

(2014) 02 MAD CK 0175

In the Madras High Court

Case No : W.A. No's. 504, 505, 514 to 516, 803, 810, 811, 814, 815, 947, 1733, 2166 of 2012, 2335 and 2336 of 2013, W.P. No's. 13580 of 2011, 7155 of 2012, 10479, 13913, 13914, 14087, 14163, 18857 to 18859, 20512 to 20514, 20691, 21525 to 21527, 21606, 22202, 222

R. Thiagarajan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Constitution of India, 1950 — Article 21 226 300A

Citation : (2014) LabIC 2691 : (2014) 2 LW 437

Hon'ble Judges : P. Devadass, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : A.R.L. Sundaresan, 504, 505, 947 of 2012 and Petitioners in W.P. Nos. 22202, 23395, 27010 of 2013 for Mr. M.A. Gouthaman, Mr. R. Muthukumaraswamy, 1733 and 2166 of 2012 for Mr. A. Jenasenani, Mr. A. Thyagarajan, for Mr. R. Rajaramani in W.P. Nos. 22422, 22423, 23268, 23366, 13913, 13914, 14087, 14163, 23367, 23570, 24671, 24707, 25859, 26358, 27713, 29738, Mr. N. Subramanian, in W.A. Nos. 514 to 516, 803, 810, 811, 814, 815 of 2012 and Petitioners in W.P. Nos. 18857 to 18859, 20512 to 20514, 21525 to 21527, 23225 to 23228, 23485, 25090 of 2013, Mr. N.G.R. Prasad for Mr. S. Ayyadurai in W.P. Nos. 22264 to 22268, 22558 to 22567, 22568 to 22577, 25105 to 25107, 25120, 25584 to 25594, 26044 to 26046 of 2013, Mr. S. Vadivelu in W.P. Nos. 13580 of 2011, 27417 and 32332 of 2013, Mr. N.S. Nandakumar in W.P. Nos. 23276, 24635, 25251, 26345, 27418 of 2013, Mr. V. Suthakar in W.P. Nos. 21606, 22332 and 23160 of 2013, Mr. S.M. Subramaniam in W.P. Nos. 23342, 27476, 30360 of 2013 and 7155 of 2012, Mr. N. Muthappan in W.A. Nos. 2335 and 2336 of 2013 and Petitioners in W.P. Nos. 20691, 22378, 22379, 23242 and 28029 of 2013, Mrs. G. Sridevi in W.P. Nos. 22471 of 2013 and 1763 of 2014, Mr. U. Karunakaran in W.P. Nos. 24232 and 24243 of 2013, Mr. S. Rajendiran in W.P. No. 24228 of 2013, Mr. Pitty in Parthasarathy W.P. Nos. 22203 to 22205 of 2013, Mr. A. Sirajudeen in W.P. No. 10479 of 2013, Mr. A. Edwin Prabakar in W.P. Nos. 23486 to 23488, 24979 to 24981 of 2013, Mr. K. Vijayraj in W.P. No. 23623 of 2013, Mr. S.R. Rajagopal in W.P. No. 23675 of 2013, Mr. S. Namasivayam in W.P. No. 23703 of 2013, Mr. V. Raghupathi in W.P. Nos. 24324 to 24337 of 2013, Mr. C.T. Mohan in W.P. No. 25789 of 2013, Mr. P. Rajendran in W.P. No. 26153 of 2013, Mr. R. Singaravelan in W.P. No. 26420 of 2013, Mr. R.K. Gandhi in W.P. No. 29653 of 2013, M/s. Ajmal Associates in

W.P.MD Nos. 14113 to 14124 of 2013, for the Appellant; A.L. Somayaji, Advocate General assisted by Mr. T.N. Rajagopalan Pleader, Spl. Government, Mr. R. Ravichandran Addl. Govt., Pleader (W) and Mr. A.P. Balasubramanian for Corporation, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—W.A. Nos. 504, 505, 803, 810, 947 of 2012, 2335, 2336 of 2013 are preferred against the order upholding G.O.Ms. No. 71 Finance (Pay Cell) Department, dated 26.2.2011 and for consequential direction to pay salary in terms of G.O.Ms. No. 283, dated 26.8.2010, and G.O.Ms. No. 450, dated 26.8.2010 respectively. W.A. Nos. 514, 515, 516, 811, 814, 815, 1733, 2166 of 2012 have been preferred against the orders dated 08.3.2012, 13.3.2012, 14.3.2012 made in W.P. Nos. 6761, 7086 to 7088, 7447, 8453, 11930 of 2011 respectively, wherein G.O.Ms. No. 71 Finance (Pay Cell) Department, dated 26.2.2011 is challenged.

2. After disposal of the writ petitions by the learned single Judge, and during pendency of the above writ appeals, several other writ petitions are filed, which were also posted along with the above writ appeals. Pursuant to the direction issued by the learned single Judge to constitute a Pay Grievance Redressal Committee (PGRC), which has not been stayed by the Division Bench while admitting the writ appeals, the Government constituted a Pay Grievance Redressal Committee and based on the report of the said Committee, G.O.Ms. No. 242, Finance (Pay Cell) Department, dated 22.7.2013 was issued. Hence the said Government order is also challenged in some of the writ petitions with consequential prayers.

3. W.P. Nos. 10479, 23675 and 26153 of 2013 are filed seeking to quash G.O.Ms. No. 242 dated 22.7.2013 and for direction to implement G.O.Ms. No. 71 Finance (Pay Cell) Department, dated 26.2.2011 as the said order is beneficial to the said petitioners.

4. As the issues raised in all these writ petitions are identical, either for quashing G.O.Ms. No. 71, dated 26.2.2011; G.O.Ms. No. 242, dated 22.7.2013, and/or to implement the G.O.Ms. No. 71, etc., all the writ petitions and writ appeals are taken up together for final hearing and disposed of by this Common judgment.

5. The validity of G.O.Ms. No. 71 Finance (Pay Cell) Department, dated 26.2.2011 was challenged before the learned single Judge and the learned single Judge dismissed the writ petitions on the ground that it is the Government's right to vary the scales of pay and the State Government can withdraw the pay scales fixed by mistake. The learned single Judge observed that the Government was willing to constitute a Pay Grievance Committee for the purpose of examining the grievances, which would submit a report within a time frame, and thereafter the recommendations were directed to be considered and appropriate orders were directed to be issued. The learned single Judge further directed the

State Government to implement the said assurance given by the Government in its letter dated 7.3.2012 within four weeks by constituting the Committee and the Committee was directed to hear the grievances of parties concerned, including the writ petitioners.

6. The said common orders of the learned single Judge are challenged in the writ appeals, and the consequential orders issued by the Government in G.O.Ms. No. 242 dated 22.7.2013 have been challenged by filing separate writ petitions and all of them are grouped together for disposal as Specially Ordered Cases.

7. For the sake of convenience, the parties will be referred to as per their ranks in the writ petitions.

8. The brief facts necessary for disposal of the present writ appeals and writ petitions are that pursuant to VI Central Pay Commission recommendations, the State of Tamil Nadu constituted an Official Committee on 20.8.2009 to examine and make necessary recommendations for revision of scale of pay and allowances of State Government Employees, Teachers, including Local Body Employees. The said Official Committee submitted its report/recommendations on 25.7.2009. The Committee recommended the revised pay scale of "Pay Scale to Pay Scale Basis". The major difference is to adopt the Pay Band and Grade Pay system as in the case of Government of India. Erstwhile pay scales were different for each category of the staff and in the new pay system, the erstwhile pay scales hierarchy have been grouped into four broad Pay Bands with different Grade Pays for hierarchical differentiation, within each Pay Band as follows:

Sl.No.

Pay Band

Revised Pay (Rs.)

Grade Pay (Rs.)

1

PB-1A

4800-10000

1300, 1400, 1650

2

PB-1

5200-20200

1800, 1900, 2000, 2200, 2400, 2600, 2800

3

PB-2

9300-34800

4200, 4300, 4400, 4450, 4500, 4600, 470, 4800, 4900

4

PB-3

15600-39100

5400, 5700, 6000, 6600, 7600, 7700

5

PB-4

37400-67000

8700, 8800, 8900, 10000

The difference is only with reference to the Grade Pay, which distinguishes the hierarchical position. The recommendations were accepted and implemented in G.O.Ms. No. 234 Finance (Pay Cell) Department, dated 1.6.2009, giving notional effect from 1.1.2006 with monetary benefit from 1.1.2007 and separate Government Orders were issued in respect of each department based on G.O.Ms. No. 234 dated 01.6.2009.

9. One-man Commission was constituted to examine the anomalies, if any. The One-man Commission submitted its report to the Government on 31.3.2010, which was also accepted by the Government and G.O.Ms. Nos. 254 to 340 Finance (Pay Cell) Department, were issued on 26.8.2010. The One-man Commission had recommended the pay of Assistant Engineers, who worked at the section level, on par with Group-I Officers, and Sub-Divisional Officers. In February, 2011, representations from various staff from other departments were received by the Government to extend higher scale of pay/grade pay as granted to the Assistant Engineers/Agricultural Officers, etc. The One-man Commission recommended major upward revision, which resulted in demand for enhanced grade pay by other department Officers like Agricultural Officers, Veterinary Assistant Surgeons, Inspector of Fisheries and other equivalent cadres in different departments, who were enjoying pay parity with Assistant Engineers earlier, by contending that they are also professionally qualified and should be treated on par with the Engineering Graduates.

10. The State Government extended similar parity and revised pay scales upward for the promotional post in each of the said department. The same led to series of anomalies in maintaining horizontal parity across the departments and the age-old system of keeping the sub-division post and Group-I post at one level above the sectional level post. The pay revision of the Assistant Engineers, Agricultural Officers, etc., and placing them on par with Group-I services, who are enjoying one level higher pay, resulted in resentment among the categories like Deputy Collectors, Assistant Directors (Panchayat) and DSPs, who sought revision one

level above the Assistant Engineers, Judicial Officers, etc, which revision is not possible as the pay of Group-A entry level post cannot go above the entry level post of All India Services.

11. Chain of demands came based on the pay revision given to Assistant Engineers, Agricultural Officers, etc., and in order to set right the whole issue and in order to remove the discontent among the State Government Employees, as well as to meet the financial crisis, the Government was of the view that there is a need to re-examine the revision of scales of pay recommended by the One-Man Commission and G.O.Ms. No. 71 Finance Department, dated 26.2.2011 was issued downgrading the scales of pay of about 52 categories in various departments and restored to the level lower than the level prescribed by One-man Commission, stating further that there will not be any recovery for the payment already disbursed. The higher pay scales having been fixed and paid, which was sought to be reduced, the said Government Order was challenged and during pendency of the writ petition, interim stay was granted. Ultimately, the learned single Judge dismissed the writ petitions holding that the Government will have to constitute a Pay Grievance Redressal Cell (PGRC).

12. The said portion of the order having not been stayed by the Division Bench, while granting other portions of the order, PGRC was reconstituted through G.O.Ms. No. 123, Finance Department, dated 10.4.2012 consisting of a Chairman and two members with the following Officers in Finance Department:

1. Thiru S. Krishnan, IAS,.. Chairman Secretary (Expenditure)
2. Thiru M. Padmanabhan,.. Member Additional Secretary to Government
3. Thiru P. Umanath, IAS,.. Member Joint Secretary to Government

The terms of the reference of Pay Grievance Redressal Cell reads as follows:

(i) The Pay Grievance Redressal Cell shall examine all the representations so far received and also further representations if any, from the Employees Associations/Head of Departments/Individual Employees including the aggrieved petitioners relating to anomalies in the revised pay structure of the respective posts;

(ii) The Pay Grievance Redressal Cell shall make specific recommendations to Government on the representations/anomalies considered;

(iii) The Pay Grievance Redressal Cell shall submit its report to Government within a period of three months.

13. After reconstitution of the said PGRC, by G.O.Ms. No. 123 Finance Department dated 12.4.2012, a Press Release was made inviting representation on or before 4.5.2012 from Employees Associations/Heads of Departments/Individual Employees, including the aggrieved petitioners in the writ petitions, who challenged G.O.Ms. No. 71 dated 26.2.2011. In paragraph 2 of the said Press Release, it is stated as follows:

The Pay Grievance Redressal Cell has proposed to personally hear the pay grievance of the Employees Association and the aggrieved petitioners in the writ petitions as directed by the Hon'ble High Court. Employees Associations and the aggrieved petitioners who are willing to be personally heard are requested to send representations to the Pay Grievance Redressal Cell and register their request for personal hearing to the Deputy Secretary to Government, Finance (Pay Cell) Department, Chennai-9 either in person or through e-mail addressed to dspgrc@tn.gov.in on or before 04.05.2012.

The Associations concerned/concerned Petitioners in the Writ Petitions are requested to furnish the following details to send call letters for personal hearing:-

1. Name of the Association/writ petitioner:
2. Name of the Authorized Person/Designation:
3. Address
4. Contact Number
5. E-Mail address (if any)

The date and time for personal hearing in respect of each Association would be hosted in the Government Website (www.tn.gov.in) and correspondence would be sent separately.

Based on the said Press Release, 4376 representations were received from various Associations/individuals, as per the counter-affidavit filed by the State Government in writ petitions challenging validity of G.O.Ms. No. 242 dated 22.7.2013.

14. The grievance of the petitioners are that number of associations and individuals opted for personal hearing as stated in the Press Release and no personal hearing was given to any of the individuals/associations inspite of their appearance before the PGRC and they were directed to hand over the written representations. According to the petitioners, in the counter affidavit, it is further stated that 4376 representations were considered after giving personal hearing on four days viz., 9.7.2012 to 11.7.2012 and 16.8.2012. The said PGRC submitted its report in October, 2012 with recommendations.

15. The Government accepted the recommendations and issued G.O.Ms. No. 242 Finance (Pay Cell) Department, dated 22.7.2013 and placed the Assistant Engineers in Pay Band-2 in the scale pay of BDOs, Tahsildars, Inspectors of Police and Forest Rangers, instead of Pay Band-3 with a special compensatory allowance for the arduous nature of their work and also recommended to downgrade the pay of several officers including 5 categories of officers in G.O.Ms. No. 71 Finance (Pay Cell) Department dated 26.2.2011. In the said order, the Government revised the pay scales of 52 categories in 20 departments, leaving only Indian Medicine Department stating that the revision of scale of pay shall

take notional effect from 1.1.2006 with monetary benefit from 1.4.2013. However, the excess payments if any made so far shall be waived. It is also ordered that the applicability of the above revised scales of pay to the appellants/writ petitioners is subject to the outcome of the final verdict in the connected writ appeals/writ petitions pending as on date. All the heads of departments were directed to implement the above revised scales of pay and re-fixed the pay appropriately and issue necessary revised re-fixation orders. The said order is applicable to serving employees of 52 categories as well as pensioners/family pensioners and there shall be no recovery.

16. The grievance of the petitioners are that the State Government having implemented the VI Pay Commission benefits from 1.1.2006 notionally with monetary benefits from 1.1.2007, by order dated 1.6.2009, merely because some grievance/anomaly was pointed out by some Association and prayed for enhancement of their scale of pay, the State Government is not justified in reducing the pay fixed, unilaterally which has got civil consequences as there is monetary loss. In W.P. Nos. 10479, 26153 and 23675 of 2013, petitioners have prayed for quashing G.O.Ms. No. 242, dated 22.7.2013 and for implementing G.O.Ms. No. 71, dated 26.2.2011 as the said government order is beneficial to them due to increase of their pay scales. It is also the contention of the petitioners that if pay anomaly is pointed out and any of the association or individual has prayed for enhancement, the Government can only decide about the enhancement and cannot reduce the pay already fixed. G.O.Ms. No. 71 dated 26.2.2011 having been passed unilaterally, without hearing the petitioners, whose pay scales are reduced, the action of the Government is in violation of the principles of natural justice and the said grievance made before this Court was not considered by the learned single Judge in the order dated 15.3.2012. It is also contended that the constitution of the PGRC through G.O.Ms. No. 123 dated 10.4.2012 was subject to the result in the writ appeals and their challenge regarding validity of G.O.Ms. No. 71, dated 26.2.2011 still survives.

17. The learned senior Counsels as well as the learned counsels for the petitioners submitted that the terms of the reference made before the PGRC being to consider the pay anomalies in the revised pay structure of the respective post, and to make specific recommendations to the Government and report regarding anomalies, the PGRC has no jurisdiction to go beyond the terms of the reference, particularly when Press Release was issued inviting representations to consider the anomalies and there is no mention about the revision of the pay scale/reduction of pay scales for which objections were called for. The objections having been called for with regard to anomalies, the PGRC has no jurisdiction to recommend for the reduction of pay scales, which were already fixed to the staff of 52 categories in 20 departments and accepting the erroneous report submitted in October, 2012 and the consequential action of the Government in issuing G.O.Ms. No. 242 dated 22.7.2013, revising the scales of pay (reducing) is illegal as no notice or objection/hearing was given before ordering reduction of the scale of pay. The learned counsels also submitted that

merely because the impugned orders ordered not to recover the salary/pay already paid, the revision/reduction of pay scales have serious consequences as the petitioners will be forced to receive lesser salary than the salary they have received from 1.1.2007. Hence their civil rights are affected.

18. The learned counsels further submitted that the Press Release having been issued inviting aggrieved persons for personal hearing, not hearing the individual persons, who have submitted their objections/grievance is in violation of the principles of natural justice as well as the statement made in the Press Release itself, and if the petitioners are given opportunity to explain their position in detail in personal hearing regarding their entitlement to get the scales of pay already fixed, they will be in a position to convince the authority duly authorised, and for that purpose the impugned orders may be set aside. If the Government is interested in proceeding further in the matter, the Government may be granted liberty to call for fresh objections including that of revision of pay/reduction of pay as well as pension or family pension, and after receiving the objections and, extending personal hearing, the competent Committee may be directed to decide the issues afresh on merits in comparison with the VI Central pay Commission Recommendations. The learned counsels further submitted that the PGRC constituted by the State Government having submitted its unilateral recommendation an independent PGRC/Committee may be constituted if the Government is interested in considering the pay anomaly/revision/reduction of pay or pension. The learned counsels also cited several decisions in support of their contentions.

19. The learned Advocate General, in reply to the said submissions contended that G.O.Ms. No. 71 Finance Department dated 26.2.2011 was issued to rectify the pay scales of Assistant Executive Engineers in PWD and Agricultural Officer, Veterinary Assistant Surgeons and promotional post of Assistant Director, Deputy Director and Joint Director. In compliance with the directions issued by the learned single Judge to reconstitute the PGRC, Government issued G.O.Ms. No. 123 dated 10.4.2012 and constituted a fresh PGRC and invited representations from all concerned in a Press Release dated 21.4.2012. 4376 representations were received from various associations and individuals including the writ petitioners and personal hearing were conducted for 3 days. The PGRC submitted its report, which was accepted by the Government and G.O.Ms. No. 242 was issued on 22.7.2013 ordering revision of pay with effect from 1.4.2013, specifically stating that no recoveries will be made. The Public notice having been widely published calling for representations, the petitioners are not justified in contending that principles of natural justice was violated while issuing G.O.Ms. No. 242 dated 22.7.2013. The learned Advocate General alternatively submitted that G.O.Ms. No. 242 dated 22.7.2013 was issued for correcting the errors in pay fixation and for correction of errors/mistakes, no opportunity of hearing is required to be given. The submission that the PGRC has gone beyond the terms of reference is unsustainable as it was given wider power to look into the anomalies in the pay structure of the respective posts. Therefore the

recommendation made by the said Pay Grievance Redressal Cell, which was accepted by the Government are valid. The learned Advocate General further submitted that the pay fixation is a policy matter and the same should be left for the consideration of the Expert Body like Pay commission/Committee and one of the criteria for fixing the pay scales is the financial implication of the State. The learned Advocate General also cited several decisions in support of his contentions and prayed for dismissing the writ appeals and the writ petitions.

20. The learned counsel appearing for the writ petition Nos. 10479, 26153 and 23675 of 2013 have also supported the arguments of the learned Advocate General insofar as the validity of G.O.Ms. No. 71 dated 26.2.2011 is concerned as they are given higher pay scale/Pay Band. The learned counsel further submitted that even the benefit given to the petitioners' category is now reduced by G.O.Ms. No. 242 dated 22.7.2013 and they have prayed for setting aside the order passed in G.O.Ms. No. 242 dated 22.7.2013 and to restore G.O.Ms. No. 71 dated 26.2.2011.

21. We have considered the rival submissions made by the learned Senior Counsels as well as counsels for each of the writ petitioners and the learned Advocate General for the State Government.

22. The fact that the Government took a policy decision to extend the VI Central pay Commission Recommendation benefits to the State Government Employees is not disputed. The said policy decision was implemented by issuing G.O.Ms. No. 234 Finance (Pay Cell) Department, dated 1.6.2009, giving notional benefit with effect from 1.1.2006 and with monetary benefit from 1.1.2007. In the said Government Order it is stated that the Government has decided to adopt the revised pay scales on "Pay Scale to Pay Scale basis" and the existing 28 standard pay scales shall be revised as stated in Schedule-I to the Revised Scales of Pay Rules, 2009. The VI Central Pay Commission has recommended for revision of pay structure under four Pay Bands with 20 Grade Pays, regarding the IS Pay as granted by the Government of India for Group-D employees with appropriate Grade Pay. However, the Official Committee of the State recommended that the system of abolishing Group-D Employees by gradually absorbing them in regular Pay Band is not feasible and will not help maintaining the local pay relativity. The Committee recommended the existing three Pay Scales, adopting the method of calculation adopted by the Government of India i.e., by multiplying the basic pay by factor of 1.86 on the minimum of existing Pay Scale and recommended to retain the Grade Pay as in the case of Government of India employees, which was accepted by the Official Committee and the Pay scale was revised. Several other reasons are also stated regarding pay fixation and ultimately as already stated ordered VIth Pay Commission revision notionally from 1.1.2006 and with monetary benefits from 1.1.2007 and the arrears were directed to be paid from 1.1.2007 in three installments. The petitioners were not only paid arrears and were getting higher pay pension/family pension as the case may for more than 3 years.

23. For the said fixation, some objections were raised stating that there were certain anomalies. For looking into the said grievance/anomalies, One-man Commission was constituted through G.O.Ms. No. 444 Finance (Pay Cell) Department, dated 9.9.2009 under the following terms of reference:

(i) Representations on anomalies, if any, consequent on the implementation of the revised scales of pay or in the method of fixation of pay in the revised pay structure or other benefits on pay revision shall be examined by the One Man Commission.

(ii) The Commission shall make specific recommendations to the Government on the representations/anomalies considered by the Commission.

(iii) The Commission shall submit its report to Government by 31.12.2009." The said One-man Commission submitted its report by suggesting revised Scales of Pay to certain categories, and for certain categories the scales of pay was suggested to be reduced, and for few categories the scales of pay were recommended to be increased. It is the specific case of the petitioners, who are affected by the issuance of the said Government Order, namely, G.O.Ms. No. 71 Finance (Pay Cell) Department, dated 26.2.2011 whose scales of pay was reduced, that before revising and reducing the pay scale/grade pay, they were not given any opportunity to put forth their case for continuance of the pay scales already fixed, which was given effect to notionally from 1.1.2006 and with monetary benefit given from 1.1.2007, and arrears were also paid. Therefore the action of the Government is in violation of the principles of natural justice. Particularly, while taking away the vested rights of the Government Servants/retired Government Servants including Family pensioners.

24. The said contention raised by the petitioners, who are challenging G.O.Ms. No. 71 dated 26.2.2011, is sustainable in view of the civil consequence attached to reduction of scales of pay/pension, on the guise of removing pay anomaly. The salary having been fixed, paid and continuously received by the employees/retired persons, cannot be reduced to anyone's detriment and giving opportunity to express their grievance, after the decision is taken with liberty to go before Pay Grievance Redressal Cell cannot validate the decision already taken.

25. Though the said point was raised, the learned single Judge did not appreciate the said contention by stating that the Government has already constituted Pay Grievance Redressal Cell and the affected persons can approach the said PGRC. The Pay Grievance Redressal Cell was reconstituted through G.O.Ms. No. 123, Finance Department, dated 10.4.2012 and the terms of reference were already incorporated supra. From the reading of the terms of reference it is evident that the PGRC was authorised to examine the representations relating to anomalies in the revised pay structure of the respective post. No other specific objections were called for regarding reduction of pay/increase of pay.

26. A Press Release dated 21.4.2012 was issued calling for objections from individuals and Associations. In para 2 of the Press Release, which is extracted

supra, it is stated that the Pay Grievance Redressal Cell has proposed to personally hear the pay grievance of the Employees Association and the aggrieved petitioners, who are willing to be personally heard and, they were requested to send representations and register their request for personal hearing to the Deputy Secretary to Government Finance Pay Cell Department, Chennai-9, either in person or through E-mail on or before 4.5.2012. According to the petitioners, as well as the counter affidavit filed, 4376 representations from various associations and individuals were received and it is averred in the counter affidavit that personal hearings were held from 9.7.2012 to 11.7.2012 and on 16.8.2012 and 257 associations/individuals were called for personal hearing. It is the grievance of the petitioners that none of the association/office bearer or the writ petitioner association were heard by PGRC and the representations already submitted were though received, the persons attended hearing could not present their grievance, and the personal hearing conducted was an empty formality. Thus, there was no effective personal hearing. All the learned counsels stressed the said contention and submitted that the Government not only violated the principles of natural justice, but also not given effective post-decisional hearing in spite of their willingness to appear for personal hearing, as assured in the Press Release dated 21.4.2012.

27. There is substance in the said submissions as it is impossible to extend personal hearing to 257 Associations/individuals in four days and considering of huge number of 4376 representations in four days. The PGRC submitted report in October, 2012 on 10 issues as well as four additional issues. The additional issues are, (1) Pay commission arrears monetary benefit from 1.1.2006; (2) Applying conversion factor of 2.43/2.625 to reach uniform 40% fitment benefit; (3) Encashment/granting of allowances; and (4) Regularisation of daily wage/part-time workers.

28. The report of the PGRC was accepted and based on that G.O.Ms. NO. 242 dated 22.7.2013 was issued modifying the pay scales to 52 categories of 20 departments. The pay already reduced by G.O.Ms. No. 71 dated 26.2.2011 was reiterated and some more pay reductions were ordered, meaning thereby, everyone is affected by G.O.Ms. NO. 242 Finance Department dated 22.7.2013. Thus, it is clear that the Government, before issuing G.O.Ms. NO. 242 and while accepting the report of PGRC, failed to issue notice to the associations/petitioners.

29. The requirement of observance of principles of natural justice, while deciding the rights of parties either by quasi-judicial authority or by an administrative authority is well settled. The Hon'ble Supreme Court in its decision reported in Nawabkhan Abbaskhan Vs. The State of Gujarat, held that in Indian Constitutional Law, following of the principles of Audi Alteram Partem is an independent requirement and the duty to give the hearing is a constitutional requirement and, failure to comply with the same is fatal. The failure of duty to hear is traversary of constitutional guarantees and any order made without

hearing the party affected and, if there is an injury and then, it is violation of the constitutional right. [See Article 21 of the Constitution of India and, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,].

30. The Hon''ble Supreme Court in the decision reported in Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others, , held that when the appellants having fixed scale of pay and confirmed, they could not reduce the scale of pay without giving any opportunity of hearing to the respondents and thus the interference of the High Court was found to be just and proper.

31. In the decision reported in S.L. Kapoor Vs. Jagmohan and Others, , the Hon''ble Supreme Court held that only in cases of admitted or indisputable facts speaks for itself and, only when one conclusion is possible, the Court may not issue its writ to compel the observance of principles of natural justice, as in such cases issuing writ for violation of natural justice is futile and the principles of natural justice will satisfy the general principle that justice should not only be done, but must manifestly and undoubtedly be seen to be done.

32. G.O.Ms. No. 71 Finance (Pay Cell) Department, dated 26.2.2011 gave liberty to the affected persons to file their objections before the Pay Grievance Redressal Cell, can be treated as post decisional hearing. The said concept of post decisional hearing cannot be made applicable to the facts of this case. As such an attempt is permissible only in case of emergent situation or any urgency as held by the Hon''ble Supreme Court in the decision reported in Swadeshi Cotton Mills Vs. Union of India (UOI), . In Paragraph (106) of the said judgment, it is held as follows:-

106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . They are now considered so fundamental as to be "implicit in the concept of ordered liberty" and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment....

33. The Hon''ble Supreme Court, in the decision reported in Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, held that an administrative order, which

involves civil consequences must be made consistently by following the principles of natural justice. Paragraph (19) of the said judgment, reads as follows:-

19... An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called "purely administrative" and there is no third category....

34. In the decision reported in *The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others*, , the Hon"ble Supreme Court held that only in cases where there is no possibility of prejudice by not issuing notice, the High Court under Article 226 of Constitution of India need not set aside the action of the Government for non-compliance of the principles of natural justice.

35. In this case, by fixing higher pay by G.O.Ms. No. 234 Finance (Pay Cell) Department, dated 01.6.2009 and the consequential separate Government Orders issued for various departments, the petitioners and other Government servants in those departments were paid higher salary/pay scale with arrears from 01.1.2007 and, the same is now reduced by the impugned Government Orders. Therefore, the prejudice caused to the petitioners is apparent and, if the hearing is offered to the petitioners, there is a possibility of sustaining the pay already fixed without any modification/reduction.

36. Even though it is contended by the respondents that at the time of issuing the Government Order, the pay was wrongly fixed, the contention of the petitioners is that the salary fixed was based on the parameters envisaged in VI Pay Commission Report of the Central Government. Thus, issuance of notice to the persons, who are affected by reduction of pay/revision of pay, cannot be treated as an empty formality to justify the action of the Government in issuing G.O.Ms. No. 71 Finance (Pay Cell) Department, dated 26.2.2011.

37. The Hon"ble Supreme Court in the decision reported in *Grid Corporation of Orissa and Others Vs. Rasananda Das*, , observed that service conditions of employees could not be changed to their disadvantage by reducing their pay scales or taking away any other service benefit.

38. In this case, the contention of the respondents is that higher salary was wrongly fixed and, the same is to be rectified. Whether salary was wrongly fixed or correctly fixed can be decided by issuing notice to the persons, who are likely to be affected by reduction of pay.

39. The Hon"ble Supreme Court in the decision reported in *Uma Nath Pandey and Others Vs. State of U.P. and Another*, , held that principles of natural justice are those rules, which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority, while making an order affecting those rights and, these rules are intended to prevent

such authority from doing injustice and will exclude arbitrariness and enhance the quality of administrative justice. The old distinction between a judicial act and an administrative act has been obliterated, withered away and now even an administrative order, which involves civil consequences must be consistent with the rules of natural justice and civil consequences encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience to be ranked as fundamental and, it is fair play in administrative.

40. In the decision reported in *Prakash Ratan Sinha Vs. State of Bihar and Others*, , the Hon''ble Supreme Court held that the action of cancelling the promotion attacks civil consequences. The persons who are likely to be affected in cancelling the promotion are bound to be heard, if there is a power to decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made. The adherence to principles of natural justice by all civilized Nations is of supreme importance when a quasi-judicial authority or administrative authority is called upon to determine the dispute between the parties involving civil consequences.

41. The Hon''ble Supreme Court in the decision reported in *Union of India (UOI) and Others Vs. Jagdish Pandey and Others*, , it is held that pay scale is a legitimate right of an employee and except for valid and proper reasons, it cannot be varied, that is only in accordance with law. Merely, using the expression "erroneously" fixed can hardly justify withdrawal of such an existing right.

42. The Hon''ble Supreme Court in the decision reported in *Kesar Enterprises Ltd. Vs. State of U.P. and Others*, , following the earlier decisions, held that following of principles of natural justice will prevent the challenge of the action taken as an arbitrary decision.

43. In the decision reported in *State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another*, , the Hon''ble Supreme Court held that right to receive pension, gratuity or leave encashment can be treated as right to property in terms of Article 300A of the Constitution of India. Leave encashment amount or pension amount as well as gratuity amount payable to Government servant will depend on the basis of the pay scale received by the Government servant, while in service and, if the reduction of salary is allowed to stand, the Government servant will be forced to get the reduced pension, reduced gratuity and reduced leave salary, after retirement. Therefore, the action of the Government is definitely in violation of Article 300A of the Constitution of India. Thus, the respondents are bound to follow the principles of natural justice before reducing the salary, which are being paid notionally with effect from 01.1.2006 and with monetary benefit with effect from 01.1.2007 for over three years, which is

ordered to be reduced by the impugned Government Orders.

44. As the jurisdiction of this Court is very limited in the matter of pay fixation, which has to be gone into only by an Expert body, the arguments advanced by the learned counsels for the petitioners as well as learned Advocate General to compare the pay structure/pay band of each category, have not been dealt with in this order.

45. In the decision reported in *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, , the Hon''ble Supreme Court observed that equation of posts and salary is a complex issue which should be left to an expert body, as it is a time consuming task, which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. The said decision is reiterated in *S.C. Chandra and Others Vs. State of Jharkhand and Others*, .

46. The said issue is settled in several decisions. The decision reported in *State of West Bengal and Another Vs. West Bengal Minimum Wages Inspectors Association and Others*, , in Paragraphs (18) and (24), it is held thus:-

18. The principles relating to granting higher scale of pay on the basis of equal pay for equal work are well settled. The evaluation of duties and responsibilities of different posts and determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts.

24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.

47. The Hon''ble Supreme Court in the decision reported in *Dy. Dir. Gen. of Geo. Survey of India and Another Vs. R. Yadaiah and Others*, , held that ordinarily Court or Tribunal should not go into question of fitment of officers in a particular group or pay scale and leave those matters to the discretion and expertise of special commissions like Pay Commission and Court can interfere only on production of materials that there is some apparent error.

48. The Hon''ble Supreme Court in the decision reported in *Hukum Chand Gupta Vs. Director General, ICAR and Others*, , held that it is for the employer to categorize the posts and to prescribe the duties of each post. There cannot be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay

scales on particular posts is a very complex exercise which can be assessed by expert bodies like employer or Pay Commission and Courts would not normally venture to substitute its own opinion for the opinions rendered by the experts, as it lacks necessary expertise. The same is the view taken in the judgment of the Hon''ble Supreme Court, reported in *State of Bihar and Others Vs. Bihar Veterinary Association and Others*, . Bearing the said principle reiterated by the Hon''ble Supreme Court, we are not constrained to compare the pay structure for pay band of each category as stated supra and render findings.

49. As we found illegality in not following the principles of natural justice, before reducing the scales of pay, it is necessary that the matter is to be considered afresh by the Government after giving opportunity to all concerned especially, for reducing the scale of pay/grade pay. It is not in dispute that if really, there is any pay anomaly, the Government is entitled to remove the same by following the due procedures. As rightly contended by the learned Senior Counsels and other learned counsels for the petitioners, the One-Man Committee and the PGRC appointed by the Government, all its members are Government Officers and they have already decided to reduce the pay scales of 52 categories of 20 departments, including pensioners and family pensioners in those departments, it may not be appropriate again to permit the Government to reconsider the issue on the recommendations of the Government officials alone. At this juncture it is relevant to note that the Central Government appointed retired Judge of the Hon''ble Supreme Court to head the V Central Pay Commission. Similarly, a retired Judge of Hon''ble Supreme Court was appointed as the Chairman of VI Central Pay Commission. The Hon''ble Supreme Court appointed a retired Judge of this Court to consider the pay anomaly among the Judicial Officers/Judicial Pensioners at All India level. It is also not disputed that while extending the Pay Commission benefits, the technicalities as well as the legal issues regarding the claim of Equal Pay for Equal Work, qualifications, nature of duties etc. are also to be analysed and considered. Hence, we are of the view that it is just and appropriate to appoint a retired Judge to head the Pay Grievance Redressal Committee. In such circumstances, the writ appeals and writ petitions are disposed of with the following directions:

(i) The Government shall constitute a Pay Grievance Redressal Committee under the Chairmanship of Hon''ble Mr. Justice A.S. Venkatachalamoorthy, formerly Judge of this Court, who was elevated and retired as Chief Justice of the Chhatisgarh High Court.

(ii) The Government is at liberty to nominate one or two Senior level IAS Officers at the level of Principal Secretary, serving/retired as Member(s) of the Pay Grievance Redressal Committee.

(iii) The Pay Grievance Redressal Committee shall be given specific terms of reference by the Government, with a request to submit a report/recommendations for taking fresh decision regarding the enhancement/reduction of the pay scales/grade pay of 52 or more categories of 20 or more departments,

etc.

(iv) The Government is directed to constitute the above said committee within a period of three weeks from the date of receipt of copy of this order, prescribing time limit, within which report/recommendations is to be submitted for taking fresh decision.

(v) In view of the constitution of the above said Committee as ordered above, the implementation of G.O.Ms. No. 71 dated 26.2.2011 and G.O.Ms. No. 242 dated 22.7.2013 insofar as it affects any category of Government Servants/pensioners/family pensioners, which are not implemented as on today shall not be implemented till fresh decision is taken.

(vi) If any of the categories of Government servants of any department, who have been offered higher scales of pay as on today, it is open to the Government to implement the same insofar as the pay scales, which are beneficial to the employees of such categories.

(vii) As we have appointed the Chairman of the PGRC, we direct the Government of Tamil Nadu to make available office premises with supporting staff and to provide a Government car with driver for the use of the Chairman for effective functioning of the Committee.

(viii) We fix the remuneration for the Chairman of the Committee as Rs. 1.50 lakhs per month and direct the Government to sanction necessary funds towards remuneration and for meeting other expenses for effective functioning of the Committee.

(ix) It is open to the Government to fix remuneration of the Members/Member of the Committee, to be nominated by the Government, if they are retired IAS

officer(s).

(x) There is no order as to costs.

(xi) Connected miscellaneous petitions are closed.