
(1987) 12 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2216 of 1987

Padam Kumar Jain

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-12-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 232, 233, 234

Citation : (1988) 1 RLW 45 : (1988) 1 WLN 396

Hon'ble Judges : G.M. Lodha, Acting C.J.; P.C. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Shri Padam Kumar Jain. President, Rajasthan Judicial Service Association, addressed a letter to the Chief Justice of this Court on 4th September, 1987. This letter was directed to be registered as a writ petition and was listed before a division bench of this Court. The Division Bench by its order dated 8th September, 1987, issued a notice to the Chief Secretary to the Government of Rajasthan to show cause as to why the writ petition should not be admitted. After service the case was admitted vide order dated 6th November, 1987. Shri BL Sharma appeared for the petitioner and prayed that an ad interim stay order should be passed directing the respondent to allow selection scale and super-time scale to the RJS Officers analogous to the RAS Officers in the State of Rajasthan.

2. Shri S.B. Mathur appeared on behalf of the State and prayed for time to file reply and the case was listed for orders and hearing on 17th November, 1987. On 17th November, 1987, time was sought on behalf of the State and, this Court was informed that the Government is giving active consideration to the demand made in the writ petition. The case was adjourned to allow time to file reply and, ultimately, after filing the reply, the case was heard.

3. The main grievance raised in this writ petition by the petitioner is that

selection scale and super-time scale have been allowed to RAS, RAcS and RPS cadres of Rajasthan which has resulted in discrimination against RJS cadre who has not been given the benefit of selection grade or super-time scale. The treatment which has been given to the judiciary in comparison to the provincial executive wing in the State is the main grievance in this writ petition and is a cause of heart-burning.

4. The brief history of the different cadres of services in the State of Rajasthan would reveal that the position of Rajasthan Judicial Service (RJS) vis-a-vis the Officers of the Rajasthan Administrative Service (RAS), Rajasthan Police Service (RPS) was a bit better. While Assistant Collectors Magistrates, and Sub-Divisional Officers were in the scale of pay of 250-25-400-EB-25-500 Civil Judges and Munsifs were in the pay scale of 250-25-400-25-500. It may further be observed that there were three, pay scales for Judicial Officers, one which has already been stated above; another scale was 400-25-600 for Civil and Assistant Sessions Judges and third one was given to District & Sessions Judges. As against three scales available to the judicial officers there were only two pay scales for the Administrative Officers, one which has been referred to above and, another was 500-25-700, which was given to the Collector and Additional Collectors. This was the position in the year 1950 and had continued upto 1956. In 1954, the Rajasthan Administrative Services Rules and the Rajasthan Police Service Rules were framed. Under pay scale Rules of 1956, the ordinary Pay scale admissible to the Munsif & Civil Judge was 250-25-500-EB-25-750 and the pay scale admissible to the Rajasthan Administrative Service was 250-25-500-EB-25-750, which was termed as time-scale. There was a selection grade of 500-30-740-EB-30-800-50-1200. Thus, so far as the time-scale grade was concerned, it remained the same for RJS and RAS Officers. However, District & Sessions Judges, Civil Judges and Additional Sessions Judge were constituted into a separate cadre known as RHJS. A comparative statement showing the pay scales of officers of the Rajasthan Administrative Service and the Rajasthan Judicial Service since 1956 upto 1987 is given below:

Comparative Chart Showing the Pay Scales of RJS and RAS from 1956 & 1987

R.A.S.	R.J.S.	Year	Ordinary	Senior	Selection	Super-time	Ordinary	Senior
Scale	Scale	Scale	Scale	Scale	Scale	Scale	Scale	Scale
250-550-EB-750	-- --	250-750	-- --	-- --	(No. E.B)	1961	250-500-EB-750	--
500-800	--	250-750	--	Nil	-- (No. E.B.)	1966	285-800	--
Nil	--	1969	375-800	700-1200	1100-1500	--	375-800	700-1200(1/3)
Nil	--	1976	500-1000(2/3)	750-1350	1150-1650	1550-1900	--	750-1350
930-1500(1/3)	Nil	--	1250-1700(2/3)	1983	1000-1860	1500-2250	1920-2500	--
1000-1860	1600-2325	Nil	--	1987	1720-3350	2540-3900	2975-4700	--
3900-5300	1720-3350	2600-4150	Nil	Nil				

4. In the year 1969, under the Rules of Rajasthan Civil Services New Pay Scale Rules, 1969, the Rajasthan Administrative Service was to have three scales, one ordinary time scales; second senior scale and the third was selection grade. The

same pay scales and rules were made admissible to the Rajasthan Accounts Service. With respect to the Rajasthan Police Service, ordinary time scale and senior scales were kept at par with the Rajasthan Administrative Service and the Rajasthan Accounts Service. But, so far as the Rajasthan Judicial Service is concerned, the ordinary time scale was meant for the Munsif and was kept at par with the Rajasthan Administrative Service, the Rajasthan Police Service and the Raj. Accounts Service. The senior scale was given to the Civil Judges belonging to the Rajasthan Judicial Service. But whereas the senior scale was made available 100% to the Rajasthan Administrative Service the Rajasthan Accounts Service and the Raj. Police Service the senior scale was given only to 1/3rd of the Civil Judges and, they were designated as Senior Civil Judges. The selection grade was disallowed to the Rajasthan Judicial Service. Thus, in the year 1969, the first major deviation from the principle of the treating the Rajasthan Judicial Service, in the matter of pay scales at par with the Rajasthan Administrative, the Raj. Accounts Services and the Rajasthan Police Service, was made. It is contended by the petitioner that thus in the initial stage, the Rajasthan Judicial Service Officers were given better treatment than the officers of other services referred to above. In the year 1961, the judicial work which was discharged by the Executive Magistrates was completely taken away from them and the same was entrusted to the officers of the Raj Judicial Service. It may be mentioned here that work under the minor Acts only remained with the Executive Magistrates. In the year 1974, there was a complete separation of judiciary from executive and a new system of designation of posts came in under the new Code of Criminal Procedure, 1973. As a result of the New Code of Criminal Procedure 1973, posts of Chief Judicial Magistrate were created and, the administration of justice in the District was placed under the control of Chief Judicial Magistrate. It is further contended by the petitioner that the duties and the functions which were previously discharged by the District Magistrates as District Magistrates with respect to administration of criminal justice were entrusted exclusively to the Chief Judicial Magistrates. The office of the Chief Judicial Magistrate was from amongst the cadre of Civil Judges. At this time, some improvements were made in the RAS grade and other grades. For RAS Officers the grades were revised from Rs. 700-1200 to Rs. 1150-1650 and the grade of Chief Judicial Magistrate were revised to Rs. 1250-1750 under the New Pay Scale Rules of 1976. It is further contended that to the Civil Judges who were not Chief Judicial Magistrates, the scale allowed was Rs. 930-1500, whereas the revised grade of the Rajasthan Administrative Service was Rs. 1150-1650. The Rules of 1976 were replaced by the Rules of 1983. In the year 1983, the ordinary time-scale was revised both for RJS and RAS to Rs. 1000-1860. With respect to Civil Judges, whether they were Chief Judicial Magistrates or not, one pay scale was allowed which was Rs. 1600-2325, while the senior pay scale of RAS Officers was revised to Rs. 1500-2270 and the selection scale allowed to RAS Officers was revised to Rs. 1920-2500. The aforesaid rules of 1983 were further revised by the Rules of 1987.

5. Thus, it appears from the above that there are four pay scales in RAS RPS, RAS, R A/c S--Ordinary Scale (19) 1720-3050; Senior Scale (22) 25-Q-3900; Selection Scale (25) 2975-4700 and Super-time Scale (30) 3900-5300. On the other hand, Rajasthan Judicial Service has only two scales of pay, one Scale No. 19--1720-3350 and another Scale No. 23-2600-4150.

6. From the above narration of facts, it would be evident that the Rajasthan Administrative Service, the Raj. Police Service and the Rajasthan Accounts Service, which in the year 1950 were being treated lower than the RJS so far as pay scales were concerned, have been brought since 1969 to 1987 to a position which is higher and beneficial than the pay scales allowed to the Judicial Officers. From the above narration, it is also evident that the responsibilities of Judicial Officers have increased, but their pay scales have been reduced in comparison to the Rajasthan Administrative Service, the Rajasthan Police Service and the Rajasthan Accounts Service.

7. At this junction, we would like to state that, though Legislature, Executive and Judiciary are the three wings of our democracy and, it is the independent judiciary which ensures rule of law. It is on account of this reason that the judiciary is being treated with respect and faith in comparison to the Executive Officers, and this distinction is one of the essential features of our constitutional system of justice. We would like to refer to some of the comments which famous jurists, philosophers or the Judges have observed in respect of judiciary. The Law Commission, headed by Justice P.B. Gajendra-gadkar, in its Fifty-Fourth Report, observed as under:

53.4. In this connection we must first and foremost, refer to the question of adequate remuneration to the members of the judiciary which has been discussed more than once. It is obvious that ill paid the Judicial Officer cannot give their best.

53.5. What is more important is, poor remuneration for the Judicial Officers can never attract competent lawyers to join the judicial service. We confess that we are unable to decide how we should express our firm belief in this matter, in order to convince the Union Government and the State Governments that they are ill-serving judicial administration by refusing to recognise the patent truth that for the success of the judicial process, we must attract competent lawyers to join the judicial service, & that competent lawyers just will not be attracted to the judicial service unless the terms of their service are radically improved.

53.5A. We are fully conscious that the subject of the terms and conditions of service of the subordinate judiciary is a matter for the State Government to decide, but we would urge the Union Government to persuade the State Governments to take the necessary action without delay before the judicial process falls into complete disrepute by its inefficiency and unsatisfactory working. If the rule of law is to become and continue to be a reality in our national life, our courts must be manned by a competent and experienced and

fearless judges, it is in this context that we proceed to make our recommendations.

53.6(2). The remuneration at present payable to judges is grossly inadequate. The Law Commission has in its Fourteenth Report, made certain recommendations on this subject. If Judges are expected to work efficiently and honestly, they should be properly paid, having regard to their status and the nature of work done by them.

8. Mr. Soli, J. Sorabjee in a special issue of Illustrated Weekly of India, dated December 11, 1977 stated as follows:

It is implicit in the concept of independence that provision must be made for adequate remuneration of the judiciary... Unfortunately, despite strong public agitation the conditions of service of the Judiciary have remained substantially unchanged since the dawn of Independence. The service conditions of the subordinate judiciary are appalling. Many of them do not have the basic staff and amenities requisite for proper discharge of judicial work. Their main problem is of accommodation.

There is hardly any Section of society where salaries have practically remained stationary for the last 27 years, as in the case of the higher judiciary. Judicial independence can be undermined not only by political pressure but also by financial anxiety.

9. Sorabjee further observed in the same issue of Illustrated Weekly of India:

In an age when grandiose schemes and projects run into crores, the country will gladly pay and bear a small price for the preservation of an indispensable pillar of democracy.

Let us never forget that if justice must be cheap, Judges must be expensive.

10. It would not be out of place to quote Sir Winston Churchill as the Law Commission in its report has referred to a speech made by him as under:

The service rendered by Judges demands the highest qualities of learning, training and character. These qualities are not to be measured in terms of pounds, shillings and pence according to the quality of work done. A form of life and conduct far more severe and restricted than that of ordinary people is required from Judges and, though unwritten has been most strictly observed. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct. The Bench must be the dominant attraction to the legal profession, yet it rather hangs an the balance now, and heavily will our society pay if it can not command the finest characters and the best legal brains which we can produce; and heavily will our country pay in an epoch where our relative material power has diminished if we do not sustain these institutions for which we are renowned.

11. The Law Commission headed by Justice H.R. Khanna in the 77th Report given

in 1978 has observed as under:

It is mostly that the trial court judges rather than appellate judge that the members of the general public come in contact, whether as parties, as witnesses, the image of judiciary for the common man is projected by the trial court judges and this in turn depends upon the intellectual and moral and personal qualities.

12. Justice Beri in his report on the Rajasthan Pay Commission has observed as follows:

In so far as Rajasthan is concerned, the initial grade in both is identical, but as soon as the first promotion is reached by a member of the Rajasthan Administrative Service, the Judicial Service lags behind the Executive. I have also recommended the equalisation of the first step with the Provincial Civil Service, but the third scale I am unable to do so because that would create an irrational distance between the Additional District Judge and the Chief Judicial Magistrate. The pattern of the Judicial Service discourages me for equating the Rajasthan Judicial Service with the Rajasthan Administrative Service in the third scale.

13. In this report, comments received from the Raj. High Court were considered, where in it was suggested that keeping the facts in view that the RJS Officers Possess higher qualification, join service comparatively late than RAS and their duties are also no less onerous than those of the Administrative Officers, their pay scales should be at par with the RAS Officers at all levels.

14. B.L. Sharma, learned Counsel for the petitioner has placed reliance on H.L. Vijn v. Union of India 1984 (1) SLR 99. In this famous judgment, a Division Bench of the Delhi High Court observed that the Chief Justice is the Head of the judiciary in the State. When, therefore, he makes recommendation the inevitable presumption is that it has been made, with a full sense of responsibility and circumspection and after having weighed various public interests as well as financial aspect involved.

15. We have quoted these observations of the Delhi High Court to emphasise the view which the learned Chief Justice of this Court had while it had sent its comments to the Beri Commission vide letter dated 13-7-1979 in which it was suggested that keeping the facts in view that the RJS Officers possess higher qualification, join service comparatively late than the RAS Officers and their duties are also no less onerous than those of Administrative Officers, their pay scales should be at par with the RAS Officers at all levels.

16. In the writ petition, the petitioner has pointed out that the Officers recruited in the RAS, the RPS and the RA/cS would get Senior scale within 2 to 6 years" period, whereas the Officers recruited in RJS could get senior scale after 11 to 14 years. The Officers of RAS, RPS etc. could get the selection scale within 12-13 years, but the Officers belonging to the RJS cadre have not been promoted to the RHJS even after 14 years" service. The petitioner has further stated that in

18. The respondent has also submitted that the Rajasthan Judicial Service and the Rajasthan Administrative service along with the RPS and the Rajasthan Accounts Service constitute different State services having different job requirements and to meet out different administrative eventualities and are distinct class and, hence, Articles 14 and 16 are not attracted. The State has also taken the plea that the Beri Commission in the year 1981 denied the relief claimed by the petitioner in the writ petition. It is also the case of the State that since the pay scales have been revised twice - in 1969 and 1983 - on the recommendations of the pay commission headed by the Rajasthan High Court Judges after detailed scrutiny of all aspects as well as the memorandum submitted by the RAS, the RJS and the RPS associations. As such, no relief can be given in the writ petition.

19. Shri B.L. Sharma, learned Counsel for the petitioner, has submitted that in Punjab there are 5 grades for the judicial officers; one is Munsif, another Subordinate Judge and the rest are junior selection grade, senior selection grade and super time scale. In Haryana also there are: time scale, ordinary, senior time scale and selection grade. In Haryana rent free accommodation, at the level of CJM is provided. A large number of judicial officers are provided Government accommodation and special pay of Rs. 100/- is given. The same position is in existence in Himachal Pradesh, and Punjab. In Madhya Pradesh telephones have been provided to the CJM at residence. In Uttar Pradesh most of the judicial officers are provided with residential accommodation and in addition, robe and book allowance of Rs. 150/- per month is allowed to all judicial officers. Shri B.L. Sharma, learned Counsel for the petitioner, has submitted that the petitioners are entitled to the selection scale and super-time scale and, that it is a case of discrimination meted out by the State by denying the benefits of selection grade & super-time scale to the RJS officers in comparison to the RAS and the RPS cadre. His further submission is that when in the year 1950, the judicial service was treated a little higher than the RAS cadre there was no reason that stepmotherly treatment should be given to the RJS cadre by denying the selection grade and super-time scale.

20. Shri M.I Khan, learned Additional Advocate General vehemently submitted that this Court has no jurisdiction to grant relief to the petitioner in the matter of revision of pay scale.

21. Let us have a look at the conditions of service under which the RJS officers render their services.

22. The plight in terms of poor service conditions of the Munsifs which forms the RJS cadre in Rajasthan, has been aptly described by one of us in the following manner:

MUNSIF--A HAVE-NOT

BULLOCK CART DRIVER

Even with the advent of space-age, where science and technology have conquered "Moon and Stars" and crazy modernists are reserving space in space the Indian Judiciary, the most neglected, insignificant untouchable, unimportant segment of the society moves with bullock cart speed only. The proverbial driver of this bullock cart is a "Munsif" the lowest in the judicial ladder, also known as Judicial Magistrate." [Judiciary Fumes, Flames & Fire by Justice Guman Mal Lodha: Page 104].

23. The pathetic and pitiable conditions of the Munsif Magistrates, so far as it concerns the court building, has been described as under:

Inspiration by inspection

5. To start with, I must mention my recent, experience of inspection of Munsif Courts of Jhunjhunu District. The plight and pitiable conditions of living, not only of the judicial officers so far as their residences are concerned, but, the court-buildings and the low status of the presiding officers have compelled me to pen down this paper for the souvenir and put the caption of have nots. [Judiciary Fumes Flames & Fire: Page 105].

Eviction decree against Court

6. The court-building of Khetri Munsif is functioning under a decree of eviction from the landlord, which is said to be now in appeal. Any day, the Munsif who passes or refuses the prayer for eviction, is under constraints, strains, and stress and peril of being thrown out with bag and baggage, including eviction suit files and other cases, outside the court-room by a bailiff, to whom he commands eviction of others. [Judiciary Fumes Flames & Fire: Page 105].

Roof falling imminent

7. At Chirawa, the rent suit is pending against the court premises of the Munsif Magistrate. The roof of this small old relic of a Jagirdar's room is in hopeless dilapidated condition. The rent is Rs. 12/- per month. The landlord does not permit renovation of the roof and the building, for more than Rs. 12/- in a year which is not sufficient for paying to one construction worker for one day. To stand below its roof is not without risk to life. The poor Munsif who works throughout the day under that roof where accidents have already happened of falling of old plaster, is always under constraints, strains and stress of the danger of roof falling over his head any time. [Judiciary Fumes Flames & Fire: Page 106].

Apology for Court

8. Facing eviction proceedings on the one side, and danger of room collapse from above, how one can discharge judicial duty of serious nature in a dark, dim, outdated, outmoded obsolete, old dilapidated room with clumsy surroundings which cannot even be an apology for a court, is a billion dollar question. [Judiciary Fumes Flames & Fire: Page 106].

Financial Autonomy Heeded

10. Leaving aside courts at district places, most of the Munsif courts are functioning in rented premises from landlords as the State have not been able to provide the government buildings primarily on account of meagre financial resources and equally on account of apathy, indifference to the financial requirement of the judiciary. This can be remedied by "Financial Autonomy for Judiciary" and restoration of "Primacy of Chief Justice" only. So far as the housing accommodation to the presiding officers is concerned, almost eighty to ninety percent of the presiding officers constituting the cadre of Rajasthan Judicial Services are forced to stay in private houses on rent basis at the whims & caprice and mercy of the landlords. Some of the landlords prove to be most unscrupulous to exploit this tenant landlord relationship, and destroy the image of the judicial officers mostly without latter's knowledge or connivance. And yet the poor Munsif is dubbed as corrupt in such situations [Judiciary Fumes Flames & Fire: Page 106].

80% live in rented premises

11. A close comparison of the above statistics would show that the officers of the Administrative Services of almost equal rank, whether in the Rajasthan Administrative Service or the Raj. Police Service invariably get government accommodation for their residence. Eighty percent of the Rajasthan Judicial Service Officers are have-nots in this respect but equal percentage of the Rajasthan Administrative Service and the Rajasthan Police Service and other Allied Services are "haves". [Judiciary Fumes Flames & Fire: Page 107].

J.D. Vs. A.O.

12. It would thus be seen that even in competitive comparison of almost the same cadre in matters of residential facilities, the Judicial Officers are "have-nots" and the administrative officers are "haves" [Judiciary Fumes Flames & Fire: Page 107].

24. We are conscious of the fact that though Mr. Khan has tried to undermine the grave problem which the RJS cadre is facing by arguing that the RJS cadre has got the benefit of getting the RHJS cadre, but this myth is exposed when we find the meagre percentage of promotional avenues as highlighted by the Bed Commission at p. 240 and extracted in the above article-"Munsif-A have-not" in para 20, which is as under:

20. Promotional avenues for Munsif are too scanty and meagre as pointed by the Rajasthan Pay Commission headed by the former Chief Justice Shri BP. Beri.

11.3.13. The promotional avenues for Munsif to the post of Civil Judge is 4% and from Civil Judge to Chief Judicial Magistrate is 30%. [Judiciary Fumes Flames & Fire: Page 111].

25. The pitiable condition of the Munsifs was then described by one of us in the following manner:

With spates of adjournments taken by the parties, on one pretext or the other, he has to take cartload of files for "home-work" and then also to struggle hard for reaching targets." [Judiciary Fumes, Flames & Fire : Page 114].

26. Here, we may remind the importance of the RJS cadre, which is the lowest bedrock in the judiciary in the words of Mr. Justice Hanna (Irish Free State), who stated:

Sometimes the Judges of the highers courts think and I am bound to say, I though sometimes myself-that the restoration of law and order depended upon what the High Court Judges did in dealing with the heaviest classes of crime. But I have finally come to conclusion...that the real basis of establishment of law and order lies in the competency, honesty and fidelity of the lowest rank of judges. [Judiciary Fumes, Flames & Fire: Page 115].

27. Justice H.R. Khanna, in his report of 77th Law Commission also realised that importance when he observed:

If an evaluation were made of the importance of the role of the different functionaries who play their part in the administration of justice the top position would necessarily have to be assigned to the trial court Judge. He is the key man in our judicial system, the most important and influential participant in the dispensation of justice. It is mostly with the trial Judge that the members of the general public come in contact, whether as parties or as witnesses. The image of the judiciary for the common man is projected by the trial court Judges and this in turn depends upon their intellectual, moral and personal qualities. [Judiciary Fumes Flames & Fire: Page 116].

28. The role of trial Judge was also emphasized by Mr Justice K.K. Mathew and Mr Justice Madhusudan Rao when they observed:

The importance of the role of the trial Judge in our judicial system does not require over-emphasis. It is the trial Court, is the first resort for almost all seekers of justice and confidence of the common man in the system of judicial administration depends largely on the image produced by the trial Judges. The image that can be produced depends on the intellectual, normal and personal qualities of the Judge. In his speech delivered at the All India Law Seminar held at Cochin in the year 1979, Justice K. K. Mathew said, "an examination of the role of the trial Judge in the administration of justice should suggest at least few of the attributes of mind, heart and character that are essential to the task. To be authentic in his role, the trial Judge must be an usually honest man, a man of exceptional integrity financially, politically and socially. This is usually put first in discussion of qualification or even one unique to the judicial branch of public service. Only a good lawyer, a genuinely good one, is qualified for service on a substantial trial court." [Judiciary Fumes Flames & Fire: Page 117-118].

29. We have extracted above the relevant data and quotes of eminent jurists and our deductions to show that the cadre of the RJS is the most important in

judiciary and the statistical survey shows that 2/3rd of the subordinate judiciary's work is to be performed by the RJS cadre only.

30. We are not prepared to accept the contention of Mr. Khan that simply because the person belonging to RAS or RPS is sometimes required to do harder duties in the field like controlling the mobs or operations against anti-social elements or attending the VIPs. therefore, they deserve better pay scales and amentities. It should not be forgotten that the task of taking judicial decision in multi-farious fields and disputes which includes the worst and most difficult, is of serious mental hazard and becomes nerve breaking and this process is repeated dozens of time a day and sometimes hundreds of times. Thereafter, to adjudicate the matters, by marshalling the facts, regulating the court work, doing home work for judgments and study of the latest law which is spread over in lacs of books of law with varied fields from civil rights to criminal jurisprudence, is the most difficult exercise which the present Judicial Magistrate is required to do, everyday in each hour and sometimes each minute. In our opinion, though duties of RPS and RAS officers are many a times are equally difficult and hazardous, particularly when they are required to go in the field and take spot decisions which can result in serious consequences both to them and the public and the State, yet they do get equal time if not more than in administrative indoor works or even much less exerting duties to attend the superior officers and VIP on their visits or otherwise.

31. We do feel that considering the entire matter on a broad perspective, the duties of the RJS Officers are in no way less onerous than that of RPS and RAS. This fact is well proved even by the State admissions and the reports of various Commissions in matters of pay scales and further the historical events where the State itself opted for better pay-scales of the RJS than the RAS or the RPS at the time of initial formation of the State service We would not like to comment that the State financial secretariat is manned by administrative and accounts service personnel and the RJS are foreigners to them. We do not want to allege any motive in deliberate disregard of the RJS cadre or undermine it, because the policy decisions are taken mostly by politicians at very high level and not by ordinary cadre. Be that as it may we have got no hesitation in holding that even though they are in separate cadre, but they are in the same cadre of State service and Article 14 by and large substantially applies to them. We would like to mention that when the State Government had the only difficulty of not permitting them better pay scales in terms of super time or selection scales or increasing the existing pay scales on the ground that the other services, which are equally placed like RPS and RAS would agitate for the same, it does not lie now in the mouth of Mr. Khan representing the State to circumvent the above position of equality between the three cadres and argue that even though their problem has now been solved as the RAS has been given super-time and selection scales, yet they would deprive the RJS on a technical ground. The State Government should not forget that the social welfare State committed to the social justice should do its best to implement the social justice concept through

judiciary by decisions based on it and should not promote the feeling in that cadre of judiciary to grow that, while they are required to deliver and administer social justice, they are themselves victims of State's injustice. Such impression, if it grows, is bound to prove fatal to the efficiency dedication, impartiality of the cadre and that would retard their progressive capacity to deliver the speedy, substantial, social justice.

32. An important feature of historical importance is that the RAS rules were framed in 1954 whereas the Rajasthan Judicial Service Rules were framed in 1955. Under Rule 35 of the Judicial Service Rules, a person in the Rajasthan Administrative Service could be recruited by transfer in the Rajasthan Judicial Service and under Rule 36, qualifications were provided therefor. It was not every member of the RAS who could be recruited to Rajasthan Judicial Service. Only such members of the Rajasthan Administrative Service who hold the degree of Bachelor of Laws of the University of Rajasthan or of any other University established by law and recognised for the purpose by the Governor, or a Barrister of England or northern Ireland or a member of the faculty of Advocates in Scotland and must be a recruited RAS, by a competitive examination conducted by the Commission in accordance with the Rule 7A of the Rajasthan Administrative Service Rules, 1954, could be recruited into the RJS. It would thus be seen that for entry into the RJS a person to have qualifications better than those are meant for recruiting to the RAS. The Rajasthan Judicial Services thus as per the views of the rule making authority is a service which required more qualified better and superior persons than those required for recruitment to the RAS.

33. We may refer to the State Government's admission in the conference that the service conditions of the Judicial Officers require to be improved. The only constrain pointed out was the comparative benefits as available to the other Officers. In addition to it, the proverbial financial limitation was also mentioned, but it assured the Conference which was attended by the Prime Minister in addition to the Chief Justices, Chief Ministers and Law Ministers on 31st August, 1985 at Delhi that the State Government shall do its utmost in order to improve the service conditions of the Judicial Officers.

34. The reply of the State further shows that in 1983 on the basis of the recommendations of the Beri Pay Commission the pay scales of RAS and RJS were almost identical except that the RAS Selection Scale was given to the RAS Officers and the State has compared it with the grade of RHJS which according to us cannot be done because the RHJS is a Senior cadre to the R S and it is only when some vacancies are created or occur, when some of the RJS cadre personnel is promoted.

35. Obviously the Selection Scale and Super-time Scale to the RAS is not available to the RJS, where as the Selection Scale takes the RAS upto Rs. 4,700/- and, the super-time scale upto Rs. 5,300/-, the RJS Officer cannot go beyond Rs. 4150/- and thus there is a disparity of Rs. 1,150/-.

36. We may also point out that before us it was pointed out in the minutes of the proceedings of the Joint Conference held in August-September, 1985. Para 37 of the minutes shows that the Chief Minister of Rajasthan agreed with all the suggestions and indicated that the Pay Revision Commission presided by High Court Judge had been set up to go into the revision of pay scales and that the Commission would take into consideration all relevant factors. The Chief Minister further agreed that other suggestions would be implemented by obtaining financial assistance from 8th Financial Commission.

37. In Resolution No. 15, the State Government's following view was expressed:

Resolution No. 15

The detailed note as received from the Conference with regard to residence, car, age of retirement, pay-scales, court buildings, etc. can be seen at Annexure-12. The State Government is seriously considering this resolution for adopting it in Rajasthan but any decision taken by the Government may also result in raising of demand by other sister services. Therefore, the State Government cannot give clearance at this stage. The State Government further proposes that if the Indian Judicial Service is created, it shall solve most of the problems of the judiciary and for creation of that service, the State Government had also agreed earlier. We, therefore, reserve our decision in respect of salary and allowance, age of retirement, transport and residential accommodation. The financial implications as worked out by the Law Department in respect of these items are at Annexures 3 to 7

38. We have also been informed that in other States like Uttar Pradesh, residential accommodation is provided to most of the Judicial Officers and robe and book allowance of Rs. 150/- per month is given to all Judicial Officers and there is super time scale of pay. Generally we find that the staff cars are provided to the District Judges and upto Chief Judicial Magistrates and housing facilities available to almost all officers.

39. In Punjab the District Judges are provided with Office and Visitors rooms at the residence well furnished by the Government having one air conditioner and one sofa, carpet and other furnitures and the electric bill of this block is paid by the Office. The District Judges have got a car and the Amritsar District Judge has got three cars. Rent-free residence is provided to Additional Chief Judicial Magistrates also and the allotment of house is done by the District Judge. So is the case in Haryana and Himachal Pradesh. Chief Judicial Magistrates are provided with jeeps in Uttar Pradesh and residential accommodation is given to the lower judicial service also along with robe and book allowance. In Calcutta the Chief Metropolitan Magistrates and the Additional Chief Metropolitan Magistrates are provided with transport facilities. In Punjab special pay is given of Rs. 100/- to the Chief Judicial Magistrate and so also in Haryana and Himachal Pradesh.

40. We would not like to enter into the details of this comparative study but we

must mention that the Punjab, Haryana and Himachal Pradesh pattern deserves to be treated as an ideal for all Judicial Officers Pay Scales and amenities all over India and specially Rajasthan which is geographically attached to Haryana on the one side and Punjab on the other. The disparity in the Judicial Officers service conditions in adjoining Districts like Ganganagar with Hissar or Jaipur with Gurgaon or Alwar with Rewari, certainly creates very anomolous and difficult psychological problems resulting in discouragement, depravation and lack of initiative in Rajasthan.

41. Since in the ultimate decision, we are proposing to direct the Government to set up a Committee or Commission for implementing the final decision which we would decide to give, we would also like that apart from pay scales revision for supper time and selection grade, the Committee and Comission may further examine the other conditions of a Judicial Officer and in particular try to provide Government accommodation and transport in addition to other facilities like furnishing of the house or robe and library allowance or other allowances like special pay etc. mentioned above.

42. We have given our thoughtful consideration to the respective submissions made by the learned Counsel for the parties. We may make reference to Articles 232, 234 and 235 of the Constitution. Article 233 deals with the appointment, posting and promotion of the District Judges and Art 234 deals with the appointment of persons in judicial service other than District Judges. These appointment shall be made by the Governor of the State in accordance with the rules framed by him in consultation with the High Court and the Rajasthan Public Service Commission. Article 235 deals with the control over subordinate judiciary. But, Article 235 does not confer upon the High Court the power to make rules regarding conditions of service of the judicial officers attached to the district Court and the court subordinate thereto. Undoubtedly, the High Court has power under Article 235 to frame rules for regulating the manner in which control vested in it may be exercised as the power of control vested in the High Court by Article 235 is expressly made subject to law which may be enacted for regulating recruitment and service conditions of judicial officers of the State.

43. The smooth and speedy operation of the courts of law is essential for the progress of the country and the growth of its economic and industrial structure. The concept of judicial independence implies freedom from interference by the executive or the legislature in any manner, direct or indirect with exercise of judicial function. It is also implicit in the concept of independence that provision must be made for adequate remuneration of the judiciary. We may state here that inspite of strong public agitation & demand made by the judicial officers of Delhi, the conditions of service of the judicial officers remained substantially unchanged since the dawn of independence. The service conditions of the subordinate judiciary are appolling. There is no denial of the fact that many of them do not have the basic staff and amenities required for proper discharge of judicial work. It is generally sad that it is in the interest of the State itself that

those who discharge judicial functions should possess higher quality of learning and character. It is also said that the State is the biggest litigant all over India and needs such a judiciary more than at any other time. There cannot be any dispute about the proposition that unless quality and status of judiciary are commensurate with its responsibility, the spirit of the constitution will escape into emptiness. It should not be also forgotten that the real basis of establishment of law lies in the competency, honesty and finality of the lowest rank of Judges; and if an evaluation was made of the importance of the role of the different functionary who play their part in the administration of justice, the top position would necessarily have to be assigned to trial judge as he is the key man in our judicial system, the most important and influential participant in the dispensation of justice. The image of the judiciary for the common man is projected by the trial court Judges. Thus, the importance of the role of the trial Judge in our judicial system does not require over-emphasis. The law Commission of India which was presided over by Shri M.C. Setalvad in his report observed as follows:

In the matter of scales of pay and remuneration, the judiciary compares unfavourable with the executive branches of the Government. It is true that, generally speaking, the scales of pay of the judiciary officers and the corresponding executive officers are identical in many of the States. However, it has to be remembered that the executive officers are, by and large, recruited at a much younger age than the judicial officers. The entrant to the judicial service is required to be a graduate in law and in most of the States it is also necessary that he should have practised for a certain number of years at the Bar. On the other hand, for recruitment to the executive branches of Government service, a degree in arts or science is, generally speaking, sufficient. In the result, a person entering the judicial service does so when he is about twenty five, six or twenty seven years of age and at a time when his contemporaries who have entered the executive service of the Government have already acquired a certain seniority in the service and have come to draw a higher salary. It will thus be seen that a person joining the judicial service starts with a lower remuneration than what he would have received if he had entered the executive service a few years earlier.

44. The Commission further observed as follows:

An important factor which detracts from the attractiveness of the judicial service is the inferiority of the status of the judicial officer compared with that of the executive officer.

45. Before the Beri Commission, the demand of the officers of the Rajasthan Judicial Service was of absolute parity with the Rajasthan Administrative Service - in terms of senior and selection scales and also for providing promotional avenues on the same percentage as is available in the RAS. It was also argued before the Beri Commission that in Haryana and Punjab Judicial officers are equivalent to the provincial civil services in the matter of pay scales. Attention was also invited to the remarks of Mr. Justice Palekar that "Judicial Administration is an integrated function of the Judge & cannot suffer any dis-

as maintenance of high standards of rectitude in Judicial Administration is concerned." The observations of Justice R.S. Phatak were also quoted when he said, "We are all trustees in the administration of justice and we are morally entitled to hold office only so long as we serve and fulfil the essential purpose of the judicial system. Dedication and loyalty to that purpose, and no self-service interest, marks the true Judicial Officer. Let no one hold the illusion that he can employ the powers of his office for private gain or personal interest, for the accumulation of ill-gotten wealth, or the egoistical flaunting of judicial authority. If that is what constitutes the essential meaning of his office to him, let me say without hesitation that he has no place in the judiciary.

46. It was also argued before the Commission that more and more posts of Munsifs are being created and this is distorting the possibilities and prospects of promotion. The officers of the Rajasthan Judicial Service demanded washing allowance to be given to the officers. They also claimed library allowance and also conveyance allowance. Justice Beri in his report observed:

In so far as Rajasthan is concerned, the initial grade in both is identical, but as soon as the first promotion is reached by a member of the Rajasthan Administrative Service, the Judicial service lags behind the Executive.

47. However, the Commission, for the reasons recorded by it, recommended as above.

48. In *S.P. Gupta Vs. President of India and Others*, the Supreme Court, through Desai, J. observed as follows:

The legislative appropriation and executive control over finance cannot be permitted to castrate or cripple the Courts by refusing or reducing requisite grants and re-appropriations. To have the Courts under the fiscal thumb of the politician and the public servants is in direct violation of the spirit of the Constitution. The Courts are frequently called upon to pronounce on the acts of those who control public funds and must be kept free in such cases without fear of retaliation open or concealed. If independence and impartiality of the judiciary are to be maintained, it must possess and does possess powers over the purse. This power must be proclaimed and asserted in order to sustain the Constitution and the laws. To refuse to provide adequate funds to the Courts is to prevent them from discharging their constitutional responsibilities and therefore, it is an encroachment upon the exclusive area of the judiciary. To adopt a stance of confrontation or affront or inaction will destroy the system and eventually the legislature and the executive. It is, therefore, in their interest to concede rather wisely such a power to the Courts.

49. In view of what we have stated above, or quoted from the learned Jurists or from the observations of the Supreme Courts graver anxieties have been shown by them for improving the terms and conditions of service of the Judicial Officers. There is a clear voice echoed that the terms and conditions of the Judicial Officers be improved and at least they should be put at par with the

administrative services.

50. After observing the above, let us refer to the objections raised by Shri M.I. Khan, Additional Advocate General that no mandamus can be issued against the State as the two services, i.e. Administrative Service and Judicial Service are two different categories and Articles 14 & 16 are not attracted. In this regard, we would like to refer a judgment of this Court in S.K. Ghosh v. State of Rajasthan 1984 RLR 966, where in the Private Secretaries to Chief Justice & Judges of the High Court filed writ petitions for restoration of parity between them and Private Secretaries to the Commissioners and Secretaries to the Government in the matter of pay scale and status and, it was held, that a writ of mandamus can be issued. It would be pertinent to mention here that the State Government filed an appeal before a Division Bench of this Court, which approved the judgment of the learned Single Judge. Aggrieved by the judgment of the Division Bench of this Court, the State filed a SLP before the Supreme Court and the same was dismissed. In this view of the matter, the objections raised by the State does not survive.

51. At present, the pay scale of 1987 provides as under:

RAS RJS Ordinary Scale 1720-3350 1720-3350 Senior Scale 2540-3900
2600-4150 Selection Scale 2975-4700 Nil Super-time Scale 3900-5300 Nil

52. We may make it clear that we have considered only the Rajasthan Judicial Service and have not considered the Rajasthan Higher Judicial Service as that is a different service and as per the report of the Beri Commission, it is evident that the pay scales of District Judges were revised in 1955 to bring the scale on par with the IAS Senior scale. There is a mention of the decision of the Cabinet, wherein the cabinet accepted the principle that the grade and pay scale of District Judges will be on par with the senior IAS Scale.

53. Having regard to the facts mentioned above and for the reasons discussed at various places in this judgment we are of the opinion that in order to do justice to the Rajasthan Judicial Service Officers, the following categories of pay scales shall be allowed on almost identical basis on which these pay scales have been given to the Rajasthan Administrative Service Officers;

- (1) Ordinary scale
- (2) Senior scale
- (3) Selection scale
- (4) Super-time scale.

54. For giving effect to the pay scales in the above four categories, as stated above, and also percentage of promotional avenues vis-a-vis RAS Officers, a commission or committee may be appointed by the Government and, it is expected that an early steps would be taken by the Government in this regard.

55. The writ petition is allowed as indicated above, with no order as to costs.