
(2005) 05 AHC CK 0160
In the Allahabad High Court
Case No : Writ Petition No. 6978 of 2003(S/S)

Shiv Bodhan and Ors.etc.etc.

APPELLANT

Vs

State of U.P.& Ors.etc.etc.

RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Citation : (2005) 05 AHC CK 0160

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—In these bunch of writ petitions common question of law and facts are involved, hence, I proceeded to decide the present bunch of writ petitions by the present judgment covering all the petitions.

Every one suffers from the warmth of dearness on account of rise in consumer price index. With intention to meet out the adverse consequence and hardship on account of rise in consumer price index, dearness allowances are paid to the employees. When right to livelihood is guaranteed under Article 21 of the Constitution of India, whether inspite of fact that regular as well as workcharge employees both suffer equally on account of rise in consumer price index Government can provide ceiling on the dearness allowances of work charge employees ? Petitioners are aggrieved with the ceiling provided by the impugned order for payment of dearness allowances to the workcharge employee, hence, they have approached this Court under Article 226 of the Constitution of India. All the petitioners are the employees of Lok Nirman Vibhag and Irrigation Department discharging duties as workcharge employees.

2. The brief facts of the case is that the petitioners in the present bunch of Writ Petitions were appointed between 1965-85 as work charge employees in the respective department. The regular employees get their salary from establishment budget. Whereas work charge employees get their salary from the estimate of work where they have been appointed. Volume VI of Para 667 of the Financial Handbook defines the workcharge employee. For convenience para 667

of the financial handbook is reproduced as under:

?(667) Workcharged establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision, of a specific work or of subworks of a specific project or upon the subordinate supervision of departmental Labour stores and machinery in connection with such a work or subworks. When employees borne on the temporary establishment are employed on work of this nature their pay should for the time being, be charged direct to the work. ?

Volume VI of Para 669 of the Financial Handbook provides that the workcharge employees shall not be entitled for any pension or to leave salary or allowances except the allowances relating to travelling and daily allowances. They may be allowed and extraordinary pension and gratuity in certain conditions admissible under the rules contained in the Civil Services Regulations. However, the aforementioned provision contained in Financial Handbook has been denotified or repealed by the State Government by notification dated 112000. The relevant extract of the notification is reproduced as under:

3. The controversy relating to the payment of equal dearness allowances to the regular employees as well as work charge employees has earlier drawn attention of this Court in a Writ Petition No. 1807 of 1997 (SS) which was decided by judgment and order dated 2781999. It appears that earlier when ceiling was imposed by the respondents state a bunch of writ petitions were filed challenging the validity of decision taken by the State Government. During the pendency of writ petition the impugned order was passed by respondents state which was placed before this Court. On account of issuance of subsequent Government order providing ceiling on dearness allowances, earlier bunch of writ petitions were disposed of finally by judgment and order dated 2681999 with the observation that in case there is any grievance relating to the fixation of salary the employees may raise such grievance before the competent authority. The question relating to the regularization of work charge employees was also considered by this Court. On account of assurance given by respondents state that they are proceeding ahead to consider the petitioner's case for regularisation in view of Apex Court judgment reported in 1998 (8) SCC 473, Raj Narain Prasad v. State of U.P. & Ors., this Court had not proceeded ahead with the controversy on merit, and the writ petition was disposed of finally by judgment and order dated 2681999. It appears that grievance of the petitioners was not considered by the State Government satisfactorily, hence, they have challenged the impugned order dated 2681999 by which the maximum ceiling limit have been placed on the grant of dearness allowance to the work charge employees.

4. It is not disputed that employees working in the same cadre against the regular vacancy are getting regular pay scale with full dearness allowance in pursuance to decision taken by State Government on the basis of pay commission report without providing any ceiling limits.

While assailing the impugned order Shri Hemendra Pratap learned Counsel for the petitioner and other Counsel who argued on behalf of petitioners had submitted that in pursuance to pay commission report the quantum of dearness allowances is decided by the State Government by revising the same in pursuance to hike in price index every year or at the interval of few years. The submission of the learned Counsel for the petitioner is that petitioner's have been paid salary in regular payscale available to the employees of the cadre. The work charge employees are being absorbed against regular vacancy in pursuance to Apex Court judgment in Raj Narain's case (supra). Since petitioner discharges same duty which regular employees discharges they are entitled for dearness allowances which their counter part gets while discharging the same duty in the regular cadre. The further submission of the learned Counsel for the petitioner is that since rise in price index creates hardship and affects the regular as well as work charge employees equally, the revision of dearness allowances done in pursuance to pay commission report or for a particular cadre of the employees should be done without creating any difference between the regular as well as work charge employees. According to petitioner's Counsel since right to livelihood is a fundamental right guaranteed under Article 21 of the Constitution of India and dearness allowance is being revised on the basis of consumer price index which changes on hike in cost of living, the ceiling fixed by the State Government by the impugned order on the dearness allowance of the work charge employees is highly arbitrary unjust and improper hence violative of Articles 14 and 21 of the Constitution of India.

Learned Counsel for the petitioner had relied upon the judgments reported in 1994 SCC (L&S) 1321, Hindustan Lever Ltd. v. B.N. Dougre & Ors.; 1997 (5) SCC 10, Ashok (DR) v. Union of India; 1997 (8) SCC 191, Samatha v. State of Andhra Pradesh; 1997 (9) SCC 377, Air India Statutory Corporation v. United Labour, 2000(2) LBESR 636 (SC); 1999 (3) SCC 601, Secretary H.S.F.B. v. Suresh & Ors.; 2003 (6) SCC 469; State of West Bengal & Ors v. Pantha Chatterji; 2003 (6) SCC 1, Kapila Hingorani v. State of Bihar, 1998(2) LBESR 75 (All) : (1998) 3 UPLBEC 2125; Prayag Narain & Ors. v. State of U.P., AIR 1991 SC 537; Km. Shri Lekha Vidvarthi v. State of U.P..

5. On the other hand, the submission of learned Additional Chief Standing Counsel is that in pursuance to recommendation of equivalence committee which has revised the wages of work charge employees, the ceiling on the dearness of the employees of the Lok Nirman Vibhag and irrigation department can be provided by the State Government. The classification done by the State providing ceiling on the dearness allowances of work charge employees and not on the regular employees is a reasonable classification and does not hit by Article 14 of the Constitution of India. According to learned Additional Chief Standing Counsel Shri Alok Sinha the dearness allowance of the work charge employees was revised thrice. Learned Additional Chief Standing Counsel for the State also submitted that in view of judgment and order dated 2781999 passed by this Court, the present writ petition is not maintainable and barred by constructive

res judicata. It has been also submitted that on account of provision contained in 667 to 668 of the financial handbook Volume (6) the work charge employees were entitled for consolidated wages with the ceiling on dearness allowances. The benefit provided to the regular employees can not be provided to the work charge employees. The further submission of the learned Counsel for the State is that the principle of equal pay for equal work shall not be attracted in respect of work charge employees, in view of the fact they form distinct and separate class because on their different nature of engagement and qualification. Learned Additional Chief Standing Counsel had also proceeded to submit that even if the petitioners have been provided regular payscale by the Department they will not be entitled for same dearness allowances which is being paid to regular employees on account of fact that payment of regular payscale in violation of Government order or provision contained in Financial Handbook will not create any statutory right to claim same dearness allowance which is being paid to regular employees. Leaned Standing Counsel submits that evaluation of job for the purpose of payment of pay scale including the dearness allowances must be left open for expert bodies or the concerned limb of the Government and Court should not interfere with such matters.

Additional Chief Standing Counsel has relied upon the judgments reported in; AIR 1997 SC 693, State of Rajasthan v. Kunji Raman; 1997(1) LBESR 479 (SC) : (1996) 11 SCC 77, State of Haryana & Ors. v. Jasmer Singh & Ors.; 1997(2) LBESR 150 (SC) : AIR 1997 SC 2129; State of Haryana v. Surinder Kumar & Ors.; (1990) 1 UPLBEC 596; Suresh Kumar Tewari & Ors. v. State of U.P. & Ors.; 2003(1) LBESR 993 (SC) : (2003) 1 SCC 250; State of Orissa & Ors. v. Balram Sahu & Ors.; AIR 1987 SC 2342, Daily Rated Casual Labour Employee under PAT Department through Bhartiya Das Tar Mazdoor Manch v. UOI & Ors.; 2001(1) LBESR 1029 (SC) : (2001) 3 SCC 574, Gujarat Agriculture University v. Rathod Labhu Bechar & Ors.; (1998) 8 SCC 473, Raj Narain Prasad & Ors. v. State of U.P. & Ors.; (2004) 6 SCC 661, P.M. Bhargava & Ors. v. University Grant Commission & Ors.; (2003) 4 SCC 59, Jugal Chandra Saikia v. State of U.P., M.P. & Ors.; AIR 2000 SC 1005; India Thermal Powers Ltd. v. State of M.P. & Ors., (1988) 2 SCC 115, Dr. Shivarao Shantaram Wagle & Ors. v. UOI & Ors., (1979) 4 SCC 440, Jaswant Singh & Ors. v. Union of India & Ors.; AIR 1993 SC 2422. Federation of Directly Appointed Officers of Indian Railway & Ors. v. Union of India & Ors.; AIR 1986 SC 1929, M/s. K.N. Oil Industries & Anr. v. State of M.P. & Ors., AIR 2003 SC 3349 Shiromani Gurdwars Prabandhak Committee v. Mahant Harnam Singh & Ors.; AIR 2000 SC 622, Maharashtra Vikrikar Karmchari Sangathan v. State of Maharashtra & Anr.; AIR 2004 SC 2449, Union of India & Anr. v. Manu Dev Arya; (1991) 7 SCC 256, Joint Action Council of Service Doctor's Organizations & Ors. v. Union of India & Ors.; AIR 1996 S.C. 2173; State of U.P. & Ors. v. Harish Chandra & Ors.; (2001) 4 SCC 309, Union of India & Ors. v. Rakesh Kumar, (1997) 3 SCC 11; State of Haryana & Ors. v. Ram Kumar Mann; (1976) 4 SCC 543; G. Mauniyappa Naidu v. State of Karnataka & Ors.; (2004) 1 UPLBEC 112, Upendra Kumar Saxena & Ors. v. State of U.P. &

Ors..

HISTORY OF DEARNESS ALLOWANCE

6. Next to basic wage Dearness Allowance is one of the most important element in the fixation of pay structure of employees, the concept of dearness allowance was introduced during second world war to meet out the increases in the cost of living caused by inflation. It was either linked to the cost of price index or was given by way of flat increases. The Dearness Allowance was designed to combat inflation and protect the actual wages of the workmen or employees. Thus the purpose of Dearness Allowances was for cent percent neutralization of price hike. The national commission of Labour in 1969 recommended 95 neutralization for minimum wages earners.

The expedient of giving Dearness Allowances has been invented in order to mitigate the rigours of higher cost of living beyond a certain stage for the simple reason that emoluments of public servants are generally fabricated on the basis of certain stabilised price structure. The Second Central Pay Commission in its report laid down the principle underlying the grant of dearness allowances in the following words:

?A dearness allowances is device to project to a grater or lesser extent the real income of the wage earners and salaried employees from the affect of rise in price and the distinction we have made in the preceding paragraph is based on the consideration that employees in the lower pay ranges in particular would suffer serious hardship without such protection while those drawing higher salaries may not. But even among with lower paid employees there is a graduation not all of them require the same degree of protection.?

According to report of U.P. Pay Rationalisation Committee (196465) the Dearness Allowance can have justification only so long as prices which break from their moorings and spiral up are in such a state, as the temporary phase, but when price changes their moorings permanently and get pegged at higher point without any reasonable chance of coming down again then in such a case the resort to the expedience of (Dearness Allowance) would be inappropriate for in such a state of the economy a wholesale revision of pay structure is called for. It is not always easy to say whether price rise index in the economy is going to be permanent or not unless it is an obvious passing phase. It has, therefore, been practiced the continuance of expedience of Dearness Allowance for a long period as was possible. In the State of U.P. for the first time compensatory allowances on account of higher price of food prices in Districts like Dehradun, Nainital, Almora and Garhwal was paid to the employees. However, after the first world war in 1919 Mr. C.A. Silberrad and C.H.B. Kendell made certain proposals for ? high price allowance? on a sliding scale, designed to allow for the difference between the then prevailing prices and the normal price level. The proposed ? high prices allowance? was incorporated in the pay structure itself to the extent it was considered necessary. As discussed above the payment of ?Dearness

Allowance? had originated after second world war. In pursuance to report of U.P. Pay Committee 1947 the Dearness Allowance was restricted up to Rs. 200/ only subject to marginal adjustment.

However, gradually Dearness Allowance has been decided on sliding scale falling the price index. Hon"ble Supreme Court in the cases reported in AIR 1963 SC 1332, Hindustan Times Ltd. v. Their Workmen, held that Dearness Allowance should not remain fixed but should be on sliding scale. The whole purpose of Dearness Allowance is to neutralise a portion of increase in cost of living. The Apex Court had relied upon its earlier judgment reported in 1961 (2) LLJ 352. Relevant portion from the case of Hindustan Times Ltd. (supra) is reproduced as under:

?.....should be fixed as the Dearness Allowance. It is, in our opinion proper and desirable that the Dearness Allowance should not remain fixed at this figure but should be on a sliding scale. As was pointed out in Workmen of Hindustan Motors v. Hindustan Motors, 1961 (2) Lab LJ 352 (SC), the whole purpose of dearness allowance being to neutralise as portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on rise in the cost of living and a decrease on a fall in the cost of living. ?

In one another case reported in AIR 1980 SC 31, C.V.K.U. Sahakari Mandi v. G.S. Barot, Hon"ble Supreme Court held that the purpose of grant of Dearness Allowance is to neutralise the increase in the cost of living due to rise in price. For convenience paras 9 and 10 of the C. V.K.U. Sahakari Mandi (supra) is reproduces as under:

?The law is thus clear that dearness allowance is intended to neutralise a portion of the increase in the cost of living. Though 100 per cent neutralization is not advisable as it will lead to inflation, full neutralization may be permissible only in the case of the lowest class of employees. The management is entitled to complain if the neutralization is more than 100 per cent.

(10) The purpose of grant of dearness allowance is to neutralise the increase in the cost of living due to rise in prices. Neutralization may be such as to neutralise fully the increase in cost of living or may be restricted to neutralise only portion of the increase. Full or cent per cent neutralization can be achieved if the increase in the cost of living is fully compensated so that the pay of the worker is not adversely affected. But an award of more than 100 per cent of an increase in the cost of living would be more than neutralization and would be in effect give the worker an increased wage. The result would be the worker would be getting an increased wage packet whenever there is a price rise a result which would not have been envisages in making provision for grant of dearness allowance.?

CONSUMER PRICE INDEX

7. Since Dearness Allowance has got direct nexus with the consumer price index

it is necessary to understand the consumer price index. Hon"ble Supreme Court had discussed this aspect of the matter in a case reported in AIR 1986 SC 125, Workmen M/s. Indian Oxygen Ltd. v. M/s Indian Oxygen Ltd., in the following words:

?Prior to 1975 dearness allowance to the workmen employed in the units of the Company in NorthEastern Zone i.e. in the States of West Bengal, Bihar Orissa, U.P. Delhi and Punjab was linked to the consumer price index number (middle class) prepared by the Bengal Chamber of Commerce for Calcutta. It may be mentioned that the Bengal index has been discontinued since 1975. It is important to note that by the two awards of the Industrial Tribunal. The office staff and the workmen employed by the Company at Delhi are being paid dearness allowance linked to consumer price index compiled by Labour Bureau, Simla, for Delhi. Subsequently by a decision of this Court in Goverdhan Prasad v. Management of Indian Oxygen Ltd., AIR 1984 SC 27, 10 workmen employed by the Company stationed at Ghaziabad were required to be paid dearness allowance to the same extent and in the same manner as was being paid under the awards of the Industrial Tribunal to the workmen of the Company at Delhi.

(8) At this stage, it is necessary to have some idea of what is consumer price index number, how it is being compiled and what is its relevance in the matter of dearness allowance. Pursuant;to the recommendations of the Planning Commissioner for the Second Five Year Plan the Labour Bureau. Simla and the Industrial Statistical Organization of the Government of India look steps to conduct fresh family living surveys among working class and middle class population respectively with a view to constructing the new series of consumer price index numbers. The working class surveys were conducted at 50 selected centers and the middle class surveys at 45 centers, 18 centers being common to both. The work of this survey was commenced in this second half of 1958 and was concluded by September 1959. One of the centers selected for survey was Kanpur (See Ahmedabad Mill Owners, Association v. Textile Labour Association, (1966) 1 SCR 382 : AIR 1966 SC 497.

(9) What materials and statistical information enter into the compilation of consumer price index number may be briefly noticed

(10) The consumer price index number for industrial workers (base 1960 : 100) are being compiled and published by the Labour Bureau. Simla every month in respect of 50 industrial centers scattered all over the country. Amongst them is Kanpur. The material collected is through the family surveys of working class families. There are six main groups for which indices for each centers are being compiled besides the general index. They are:

- (i) Food
- (ii) Pan, Supari, Tobacco and intoxicants
- (iii) Fuel and light

(iv) Housing

(v) Clothing, bedding and footwear, and

(vi) Miscellaneous.

Consumer price index numbers are intended to measure relative temporal (overtime) changes in the price of a fixed basket of goods and services consumed by the index population in a. current period in relation to the base period. The index numbers are compiled by using Laspeyers Formula. Broadly stated this formula takes note of base and current prices for a particular item, quantity consumed of that item during the base period. It would appear that for the compilation of an index there are three essential requirements namely: (1) weighting diagram which is the relative percentage share of the total consumption expenditure as revealed by the basic family budget enquiry in respect of different items, (2) base prices of the different items which go into the index basket and (3) current prices in respect of each one of the items featuring in the index basket. The weighting diagram for a centre is derived on the basis of the data collected through family budget enquiries which were conducted in the 1958-59 at each one of the 50 centers. The survey was conducted by taking all samples of working class families in each of the 50 centers and the data was collected by interviewing these families. Based on the result of the family budget enquiries, the average expenditure of a family per month on different items of consumption price index number is a weighted average of the 50 centers indices. This is compiled and published alongwith the index number for each centre (source : Consumer Price Index : An anatomy published by Labour Bureau, Simla).

(ii) It would appear at a glance that there would be a noticeable difference between the consumer price index number for a centre and its weighted average for 50 centers which would be the all India average consumer price index number, the latter would generally be lower than the former in some cases. ?

CONSTITUTIONAL MANDATE

8. As settled by Apex Court in number of cases that right to life enshrined in Article 21 means right to have something more than survival and not mere existence or animal existence. It includes all those aspects of life which as to make a man's life meaningful complete and worth living. It shall also include all those things which give meaning to the man's life which includes tradition of cultural heritage and protection of heritage in its full measure. Right to life also includes protection for all things, which causes health hazards due to pollution or use of harmful drugs. Reference may be given to various Apex Court judgments including 1997 (5) SCC 10, Dr. Ashok v. Union of India & Ors.; 1978 (1) SCC 248, Menaka Gandhi v. Union of India; 1989 Supp (1) SCC 251, Ramsharan Autyanuprasi v. Union of India; (1984) 3 SCC 165, Vincent Panikulangara v. Union of India; (1983) 1 SCC 124, Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nandkarni; (1981) 1 SCC 608, Francis Coralie

Mullin v. Administrator, Union Territory of Delhi; 1991 Supp (1) SCC 600, Delhi Transport Corporation v. D.T.C. Mazdoor Congress; (1991) 1 SCC 598, Subhash Kumar v. State of Bihar, Olga Tellis v. Bombay Municipal Corporation; (1985) 3 SCC 545, C.E.S.C. Ltd. v. Subhash Chandra Bose; (1992) 1 SCC 441, Dalmia Cement (Bharat) Ltd. v. Union of India, (1996) 10 SCC 104.

From the cases referred hereinabove not only right to life but right to economic equality has been held to be fundamental right by the Apex Court. Right to live with dignity is also a fundamental right as settled by Hon"ble Supreme Court in a case reported in (1997) 8 SCC 191, Samatha v. State of Andhra Pradesh, Hon"ble Supreme Court held that keeping in view the Directive principle of said policy visavis fundamental right carried out under Chapter III of the Constitution it is the mandate of our constitution to reduce inequalities in income and status and provide the equality of opportunities or facilities. For convenience relevant portion from the Samatha's case (supra) is reproduced as under:

It is necessary to consider at this juncture the meaning of the word socialism envisaged in the Preamble of the Constitution. Establishment of the egalitarian social order through rule of law is the basic structure of the constitution. The Fundamental Rights and the directive principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word socialist used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate articles seek to establish, i.e. to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice enjoins the Court to uphold the Government's endeavour to remove economic inequalities, to provide decent standard of living to the poor and to project the interests of the weaker sections of the society so as to assimilate all the sections of the society in a secular integrated socialist Bharat with dignity of persons and equality of status to all.

9. While considering the right of employees for payment of dearness allowances Hon"ble Supreme Court in a case reported in AIR 1981 SC 409, Raja Bahadur Motilal Poona Mills Ltd. v. Girni Kamgar Sanghathan Poona, had correlated it with the State's duty contained in Para IV of the Constitution of India in the following manner:

However, certain basics are clear and indeed fundamental. The constitutional principles of Part IV expressed in Articles 38, 39 and 39A and values enshrined in the Preamble inform and enliven this department of jurisprudence. Flexibility, not fanatical adherence, govern this jurisdiction. Of course. The parameters of industrial law have been made clear for decades by this Court and those guidelines have been, time and again, referred to and reinforced. We are not called upon to launch on a fresh discussion of the first principles. What is called for is application of those principles, not with finical nicety but with flexible viability. From one angle it may appear that any decision regarding Dearness Allowance has a touch of arbitrariness or a colour of caprice; from another it may appear unrealistic or unworkable. These are the unavoidable features of this

branch of law where actually decisions have to be reached by the application of well tried principles to the concrete figures presenting themselves.

(4) Ultimately, humanism projects itself more than any other. This Court has pointed out that, where we deal with the lowest brackets of wages, neutralization on account of inflationary spirals must be hundred per cent because the right to life with bare necessities cannot be shrunken still further. The higher ranges admit of or accommodate lesser percentage in the matter of neutralization.?

PARTIES SUBMISSION

10. The main thrust of the arguments of petitioner's Counsel is that no ceiling can be provided on dearness allowance as it has got directed nexus with the consumer price index affecting the right of livelihood of employees. On the other hand, the submission of Shri Alok Sinha learned Additional Chief Standing Counsel is that equality of payment in salary cannot be claimed on account of fact that the regular employee and the work charge employees constituted two different classes.

11. In the case of Raj Narain (supra) the Apex Court had directed to frame scheme for regularization of work charge employees. These work charge employees were appointed during the following year in the irrigation as well as Lok Nirman Vibhag in the State of U.P.:

25 per cent engaged in the year 196065

50 per cent engaged in the year 196570

20 per cent engaged in the year 197580

5 per cent engaged in the year 198085.

Admittedly the petitioners are the work charge employees whose cases are covered by Apex Court judgment in Raj Narain's (supra) case and they are working since more than two decades. In the absence of sanctioned post they could not be regularized till date.

12. In the case of Shiromani Gurdwars Prabandhak Committees (supra) Hon''ble Supreme Court had held that judgment rendered by the Apex Court under Section 92 of the Gurudwara Act shall be binding on all those persons even if they are not parties but has got interest in the affairs of Gurudwara.

In the case of Federation of Directly Appointed Officer of Indian Railway (supra) Hon''ble Supreme Court ruled that the judgment which has settled the career of assistant engineers should not be made unsettled by initiating another proceeding at later stage.

In the case of M/s K.N. Oil Industries (supra) Hon''ble Supreme Court held that once the controversy has been finally settled by High Court through a judgment it has got binding affect and subsequent writ for the same cause of action shall be barred by constructive res judicata.

In the case of Maharashtra Vikrikar Karmchari Sangathan (supra) seniority list was affirmed by the Tribunal. The tribunal's judgment was affirmed by Hon''ble Supreme Court. Hence, Hon''ble Supreme Court held that the subsequent petition challenging the seniority list shall be barred by constructive res judicata.

In the case of Jaswant Singh (supra) Hon''ble Supreme Court had considered the rights of temporary and permanent Government employees. It has been held that the temporary Government servant or daily wagers working in a project for three years will not acquire quasi permanent status/Hon''ble Supreme Court had dealt with the rights of work charge employees in paras 42, 43 and 44 and held that they can not claim parity in pay with the regular employees on the ground of equal pay for equal work. The controversy was relating to work charge employees engaged in Beas Project and their appointment was for the period till completion of project. However, Hon''ble Supreme Court held that those employees shall be entitled for benefit of provisions contained in Industrial Dispute Act. Relevant portion for the Jaswant Singh's case is reproduced as under:

?But though the workcharged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the provisions contained in the industrial disputes act. Their rights flow from the special enactment under which even contracts of employment are open to adjustment and modification. The workcharged employees, therefore, are in a better position than temporary servants like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits. ?

13. Learned Additional Chief Standing Counsel had given much emphasis on the Apex Court judgment in the case of State of Rajasthan v. Kunji Raman (supra). In the case of Kunji Raman (supra) the controversy was relating to the Rule framed by State of Rajasthan for work charge employees. The Government of Rajasthan had framed Rajasthan Service Rule, 1951 and Rajasthan Service (Concession of Projects) Rules 1962. Certain provision of the Rule was challenged before the Rajasthan High Court on the ground that the rule in question framed for work charge employees does not provide for the payment of compensatory allowances to the work charge employees at the same rate as on which it was being to pay regular employees in the establishment. High Court had struck down the rules being violation of Articles 14 and 16 of the Constitution of India Hon''ble Supreme Court had set aside the judgment and order of the Rajasthan High Court on the ground that the regular employees and work charge employees constitute two classed and different treatment may be provided to them. It was further held by Hon''ble Supreme Court that the service condition of the work charge employees of the Rajasthan was governed by Work Charge Employees Service Rules. Accordingly they belong different class and no parity can be claimed with the employee. For convenience relevant portion from the Apex Court judgment in Kunji Raman's case is reproduced as under:

?In the State of Rajasthan the Public Works Department is maintaining two

separate establishment Regular and (1)(92) Workcharged. The employees working in the regular establishment are governed by the RSR and the work charged employees are governed by the Work Charged Employees Service Rules. The RSR are made inapplicable, inter alia, to the workcharged employees/the workcharged employees fall under two categories (1) those who are working on a project and (2) those who are not working on a project. It appears that for the workmen engaged on the workcharged establishment of Mahi Bajaj Sagar Project the Government has framed separate standing orders under the Industrial Employment (Standing Orders) Act, 1946 and they apply to all persons engaged on workcharged establishment of the said project whose terms of service are not regulated by the RSR, Rajasthan Civil Service (Classification, Control and Appeal) rules and any other Rules framed under Article 309 of the Constitution by the Government of Rajasthan. The standing orders provide not only for classification, recruitment and termination of service but also for wages an allowances and other service conditions of the persons engaged on the Mahi Project. Whereas the employees who are not working on a project get workcharges pay scale those who are working on a project get a special pay scale and they are also entitled to other benefits an allowances as are applicable to all the employees covered under the Industrial Disputes Act, 1947, Factories Act, 1948 and Industrial Employment (Standing Orders) Act, 1946. The petitioner and other employees represented by him are undisputedly governed by the said certified standing orders. They are not treated as fulltime Government employees and, therefore, are free to utilize their free time in the manner they wish. They are also entitled to grant of overtime wages. A subdivisional is regarded as a unit for the purpose of establishment of the workcharged employees. A separate seniority list of each category is maintained in each unit for the purpose of promotion as well as retrenchment. The service of a workcharged employee is ordinarily not transferable from one workcharged establishment to another workcharged establishment.?

.....Thus the claim made by Respondents Kunji Raman and other similarly situated employees for granting them project allowance was really misconceived. From what is now slated by them in this counteraffidavit, it appears that what they really want is parity in all respects with the employees of the regular establishment. In other words. What they want is that they should be treated as regular employees of the Public Works Department of the Rajasthan Government and should be given all benefits which are made available under the RSR and the project Rules. Such a claim is not justified and, therefore, the contention raised in that behalf cannot be accepted. We hold that the High Court committed an error in declaring Rules 2 (b) and (d) of the Project Rules, 1962 and Rules 4(2) and (4) of the Projects Rules, 1975 as ultra vires Articles 14 and 16 of the Constitution. ?

Kunji Raman's case does not relate to payment of dearness allowance. Neither there is any Rule governing service condition of work charge employees working in the State of U.P. nor the Government had passed any order in pursuance to

power conferred by Article 162 of the Constitution of India. The relevant provision governing the service condition of work charge employees as contained in Financial Handbook has been already deleted or repealed by the State Government as discussed hereinabove. In Raj Narain's case (supra) already the Apex Court had directed to regularized the services of work charge employees in phases who were appointed more than two decades before. Accordingly the ratio of Kunji Raman's case (supra) does not seem to be applicable in the present case.

14. The case of Barkat Ali (supra) dispute relates to age of superannuation and payment of pensionary benefit to the work charge employees, does not attract the present controversy. This Court while deciding the Barkat Ali (supra) directed the Government to regularize the service of work charge employees keeping in view the mandate of Raj Narian's case (supra).

The case of State of Haryana & Ors. v. Jasmer Singh & Ors. (supra) relates to claim raised by daily rated workers for equal pay to their counter part working in regular cadre. Hon''ble Supreme Court in Jasmer Singh's case (supra) held that question relating to regularization of daily rated workers is a policy matter which should be left over to the State Government. Question relating to the payment of minimum pay scale to daily rated employees should be considered by the Government keeping in view their qualification and merit and not by the Court. Daily rated employees can not be equated with the regular employees and also daily rated workers can not be given the minimum of the regular payscale of the regularly employed.

In the case of State of Haryana v. Surinder Kumar & Ors. (supra) also controversy related to daily rated workers who claimed the regular payscale. The apex Court held that only because the daily rated workers discharged same duties shall not be a ground for payment of regular payscale.

Similar proposition of law has been laid down by Hon''ble Supreme Court in the cases of Suresh Kumar Tewari & Ors. v. State of U.P. & Ors. (supra); State of Orissa & Ors. v. Balram Sahu & Ors. (supra) and State of Haryana v. Tilak Raj & Ors. (supra), Hon''ble Supreme Court held that the daily rated workers cannot claim regular payscale by applying the principle of equal pay for equal work on account of fact that they do not hold posts and scale of pay attached to a definite or regular post. However, in the case of Tilak Raj (supra) Hon''ble Supreme Court held that the State should ensure that minimum wages to be paid to daily rated workers.

In the case of Gujarat Agriculture University v. Rathod Labhu Bechar & Ors. (supra) the Apex Court directed for regularization of daily rated workers in phase manner and also directed to pay minimum wages so that the daily wager may be able to cope up with their minimum requirement of livelihood.

The case of Union of India & Anr. v. Manu Dev Arya (supra) relates to a controversy of payment of nonpracticing allowance to Research Assistant.

Hon'ble Supreme Court held that nonpayment of nonpracticing allowance like regular Doctor to the Research Assistance shall not be discriminatory as they constituted different class.

Same principle has been reiterated by Hon'ble Supreme Court in the case of Joint Action Council of Service Doctor's Organizations & Ors. v. Union of India & Ors. (supra).

15. In the case of Dr. Ms. O.Z. Hussain v. Union of India & Ors. (supra) the controversy was relating to disparity in payscale of medical and nonmedical wing of directorate of health services Hon'ble Supreme Court held that being forming two different class the different pay scale shall not be discriminatory. However, the Apex Court held that the medical and nonmedical wing of health services shall be entitled for same Allowance, higher degree allowance and risk allowance. Hon'ble Supreme Court had further held that to avoid stagnation in service Government must frame service rule providing promotional avenues to the nonmedical wing of the directorate of health services. For convenience Paras 6 and 7 of the Apex Court judgment in Dr. Ms. O.Z. Hussain's case (supra) is reproduced as under:

?(6) Undoubtedly, in regard to the three other allowances, namely, book allowance, risk allowance and conveyance allowance, there is no scope for discrimination between Group 'A' Scientists in nonmedical and medical wings. In fact, at the hearing of the writ petition, respondent's Counsel found it difficult to support the prevailing position. We are of the opinion that these four kinds of allowances, which are admissible to the medical doctors, are also admissible to the Group ?A? scientists under the nonmedical category employed in the establishment of Director General of Health Services. The claim for nonpractising allowance stands on a somewhat different footing and we do not think on the present state of the record of this proceedings, we can come to a definite conclusion that the Group 'A' scientists in the nonmedical category would be also entitled to such allowances.....

(7) This Court, has on more than one occasion, pointed out that provisions for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification; why while similarly placed officers in other Ministries would have the benefit of promotion, the nonmedical ? A ? Croup scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare state, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the ?A? category scientists in the nonmedical wing of the Directorate.

(8)(2) These "A" Group scientists shall be entitled to book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to doctors in the medical wing in the Directorate w.e.f. 141989.....?

16. The case of P. M. Bhargava & Ors. v. University Grant Commission & Ors. (supra) relates to preparation of curriculum/syllabus of a University and Hon''ble Supreme Court held that such controversies should be left over to the universities itself which is the expert of the field. The controversy was relating to induction of Astrology as a subject in the curriculum by University Grant Commission.

In the case of Jugal Chandra Saikia v. State of U.P., M.P. & Ors. (supra) the controversy relates to compulsory retirement.

The case of India Thermal Powers Ltd. v. State of M.P. & Ors. (supra) relates to set up of a power plant by private companies.

The case of Dr. Shivarao Shantaram Wagle & Ors. v. UOI & Ors. (supra) PIL was filed in the Apex Court against the alleged radio native contamination of Irish butter imported in India does not attract the present controversy.

The case of State of U.P. & Ors. v. Harish Chandra & Ors. (supra) relates to appointment from a select list which lapsed after a year. It also does not attract the present controversy.

In the case of Union of India & Ors. v. Rakesh Kumar (supra) the pensionary benefit granted by the Court contrary to statutory provisions or Rule was set aside by the Apex Court also does not attract the present controversy.

In the case of State of Haryana & Ors. v. Ram Kumar Mann (supra) Apex Court held that wrong order cannot be the foundation for claiming equality of enforcement of the same order. Once the resignation was accepted by the competent authority and application for withdrawal of rejection was rejected it can not be challenged on the ground that in the case of three others the authorities had permitted for withdrawal of resignation.

In the case of G. Mauniyappa Naidu v. State of Karnataka & Ors. (supra) the controversy relates to absorption of deputationist. Hon''ble Supreme Court held that deputationist does not have got right to claim absorption in violation of statutory rules even it the municipal corporation had passed certain resolution or Government had sanctioned for the absorption.

In the case of Upendra Kumar Saxena & Ors. v. State of U.P. & Ors. (supra) the controversy relates to termination of service of an employees on account of closure establishment. The apex Court held that employees does not have got right to claim alternative appointment after closure of establishment.

17. In view of case laws referred hereinabove the argument advanced by learned Additional Chief Standing Counsel Shri Alok Sinha is that the work charge

employees cannot claim same dearness allowance which is being paid to the regular incumbent. The principle of 'equal pay for equal work' shall not be attracted. The argument advanced by learned Additional Chief Standing Counsel does not seem to be tenable. In the present case the controversy does not relate to parity in pay but it relates to ceiling fixed by the State Government in payment of dearness allowance. The payscale of an employee is fixed by the State Government keeping in view various factors which includes the nature of job and duties, the class or category of employment, the qualification prescribed for the cadre, reports of pay commission etc. On the other hand, dearness allowance is fixed solely relying upon the consumer price index. As discussed hereinabove the consumer price index is proportionate to hike in cost of living, which includes the rise in cost of food grains, cloths and several other materials necessary to lead a dignified life. The Dearness Allowance is being paid to neutralise the rise in cost of living accordingly it has got direct nexus not only with the right to livelihood but also with the quality of life.

As settled by Hon'ble Supreme Court right to life, right to live with dignity and quality of life are the fundamental rights guaranteed under Article 21 of the Constitution of India.

'Dearness affect all the employees equally?'. Accordingly in case State decides to pay dearness allowance to the work charge employees then fixation of any ceiling will amount to hostile discrimination and shall be violative of right guaranteed under Articles 14 and 21 of the Constitution of India.

18. The other submission of learned Additional Chief Standing Counsel that these bunch of writ petitions are barred by constructive res judicata is also not sustainable. Writ Petition No. 1807 (SS) of 1997 was decided by this Court by order dated 27/8/1999 when the impugned order was placed before this Court with the observation that in case the petitioners have got any grievance against the fixation of salary it shall be open to them to approach State Government. The issue relating to placement of ceiling on payment of dearness allowance to work charge employees was not adjudicated by this Court. The principle of constructive res judicata may be applicable in case the issue before the Court has been adjudicated by earlier judgment. Since, the dispute relating to provide ceiling on the payment of dearness allowance to work charge employees was not decided by this Court while deciding earlier writ petition, the principle of constructive res judicata shall not come in the way to decide these bunch of writ petitions on merit.

CEILING ON DEARNESS ALLOWANCE NOT PERMISSIBLE

19. As discussed hereinabove the ceiling on dearness allowance affects the right of livelihood as well as quality of life, of the work charge employees. It is different thing in case the State Government would have taken a decision not to pay dearness allowance to work charge employees on some sound grounds but once the State Government took a decision for payment of dearness allowance

there should not be disparity in payment of dearness allowance by providing ceiling, payable to work charge employees.

In the case of *Hindustan Lever Ltd. v. B. N. Dougre & Ors.* (supra) Hon''ble Supreme Court held that the ceiling on the dearness allowance to monthly rated clerical and technical staff working in Sewree factory was illegal. For convenience relevant portion from the judgment of Apex Court in *Hindustan Lever Ltd.* (supra) is reproduced as under:

(14) It is in the above background that we must consider the question of place of a ceiling on dearness allowance. As is so wellknown, wages are among the major factors in the economic and social life of the working classes. Workers and their families depend almost entirely on wages to provide themselves with the three basic requirements of food, clothing and shelter. The other necessities of life like children's education medical expenses, etc. must also come out of the emoluments earned by the breadwinner. Workers are therefore concerned with the purchasing power of the pay packet he receives for his toil. If the rise in the paypacket does not keep pace with the rise in prices of essentials the purchasing power of the paypacket does not keep pace with the rise in prices of essentials the purchasing power of the pay packet falls reducing the real wages leaving the workers and their families worse off. Therefore, if on account of inflation prices rise while the paypacket remains frozen, real wages will fall sharply. This is what happens in periods of inflation. In order to prevent such a fall in real wages different methods are adopted to provide for the rise in prices. In the costofliving sliding scale systems the basic wages are automatically adjusted to price changes shown by the cost of living index. In this way the purchasing power of workers' wages is maintained to the extent possible and necessary. However, lapfrogging must be avoided. This Court in *Clerks of Calcutta Tramways v. Calcutta Tramways Co. Ltd.*, AIR 1957 SC 78 [(1956 (2) LLJ 450)] held that while awarding dearness allowance cent percent neutralization of the price of cost of living should be avoided to check inflationary trends. That is why in *Hindustan Times Ltd. v. Their Workmen*, AIR 1963 SC 1332 [(1963) 1 LLJ 108], Das Gupta, J observed that the whole purpose of granting dearness allowance to workmen being to neutralise the portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase when the cost of living increases and a decrease when it falls.?

In one another case reported in AIR 1986 SC 1794, *The monthly rated workmen at the Wadala Factory of the Indian Hume Pipe Co. Ltd. v. The Indian Hume Pipe Co. Ltd. Bombay* (supra), Hon''ble Supreme Court had repelled the respondents submission to provide any ceiling on the dearness allowance. Relevant portion from the apex Court judgment in *The monthly rated workmen at the Wadala Factory of the Indian Hume Pipe Co. Ltd.* (supra) is reproduced as under:

?The learned Counsel for the respondents made a strong plea for substitution of the existing system of dearness allowance with ceiling on the quantum of dearness allowance. We have already indicated that in the absence of compelling

material system that gives benefit to the workmen cannot lightly be interfered with to their detriment. The theory of ceiling on the quantum of dearness allowance cannot be accepted since under the prevailing conditions there is no control over the prices of essential commodities and as such a ceiling would not give sufficient cushion when prices of essential commodities continuously rise. ?

20. In the case of *State of West Bengal & Ors. v. Pantha Chatterji* (supra) Hon"ble Supreme Court had held that the persons working as part time Border Wing Home Guards recruited for patrolling the border and checking infiltration and working since more than 14 years performing same duties shall be entitled for parity in privileges and monetary benefits with their counterparts working as permanent BWHG, not made BSF personnel they can not be treated differentially as they also use to assist border security force personnel along the borders of the country. For convenience relevant portion from the Apex Court judgment from *Pantha Chatterji's* case (supra) is reproduced as under :

?(16) In the present case, we have seen that there has not been any dispute about the nature of duties of the two sets of BWHG. Ordinarily, no doubt, they could claim benefits only in accordance with the Scheme under which they were engaged. But as held earlier, the scheme was not implemented in its terms as framed. Hence, the distinction sought to be drawn between the parttime and the permanent BWHG had obliterated and both worked together shoulder to shoulder under similar situations and circumstances and discharged same duties. Once the scheme as framed failed to be implemented as such by those at the helm of the affairs and the parttime BWHG were continued under the authority of those vested with such power to continue them, it is not open to the State Government or the Central Government to deny them the same benefits as admissible to members of the permanent staff of BWHG. The decision reported in *Karnataka State Private College Stopgap Lecturers Assn. v. State of Karnataka and Government of India v. Court Liquidators Employees Assn.*, may also be beneficially referred to.

(18) In the circumstances indicated above, the High Court has rightly come to the conclusion that the so-called parttime Border Wing Home Guards could not be treated differently from the permanent staff of BWHG. They have been rightly accorded parity with them. ?

21. In the case of *Air India Statutory Corporation v. United Labour* (supra) Hon"ble Supreme Court held that social security, just and humane conditions of work and leisure to workman are part of their meaningful right to life and to achieve self expression of their personality and to enjoy the life with dignity. In case, the ceiling is fixed over the dearness allowance of the work charge employees, after rise in consumer price index in case the hike in price is not neutralised by payment of full dearness allowances payable to regular employee, they may suffer with serious consequences in quality of life. For convenience relevant portion for the Apex Court judgment from *Air India Statutory Corporation* (supra) is reproduced as under:

?Social justice, equality and dignity of person are cornerstones of social democracy. The concept of ?social justice? which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. ?Social Justice? is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devoid to mitigate the sufferings of the poor, weak, dalits, tribal and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane condition of work and leisure to workman are the part of his meaningful right to life and to achieve self expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilized living while sharing according to their capacity, social and cultural heritage.?

(50) All essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman, lower class, middle class and poor people is a means to development and source to earn livelihood. Though, right to employment cannot, as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency, instrumentality, juristic person or private entrepreneur, it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. Democracy offers to everyone as a doer, an exerted an developer and enjoyer of his human capacities, rather than merely as a consumer of utilities. In a socialist democracy governed by the rule of law, private property, right of the citizen for development and his right to employment and his entitlement for employment to the Labour, would all harmoniously be blended to serve larger social interest and public purpose. ?

22. From the judgments of Apex Court referred hereinabove, it was incumbent upon the State Government not to provide any ceiling on payment of Dearness Allowance to the work charge employees. Law laid down by the Apex Court is binding under Article 141 of the Constitution of India. Accordingly, the State Government should have acted keeping in view the law settled by the Apex Court referred hereinabove. It was also incumbent upon the State Government to amend the relevant Government Orders according to law settled by Apex Court (supra) for payment of Dearness Allowance to the work charge employees up to

optimum level as paid to the regular incumbent. The State Government may neither legislate nor pass an order in pursuance to power conferred by Article 162 of the Constitution of India contrary to protection provided by constitution enshrined in its Part III.

In a recent judgment reported in (2004) 6 SCC 224, *Brahmo Samaj Education Society & Ors. v. State of W.B. & Ors.*, Hon''ble Supreme Court held as under:

?We would rather state that the State Government shall take note of the declarations of law made by this Court in this regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein.?

In view of above, the various Government Orders relied upon by Additional Chief Standing Counsel to defend the impugned order will be of no help to provide ceiling on payment of Dearness Allowance to the work charge employees.

23. Indian Constitution is not only a pragmatic of result of struggle for freedom but it also reflects the aspiration of hope of the people. It was the pious wishes of our founding father to give quality of life to their progeny. The preamble of the constitution not only contains the spirit of constitution but also speaks of the desirement and sentiments of the people of the country for social equality. Life as a whole is not confined merely to right to exist but it includes right to live with dignity and grace. Several rights included in directive principles being nonjusticiable in the beginning consequent upon interpretation of Article 21 have been elevated to be facets of right to life. Undoubtedly the rise in cost of living immediately affects a man''s personal life disturbing and adversely affecting the entire family. It has got no concerned with the regular payscale. That is why the dearness allowances are revised from time to time keeping in view the consumer price index in the manner discussed hereinabove, some times even without having any corelation with the revision of regular payscale. Accordingly, the argument advanced by Shri Alok Sinha learned Additional Chief Standing Counsel to defend the impugned order on the basis of inapplicability of equal pay for equal work does not extend any help to defend the impugned order.

24. Though the Dearness Allowance is the part of pay structure of an employee but as discussed hereinabove it has got no nexus with the job, duties or cadre in which a person has been appointed. The quantum of Dearness Allowance is decided exclusively on the basis of consumer price index, which is added to pay structure of an employee. Since, the rise in consumer price index equally affects the regular as well as work charge employees, any ceiling by the State Government on the Dearness Allowance shall be unreasonable, improper and discriminatory, hence shall be violative of Article 14 of the Constitution of India. There is no nexus with the object, which the State sought to achieve by providing ceiling over the Dearness Allowance.

25. For a better quality of life within the means of wages payable to work charge employees it is necessary that the hike in cost of living and consumer goods

should also be neutralise in respect of work charge employees by making payment of same dearness allowance which is being paid to their counter part working in the regular cadre as both are adversely affected by rise in price equally.

26. Churchill's comment on the father of nation Mahatma Gandhi should not be forgotten, to quote: "The little man with a little pencil with little ballot vote" All rules of interpretation leading to the protection and enhancement of quality of life and dignity of individual should be preferred in a welfare State. Any interpretation of Rules, orders or constitutional provisions which affects the quality and dignity of life should be ignored. Constitution commands that the peoples of the country should get life of equality and dignity and the life of common man should be made happy and peaceful. This cannot be achieved in case the work charge employees are permitted to suffer the wrath of price hike in their life.

27. As discussed hereinabove the ceiling provided by the impugned order on the payment of dearness allowance to the work charge employees is highly arbitrary unjust and improper; and also discriminatory in nature. It also affects right to live with quality of life and dignity guaranteed under Article 21 of the Constitution of India. Quality of life can not be achieved in case the work charge employees are not paid dearness allowance up to optimum limit which is being paid to their counter part working in regular cadre. Once the Government had taken a decision for payment of dearness allowance and provisions contained in financial handbook Vol. 6 from paras 667 to 669 has been repealed or deleted then there is no justification on the part of State Government to provide any ceiling on payment of dearness allowance.

28. In view of above the impugned order dated 26/8/1999 which provides ceiling on the payment of dearness allowance to work charge employee is held to be violative of Articles 14 and 21 of the Constitution of India.

A writ in the nature of certiorari is issued quashing the impugned order dated 26/8/1999 passed by the State Government as contained in Annexure No. 1 to the writ petition to the extent it provides ceiling on the payment of dearness allowance to the work charge employees of the respective departments with all consequential benefits. A writ in the nature of mandamus is also issued commanding the Government of U.P. to pay same dearness allowance to the work charge employees of the respective department which is being paid to their regular counter part.

Writ petitions are allowed accordingly. No order as to costs.