

(1994) 03 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 8991 of 1992 and Civil Application No. 2370 of 1993

R.H. Bhatt

APPELLANT

Vs

Principal Chief Conservator of Forests and Another

RESPONDENT

Date of Decision : 01-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 1 GLR 327

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

Shah, J.—The petitioner has by this petition under Art. 226 of the Constitution of India Challenged the action of the respondents in placing the petitioner in the pay scale of Rs. 1,400-2,600 from the pay scale of Rs. 1,640-2,900. He has further prayed that he should be offered the pay scale of Rs. 1,640-2,900.

2. In order to appreciate the aforesaid claim of the petitioner few relevant facts are stated herein :

(i) The petitioner was initially appointed as Forest Surveyor in the pay scale of Rs. 1,200-1,800, and thereafter he was promoted as Range Forest Officer Surveyor. These are two different cadres of Range Forest officers, i.e., (i) Range Forest Officer (Survey) and (ii) Range Forest Officer. Admittedly the petitioner belongs to the cadre of Range Forest Officer (Survey).

(ii) It is the case of the petitioner that the pay scale of Range Forest Officer and that of Range Forest Officer (Survey) were same since 1959 to the date of report of 4th Pay Commission, i.e., upto 1-9-1987. It is his case that after revision of pay scale after 1-9-1987 Range Forest Officer, Range Forest Officer (Survey), Technical Assistant Superintendent, Saw Mill Instructor were placed in the pay scale of Rs. 1,400-2,600, and therefore, representations were made by the Range Forest Officers and Range Forest Officers (Survey) demanding higher pay

scale. It is his further case that such representation was accepted and that by resolution, dated 19-4-1988 passed by the Finance Department, Government of Gujarat the Government has partially modified the Annexure "C" appended to Gujarat Civil Services (Revision of Pay) Rules, 1987. In column 4 against the Entry at Serial No. 24 the revised pay scale relating to the "Range Forest Officer" : is modified to Rs. 1,640-2,900. Based on the aforesaid Government Resolution, dated 19-4-1988 the petitioner is claiming that he is entitled to the said pay scale and that in fact such pay scale was offered to him and withdrawn subsequently arbitrary, capriciously and without following the rules of natural justice.

(iii) It is the case of the petitioner that the services which the Range Forest Officers render are comparable to the services being rendered by the Range Forest Officers (Survey). It is his case that the work which is performed by the Range Forest Officer (Survey) is of arduous nature and they are also exposed to various hazards, risk of loss of life. It is his case that the Range Forest Officer (Survey) is not a different cadre, but it is a cadre comparable to the cadre of Range Forest Officer and therefore, on the principle of "equal pay for equal work" as guaranteed by Art. 16 of the Constitution of India read with Art. 39(1)(d) of the Constitution of India he is entitled to pay scale of Rs. 1,640-2,900.

(iv) It is pertinent to note that the petitioner came to be promoted to the post of Range Forest Officer (Survey) vide order, dated 13-11-1991, and he is working as Range Forest Officer (Survey) since that date.

3. At the time of admitting this petition, the learned single Judge of this Court passed the following order :

Rule. Notice as to interim relief returnable on 15-1-1993. Ad-interim relief restraining the respondents from reducing the pay of Range Forest Officer (Survey) from Rs. 1,640-2,900 to Rs. 1,400-2,600".

4. Because of the aforesaid order of interim relief passed by this Court the petitioner is being offered pay scale of Rs. 1,640-2,900. However, the respondents have filed the Civil Application No. 2370 of 1993 for vacating the aforesaid interim relief, inter alia, contending that the petitioner is not entitled to pay scale of Rs. 1,640-2,900 as said pay scale is offered to him by mistake or inadvertently. In fact the petitioner being Range Forest Officer (Survey) he should not have been placed in the pay scale of Rs. 1,640-2,900 but he was required to be placed in the pay scale of Rs. 1,400-2,600. When said fact was brought to notice of the authorities action was taken to place the petitioner in the pay scale to which he legitimately belonged and thereafter he has obtained the aforesaid interim order. It is, therefore, prayed that the ad-interim order which is granted by the learned single Judge is required to be vacated.

5. The respondents have also filed detailed affidavit-in-reply and pointed out that the petitioner is working as Ranger Surveyor or as Range Forest Officer (Survey). It is also pointed out that there are two different cadres, i.e., Range Forest

Officer and Range Forest Officer (Survey). The pay scales of Range Forest Officer and Range Forest Officer (Survey) are different for the following reasons :

(i) Because qualifications prescribed for the post and the duties to be performed by the incumbent are different. It is pointed out that the qualifications for the post of Range Forest Officer are higher and they are required to perform more responsibilities than the Range Forest Officer (Survey). The pay scale prescribed is of Rs. 1,640-2,900 while the pay scale prescribed for Range Forest Officer (Survey) is of Rs. 1,400-2,600.

(ii) It is further pointed out that the Recruitment Rules for the two cadres are also different. The Recruitment Rules for Range Forest Officer are framed and are called as "The Rangers (Subordinate Forest Service) Recruitment Rules, 1969." Under said rules to be eligible for appointment by direct selection to the said post a candidate must possess the minimum educational qualification of Intermediate Examination of any recognised University or its equivalent examination with two or more of the subjects, namely, Mathematics, Physics, Chemistry, Botany and Zoology, or he must have passed the Higher Secondary Examination, or Pre-University examination followed by pre-professional or pre-technological course conducted one year after the Higher Secondary Stage or one year after the Pre-University stage in a recognised University or its equivalent examination with two or more of the subjects, namely, Mathematics, Chemistry, Physics, Botany and Zoology. He is also required to possess minimum standard of physique, i.e., (i) Height : 5'4" or 1.6256 meters or 163 c.m.s. and (ii) Chest : Normal 31" or 0.7874 meters or 70 c.m.s. expanded 33" or 0.8382 meters or 84 c.m.s. provided that the minimum height may be reduced by 5 c.m.s. in the case of Gorkha, Nepalese, Assamese, Naga, Manipuri, Garhowali, Kimahoho, Sikkimese and Bhutanese candidates. The rules for Range Forest Officer (Survey) are known as "Forestries (Subordinate Forest service) Recruitment Rules, 1969". To be eligible for appointment by direct selection to the post of Forester a candidate must possess certificate of SSC Examination or its equivalent examination and must possess the physique of (i) Height : 5'4" or 1.6256 meters or 163 c.m.s. (ii) Chest : Normal 31" or 0.7874 meters or 79 c.m.s expanded 33" or 0.8382 meters or 84 c.m.s. Minimum expansion 2" or 5 c.m.s. It is, therefore, submitted that since Recruitment Rules for two different cadres are different, and since educational qualifications are also different, different pay scales are justifiably fixed.

(iii) the duties to be performed by Range Forest Officer are stated to be different from the duties to be performed by range Forest Office (Survey). In this connection reference is to be made first to the duties to be performed by the Range Forest Officer which are as under :

(1) Range Forest Officers are in executive charge of ranges. They are responsible for the efficient protection and management of their ranges, the condition and proper custody of all Government property and discipline of all forest subordinates in their charge. They must see that each understands and attend to

his duties. They should explain to them the rights and privileges of villagers existing, if any, the forest and the legal actions to be taken when necessary under Forest and other Acts.

(2) They are responsible for carrying out with the help of their Round Foresters and Beat Guards and According to the orders of the Deputy Conservators of Forests, all work in their charge, i.e., the marking, reservation, girdling and felling of trees. The transport of timber and fuel, etc., to the sale depots, sowing, planting and other silvicultural works, construction of roads, building and wells, protection of forests and investigation of important offences, supervision of removal of forest produce by purchasers and by right and privilege holders, disbursement of pay of subordinates and expenditure on departmental works, submissions of accounts to the Divisional Officer and issue of passes and permits.

(3) The Range Forest Officers employed on special jobs like looking after afforestation works, depots, sawmills, mobile squads, training classes, wild life sanctuaries, Guest Houses, etc., will carry out the works according to the direction of the superior officers.

As contrasted with the aforesaid duties, the duties to be performed by the Range Forest Officer (Survey) which was originally known as Round Forester are as under :

(1) A Round Forester's duties include protection of forests, investigation of offences, issue of transit and other passes, collection of grazing fees and compensation for offences, reservation of standards in coupes and inspection of forests.

(2) He is responsible for all works in his round. He should instruct the Beat Guards in all their duties, see that they know their forest boundaries and for the uneducated write up their diaries whenever he meets them and explain to them the forest rules, regulations and privileges applicable to their charges. He should see that they go about their jungles and he should inspect their diaries from time to time and report negligence on their part. The Beat Guards' duties are equally applicable to Round Foresters.

From the aforesaid duties which are prescribed in Gujarat Forest Manual (Vol. I) it becomes clear that the duties to be performed by Round Forester (Range Forest Officer-Survey) and the duties to be performed by the Range Forest Officer are different.

6. Based on the aforesaid points of differentiation, it is submitted that the pay scale is determined. While fixing the pay scale it is kept in mind that the qualifications required for being appointed in the cadre of Range Forest Officer are higher than those required for being appointed as Range Forest Officer (Survey) and that the responsibilities attached to the post of Range Forest Officer are also higher and accordingly higher pay scale of Rs. 1,640-2,900 is fixed for Range Forest Officer while lower pay scale of Rs. 1,400-2,600 is fixed for Range

Forest Officer (Survey). It is further submitted that after due deliberations and careful consideration the Government has revised the pay scale of Range Forest Officer in April, 1988 from Rs. 1,400-2,600 to Rs. 1,640-2,900. The said revision is not made applicable to Range Forest Officer (Survey) and the pay scale of Range Forest Officer (Survey) is kept the same. i.e., Rs. 1,400-2,600. It is the case of the Government that no reliance could be placed by the petitioner on the Government Resolution, dated 19-4-1988 as it pertains only to the Range Forest Officer and not to Range Forest Officer (Survey). It is submitted that by mistake higher pay scale was given to the petitioner and when such mistake was brought to the notice of the office of the respondent No. 1 the said mistake is rectified and it is pointed out that the petitioner is not entitled to higher pay scale. It is further submitted that it would not be within the jurisdiction of this Court to revise the pay scale as revision of pay scale is the function which is appropriately left to the Government.

7. At this stage, it is necessary to refer to law on the subject as the petitioner has placed his claim for higher pay scale on the ground that doctrine of "equal pay for equal work" would apply and consistent with the said doctrine read with Art. 39(d) the Range Forest Officer (Survey) should also be given the pay scale which is being given to Range Forest Officer.

8. Mr. G. I. Desai, learned Advocate for petitioner has submitted before this Court that the post of Range Forest Officer (Survey) was treated as equal to the post of Range Forest Officer, and therefore, pay scale of Range Forest Officer (Survey) was equated to the pay scale of Range Forest Officer. Once similar pay scale was prescribed for both the posts, in his submission, it is not competent for the State Government to revise the pay scale so as to discriminate the incumbents of two posts by grant of different pay scales. He has in this connection invited the attention of this Court to the decision of the learned single Judge of the Punjab and Haryana High Court in the case of Kirpal Jeet v. State of Punjab, reported in 1988 Indian Judicial Report 19.97. In the case before the Punjab and Haryana High Court a decision was taken by the Government to equate the pay scale of certain posts with that of another post. Having so equated the pay scale, at the time of subsequent revision of pay scale an attempt was made to discriminate between the incumbents of two posts for the grant of different pay scales. It was in this connection that the single Judge of the Punjab and Haryana High Court held that once the State Government decides to equate the pay scale of a certain post with that of another post it is not open to it to discriminate between the incumbents of the two posts by grant of different pay scales to such incumbents at the time of subsequent revision of pay scales. Such an action would be wholly violative of Art. 16 of the Constitution of India in as much as it would be denying the equality of opportunity in the matter of employment.

9. To the aforesaid proposition of law no exception can be made, but in my opinion this decision has no application, whatsoever, to the facts and

circumstances of the case before this Court. In the case before this Court the post of Range Forest Officer is altogether different from the post of Range Forest Officer (Survey). The differentiation between the two posts is clearly stated hereinabove. Recruitment rules for the two posts are different, educational qualifications for recruitment to the posts are different, the duties to be performed by the incumbents of the two posts are different. No equation of the post of Range Forest Officer (Survey) is made with the post of Range Forest Officer. In fact, the two posts are always treated differently and even while revising the pay scales as back as 1988 the Government has revised the pay scale of Range Forest Officer and not of the Range Forest Officer (Survey). It is not a case where the Government has decided to equate the pay scale of Range Forest Officer (Survey) with that of the Range Forest Officer and it is also not a case where the Government has revised the pay scale of Range Forest Officer and has not revised the pay scale of the Range Forest Officer (Survey). Ordinarily, it is not for the Court to direct the Government to revise the pay scale of a post or cadre. Equation of post and pay are meant primarily for the executive and Government and Expert bodies like Pay Commissions but not for Courts. This Court, therefore, would be slow to direct the State Government to revise the pay scale of Range Forest Officer (Survey) as it has revised the pay scale of Range Forest Officer because the revision of pay scale is the function which must be left to the State Government. It is only when all cases are equal, i.e., where all relevant considerations are the same the persons holding identical post may not be treated differently in the matter of their pay merely because they belong to two different departments or they are holding different posts.

10. At this stage, reference is required to be made to large number of considerations which shall have to be kept in mind while deciding the question as to whether the doctrine of equal pay for equal work would apply so as to entitle the petitioner to a higher pay scale which is being offered to Range Forest Officer. Before that exercise is undertaken, it would be necessary to refer to the decision of the Supreme Court on which reliance is placed. By the learned Counsel for the petitioner, i.e., Bhagwan Sahai Carpenter and others Vs. Union of India and another, . In the case before the Supreme Court the petitioners were employed in various categories of trades, such as, Carpenter, Mason, Painter, Upholster, Plumber, Pipe-fitter etc., in skilled grade in Military Engineering Service under the Ministry of Defence. While some of the trades out of 15 trades in the skilled grades were upgraded on the basis of recommendations made by the Expert Committee rest of the trades were ignored and were not upgraded and it was contended before the Supreme Court that such action was arbitrary, discriminatory and violative of Arts. 14 and 16 as well as Art. 39(d) of the Constitution of India. The Supreme Court noticed that all the employees in different trades within the skilled grade were getting the same scale of pay for years together. In 1981 out of 15 trades in the skilled grade some of the trades had been upgraded while the trades to which the petitioners belonged were not "upgraded. Apparent disparity was subsequently noticed and the trades to which

the petitioners belonged were also upgraded with effect from 15-10-1984. The petitioners, therefore, started getting equal pay which was being offered to some of the trades in the skilled grade. It was in this fact situation that the Supreme Court directed that said benefit should be made available to the petitioners from the date it was made available to some of the trades from 16-10-1981. It was in this context that the Supreme Court observed that if some of the trades in the skilled grade are provided higher pay scale from an earlier date and the same benefit is given to the members of other trades in the skilled grade from a later date it will be, per se, discriminatory and, therefore, the petitioners should also be paid higher pay scale from the date it was made available to some of the trades.

11. Based on the aforesaid decision it is submitted before this Court that since Range Forest Officers and Range Forest Officers (Survey) were getting same pay scale prior to revision of pay scale in 1988, same pay scale should be offered to Range Forest Officer (Survey). It may be noted that before the Supreme Court the employees belong to different trades in category of skilled employees. The pay scales of some of the trades were upgraded which resulted into clear discrimination. No attempt was made by the respondents to justify the classification. It was in fact found that separate category was that of skilled grade and therefore, between two trades in skilled grade no differentiation was pointed out. In fact, subsequently, since 1984 pay scales of other trades were also revised so as to equate with the pay scale of some of the trades to whom higher pay scale was given. It is, therefore, not a case where unequals were treated as equals but it is a case where equals were treated as unequals, and such unequal treatment was conceded by subsequent revision of pay scales. The Supreme Court, therefore, extended the benefit of equal pay even for a period during which there was no revision of pay scale. In my opinion, the principle laid down in this judgment can have no application as in the case before me clear classification is sought to be made between Range Forest Officer and Range Forest Officer (Survey) and it is pointed out as to why they are required to be treated differently. The factors for differentiation are enumerated and if such factors are taken into consideration which are relevant and germane to the exercise of power it is difficult for this Court to state that by not revising the pay scale of Range Forest Officer (Survey) Arts. 14 and 16 of the Constitution are violated. In fact, in the opinion of this Court, for strong and convincing reasons the authority revising the pay scale has found it fit to revise the pay scale has found it fit to revise the pay scale of Range Forest Officer and not to revise the pay scale of Range Forest Officer (Survey).

12. At this stage it is required to be noted that it is the case of the petitioner that the pay scale of Range Forest Officer (Survey) is also revised by the Government Resolution, dated April 19, 1988.

13. In my opinion, the aforesaid submission has no merit and shall have to be rejected. Firstly, Mr. Desai learned Advocate for the petitioner is not right in his

submission that vide Government Resolution, dated April 19, 1988 the pay scale of Range Forest Officer (Survey) is also revised. The resolution is very clear and it is reproduced herein :

"Consequent upon the instruction of the revised scales of pay under Gujarat Civil Service (ROP) Rules, 1987 there were representations from the Employees of Forest Department demanding higher pay scales. After careful consideration, Government is pleased to direct that in partial modification of the Schedule "C" appended to the Guj. Civil Service (ROP) Rules, 1987 published under Government Notification, Finance Department No. 39/EGR/1087-339/2/M, dated 1st June, 1987 under the heading "Agriculture and Forest Department" under the sub-heading "Principal Chief Conservator of Forests" in column 4 against the entry at Sl. No. 24 the revised pay scale relating to "Range Forest Officer" should be modified to Rs. 1,640-2900."

14. From the aforesaid resolution it is difficult to comprehend as to how it can be said that the Government has also revised the pay scale of Range Forest Officer (Survey) In fact, the pay scale of Range Forest Officer only is revised against Entry No. 24. Entry No. 24 under sub-heading "Principal Chief Conservator of Forests" in the Schedule "C" appended to the Gujarat Civil Service (ROP) Rules, 1987 reads as under :

"Range Forest Officer, Technical Assistant Superintendent Saw Mill, Range Forest Officer (Survey), Instructor and Research Officer".

15. It is pertinent to note that the said entry consists of Range Forest Officer, Technical Assistant Superintendent Saw Mill, Range Forest Officer (Survey), Research Officer etc. As against all such posts the Government has while passing the resolution, dated 19-4-1988 modified under the sub-heading "Principal Chief Conservator of Forests" against the Entry No. 24 the revised pay scale relating to "Range Forest officer" to Rs. 1640-2,900. Out of various posts included in Entry No. 24 the Government has revised the pay scale of Range Forest Officer only and it has not revised the pay scale of other posts. It is, therefore, not correct to state that when the Government revised the pay scale by Government Resolution, dated 19-4-1988 it has revised the pay scale of all the posts included in Entry No. 24. It is pointed out to this Court that subsequently by another notification issued by the Finance Department, State of Gujarat, dated 20-3-1991 in exercise of powers conferred by proviso to Art. 309 of the Constitution of India the Governor of Gujarat was pleased to further amend the Gujarat Civil Service (Revision of Pay) Rules, 1987 by enacting Gujarat Civil Service (Revision of Pay) (Amendment) Rules, 1991 and by said rules the Schedule "C" to the rules is amended and under the heading "Principal Chief Conservator of Forests" for the Entries at 23 and 24 the following entries are substituted :

23. Steno Grade I

475-800

1640-2900

24. Technical Assistant/Supervisor-Saw Mill, Instructor/research Officer

475-750

1640-2900

16. From the aforesaid it becomes clear that the pay scale of Technical Assistants, Superintendent Saw Mill, Instructor and Research Officer is revised to Rs. 1,640-2,900 by the revision undertaken in the year 1991. It is thus clear that when the Government Resolution was passed on 19-4-1988 pay scale of only "Range Forest Officer" out of entry No. 24 was revised and the pay scale of other posts included in entry No. 24 was not revised. It is, therefore, difficult to accept the submission of Mr. Desai, learned Advocate for the petitioner that by the Government Resolution, dated 19-4-1988 the pay scale of all the posts included in entry No. 24 were revised including the pay scale of Range Forest Officer (Survey). It appears that in 1988 as well as in 1991 the Government has not though it fit to revise the pay scale of Range Forest Officer (Survey).

17. In view of the aforesaid the submission of the petitioner that in fact the pay scale of Range Forest Officer (Survey) is revised by the Government Resolution, dated 19-4-1988 cannot be accepted. It is true that the Government has under misapprehension given effect to such revision so as to include the post of Range Forest Officer (Survey). In the sub-subsequent order of promotions, transfers and postings of Range Forest Officer (Survey) issued by the Government as back as 13-11-1991 in the pay scale of Range Forest Officer (Survey), same mistake is committed. Much reliance is placed by the petitioner upon the said order of promotion, transfer and posting. In my opinion, issuance of such an order is based on misconception on the part of the Government in including the post of Range Forest Officer (Survey) in the category of post for which the pay scale is revised by the Government Resolution dated 19-4-1988. In fact, it is because of said mistake that the petitioner and other similarly situated employees, namely, Range Forest Officer (Survey) were offered the revised pay scale and their pay was fixed in such revised pay scale. This fact, however, cannot go to support the case of the petitioner that by the Government Resolution, dated 19-4-1988 the pay scale of Ranger Forest Officer (Survey) is also revised. From what is stated hereinabove it becomes clear that by the Government Resolution the pay scale of only the Range Forest Officer out of various posts in Entry No. 24 is revised and the revision of other posts is effected in the year 1991. However, while effecting the revision of pay scales of other posts from Entry No. 24 once again the Finance Department of the Government has not thought it fit to revise the pay scale of Range Forest Officer (Survey). Thus, it is clear that the exclusion of Range Forest Officer (Survey) from the revision of pay scale is purposive, deliberate and intentional and the petitioner cannot succeed on the basis of mistaken committed by the Government in offering him the revised pay scale. When said mistake was brought to the notice of the department, the department

has vide order, dated 20-4-1993 placed the petitioner and other similarly situated Range Forest Officers (Survey) in the pay scale of Rs. 1400-2600. However, prior thereto the petitioner has approached this Court and has obtained interim relief from this Court and has obtained interim relief from this Court because of which the petitioner is being paid the salary as fixed in the pay scale of Rs. 1640-2900. It is the case of the respondents that the petitioner is not entitled to such revised pay scale as for the post of Range Forest Officer (Survey) no revision has taken place and in fact for such post pay scale is of Rs. 1400-2600.

18. Mr. G. I. Desai, learned Advocate for the petitioner has, however, submitted before this Court that when the pay of the petitioner and other similarly situated employees is fixed in the scale of Rs. 1640-2900 and when such pay is being paid to the petitioner and other similarly situated employees they cannot be deprived of such pay scale unilaterally without hearing them and without following principles of natural justice. Mr. Desai has in this connection relied upon the decision of the Division Bench of the Punjab and Haryana High Court in the case of *The General Manager, Northern Railways, Baroda House, New Delhi v. Madanlal Chopra*, reported in 1971 (1) SLR 629. Before Punjab and Haryana High Court the salary of one Madanlal was fixed by the competent authority in the higher pay scale. Said employee thereafter continued to get revised pay. Later on, on the recommendation of the Divisional Accounts Officer an order was passed by the General Manager withdrawing the benefit which was granted to the employee. The learned single Judge of the Punjab and Haryana High Court allowed the petition of Madanlal Chopra on the ground that such an order could not have been passed without affording even opportunity of being heard. In appeal before the Division Bench, the Division Bench held that once benefit was extended to the employee under the order passed by the competent authority the employee cannot be denied of such benefit unless such order is revised. Such an order has adverse affect on the employee, and therefore, the employee cannot be deprived of such rights. In my opinion, the aforesaid decision may assume importance to the extent that when the pay of the employee is foxed in a revised pay scale, any alteration in fixation of his pay to his detriment cannot ordinarily be made without informing him or without affording him opportunity of being head. The Government cannot unilaterally, without disclosing the reasons to the employee re-fix his salary in a pay scale prejudicial to him. It may be that the Government may have strong case to effect such re-fixation as in the case on hand where due to mistake pay is fixed in the higher pay scale but nonetheless fixation of pay of an employee unilaterally so as to prejudicially affecting is not permissible unless minimum of rules of natural justice are followed so as to afford opportunity of being heard to the employee. That having not been done in the present case, to the aforesaid extent the challenge of the petitioner should succeed and the respondents shall have to be directed to follow the rules of natural justice and to pass appropriate order fixing salary of the petitioner in the pay scale of Rs. 1400-2600 in accordance with the revised rules. However, Mr.

Amit Panchal, learned A.G.P. for respondents has very strenuously urged before this Court that the petitioner cannot be granted benefit of mistake committed by the department while re-fixing him in the higher pay scale. He submitted that when such a mistake came to the notice of the department it has immediately corrected such mistake and placed the petitioner in the pay scale of Rs. 1400-2600. He submitted that unfortunately before said mistake could be corrected and re-fixation could be effected the petitioner has approached this Honourable Court and obtained ex parte stay and is enjoying the benefit thereof till date. He submitted that the Supreme Court has recently in the case of *Madras Fertilisers Ltd. v. Assistant Collector of Central Excise, Madras - V Division, Madras* reported in JT 1994 (1) SC 150 ruled that a wrong decision in favour of any particular party does not entitle any other party to claim the benefit on the basis of the wrong decision. In the opinion of this Court this decision of the Supreme Court has no application to the fact situation obtaining before this Court in as much as it is not a case of a wrong decision in case of another party of which the petitioner is taking benefit. It is a case where by mistake the pay of the petitioner himself is fixed in a higher pay scale and the petitioner is given to the petitioner, he started drawing higher pay in that higher pay scale and when he has to be deprived of such benefit minimum rules of natural justice are required to be followed as such decision undoubtedly affects the employee adversely. In my opinion, therefore, the aforesaid submission of the learned A.G.P. for respondents shall have to be rejected.

19. It is further submitted before this Court that once the pay scale of Range Forest Officer (Survey) is already revised it cannot be withdrawn unilaterally and to the disadvantage of the Range Forest Officer (Survey) without hearing Range Forest Officer (Survey). In this connection reliance is placed upon the decision of the Supreme Court in the case of *Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others*, . In the case before the Supreme Court the pay of the respondents was fixed at Rs. 135/- in the scale of Rs. 105-135. The said fixation was subsequently varied to the disadvantage of the respondent as the appellants contained that there was mistake in fixing the pay. The Supreme Court while rejecting the appeal of the appellant stated that once the pay scale was fixed and the respondents were confirmed in the said scale, if the said scale was to be reduce to the disadvantage of the employees opportunity was required to be provided to the respondents. Based on the aforesaid proposition of law it is submitted before this Court that the respondents cannot unilaterally withdraw the pay scale which was offered to the petitioner.

20. That would now bring this Court to the question as to whether the petitioner and other similarly situated employees working on the post of Range Forest Officer (Survey) are entitled to higher revised pay scale of Rs. 1,640-2,900 by application of doctrine of equal pay for equal work.

21. In a large number of cases commencing from *Randhir Singh Vs. Union of India (UOI) and Others*, the Apex Court of the country has applied the principle

of equal pay for equal work based on the facts and circumstances prevailing in the case and has even refused to extend the said principle in cases where it was satisfied that there existed a reasonable classification having nexus to the object sought to be achieved between the two classes of employees who have been unequally treated in the matter of payment of wages. In the case of *Randhir Singh (Supra) Chinnappa Reddy, J.* Speaking for the Court observed as under :

"We concede the equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. Of course if officers of the same rank perform dissimilar functions and the power, duties and responsibilities of the posts held by them vary, such offices may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same Construing Arts. 14 and 16 in the light of the Preamble and Art. 39(d) we are of the view that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to case of unequal scales of pay based on non classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

This principle was enunciated and was applied in the case of *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, , Dhirendra Chamoli v. State of U.P. (1986 (1) SCC 673), Surinder Singh v. Engineer in Chief C.P.W.D. (1986 1 CLR 124), Jaipal v. State of Haryana (1988 2 CLR 83) and in the case of Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, . In the case of Federation of All India Customs and Excise Stenographers v. Union of India (supra) S. Mukerji, J. (as his Lordship then was) made following pertinent observations :*

In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, i.e., on intelligible basis. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scales has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact. In the light of the averments made in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved.

22. Once again in the case of *State of Uttar Pradesh v. J. P. Chaurasia*, reported in 1988 2 CLR 597 (SC) the Apex Court speaking through K. Jagannatha Shetty, J. ruled that the underlying Constitutional philosophy behind doctrine of equal pay for equal work is that in the matter of employment the Government of socialist State must protect the weaker sections. It must be ensured that there is no exploitation of poor and ignorant. It is the duty of the State to see that the under-privileged or weaker sections get their due. It is in this background that the principle of equal pay for equal work has to be construed in the first place. This principle has no mechanical application in every case of similar work. It has to be read into Art. 14 of the Constitution of India. Article 14 permits reasonable classification founded on different basis. The Court found that the classification can be based on some qualities or characteristics of person grouped together and not in others who are left out. These qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. The Court noted that it cannot be denied that the quality of work performed by persons of longer experience is superior than the work of new comers.

23. From the aforesaid observations of the Supreme Court it becomes clear that that doctrine of equal pay for equal work does not come within Art, 14 of the Constitution of India as an abstract doctrine. it is nothing but a facet of Art. 14. In fact, in the later decision in the case of *State of Madhya Pradesh v. Pramod Bhartiya*, reported in 1992 II CLR 942 (SC) the Apex Court speaking through B. P. Jeeven Reddy, J. examined the various facets of the doctrine in the context of Arts. 14 and 16 of the Constitution of India read with Art. 39(d) of the Constitution and the Court made the following pertinent observations :

"Equal pay for equal work, it is self-evident, is implicit in the doctrine of equality in Art. 14, it flows from it. Because Clause (d) of Art. 39 spoke of "equal pay for equal work for both men and women" it did not cease to be a part of Art. 14. To say that the said rule having been stated as a Directive Principle of State Policy is not enforceable in a Court of Law is to indulge a sophistry. Parts IV & III of the Constitution are not supposed to be exclusionary of each other. They are complementary to each other, the rule is as much a part of Art. 14 as it is of clause (1) of Art. 16. Equality of opportunity guaranteed by Art. 16(1) necessarily means and involves equal pay for equal work. It means equally that it is neither a mechanical rule nor does mean geometrical equality. The concept of reasonable classification and all other rules evolved with respect to Arts. 14 and 16(1) come into play wherever complaint of infraction of this rules falls for consideration."

The Supreme Court in this very connection referred to the provisions of Equal Remuneration Act, 1976, and more particularly to the definition of expression "same work or work of similar nature" contained in Clause (h) of Section 2 of the Equal Remuneration Act, 1976. After referring to the provision of said Act, the

Supreme Court noticed that the Act was enacted by the Parliament by Art. 39(d) of the Constitution of India and the obligation created by the convention concerning equal remuneration for men and women workers for work of equal value" to which India is a signatory. The Court thereafter made the following pertinent observations :

"It would be evident from that definition that the stress upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, the quality of work may vary from post to post. It may vary from institution to institution. This reality cannot be ignored or overlooked. It is not a matter of assumption but one of proof. Since that plea of equal pay for equal work has to be examined with reference to Art. 14 the burden is upon the persons complaining of discrimination to establish their right to equal pay or the plea of discrimination, as the case may be."

24. From the aforesaid observations of the Supreme Court it becomes clear that the doctrine of "equal pay for equal work" is not an abstract doctrine. Various relevant factors must enter into consideration. Similarity of skill effort and responsibility when performed under similar conditions shall have to be given due weight. The equality of work may also differ from post to post. It may also differ from institution to institution. These realities shall have to be kept in mind. Similarly, even if some work is done, a differentiation can be made in view of the nature and types of work done. i.e., on intelligible basis. Same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact and some less it varies from nature and culture of employment. The problem about equal pay, therefore, cannot be always translated into mathematical formula. Similar, merit or experience can provide basis for classification to promote efficiency in administration. It is also not sufficient to say that the service conditions are similarly, and what is more important is whether they discharge dissimilar duties and functions and responsibilities : salary must reflect nature of duties and responsibilities attached to the post, meaning thereby, that the pay scale must be commensurate with the task to be performed and the responsibilities to be undertaken by the holder of the post. Educational qualification is only one of the main factors in pay fixation. Complexity of job to be performed and responsibilities attached thereto are entitled to pave a way in determining the proper pay scale for the job. At times, nature of work may be more or less same but scale of pay may vary based on academic qualification or experience which justifies classification.

25. Applying the aforesaid principle it shall have to be decided as to whether the action of the respondents in not revising the pay scale of Range Forest Officer (Survey) while revising the pay scale of other posts stated in Entry No. 24 is in any way violative of Arts. 14 and 16 of the Constitution of India so as to deny to those class of employees the benefit of doctrine of equal pay for equal work. Before that exercise is undertaken by this Court it shall have to be stated that the function of fixation of pay scale is the primary function of the Executive and

is not the function of the judiciary and therefore, ordinarily the Courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay. Commissions, etc. In the case of Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, , A.M. Ahmadi, J. speaking for the Apex Court after making passing reference to the decision of the Supreme Court in the case of Prabhat Kiran Maithani v. Union of India reported in AIR 1977 SC 1533 stated Law pithily in the following words :

"We do not consider it necessary to traverse the case law on which reliance has been placed by Counsel for the Appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the Executive and not the judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction, Courts must, however, realise that job evaluation is both a difficult and time-consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department, (ii) the nature of contribution expected of him, (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions, (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties, (v) the extent of powers vested in him, (vi) the extent of his dependence on superiors for the exercise of the powers, (vii) the need to coordinate with other departments, etc. We also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the total number of pay scales has to be achieved by resorting to board-banding of posts by placing different posts having comparable job-charts in a common scale. Substantial reduction in the number of pay scale must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some details only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the

hierarchical arrangements, avenues for promotion. etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as Chairman of the Third (State) Pay Commission, There can therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grade error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."

26. From the aforesaid observations of the Supreme Court it becomes abundantly clear that it is not the function of this Court to undertake the task of determining the pay scale. In the present case, pay scale for all posts mentioned in Entry No. 24 were prescribed by the Pay Commission and as per revised Rules of 1987 the pay scales were prescribed in the grade of Rs. 1,400-2,600. However, on subsequent representation, by Government Resolution dated 19-4-1988 pay scale of Range Forest Officers only was revised to Rs. 1,640-2,900. Once again, there were representation, deliberations and discussions and the rules were amended as back as 1991 to revise the pay scale of the rest of the posts other than the post of Range Forest Officer (Survey). AT this time also the Government has taken into consideration various factors and has decided not to revise the pay scale of the Range Forest Officer (Survey). It appears that even subsequent representation made by the Range Forest Officers (Survey) is also negated as back as 1993. In that view of the matter, when the revision of pay scale is effected with respect to all posts mentioned in Entry No. 24 excepting for the post of Range Forest Officer (Survey) and when in the affidavit-in-reply the distinguishing features are pointed out to this Court which are enumerated hereinabove, this Court would be loath to undertake the exercise of job evaluation, and based on that to order revision of pay scale of Range Forest Officer (Survey). The Court would prefer to leave the work to the expert bodies whose function it is to prescribe the pay scales after taking into consideration the relevant factors. As stated by the Supreme Court in the case of Secretary, Finance Department v. W.B. Registration Service Association, (supra) a large number of factors enter into consideration, and in the present case looking to the distinguishing features which are pointed out in the affidavit-in-reply this Court would not undertake the exercise of ordering giving of some pay scale to the class of Range Forest Officer (Survey) as that would amount to usurping the executive function. As is seen from the distinguishing features stated hereinabove the educational qualifications prescribed for the posts are different, nature of duties and responsibilities to be performed are different, recruitment rules are different and while other posts have promotional avenue to the post of Assistant Conservator of Forests the post of Range Forest Officer

(Survey) does not have any promotional avenue, it would mean that the post of Range Forest Officer (Survey) is in every respect treated as post lower than the other posts in Entry No. 24, and in that view of the matter the differentiation made cannot be said to be violative of Arts. 14 and 16 of the Constitution of India nor can it be said to be violative of doctrine of "equal pay for equal work".

27. In view of the aforesaid, this petition must fail substantially except to the extent that before withdrawing the pay which was offered to the petitioner in the revised pay scale, he was atleast required to be heard, and since he was not heard action of fixation of his pay to his disadvantage is required to be struck down with liberty to the respondents to decide or refix the pay of the petitioner in the pay scale of Rs. 1,400-2,600 after affording opportunity of being heard to the petitioner. As regards the pay already paid under the revised pay scale the authority shall pass appropriate order after hearing the petitioner keeping in mind that the petitioner has pressed into service Rule 57-A(ii) or B.C.S.R. It is stated before this Court that under such re-fixed salary under the revised pay scale number of Range Forest Officers (Survey) have retired with higher pay fixed which would result into pensionary benefit to such retired employees which the petitioner and other similarly situated persons who still continue in service would be deprived of such benefit. In the opinion of this Court this fact has no relevance whatsoever for the purpose of deciding the question as to whether the petitioner and other similarly situated persons are entitled to higher pay scale or not. Once the claim of the petitioner for higher pay scale is not accepted the consequences must follow, but at the same time it is recommended that since the petitioner and other similarly situated Range Forest Officers (Survey) have already received higher salary because of wrong fixation of pay while ordering refixation of their salary the Government may consider their case sympathetically and favourably so as not to order any recovery of excess amounts received by them under the pay scale fixed by the Government by mistake. The employees who have received such higher emoluments must have adjusted themselves to live with such higher emoluments and must have used such higher emoluments for their changed need. In that view of the matter, recovery of such amount would act very harsh on such employees, and hence, it is recommended that the Government may consider their case sympathetically.

28. In the result, petition substantially fails and it is accepted partially only. The action of the respondents in refixing the pay of the petitioner in the pay scale of Rs. 1,400-2,600 is upheld subject to rider that the respondents shall, before undertaking such exercise, afford opportunity of being heard to the petitioner and after taking into consideration the representation of the petitioner shall refix his salary in appropriate pay scale. Rule is made absolute to the aforesaid extent only with no order as to costs.

29. In view of the judgments on main Special Civil Application no order on civil Applications.

30. Petition partly allowed.