

(2015) 08 GUJ CK 0027
In the Gujarat High Court

Case No : Special Civil Application Nos. 12527 and 18083 of 2013

Patel Tarunkumar Shankarlal and Others	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2015) 08 GUJ CK 0027

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : Asim J. Pandya, for the Appellant

Final Decision : Allowed

Judgement

J.B. Pardiwala, J—Since the issues involved in both the writ applications is more or less the same, those were heard analogously and are being disposed of by this common judgment and order.

2. Rule. Mr. Rohan Yagnik, the learned AGP, waives service of notice of rule for and on behalf of the respondent Nos. 1 and 2 and Mr. Rituraj Meena, the learned advocate, waives service of notice of rule for and on behalf of the respondent No. 3.

3. By these writ applications under Article 226 of the Constitution of India, the petitioners, serving as the work charge employees, have prayed for the following reliefs;

"(A) This Hon"ble Court may be pleased to issue appropriate writ, order or direction quashing and setting aside the impugned decision at Annexure-A, being discriminatory, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India;

(B) This Hon"ble Court may be pleased to issue an appropriate writ, order or direction directing that the petitioners are entitled to the benefits of Sixth Pay

Commission and be pleased to direct the respondents to give the benefits of the Sixth Pay Commission to the petitioners with interest at the rate of 10% per annum on the arrears.

(C) Pending admission, hearing and final disposal of the present petition, the respondents may be directed to give benefits of Sixth Pay Commission to the present petitioners from the next month i.e. September, 2013;

(D) Ad-interim relief in terms of prayer (c) above may kindly be granted in the interest of justice.

(E) This Hon"ble Court may be directed to grant such other and further relief and/or order in the interest of justice in favour of the petitioners."

4. The case of the petitioners may be summarized as under;

4.1 The petitioners seek to challenge the decision dated 10th May, 2013 of the respondent No. 2 being unjust, discriminatory, illegal and violative of the Articles 14, 16 and 21 of the Constitution of India. The proposal forwarded by the respondent No. 3 for extending the benefits of the 6th Pay Commission to the petitioners herein has been rejected by the Finance Department of the State Government.

4.2 The petitioners were appointed between 1989 and 1994 under the different divisions or sub-divisions of the respondent No. 3 as the work charge employees after following the regular recruitment procedure. It is their case that their appointments were not, at all, illegal or to put in different words, by way of the back door entries. It is the case of the petitioners that they were given the benefits of the 5th Pay Commission by virtue of the Government Resolution dated 30th March, 1998.

4.3 It is their case that all the work charge employees appointed prior to 31st March, 1989 by the respondent No. 3 were given the benefits of the 6th Pay Commission.

4.4 it is their case that even 22 work charge employees appointed after 31st March, 1989 on the compassionate ground were given the benefits of the 6th Pay Commission.

4.5 So far as other statutory boards and departments of the respondents are concerned, there also, the work charge employees have been given the benefits of the 6th Pay Commission. By the Government Resolution dated 20th March, 2011, the Gujarat Maritime Board also extended the benefits of the 6th Pay Commission to its work charge employees

4.6 It is their case that the Gujarat Maritime Board had not classified its work charge employees in two categories, i.e., (i) work charge employees appointed prior to 31st March, 1989 and (ii) the work charge employees appointed after 31st March, 1989. In short, the Gujarat Maritime Board uniformly extended the benefits of the 6th Pay Commission to all its work charge employees irrespective

of their dates of appointments.

4.7 It is the case of the petitioners that there is no rational or logic behind not extending the benefits of the 6th Pay Commission to the petitioners. It is the case of the petitioners that the Government could not have relied upon its resolution dated 31st March, 1989 for declining the benefits of the 6th Pay Commission. According to the petitioners, the Government Resolution dated 31st March, 1989, Annexure-K to this petition has no application worth the name.

4.8 According to the petitioners, the circular dated 31st March, 1989 provides that the daily wagers should not be taken on the work charge establishment as there were no provisions in the earlier resolutions of the State Government permitting such a course of action. It further provides that after the date of the circular, no daily wager should be taken on the work charge establishment and any violation in that regard would entail with the departmental action.

4.9 It is the case of the petitioners that they were not daily wagers appointed prior to 31st March, 1989 and absorbed thereafter on the work charge establishment. It is their case that they were directly appointed as the work charge employees after following the regular recruitment procedure, i.e., by calling the names from the employment exchange and consideration of the eligibility criteria prescribed by the Government.

4.10 It is the case of the petitioners that no such objections were raised by the State Government when the benefits of the 5th Pay Commission were extended pursuant to the Resolution dated 1998. Such a stance of the State Government after a period of 20 years of service could be termed as arbitrary and unreasonable.

5. Mr. Asim J. Pandya, the learned advocate appearing for the petitioners, vehemently submitted that the impugned decision is ex-facie, discriminatory and violative of the Articles, 14, 16 and 21 of the Constitution of India. He submitted that the decision not to give the benefits of the 6th Pay Commission to the petitioners and extending the same to the 22 work charge employees appointed on the compassionate grounds is without any rational or any nexus with the object to be achieved.

5.1 Mr. Pandya submitted that the cut of date, i.e., 31st March, 1989 prescribed by the Government is arbitrary and unjust.

5.2 He, therefore, prays that an appropriate writ be issued directing the State Government to extend the benefits of the Sixth Pay Commission in favour of his clients.

6. This writ application has been vehemently opposed by Mr. Yagnik, the learned AGP appearing for the State. He submitted that the petitioners herein are not entitled to the grant of the benefits 6th Pay Commission recommendations. He strongly relied on the circular issued by the State Government dated 31st March, 1989 Annexure-K to this petition which provides that no daily wager should be

absorbed in the work charge establishment. It is his case that the petitioners were appointed contrary to such circular.

7. He has placed reliance on the affidavit-in-reply filed by the Undersecretary making the following averments;

"7. I say that the petitioners herein are appointed as work charge employees with the respondent No. 3 board if 31.03.1989. I say that the R & B Department by circular dated 31.03.1989 restricting the conversion from daily wager to work charge. I say that the petitioner herein were appointed by the then Executive Engineers. However, the powers of appointing work charge employees were taken away by the Government from the Executive Engineers vide resolution dated 03.02.1987. I say that as per the said resolution the powers withdrawn upon the Executive Engineers were taken away by the Government and therefore the appointment of present petitioner were breach the rules and therefore the appointment of petitioner were illegal is annexed herewith and marked as Annexure-R-I.

8. I say that as per the instructions issued under the Road & Building Department, Government Circular dated 31.03.1989, no daily wagers are to be appointed on the work-charged establishment after 31.03.1989. I say that as per the instructions issued under the Roads & Building Department, Government Circular dated 3.2.1987 the powers delegated to the Executive Engineer and the Superintend Engineers were withdrawn and no persons were to be recruited on the work-charged establishment thereafter. I say that the petitioners are not entitled for the benefits of the 6th Pay Commission in accordance with the Government Policy in this regard."

8. An additional affidavit-in-reply has been filed by the Undersecretary, inter alia, stating as under;

"2. I respectfully say and submit that the petitioners are the employees of Gujarat Water Supply and Sewerage Board i.e. respondent No. 3 herein after referred to as the board. I further say that the said board does not have their own rules for the pay scale, therefore, the State Government rules are adopted and applied to the employees of the said board. Therefore, it is the subject matter and prerogative of the State Government to grant the benefits of the pay scale to the employees of the board.

3. I respectfully say and submit that the respondent No. 2 i.e., the Narmada Water Resources Water Supply and Kalpasar Department is the name of department under which there are different sub departments and various boards. I further say that what is stated in para No. 3 (VI) that the 1500 work charge employee who have been given benefits of 6th pay commission are from water resources department. I further say that on the said basis only, this Hon"ble Court has issued notice. I further say that the said G.R. dtd. 18/5/12 is not applicable to the Gujarat Water Supply and Sewerage Board.

4. I respectfully say and submit that the different departments of respondent No. 2 are independent and different from each other for their functioning. Some of the departments/boards have their own rules and some of the departments are adopting the rules of the State Government. I further say that the reliance placed by the petitioner of the different GR in the memo of the petition are of different boards and same are not applicable to the case of the petitioners. Therefore, the said Government Resolutions are independent and not binding upon the case of the petitioners.

5. I respectfully say and submit that within the Narmada Water Resources Water Supply and Kalpasar Department, there are different boards and departments wherein different authorities are appointed which are not only independent but their functioning is without binding to other boards and departments.

6. I respectfully say and submit that in the above facts and circumstances and more particularly when the Government Resolutions of other boards and departments are not applicable to the case of the present petitioners and more particularly when the original appointment of all the petitioners are irregular, no benefits of any nature can be granted or provided to the petitioners as sought in the present petition. It is submitted that looking to the above facts and circumstances of the case, the present petition is required to be dismissed with costs."

9. He has also placed reliance on the affidavit-in-reply dated 29th November, 2014, duly affirmed by the undersecretary. The averments made in the said affidavit-in-reply are as under;

"3. It is submitted in the present case, the appointment of the petitioners were not regular and though the powers were not with the Executive Engineer-Superintendent Engineer, he Executive Engineer has without any powers appointed the petitioner on the work charge establishment, though they were not authorized to do so and therefore, when the appointment of the petitioners were irregular, no benefits as prayed for, by the petitioners can be granted to the petitioners. Further, it is also the say of the petitioner that the proposal was sent on 13.07.2012, is already been rejected by the Government and it has been rejected twice and therefore, the claim of the petitioner is stale, which was already earlier rejected by the Government on 26.04.2013 and lastly also on 12/8/13 upon the representation dated 17/6/13 given by one Shri Tarun Patel and it has been rejected by the Government on the ground that the appointment of the petitioner is irregular. The respondent authority seeks leave of this Hon"ble Court to produce the original file for kind perusal of this Court and when directed by the Hon"ble Court. Therefore, they cannot be given the benefit of the 6th pay commission. It is required to be noted that though the claim is already been rejected earlier two times, the board was sending the proposal. It is also not permissible and therefore, the stale claim cannot be considered and the authorities are also not required to consider same as the appointment is irregular. Even the Hon"ble Supreme Court in the case of Secretary, State of

Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , have observed that the persons who are appointed irregularly, cannot be given the benefits of regularly appointed employees. It is also observed that it is a matter of the public appointment and all the similar situated persons are required to be given the opportunity of and in the public employment, no pick and choose policy can be applied and it can be only done after following all the procedure as observed by the Hon"ble Supreme Court in the Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, (1996) 8 AD 174 : (1997) 75 FLR 353 : (1996) 9 JT 638 : (1997) 1 LLJ 56 : (1996) 6 SCALE 676 : (1996) 6 SCC 216 : (1996) 5 SCR 73 Supp . The Hon"ble Supreme Court has categorically stated that in the matter of the public employment, the vacancies are required to be published in the newspaper as well as Television, radio and it should be through the wide publication. In the present case, the petitioners were called from the employment exchange and at that time the Executive Engineers and Superintendent Engineers have no powers to appoint present petitioners on work charge establishment as per resolution dated 03.02.1987.

4. It is submitted that the petitioners were not likely to be appointed on the post after resolution of 1987 and there was no question of giving them appointment but on the contrary, the Executive Engineer has without appreciating the resolution of the State Government and de-hors the Rules, given the appointment to the present petitioners.

5. It is submitted that the petitioners have relied upon the cases of some other persons i.e., Hansaben D. Parmar and to the fact and circumstances of the present case, the case cannot be applicable to the petitioners as it is a matter of compassionate appointment and State Government has sanctioned all the benefits and therefore, the said case cannot be equated with the present case.

6. It is further submitted that the petitioner is also claiming that the cut off date of 31.03.1989 is irrational but the petitioners have not challenged the resolution of the State Government Dated 3/2/87 till date and therefore, also the present petition is not maintainable and required to be dismissed with cost.

7. It is not true that the said circular issued by the R & B Department State of Gujarat is not applicable to the petitioners. It is further submitted that the present petitioners are not daily wagers and the circular also does not say the daily wagers but it say no work charge can be appointed after 3/2/87 and therefore, the petitioners are mixing up the issue. In no case, the State Government has sanctioned such irregular appointment and have extended the benefits of the 6th pay commission and therefore, the say of the petitioner is not correct that the State Government has extended the benefits of the 6th pay commission to the similar situated persons. The petitioners are wrongly interpreting the resolution of 31.03.1989 and trying to take the benefit of the

same. It is submitted that the resolution dated 31/3/89 shall not be applicable to the facts and circumstances of the present case as the petitioners are appointed as Work charge establishment and the resolution dated 31/3/89 is with respect to the conversion of daily wagers to work charge employees. It is also submitted that the appointment of the petitioners is irregular and illegal and the case of the persons who are appointed on the compassionate ground cannot be equated with the present petitioners. It is also pertinent to note that it is the case of the petitioners that the resolution of 31.03.1989 is violative of Articles 14, 16 and 21 of the Constitution of India but the true fact is that the resolution dated 31/3/89 is legal, proper and valid and not applicable to the petitioner and no legal rights of the petitioners are infringed and when the petitioners' appointment is not legal, no question of claiming legal benefits would arise. The petitioners have not challenged the resolution dated 31.03.1989 and the resolution dated 3/2/87 within stipulated time and after a period of 23 years without challenging said resolutions, the petitioners are claiming the benefits of the 6th pay commission. It is also submitted that when the said issue has come to the knowledge of the respondent authority, the benefits of the 6th pay commission were stopped. It is also denied that the resolution dated 31.03.1989, is without application of mind and violating the fundamental rights of the persons.

8. The petitioners have also relied upon the judgment passed by the Hon'ble Apex Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 but to the fact and circumstances of the present case when the resolution of the state government are not the subject matter of challenge, the said judgment given by the Hon'ble Apex Court will not be applicable."

10. Mr. Yagnik submitted that in view of the aforesaid stance of the State Government, the petition deserves to be rejected.

11. On behalf of the respondent No. 3, an affidavit-in-reply has been filed, inter alia, stating as under;

"5. It is submitted that the petitioners herein were appointed by the present answering respondent Board on Work Charged Establishment. It is further submitted that on 27/2/2009, the state government had passed a resolution by which the benefits of 6th Pay Commission was to be given to only those people who have been given the benefits of 5th Pay Commission by approval of Finance Department. A copy of the resolution dated 27/2/2009 is annexed with the reply and marked as Annexure-R1.

6. It is submitted that subsequently, the present answering respondent Board vide letter dated 19/3/2010 had given the information with respect to the number of employees who have been given the benefits of 5th Pay Commission. A copy of the letter informing respondent No. 2 about the number of employees who have been given benefits of 5th Pay Commission is annexed with this reply

and marked as Annexure "R2".

7. It is submitted that once again vide letter dated 7/6/2010, a proposal was sent to respondent No. 2 in which, details of workers working under Work Charged Establishment was given along with request to give them the benefits of 6th Pay Commission. A copy of the letter dated 7/6/2010 requesting respondent No. 2 to give the benefits of 6th Pay Commission to the workers working under Work Charged Establishment is annexed with this reply and marked as Annexure R3.

8. It is submitted that subsequently, respondent No. 2 was pleased to give the benefits of 6th Pay Commission to 811 Work Charged Employees vide order dated 15/4/2011. The copy of the order dated 15/4/2011 giving benefits of 6th Pay Commission to 811 Work Charged Employees is annexed with this reply and marked as Annexure R4.

9. It is submitted that subsequently, another set of 29 employees working under Work Charged Establishment was given the benefits of 6th Pay Commission. A copy of the order dated 8/7/2011 giving benefits of 6th Pay Commission to 29 workers working under Work Charged Establishment is annexed with the reply and marked as Annexure R5.

10. It is submitted that the present answering respondent Board by way of letter dated 10/8/2011 requested respondent No. 2 to give benefits of 6th Pay Commission to another set of 66 Work Charged Employees who were left out. The copy of the letter dated 10/8/2011 requesting respondent No. 2 to give the benefits of 6th Pay Commission to 66 Work Charged Employees who were left out is annexed with this reply and marked as Annexure R6.

11. It is submitted that subsequently vide order dated 19/6/2012, the Respondent No. 2 was pleased to give benefits of 6th Pay Commission to a group of 22 Work Charged Establishment Employees. A copy of the order dated 19/6/2012 is annexed with this reply and marked as Annexure R7.

12. It is submitted that vide letter dated 13/7/2012, the present answering respondent board, had issued another letter to respondent No. 2 to consider the case of the petitioners herein so that they could get benefit of 6th Pay Commission. A copy of the letter dated 13/7/2012 is annexed with the reply and marked as Annexure R8.

13. It is submitted that vide order dated 10/5/2013, the request letter issued by the present answering board was rejected by the respondent No. 2. The copy of the same is already annexed with this petition and marked as Annexure A.

14. It is in light of the aforesaid facts, that the present answering respondent board now deals with the contentions of petitioner para wise:-

(a) With respect to paragraph 1, it is submitted that the present answering board herein vide its letter dated 13/7/2012 had requested respondent No. 2 to give

the benefits of 6th Pay Commission to 44 Work Charged Employees who were appointed after 31/3/1989. It is further submitted that as per the circular dated 27/2/2009 if at all any benefit are to be given to the petitioners for 6th Pay Commission, an approval of Finance Department is mandatory for the present answering board.

(b) With respect to No. 3.1, it is submitted that the executive engineer's were empowered to make the appointments of petitioners and accordingly, a list was called from employment exchange and out of that list, the petitioners were appointed as work charged employees.

(c) With respect to paragraph 3.2, it is submitted that each petitioner has a separate case altogether and hence, an affidavit made by few of the petitioners for each of the respondent would not be tenable under law. Under such circumstances, the present answering respondent board prays that the petitioner be directed to file separate petitions for each of the petitioner.

12. Prima facie, it appears from the stance of the respondent No. 3 board that the petitioners should be granted the benefits of the recommendations of the 6th Pay Commission.

13. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the petitioners are entitled to the benefits of the 6th Pay Commission.

14. It appears from the materials on record that the respondent No. 3-Board strongly recommended the grant of the benefits of the 6th Pay Commission recommendations in favour of the petitioners. Many proposals in that regard were forwarded to the State Government.

15. One such proposal dated 13th July, 2012, Annexure-B to this petition makes the picture very clear. The free English translation of the proposal is as under;

"Gujarat Water Supply and Sewerage Board (Govt. of Gujarat Undertaking) Gandhinagar.

Letter No. Estt. Bt. 1/EC.2/2012/5725

Date: 13.7.2012

To, Under Secretary, Narmada, Water Resources Water Supply and Kalpasar Department, Sachivalaya, Gandhinagar.

Subject: Regarding extension of the benefits of 6th Pay Commission to 44 Work Charge Employees of the Gujarat Water Supply and Sewerage Board appointed after 31.3.89 by direct recruitment.

Reference:

1). Board's letter dated 10.8.2011 bearing No. Esst.Br. 1/EC-2/2011/5494.

2). Department's resolution dated 19.6.2012 bearing No. ESTT/102009/1372/KH.

Sir,

In the above subject, this is to be submitted that the proposal was made for extending benefit of 6th Pay Commission to total 66 WC Employees recruited after 31.9.89 pursuant to which, vide resolution of the department at reference No. 2, approval has been granted for extending the benefits of 6th Pay Commission to total 22 successor WC employees.

After 31.3.09, on the sanctioned work charge establishment posts in different group water supply schemes under the board for the works of maintenance and repairs, recruitments are made by the regional offices of the Board. Taking into consideration the position of scarcity, water shortage and aspects of supply of water to the remote villages of the State, in view of day of rise in the work of the board, group water supply schemes of the board, water supply schemes running with the aid of the Central Government, action plan, scarcity program and thus, for keeping different programs and such schemes, the posts approved for such schemes are filled in by regional offices of the board through the employment exchange of the concerned district in respective cadres are appointed according to the recruitment rules in respective cadres by direct recruitment. Copies of the appointment orders in that regard are enclosed herewith.

It is stated in the circular of the Roads and Building Department dated 31.3.89 bearing No. DRE/2189/(39) G-2 that vide resolution of the R & B Department dated 17.10.1988, orders have been issued as regards the services of the rojamdars and wages. In these orders, there is no any provision for engaging the rojamdars on the establishment by way of work charge. Therefore, rojamdars have not to be made the work charge. In view of the said instruction of the Government, the rojamdars under the Board have not been taken on the work charge.

The employee of work charge establishment recruited under the board after 31.3.89 have been given the benefits of 5th Pay Commission vide letter of the department dated 29.8.88 bearing No. ESTT/1098/1233/KH (Annexure-1) and as per the provisions of the resolution of the finance department dated 24.8.2007, benefits of merger of 50 per cent of the amount of dearness allowance in the basic salary with effect from 1.4.2004 has been given to the said employees. Statement (Annexure) showing caderwise information regarding extension of benefits of 6th Pay Commission to such total 44 employees of total such 7 cadres is annexed (Annexure-4), Pay Scale of such cadres as mentioned in Annexure-4 has been approved under the 5th Pay Commission.

Further information of work charge establishment (Column 17) in prescribed form is annexed herewith (Annexure-5). And serialwise copies of appointment orders of the said employees are enclosed herewith.

Considering the aforesaid details, it is recommended for granting permission to

extend benefit of 6th Pay Commission to total 44 work charge employees appointed by direct recruitment after 31.3.89 since the recruitment of the said employees has been made on the posts sanctioned in the respective schemes through the employment exchange."

16. I fail to understand that after having extended the benefits of the 5th Pay Commission recommendation w.e.f. 1998, how would it lie in the mouth of the State Government to say that the petitioners herein were not appointed after following the regular recruitment process. I fail to understand the basis on which the circular of 31st March, 1989 is being relied upon.

17. The following facts are not in dispute.

"(i) All the petitioners are regularly appointed work charge employees and they are not back-door entrants in the work charge establishment.

(ii) All the petitioners were given the benefits of Fifth Pay Commission without any objection raised by the respondents.

(iii) The work charge employees appointed prior to 31.3.1989 have already been given the benefits of Sixth Pay Commission by the respondents.

(iv) Even 22 work charge employees that were appointed on compassionate ground after 31.3.1989 and are absolutely similarly situated, have been given the benefits of Sixth Pay Commission by the respondents.

(v) The Gujarat Matirime Board, which is also an autonomous Corporation/Board like respondent No. 3, has given the benefits of Sixth Pay Commission to all his work charge employees without making any classification of the employees as the employees appointed prior to 31.3.1989 and the employees appointed after 31.3.1989.

(vi) 1500 work charge employees of the respondent No. 2 have also been given the benefits of Sixth Pay Commission without raising any objection by the Finance Department of the State of Gujarat.

(vii) A circular dated 31.3.1989 simply forbids taking Daily Wagers on the work charge establishment and it does not prohibit the appointment of work charge employees directly after following regular recruitment procedure."

18. The Board has also made itself very clear that the petitioners were appointed as the work charge employees by way of direct recruitment and such recruitment was made on the posts sanctioned in the respective schemes through the employment exchange. If that be so, then where is the question of applying the circular dated 31.3.1989.

19. To put in other words, at any cost, the Government wants to deprive the petitioners from their legitimate claim of the benefits of the 6th Pay Commission recommendations. I do not see any reason other than the financial constraints. It may not have been said so in so many words but it is only the financial

implications which seems to be pinching the wallet of the State Government. It was sought to be argued before me on behalf of the State Government that this Court should consider the matter from different angles applying the practical experience and factual contexts before arriving at any decision. To put in other words, the State Government wants the Court to take a pragmatic approach in this type of matters. I am unable to record my concurrence there too. Pragmatic does not necessarily be deprivation of the legitimate claims of the weaker sections of the society. The submissions, if I may say with respect, is totally misplaced and does not warrant any further discussion thereon.

20. I may quote with profit the observations made by the Supreme Court in the case of Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S. Uppal and Others, AIR 2008 SC 2152 : (2008) 106 CLT 448 : (2008) 118 FLR 656 : (2008) 6 JT 108 : (2008) 7 SCALE 44 : (2008) 7 SCC 375 : (2008) 2 SCC(L&S) 562 : (2008) AIRSCW 3388 . I may quote the observations made in paras 33 and 34 as under;

"33. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in M.M.R. Khan and others etc. Vs. Union of India and others, etc., AIR 1990 SC 937 : (1991) 61 FLR 271 : (1990) 3 JT 1 : (1990) 1 SCALE 324 : (1990) 1 SCC 191 Supp : (1990) SCC 191 Supp : (1990) 1 SCR 687 and Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, AIR 2000 SC 1508 : (2000) 2 CTC 506 : (2000) 85 FLR 672 : (2000) 4 JT 503 : (2000) 1 LLJ 1618 : (2000) 3 SCALE 255 : (2000) 4 SCC 245 : (2000) SCC(L&S) 471 : (2000) 2 SCR 1212 : (2000) AIRSCW 1475 : (2000) 3 Supreme 344 . However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events, discussed above, clearly shows that the employees of the Corporation have been treated at par with those in Government at the time of revision of scales of pay on every occasion.

34. It is an admitted position that the scales of pay were initially revised w.e.f. April 1, 1979 and thereafter on January 1, 1986. On both these occasions, the pay scales of the employees of the Corporation were treated and equated at par with those in Government. It is thus an established fact that both were similarly situated. Thereafter, nothing appears to have happened which may justify the differential treatment. Thus, the Corporation cannot put forth financial loss as a

ground only with regard to a limited category of employees. It cannot be said that the Corporation is financially sound insofar granting of revised pay scales to other employees, but finds financial constraints only when it comes to dealing with the respondents, who are similarly placed in the same category. Having regard to the well reasoned judgment of the Division Bench upholding the judgment and order of the learned Single Judge, we are of the view that the impugned judgment warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us.

21. I may also quote with profit the observations made by the Supreme Court in the case of All India Judges" Association and Others Vs. Union of India and Others, AIR 1993 SC 2493 : (1993) 4 JT 618 : (1993) LabIC 2321 : (1993) 2 LLJ 776 : (1993) 1 SCALE 26 : (1993) 4 SCC 288 : (1993) 1 SCR 749 Supp : (1994) WritLR 110 .

"The contention with regard to the financial burden likely to be imposed by the directions in question is equally misconceived. Firstly, the Courts do from time to time hand down decisions which have financial implications and the Government is obligated to loosen its purse recurrently pursuant to such decisions. Secondly, when the duties are obligatory, no grievance can be heard that they cast financial burden. Thirdly, compared to the other plan and non-plan expenditure, we find that the financial burden caused on account of the said directions is negligible. We should have thought that such plea was not raised to resist the discharge of the mandatory duties. The contention that the resources of all the States are not uniform has also to be rejected for the same reasons. The directions prescribe, the minimum necessary service conditions and facilities for the proper administration of justice. We believe that the quality of justice administered and the calibre of the persons appointed to administer it are not of different grades in different States. Such contentions are ill-suited to the issues involved in the present case."

22. Thus, I am convinced with the case made out by the petitioners for the grant of the reliefs prayed for in these writ applications.

23. For the foregoing reasons, both the petitions succeed and are, accordingly, allowed. The respondent Nos. 1 and 2 are directed to extend the benefits of the recommendations of the 6th Pay Commission with its effective date. The State Government is directed to undertake this exercise within a period of two weeks from the date of the receipt of the writ of the order. The arrears towards the pay scale according to the 6th Pay Commission recommendations shall be worked out and the necessary payment shall be made to the petitioners latest by the end of November, 2015. The Government shall start paying the salary from next month onwards in accordance with the 6th Pay Commission recommendations. The prayer for grant of the arrears with interest is declined. Rule is made absolute to the aforesaid extent.

After the order is pronounced, Mr. Yagnik, the learned AGP appearing for the

State-respondents prays for stay of the operation of the order pronounced today.
In view of what has been stated above, the request is declined.