner for continuance of the existing scheme of advance increments and accordingly continued the same beyond 1-7-1986 subject to the condition mentioned in item (i) of paragraph 4, namely that the advance increments given for higher standards of study shall be treated as personal pay and shall be paid to the individual throughout the service at the rate at which it was sanctioned. Paragraphs 1 and 2 of G.O.Ms.No. 182 read as follows:

"1. The Pay Revision Commissioner in his report among other things has recommended that the existing scheme of Advance increments for acquisition of higher qualifications be continued. The following are the recommendations of the Pay Revision Commissioner in respect of liberalisation of the norms in this regard: (i) The Advance Increments given for higher standards of study should be treated as Special Pay paid to the individual throughout the career,

(ii) As long as the higher qualification is acquired, no distinction should be made between those who have acquired the qualification at the expense of the Government and those who have done it on their own.

2. After careful consideration, Government hereby order that the Advance Increments, last sanctioned in the Revised Scales of Pay of 1978, be continued beyond 1st July, 1986, subject to the same terms and conditions except the

condition mentioned in item (i) of para 4 of this order relating to treatment of the Advance Increments as Personal Pay."

A regarding of paragraphs 1 and 2 gives no room to doubt that the only modification engrafted subject to which the scheme was continued related to treatment of the advance increment as personal pay through out the career of the employee. Other than this, paragraph 4 only contains instructions relating to the scheme as the very first sentence itself indicates: "In this connection, the following instructions are issued". The instructions, by their very nature, are meant to be guidelines for carrying out the main object; they cannot be restrictions amounting to deprivation of the rights conferred by the scheme. We, thus discern no rationality in the two Clauses - (d) and (g) of paragraph 4 of the G.O.

31. Viewed from another angle also, the prescription of the date -1-7-1986 -for allowing the benefit of advance increments was violative of Article 14 of the Constitution. In the common counter-affidavit filed by Sri E. Satyanarayana Murthy, Additional Secretary to the Government, it was explained in paragraph 3 that the reason for choosing the date 1-7-1986 for the purpose of entitlement to the benefit of advance increments was:

"The employees who acquired additional qualifications prior to 1-7-1986 must have already earned Advance Increments in the pre-revised scales for the additional qualifications they acquired if they are so entitled for them under the G.Os. in force at that time. Hence, the Advance Increments recommended by the P.R.C. 1986 are applicable only to those who acquired additional qualifications on or after 1-7-1986".

In other counter-affidavit filed by Sri Nazir Ahmed, Assistant Secretary to Government, it was mentioned in paragraph 3 that Clauses (d) and (g) of paragraph 4 of G.O.Ms.No. 182 "are not at all affecting the petitioners. Hence they cannot said to be aggrieved as the petitioners too acquired higher qualifications after 1-7-1986 as mentioned in the G.O.". The reasoning is clearly untenable. As the object of the scheme, which had been in existence long before G.O.Ms.No. 182 dated 17-7-1987 was issued, was to promote excellence by granting incentives, all the employees answering the criteria laid down in the scheme - possession of higher qualification and relevance of that to the posts held by them - constitute a single class distinct and different from the others who have not acquired such higher qualifications relevant for the posts. There were several categories of employees entitled for these benefits by fulfilling the criteria like some of the petitioners herein by acquiring the higher qualification prior to 1-7-1986 but were not allowed the same by the Government. They were either making representations claiming the benefits or contemplating taking recourse to legal remedies available to them. The scheme, as reiterated in G.O.Ms.No. 182, not being a new one but only continuation of the one existing previously, fixation of any date for the purpose of claiming the benefits undermines the very object of the scheme preempting the employees acquiring higher qualifications prior to

1-7-1986 from enjoying the benefit. In view of the interpretation placed by us on the scheme that it applied to employees who fulfilled the criteria irrespective of the department/category to which they belonged, prescription of a cut-off date would deny the employees, otherwise eligible, from having the benefits. We thus find no nexus between the prescription of the date and the object sought to be achieved.

32. The precedents on this point fully support our reasoning and conclusion. In *D.R. Nim, I.P.S. Vs. Union of India (UOI)*, , the question that fell for consideration was whether for purposes of seniority the exclusion of the continuous officiation in a senior scale post by a promotee officer in the Indian Police Service for a period of four years on the ground that such officiation was prior to May 19, 1951 was legally sustainable? Interpreting Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954, which did not spell out any rational basis for the prescription of a date for excluding continuous officiation in senior scale post for the purpose of determination of year of allotment, Sikri, J., (as he then was) speaking for the Constitution Bench of the Supreme Court, said:

"The Central Government cannot pick out a date from a hat - and that is what it seems to have done in this case - and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso."

33. Nearer to the fact situation obtaining in the present cases, is the ruling in *D.S. Nakara v. Union of India (2 supra)* also a decision of a Constitution Bench of the Supreme Court. The liberalised pension scheme announced by the Government of India on May 25, 1979 was made applicable to Government servants who retired subsequent to March 31, 1979 and in the case of defence personnel, the cut off date was 1-4-1979. Dealing with the question whether employees who retired prior to the aforesaid dates would not be entitled to the benefit of the liberalised pension formula, the Court found that there were no relevant and valid considerations in the prescription of the aforesaid dates. The reasoning, as expressed by Desai, J., who spoke for the Court, was:

"... the principle that when a certain date or eligibility criteria is selected with reference to legislative or executive measure which has the pernicious tendency of dividing an otherwise homogeneous class and the choice of beneficiaries of the legislative/executive action becomes selective, the division or classification made by choice of fate or eligibility criteria must have some relation to the objects sought to be achieved. And apart from the first test that the division must be referable to some rational principle, ii the choice or the date or classification is wholly unrelated to the objects sought to be achieved, it cannot be upheld on the spacious plea that that was the choice of Legislature."

34. *State of Rajasthan Vs. Gurcharan Singh Grewal and others*, , is yet another precedent restating the principle. The question was whether payment of Beas Project Compensatory allowance could be denied to employees who joined the

project service after 14-9-1972. Holding that "if the employees who joined the Project before 14-9-1972 could exercise their option in the matter of compensatory allowance, there is no reasonable basis for denying that benefit of option to the employees who joined the Project after 14-9-1972", the Supreme Court voided the action.

35. The petitioners in this batch of cases have no grievance against the employees who have been getting the benefit of advance increments under several orders passed by the Government extending the scheme from time to time to different departments/categories. But their case is that they are also entitled to receive the same benefits since they fulfilled the criteria laid down under the scheme. We have already concluded that the petitioners other than those holding the posts of typists, copyists, examiners, record assistants, amins, bailiffs, process servers etc., in the High Court as well as the subordinate Courts are entitled to the benefit of advance increments Following the ratio laid down in the rulings of the Supreme court in D.R.NIM, D.S. Nakara and State of Rajasthan (4, 2 and 6 supra), we hold that Clauses (d) and (g) of paragraph 4 of G.O.Ms.No. 182 dated 17-7-1987 restricting the benefit of advance increments only to those who acquired additional qualifications on or after 1-7-1986 and denying the same to others who acquired the same before 1-7-1986 are violative of Article 14 and accordingly we strike down the same. The two offending Clauses - (d) and (g) - are clearly severable from the rest of the provisions of the G.O. We, therefore, uphold the validity of the rest of the G.O., by declaring that its application is not confined to the categories mentioned in the Annexure to it but extends to all employees who fulfil the criteria laid down therein.

W.P.No. 7473 of 1992:

36. In this writ petition, there are five petitioners. Four of them were working as Assistant Registrars and the fifth one as Special Officer of the High Court of Andhra Pradesh at the time of filing of the writ petition. Pursuant to the interim orders granted earlier, they were drawing advance increments since they acquired additional qualification before they were promoted to the post of Assistant Registrar. An objection was taken by the Pay and Accounts Officer that since they acquired the additional qualification before 1-7-1986, they were not eligible to draw the advance increments. This objection, in our view, is clearly unsustainable. It was made clear in Memo. No. 4922/190/AI/PRC.II/ 90 dated 22-2-1991 that the advance increments which are treated as personal pay would continue even after an employee was promoted to higher post. This was on the basis of the recommendation of the Pay Revision commissioner that the advance increments should be treated as special pay to the individual throughout his career.

37. We, therefore, hold that the petitioners in W.P.No. 7473 of 1992 are entitled to draw the advance increments throughout their official career until they reach the age of superannuation. The writ petition is accordingly allowed. No costs.

38. To sum up: Exclusion of judicial employees from the scheme of advance increments was in breach of Article 14 of the Constitution in several respects. Equality before laws was denied to the judicial employees although they fulfilled the required criteria. Selective approach in regard to the application of the scheme to certain departments only in disregard of the criteria laid down for achieving the objective would be in breach of equal protection of laws. The classification sought to be made for conferral of the benefits under the scheme lacked both intelligible differentia and rational nexus with the object sought to be achieved. In an arbitrary and irrational manner, the scheme prescribed the date 1-7-1986 for allowing advance increments.

39. For these reasons, we declare that among the petitioners, those who are holding the posts of typists, copyists, examiners, record assistants and all posts lower in rank than Junior Assistant in the High Court and the subordinate Courts are not entitled to the benefit of advance increments and their claims accordingly are negatived. In respect of the other categories of employees, the writ petitions are allowed with a declaration that they are entitled to the benefit of advance increments under G.O.Ms.No. 182 dated 17-7-1987. We direct that the respondents shall not, in consequence of the dismissal of the writ petitions in respect of the ineligible categories of employees - typists, copyists; Examiners, record assistants etc., - recover the advance increments drawn by them during the pendency of the writ petitions as per the interim orders passed by this Court from time to time. No costs.

40. In passing, we might mention that although the High Court is a party-respondent in these cases, we did not get any assistance from the counsel for the High Court - of the two counsel, one adopted the arguments advanced for the petitioners and the other counsel did not argue at all. Had the petitioners raised pleas founded on the orders issued by the Hon"ble Chief Justice, complicated and delicate constitutional questions concerning the structural set up of the judicial branch vis-a-vis the Executive and the Province of power confided in them might have surfaced for resolution, but that not being so, could hardly be a circumstance outweighing the failure of the High Court to present on the judicial side its version of the legality of its own action in relation to the pleas raised by the petitioners.

41. Recording our high appreciation for the able assistance rendered to this Court by Sri S. Satyanarayana Prasad, learned counsel who advanced leading arguments on behalf of the petitioners, and Sri Surya Kiran Reddy, the learned Government Pleader, we close these cases.