

(2006) 01 GAU CK 0099

In the Gauhati High Court

Case No : Regular Second Appeal No's. 44, 45, 46 and 47 of 2003

State of Tripura and Others

APPELLANT

Vs

Tarun Chandra Dey and Others

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Tripura State Civil Services (Revised Pay) (Amendment) Rules, 1999 — Rule 10, 3, 4, 5, 7

Tripura State Civil Services (Revised Pay) Rules, 1988 — Rule 5(1), 5(2), 5(3)

Citation : (2006) 4 GLT 213

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S. Deb and S. Chakraborty, for the Appellant; S. Talapatra and B. Banerjee, for the Respondent

Judgement

B.K. Sharma, J.—While the appeals being RSA Nos 44/2003 and 45/2003 have been preferred by the State of Tripura (Defendants in the suits) against the appellate judgment and decree passed by the learned Additional District Judge, Udaipur, South Tripura dated 4.6.2003 in Title Appeal No. 7/2001 and Title Appeal No. 8/2001 respectively, the appeals being RSA Nos. 47/2003 and 48/2003 have been preferred by the Plaintiffs in the suits namely Title Suit No. 14/1999 and Title Suit No. 11/1999 respectively, against the same very judgment and decrees of the Appellate Court. Thus, both the Plaintiffs and the Defendants in the suits have preferred the present appeals being aggrieved by the judgments and decrees of the first Appellate Court. Be it stated here that the State did not prefer any appeal against the judgment and decree passed in the Title Suits.

2. The dispute involved is in respect of entitlement of the benefits of revised pay scales and the dates from which such revised pay scales are to be made effective. The Plaintiffs in the suits are the Tripura Police personnel working in the rank of Sub-Inspector of Police. Two separate Title Suits were filed by two sets of employees in the rank of Sub-Inspector of Police. Since the basic facts and the

issues involved in both the suits, barring some minor differences in respect of service particulars of the Plaintiffs are same and as agreed to by the learned Counsel for the parties, the facts involved in Title Suit No. 11/1999 giving rise to Title Appeal No. 8/2001 and the present appeal being RSA No. 45/2003 are taken into consideration for deciding all the appeals. All the appeals were heard analogously and are being disposed of by this common judgment and order.

3. Title Suit No. 11/1999 was filed by the Plaintiffs with the following prayer:

(i) To declare that revised pay scale of the Plaintiffs at Rs. 1450-3710/- be fixed up as on 1.1.86 instead of 1.11.92 as per TSCS (RP) Rules 1988 with it's clarification vide Memo dated 21.9.95 and the Plaintiffs are legally entitled to get financial benefit accordingly.

(ii) To declare that Gradation scale of Rs. 1700-3980 be fixed up of the Plaintiffs No. 1 and 2 as on 29.6.89 and 30.3.91 respectively as per TSCS (RP) Rules 1988 with it's clarification vide Memo dated 21.9.95 and the Plaintiff No. 1 and 2 are entitled to get the said financial benefit.

(iii) To declare that the revised pay scale of the Plaintiffs be fixed at a scale of Rs. 7450-13,000/- as per TSCS (RP) Rules 1999 as on 1.1.95 and the Plaintiffs are entitled to get all financial benefit of the same.

(iv) To declare that the Memo No. 34019-40/SETTS (24)/PHQ/99 dated 5.8.99 issued by D.G. of Police, Tripuras is illegal, void, inoperative, in violation of RP rules 1988 and 1999 and not acted upon the Plaintiffs in any way.

4. All the three Plaintiffs involved in the Suit were first appointed as Constable in the Department of Police under the Government of Tripura and riding the ladder of promotions they became Sub-inspector of Police with effect from 29.6.79, 30.3.81 and 12.4.83 respectively in the pay scale of Rs. 560-1300/-.

5. In the year 1988, the Tripura State Civil Service (TSCS) (Revised Pay) (RP) Rules, 1988 came into being vide Memo No. F. 4(6)-FIN (PC)/88 dated 16.9.88 issued by the Department of Finance, Government of Tripura and the same was duly published in the extra-ordinary issue of the Tripura Gazette on 16.9.88. The RP Rules, 1988 was promulgated providing revised pay scale of Rs. 1300-3200/- for the SI of Police from the earlier pre-revised scale of Rs. 560-1300/-. Subsequently, the Finance Department enhanced the revised scale to Rs. 1450-3710/- with effect from 1.11.92 vide Memorandum dated 7.11.92. By yet another notification dated 21.9.95 the revised pay scale of Rs. 1450-3710/- in the RP Rules of 1988 was declared as initial pay scale for the post of SI of Police. According to the Plaintiffs, this notification cleared the bar, which was introduced by the notification dated 7.11.92 giving effect to the revised pay scale from 1.11.92. It was the pleaded case of the Plaintiffs that since vide notification dated 21.9.95 the revised pay scale of Rs. 1450-3710/- was declared as initial pay in respect of SI of Police, they were entitled to get the benefit of the revised scale from the effective date of RP Rules of 1988 i.e. with effect from 1.1.86.

6. It was further stated in the plaint that as per memorandum dated 21.9.95, the SI of Police who had completed 10 years of service in the same post without any promotion were also entitled to the higher scale of Rs. 1700-3980/- which was the scale of Inspector of Police as per RP Rules, 1988. Thus it was the case of the Plaintiffs that Plaintiffs No. 1 and 2 became entitled to get the said scale of Rs. 1700-3980/- with effect from 29.6.89 and 30.3.91 and 12.4.93 respectively on completion of 10 years of service as SI of Police.

7. The Tripura State Civil Service ROP Rules, 1999 was published in the Tripura Gazette vide notification 6.2.99 for the employees of the State Government and the Rules came into force with effect from 1.1.96. In the ROP Rules of 1999 the revised pay scales in respect of the employees of the Police Department have been indicated at Page 70 and 71 of the Rules. The revised pay scale of SI of Police was shown as Rs. 5000-10,300/- from the prerevised scale of 1450-3710/-. As regards the post of Inspector of Police, the revised pay scale of the pre-revised scale of Rs. 1700-3980/- was shown as Rs. 1450-13,000/-. These scales are shown in Annexure-C to the ROP Rules of 1999, in which no gradation scale of SI of Police is mentioned. As per RP Rules, 1988, the Plaintiffs got the gradation scale, which was applicable to the scale of the Inspector of Police at Rs. 1700-3980/-. Drawing the analogy from the RP Rules, 1988, it was the case of the Plaintiffs that since the gradation scale of Plaintiffs was not incorporated in Annexure-C to the ROP Rules, 1999 in respect of the SI of Police in the Department of Police, they were entitled to the revised scale of Rs. 7450-13,000/- which is the revised scale of Rs. 1700-3980/-, because the gradation scale of the Plaintiffs were equal to the pay scale of Inspector of Police as per RP Rules of 1988. It was pleaded by the Plaintiffs that since the existing scale of Rs. 1700-3980/- was shown in column No. 1 in Annexure-A, they were entitled to get the revised scale in relation to the existing scale of pay introduced with effect from 1.1.96 as indicated in column No. 4 of the Annexure- C in respect of the Police Department as per Clause 3(d) of the said Rules. It was further stated by the Plaintiffs that since they enjoyed the benefits of the scale of the higher post or the promotion post as gradation scale as per RP Rules, 1988, they were entitled to get the benefit of the existing scale of the higher post of Inspector of Police as per Annexure-C to the Rules. The Plaintiffs contended that since they got the benefit of higher scale of Rs. 1700-3980/- applicable to the post of Inspector of Police, as gradation scale, under RP Rules, 1988, they are entitled to get the scale of Inspector of Police under ROP Rules, 1999. However, the authorities of the Defendants most illegally fixed the pay of the Plaintiffs in the revised pay scale provided by the ROP Rules, 1999 at Rs. 5500-10,700/- and not at Rs. 7450-13,000/- which resulted in deprivation of financial benefits in their service. According to the Plaintiffs, they were entitled to the said scale of Rs. 7450-13,000/-.

8. Pursuant to the representations submitted by the SI of Police, the Director General of Police (DGP) issued memorandum dated 5.8.99 regarding fixation of scale. According to the Plaintiffs the DGP most illegally and in violation of the

criteria for revised pay scale, observed in the memorandum that the police personnel who had already got two promotions during the tenure of service would not be entitled to get the higher scale than that of Rs. 5500-10,700/- and thus misinterpreted Clause 10(b) and 10(c) of the ROP Rules, 1999. By the said memorandum the SIs were classified to two grades namely direct recruits and promotees resulting in discrimination in the matter of pay scales to the junior and senior SI of Police. While the promotees who had earned two promotions in their service career although were entitled to the pay scale above the scale of Rs. 5500-10,700/- were deprived of the same, but the direct recruits on completion of statutory period of service i.e. 10+7 years became entitled to get the pay scale of Rs. 6500-12,300/- bringing disparity in the pay scale for the same set of employees in violation of the principles of equity and natural justice and so also in violation of the ROP Rules, 1999. Although the Plaintiffs after publication of the ROP Rules 1999 submitted their option in the prescribed formats, but the authority without taking a decision in the matter or referring the same to the Finance Department for its clarification as per Clause 15 of the ROP Rules, 1999 arbitrarily fixed the pay scale of the Plaintiffs at Rs. 5500-10,700/-, contended by the Plaintiffs. Being aggrieved, the Plaintiffs filed Title Suit No. 11/1999 and the other Plaintiffs filed Title Suit No. 14/1999 claiming the same reliefs as quoted above.

9. The Defendants contested the suit by filing joint written statement. Apart from the general pleas of non-maintainability of the suit on various principles of law, the Defendants-while broadly admitting the factual aspects of the matter including the fact of allowing the gradation scale to the Plaintiffs No. 1 and 2 i.e. the next higher scale of Rs. 1450-3710/- with effect from 1.6.89 and 1.3.91 respectively also admitted that the Plaintiffs got the pay scale of Inspector of Police i.e. 1700-3980/- as the gradation scale as per RP Rules, 1988 and also that all the Plaintiffs got the second gradation scale of Rs. 1700-3980/- with effect from 1.11.92, 1.11.92 and 1.4.93 respectively on the basis of the aforesaid memorandum dated 21.9.95 and the subsequent clarification vide memorandum dated 5.1.96. The Defendants also admitted that the pay scale of SI of Police was revised to Rs. 5000-10,300/- from their pre-revised scale of Rs. 1450-3710/- and that the pay scale of Inspector of Police was revised to Rs. 7450-13,000/- from the pre-revised scale of Rs. 1450-3710/- and that the pay scale of Inspector of Police was revised to Rs. 7450-13,000/- from the pre-revised scale of Rs. 1700-3980/-. It was also admitted that the Defendants fixed the pay scale of the Plaintiffs at Rs. 5500-10,700/- from their pre-revised scale of Rs. 1700-3980/- with effect from 1.1.96 as per Annexure-A to the ROP Rules, 1999. It was contended that the pay scale of SI of Police who had already enjoyed two promotions during their tenure of service, were not entitled to get the higher scale than the one of Rs. 5500-10,700/-. On the other hand the SI of Police directly recruited to the service were entitled to get the benefit of the scale of Rs. 6500-12,300/- as per Clause 10 of the ROP Rules, 1999 after the particular period of service i.e. 10+7 years. It was admitted that by such fixation

a number of junior SI of Police got higher scale than that of some senior SI of the Police including the Plaintiff. However, the same was defended on the ground that such senior SI of Police including the Plaintiff who had already got two promotions/gradation scale could not be given further benefits. The Defendants contended that the pay scales of the Plaintiffs was rightly fixed as per RP Rules, 1988 and ROP Rules of 1999 and that they were not entitled to get any higher scale of pay. According to them the memorandum issued by the DGP on 5.8.99 was absolutely based on the ROP Rules, 1999 and thus the Plaintiffs were not entitled to get any reliefs.

10. On the basis of the respective pleadings and upon hearing the parties, the Trial Court on 9.6.2000 framed seven issues. Thereafter another issue was framed on 13.9.2000 as issue No. VIII. The eight issues reads as follows:

- (i) Whether the suit is maintainable in the present form and nature;
- (ii) Whether the Plaintiffs have got any cause of action for institution of the instant suit;
- (iii) Whether the Plaintiffs are legally entitled to get revised pay scale of Rs. 1450-3710/- as on 1.1.86 instead of 1.11.92 as per T.S.C.S., (ROP) Rules, 1988 with its clarification vide Memo dated 21.9.95 and 5.1.96 issued by the Finance Department.
- (iv) Whether the Plaintiffs No. 1 and 2 are entitled to get gradation scale of Rs. 1700-3980/- w.e.f. 29.6.89 and 30.3.91 respectively as T.S.C.S. (ROP) Rules, 1988 read with its clarification vide Memo dated 21.9.95 and 5.1.96 issued by the Finance Department.
- (v) Whether the Memo No. 39019-40/ACCTS (24) PHQ/99 dt. 5.8.99 issued by the D.G.P. is illegal, void and inoperative and not acted upon the Plaintiffs;
- (vi) Whether Plaintiffs are entitled to get the decree of perceptual injunction restraining the Defendants for giving effect with the impugned Memo No. 39019-40/ACCTS (24)/PHQ/99 dt. 5.8.99 by the D.G.P. Tripura.
- (vii) Any other relief (s) the parties are entitled to.
- (viii) Whether the Plaintiffs are entitled to get revised pay scale of Rs. 7450-13,000/- as on 1.1.96 as per T.S.C.S. (ROP) Rules, 1999 and its third amendment dated 22.7.99.

11. Neither side examined any witness. The Plaintiffs without objection from the Defendants exhibited and proved the following documents.

- (i) Office Memo dated 7.11.92, Office Memo dated 21.9.95 and Office Memo dated 5.1.96 issued by the Finance Department-As Exbt. 1 series (in four sheets);
- (ii) D.O. letter dated 6.12.95 issued by S.P. South, representations of S.I.G.K. Nath dt 19.9.96, 19.3.97, 26.3.98 and 12.2.99 as Exbt. 2 series (in eight sheets);

- (iii) Options of S.I.G.K. Nath dated 20.2.99, Keshab Majumder dated 12.3.99 and Brajendra Gope dt. 17.3.99 as Exbt. 3 series (in three sheets);
- (iv) Representation of S.I.G.K. Nath and nine others to the D.G.P. dated 31.5.99 forwarded by S.P., South-as Exbt. 4 series (in three sheets);
- (v) Memorandum dated 5.3.99 issued by D.G.P. as Exbt. 5 (in three sheets);
- (vi) Notification dt 22.7.99 issued by the Finance Department-as exbt. 6 (in one sheet) and
- (vii) Two Nos of D.O. letters dated 17.8.99-as Exbt. 7 series (in two sheets).

Similarly the Defendants also without any objection from the Plaintiffs exhibited and prove the following documents;

- (i) Photocopy of Memo No. 34019-40 dt. 5.8.99 issued by the Govt. of Tripura as Exbt. A;
- (ii) Letter No. F. 1 (72) PD/92 dt. 2.3.96 (photocopy) regarding pay scale with Memo as Exbt. B;
- (iii) Office Memo No. F. 4 (6) FIN/PC/88 (P-1) dt. 21.9.95 (photocopy) as Exbt. C.
- (iv) Office Memo No. 4 (32) FIN/PC/92/(L-1) dt. 7.11.92 (Photocopy) as Exbt. D.

12. The Trial Court i.e. the learned Civil Judge (Jr. Divn.), Undaipur, South Tripura by his judgment and decree dated 12.4.2001 granted the following reliefs to the Plaintiffs.

- (i) Plaintiffs are entitled to get the scale of Rs. 1450 to 3710/- as initial scale of S.I. of Police w.e.f. 1.1.86 from the date of implementation of the R.O.P. Rules, 1988 with all financial benefits as the scale of Rs. 1450-3710 is declared as initial pay scale of the R.O.P. of 1988.
- (ii) That the Plaintiffs being the senior S.I. of Police are also entitled to get the scale of Rs. 6500 to 12,300/- equal to the scale of their juniors from the date on which their juniors were given that scale with all financial benefits;
- (iii) That the order of D.G.P. dated 5.8.99 is illegal, void, and inoperative and the Plaintiffs are entitled to get perpetual injunction restraining the Defendants from giving effect the said Memo issued by the D.G.P. on 5.8.99.

13. Barring Issue No. iv and viii, all other Issues have been answered in the positive in favour of the Plaintiffs. Being aggrieved by the decision of the Trial Court in answering the issue No. iv and viii against the Plaintiffs, they preferred Title Appeal No. 8/2001. Similarly in the other suit also namely Title Suit No. 14/1999, the Plaintiffs preferred Title Appeal No. 9/2001. The Defendants did not prefer any appeal against the judgment and decree passed by the Trial Court. In the respective appeals preferred by the Plaintiffs, the first Appellate Court while reversing the decision of the Trial Court in respect of issue No iv and answering it

in favour of the Plaintiffs/Appellants, affirmed the Issue No. viii answered by the Trial Court in the negative against the Plaintiffs. The contesting parties being aggrieved by the decisions in respect of Issue No. iv and viii have carried the judgments and decrees passed by the first Appellate Court in the respective appeals being Title Appeal No. 8/2001 and Title Appeal No. 9/2001, on these appeals.

14. While, the Defendants/State of Tripura being aggrieved by the decision in Issue No. iv by which the first Appellate Court reversed the findings of the Trial Court, has preferred RSA No. 44/2003 and 35/2003, the Plaintiffs being aggrieved by the decision in Issue No. viii by which the decision of the Trial Court has been affirmed, have preferred RSA No. 46/2003 and 47/2003. Thus, in these appeals, we are only concerned with the Issue No. iv and viii.

15. While the RSA Nos. 44/2003 and 45/2003 preferred by the Defendants/State of Tripura were admitted by orders dated 16.12.03, the RSA Nos. 46/2003 and 47/2003 were admitted by orders dated 2.1.2004.

16. RSA No. 44/2003 and 45/2003 were admitted to be heard on the following substantial question of law with any other substantial question of law to be raised at the time of hearing.

Whether the interpretation of the learned Courts below in respect of the office Memo No. F.4(32) FIN (PC) 92 (L-I), Government of Tripura. Finance Department dated 7th November. 1992 as explained by Memo dated 21.9.95 is correct?

17. RSA No. 46/2003 and 47/2003 were admitted to be heard on the following substantial questions of law:

1. Whether the Appellants are entitled to the scale of pay of Rs. 7450-13,000/- under ROP Rules, 1999?

2. Whether the Appellants can be deemed to hold post with the scale of pay of Rs. 1700- 3980/- under Annexure-C for the purpose of determining the revised pay scale?

18. I have heard Mr. S. Deb, learned Sr. Counsel assisted by Mr. S. Chakraborty, learned Counsel for the Appellants in RSA No. 44/2003 and 45/2003. I have also heard Mr. S. Talapatra, learned Sr. Counsel, assisted by Mr. B. Banerjee, learned Counsel for the Appellants in RSA No. 46/2003 and 47/2003. The respective Appellants in both sets of appeals are the contesting parties.

19. Mr. Deb, learned Sr. Counsel appearing for the Defendants Appellants submitted that while both the Courts below rightly decided the Issue No. viii against the Plaintiffs, but the first appellate Court committed an error of law in deciding Issue No. iv in favour of the Plaintiffs and against the Defendants/Appellants reversing the findings arrived at by the learned Trial Court. Referring to the memoranda of 1992, 1995 and 1996 and the provisions of the RP Rules, 1988 and the ROP Rules 1999, he submitted that the effective date of

admissibility of the revised scale being 1.1.92, the first Appellate Court not have held the same to be applicable from the effective date of RP Rules, 1988 and for that matter from the date of completion of 10 years of service by the Plaintiffs. He submitted that there being no challenge to the clarificatory memorandum dated 5.1.96, the first Appellate Court committed an error of law in reversing the judgment and decree of the Trial Court in respect of Issue No. iv. Countering the arguments of Mr. Talapatra, learned Counsel for the Plaintiffs/Appellants, that the State Appellants having not preferred any appeal against the judgment and decree passed by the Trial Court and the judgment and decree passed by the first Appellate Court could in respect of Issue No. iv having been implemented by the State, the State is precluded from rising the issue in the appeals and that the matter has attained its finality, Mr. Deb, learned Counsel for the State Appellants submitted that the issues can be raised even at the second appellate stage as per the provisions of Order XII Code of Civil Procedure.

20. Mr. Talapatra, learned Counsel for the Plaintiffs/Appellants submitted that the example of UDC as reflected in the ROP Rules of 1999 would really clinch the issue. According to him both the Courts below committed manifest error of law in interpreting the provisions of RP Rules, 1988, the memoranda referred to above and the ROP Rules of 1999 leading to deprivation of the benefit of the revised pay scale of Rs. 7450-13,000/- with effect from 1.1.96. He submitted that the Plaintiffs having not been extended with the benefit of gradation scale as Career advancement scheme (CAS), the interpretation given by the Courts below is contrary to the provisions of ROP Rules, 1999. According to him, Rule 10 of the Rules not applicable to the case of the Plaintiffs/Appellants.

21. The Issue No. iv, which has been answered in favour of the Plaintiffs in respect of which the appeals being RSA No. 44/2003 and 45/2003 have been preferred by the State Appellants has been questioned in the form of the substantial questions of law formulated while admitting the appeals which has been quoted above. The office memorandum dated 7.11.92 (exhibit-1 series) is on the subject of grant of higher pay scales to some categories of non-gazetted police personnel under Police Department and certain posts under Fire Service Organization. As per the said OM the pay scale in respect of the categories mentioned in the memorandum including the category of SI of Police got enhanced as indicated in the memorandum with effect from 1.11.92. The admissible scale of pay of Rs. 1450-3710/- in respect of SI of Police was indicated to be effective from 1.11.92.

22. By another exhibit-1 series OM dated 21.9.95, the pre-revised scales as indicated in the memorandum including that of Rs. 560-1300/-, which was the prerevised scale of SI of Police was referred to in the memorandum while stating that those pay scales had been allowed in Part- B under Schedule-III of the RP Rules, 1988, higher pay scales than those shown in column-2 of the table Notes at page-30 of the said Rules, against the respective pre-revised scale shown in column-1. A reference being made to the same in the RP Rules, 1988, it is seen

that existing scale of Rs. 560-1300/- was revised to Rs. 1300-3220/- under column-2 of the table. Under column-3 the revised scale next higher than the scale in column-2 was indicated as 1450-3710/- and under column- 4 the revised scale, next above the next higher scale in column-3 was indicated as 1700-3980/-. For a ready reference the table is indicate below:

The existing scales, revised scales, next higher scales and scales above the next higher scales which shall apply to cases covered by Note-3 are shown below:

23. Note 3, in reference to which the above table has been shown leads as follows:

Note-3: Fixation of pay of certain categories of existing employees:

(a) Except in case of an employee

(i) Who holds a post for which graded scales are prescribed, or

(ii) Who holds a post for which a Selection grade or senior grade post is also provided, or

(iii) Who holds a post of a Teacher in a Higher Secondary School or a Middle and High Stage level school or a Primary School, pay of an existing employee who was first appointed to a post specified in this part of the Schedule which carries any of the existing pay scales of Rs. 430-850, Rs. 470-1025, Rs. 550-1245, Rs. 560-1300 and Rs. 600-1440 shall be fixed in the revised scale in the manner indicated in (b) below, if the employee concerned has not got any promotion for 10 years since his first appointment to the post.

(b) For the purpose of (a)

(1) First the refixation of pay in the modified present scale, if any, shall be made and the existing emoluments determined as par Rule 7 of these Rules.

(2) Thereafter, the revised scale in which pay is to be fixed under these Rules shall be determined in the following manner:

(i) Where the employee concerned has completed on 1.1.86 or on the date of coming over to the revised scale 10 years of service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next higher than the revised scale specified in column 6 of this Part of the Schedule in relation to that post; and

(ii) Where the employee concerned has completed on 1.1.86 or on the date of coming over to the revised scale 18 years of the service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next above the scale which is next higher than the revised scale specified in column 6 of this Part of the Schedule in relation to that post. (Please see table below Note-4) Provided that the provision in (ii) shall not apply to an employee who is directly appointed to a post in the existing scale of Rs. 600-1440.

(c) When an employee gets promotion to a higher post after his pay has been fixed in the revised scale in the manner indicated in (b), his pay shall be fixed in the following manner:

(i) If the scale of the promotion post is the same as that in which his pay has been fixed in the revised scale, pay on promotion shall be fixed under F.R. 22(a) (i) and he shall draw his next increment on the anniversary date: and

(ii) If the scale of the promotion is higher than that in which his pay has been fixed in the revised scale, pay on promotion shall be fixed under F.R. 22(c) with reference to his pay on the date of promotion.

24. By the said memorandum dated 21.9.95, it was indicated that such revised scales shall be treated as the initial pay scales for the posts in question with further indication that the next higher/next above the next higher pay scales on completion of 10 years of service shall be admissible as per scales indicated in column-3 and 4 against such initial scales shown in column-3 of the table.

25. In para-2 of the memorandum illustrations have been furnished to explain the position, which reads as follows:

To illustrate, these posts in the pre-revised scale of Rs. 550-1250/- which have been given initial revised scale of Rs. 1300-3220, will be eligible for next higher scale of Rs. 1450-3710/- on completion of 10 years service and next above the next higher scale of Rs. 1700-3980/- on completion of 18 years service.

Similarly, these posts in the pre-revised scale of Rs. 560-1300/- which have been given initial revised scale of Rs. 1450-3710/- will be eligible for the next higher scale of Rs. 1700-3980/- on completion of 10 years service. No higher scale beyond Rs. 1700-3980/- will be admissible as such on completion of 18 years service.

26. After the issuance of the aforesaid memorandum dated 21.9.95, by yet another exhibit-1 series memorandum dated 5.1.96, referring to the first memorandum dated 1.11.92, a clarification was furnished in respect of the queries made. In the memorandum, while meeting the queries, it was indicated that the enhanced pay scales were effective from 1.11.92. The memorandum dated 21.9.95 and 5.1.96 read as follows:

No. F. 4 (6)-Fin (IC)/88(P-I) Government of Tripura Finance Department Dated. Agartala, the 21 st. Sept'95

OFFICE MEMORANDUM

Subject: Tripura State Civil Services (Revised Pay) Rules, 1988 clarification regarding movement to the next higher/next above the next higher scale as contemplated in notes under part-B of Schedule-III of the Rules it is.

Same posts in the pre-revised scales of Rs. 430-850/-, Rs. 470-1025/-, Rs. 550-1245/-, Rs. 560-1300/- and Rs. 600-1440/- have been allowed in Part-B

Under Schedule-III of the T.S.C.S. (RP) Rules, 1988, higher pay scales than those shown on column 2 of the table notes on page 30 of the said Rules, against the respective pre-revised scale shall be treated as the initial pay scales for the said posts. Hence, next higher/next above the next higher pay scales on completion of 10 years service shall be admissible as per scales indicated in column 3 and 4 against such initial scales shown in Column 2 of the table.

2. To illustrate, these posts in the pre-revised scale of Rs. 550-1250/- which have been given initial revised scale of Rs. 1300-3220/- will be eligible for next higher scale of Rs. 1450-3710/- 3220/- will be eligible for next higher scale of Rs. 1450-3710/- on completion of 10 years service and next above the next higher scale of Rs. 1700-3980/- on completion of 18 years service.

Similarly, these posts in the pre-revised scale of Rs. 560-1300/-, which have been given initial revised scale of Rs. 1450-3710/- will be eligible for the next higher scale of Rs. 1700-3980/- on completion of 10 years service. No higher scale beyond Rs. 1700-3980/- will be admissible as such on completion of 18 years service.

3. This will, however, be subjected to condition laid down in Note-5 as communicated in Finance Department memorandum No. F. 4(6)-Fin (PC)/85 dt. 12.10.1988 which provide that: (Note 5: Notwithstanding anything contained in Note No. 3 and 4 no Government servant shall be allowed under the provision of (b) of Note No 3 and 4, a revised scale higher than that of his next promotion post.

5. This order is issued with reference to Finance Deptt. O.M. No. F. 4(6)-Fin(PC)/88 dt. 18.5.90 and O.M. No. F. 4(6)-Fin(PC)/88 (P-I) dt. 22.6.1990.

Sd/- (S.N. Saha) 21.9.95 Deputy Secretary to the Government of Tripura

No. F.4(32)-FIN(IC)/92(L-I) Government of Tripura Finance Department Dated. Agartala, the 5th, January, 1996

MEMORANDUM

Subject: Grant of higher pay scale to the post of Sub-Inspectors of Police from 1.11.1992-clarification thereof.

In Finance Department O.M. of even number dated 7.11.92, pay scale of the post of SI of police was enhanced from Rs. 1300-3220/- to Rs. 1450-3710/- w.e.f. 1.1.1992.

2. After issue of the said OM a question has been raised by the Home Deptt. as to what procedure shall be followed for entitlement of next higher scale of Rs. 1700-3980/- in case of the following categories of SI of Police:

i. Those SIs who completed 10 years service in the post and were getting pay scale of Rs. 1450-3710/- on or before 31.10.1992.

ii. Those SIs who did not complete 10 years service on 31.10.1992 and getting

pay scale of Rs. 1450-3710/- from 1.11.1992.

iii. Those SIs who were promoted or appointed to the post of SI in the pay scale of Rs. 1450-3710/- on or after 1.11.1992.

3. The above mentioned points raised by the Deptt. are clarified as follows:

i. Pay of such SIs shall be fixed in the pay scale of Rs. 1700-3980/- as on 1.11.1992. Pay shall be fixed under FR- 22(a)(i). Without any change of date of next increment (DNI) as was admissible in the pay scale of Rs. 1450-3710/-.

ii. Pay of such SIs of police shall be fixed in the pay scale of Rs. 1700-3980 from the date of completion of 10 years service in the post. Pay shall be fixed under FR-22(a)(i) without any change of date of next increment (DNI) as was admissible in the pay scale of Rs. 1450-3710.

iii. Pay of such SIs shall be fixed in the scale of Rs. 1700-3980/- from the date of completion of 10 years of service in the post with pay scale of Rs. 1450-3710/-. Pay shall be fixed under FR- 22(a)(i) without any change of the date of next increment (DNI) as was admissible in the pay scale of Rs. 1450-3710/

Sd/- (S.N. Saha) 5.1.96 Deputy Secretary to the Government of Tripura.

27. On the basis of the above materials, the Trial Court answered the Issue No. iv in the negative against the Plaintiffs. The Trial Court noticed that although the pay scale of SI of Police was enhanced to Rs. 1450-3710/- with effect from 1.11.92, and under the second memorandum the scale had been declared as initial pay scale for the posts. It was also noticed by the Trial Court that in accordance with the said memorandum dated 21.9.95, the SI of Police drawing initial pay of Rs. 1450-3710/- were eligible for the next higher scale of Rs. 1700-3980/- on completion of 10 years service in the same post without any promotion. However, referring to the clarification furnished by OM dated 5.1.96, the Trial Court held that irrespective of completion of 10 years of service in the same post without any promotion by the SI of Police even before 1.11.92 would be entitled to the pay scale of Rs. 1700-3980/- with effect from 1.11.92 only. As regards the arguments advanced that the notification dated 5.1.96 goes beyond the notification dated 21.9.95, the Trial Court expressed its inability to go into that aspect of the matter in absence of any challenge to the notification dated 5.1.96 and held that in absence of any ambiguity in the notification dated 5.1.96 as regards the effective date of entitlement to the scale of pay, no other interpretation can be given to the matter.

28. Reversing the aforesaid finding of the Trial Court, the Appellate Court referring to the aforesaid three memoranda and in view of the declaration made in the memorandum dated 21.9.95 that the enhanced scale of Rs. 1450-3710/- would be the initial pay scale, held that the subsequent memorandum dated 5.1.96 is not applicable and that the memorandum dated 7.11.92 got superceded by memorandum dated 21.9.95 so far as the date of commencement of pay scale is concerned. The first Appellate Court found error with the finding of

the Trial Court in relying upon the memorandum dated 5.1.96 and accordingly set aside the decision of the Trial Court in respect of Issue No. iv and held that the Plaintiffs would be entitled to the next higher scale of Rs. 1700-3980/- from the date of completion of 10 years service without any promotion i.e. on 29.6.89 and 30.3.91 respectively.

29. The real issue was as to the effective date of entitlement to the pay scale of Rs. 1700-3980/- on the basis of the provisions of RP Rules, 1988 and the aforesaid three memoranda. The first gradation scale of Rs. 1450-3710/- was provided by the RP Rules of 1988 on completion on 1.1.86 or on the date of coming over to the revised scale, 10 years of service in the post without any promotion since his first appointment to the post. It was further provided under Note-3 of Part-B (Schedule- 3) i.e. the Notes of Determination of Revised scales as contained in TSCS (RP) Rules, 1988 that where the employee concerned has completed on 1.1.86 or on the date of coming over to the revised scale, 18 years of service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next above the scale which is next higher than the revised scale.

30. The Trial Court while deciding the Issue No. iii held that the Plaintiffs were entitled to get the scale of Rs. 1450-3710/- which was the next higher scale than the revised scale of Rs. 1300-3220/- of the prerevised scale of Rs. 560-1300/- as the initial scale of the SI of Police from the date of introduction of the RP Rules, 1988 i.e. from 1.1.86. The second gradation scale of Rs. 1700-3980/- was given to the SI of Police on completion of 10 years of service in the same scale without any promotion. By the OM dated 7.11.92 the pay scale of SI of Police was enhanced to Rs. 1450-3710/- with effect from 1.11.92. By the next OM dated 21.9.95 making a reference to the abovequoted table under Note-3 it was provided that the next higher/next above the next higher pay scales on completion of 10 years service shall be admissible as per scales indicates in column-3 and 4 against such initial scales shown in column-2 of the table. By way of illustration in the OM, it was indicated that the posts in the pre-revised scale of Rs. 560-1300/-, which had been provided with the initial revised scale of Rs. 1450-3710/- would be eligible for the next higher scale of Rs. 1700-3980/- on completion of 10 years of service.

31. It is on the above basis, the Appellate Court has held that the Trial Court committed wrong in relying upon the subsequent OM dated 5.1.96. According to the Appellate Court the first OM dated 7.11.92 was superceded by the second OM dated 21.9.95 so far as the same relates to commencement of the scale. The OM dated 21.9.95 although not stated to be in superccssion of the earlier OM dated 7.11.92, which was clarified only by OM dated 5.1.96, but by the same, it was provided that the higher revised scales shall be treated as the initial pay scales for the posts in question and that the next higher/next above the next higher pay scales on completion of 10 years service shall be admissible as per scales indicated in the table (column 3 and 4) against such initial scales shown in

column 2 of the table. Thus by the said OM the determining factor of getting the pay scale from the date of completion of 10 years of service was laid down.

32. The matter was sought to be clarified by OM dated 5.1.96. Dealing with the three categories of cases as noted in the memorandum, which has been quoted above, it was clarified that the pay of the first category of SIs, who completed 10 years of service in the posts and were getting the pay scale of Rs. 1450-3710/- should be fixed in the pay scale of Rs. 1700-3980/- appearing in column-4 of the table as on 1.11.92. It is true that the OM dated 7.11.92 provided for enhancement of the pay scale to Rs. 1450-3710/- with effect from 1.11.92 and the same was clarified by OM dated 5.1.96 in reference to three categories of SIs. However, the OM dated 21.9.95 stated that the higher revised scale should be treated as initial pay scale for the posts and to the entitlement of the same on completion of 10 years service as indicated in column 3 and 4 of the table.

33. By the OM 7.11.92, the revised scale of Rs. 1330-3200/- was replaced/enhanced to Rs. 1450-3710/- w.e.f. 1.11.92. If the modified scale of Rs. 1450-3710/- was in replacement/enhancement of the scale of Rs. 1330-3200/- then the same could not have made effective prospectively. This aspect of the matter was clarified by the OM dated 21.9.95 by which it was provided that the higher revised scale would be the initial pay scale of the post and next higher/next above the next higher would be admissible on completion of 10 years service. If that be so, there is no question of making the same effective from 1.11.92. No amount of clarification can alter the position. The Enhanced scale of Rs. 1450-3710/- being in replacement of the revised scale of Rs. 1330-3200/- all consequential things/benefits would automatically follow in terms of RP Rules, 1988 taking the scale of Rs. 1450-3710/- as the revised scale of Rs. 560-1300/- (pre-revised) as further crystallized by the OM dated 21.9.95. This OM has never been superceded and has not been disowned by the Appellant State and at the same time has not been explained also as to what other meaning could be given to the same.

34. There is another aspect of the matter. The Trial Court while answering the issue No. iii as noticed above, relied upon the OM dated 21.9.95 towards answering the same in favour of the Plaintiffs. It held that the enhanced/modified scale of Rs. 1450-3710/- would be applicable as the initial scale of SI of Police from the date of introduction of RP Rules, 1988 i.e. from 1.1.86. It has been categorically held by the Trial Court that with the issuance of the OM dated 21.9.95 the earlier OM dated 7.11.92 got superceded. If that be so, the Trial Court could not have ignored the same very OM dated 21.9.95 while deciding the issue No. iv and relied upon the superceded OM dated 7.11.92 together with its clarification vide OM dated 5.1.96. Thus, there is inherent contradictions staring on the face of it. On the same analogy on which the issue No. iii has been decided in favour of the Plaintiffs which has been accepted by the State by not preferring any appeal, the issue No. iv was also required to be answered in favour of the Plaintiffs, which the Trial Court failed to do.

35. In view of the above, the first Appellate Court rightly interfered with the same and answered the issue in favour of the Plaintiffs. If as per the decision in issue No. iii, the enhanced/modified pay scale of Rs. 1450-3710/- is effective from 1.1.86, there is no question of effecting the gradation scale of Rs. 1700-3980/- from 1.1.92 instead of making the same effective as per the parameter/yardstick laid down in RP Rules, 1988 and the OM dated 21.9.95 i.e. completion of 10 years of service in the post without any promotion.

36. For the foregoing reasons, I am of the considered opinion that the Issue No. iv has been rightly decided in favour of the Plaintiffs by the Appellate Court and rightly interfered with the findings of the Trial Court in reference to the OM dated 21.9.95 taking into consideration all the relevant factors. Consequently the decision of the first Appellate Court in respect of the Issue No. iv stands upheld. As a result of this finding, the RSA No. 44/2003 and 45/2003 stand dismissed.

37. This now leads us to the controversy relating to the Issue No. viii in respect of which the appeals preferred by the Plaintiffs have been admitted on the abovenoted substantial questions of law.

38. The Issue No. viii is:

Whether the Plaintiffs are entitled to get revised pay scale of Rs. 7450-13,000/- as on 1.1.96 as per ROP Rules of 1999 and its third amendment dated 22.7.99 (Ext. -6).

39. The term Existing Scale has been defined under Rule 3(b) as the scale shown in column-1 of Annexure (A) as applicable to the posts held by the Govt. Servant or the gradation scale applicable to the posts or, as the case may be, personnel scale applicable to such Govt. Servant, as on the 1st day of January, 1996 whether in a substantive or officiating capacity. The term Revised Scale has been defined in Rule-3(d) of the ROP Rules, 1999 as the corresponding revised scale of pay in relation to the existing scale of pay introduced from 1.1.96 as indicated in col. 4 of Annexure- "C" or the revised scale corresponding to the existing gradation scale applicable to the post as per Annexure-"A" (except State cadre services). The definition of Gradation as defined in Rule-3(i) reads as follows:

"Gradation" means advancement of scale under Part-B or C of Schedule-II of the Tripura State Civil Services, in short TSCS (Revised Pay) Rules, 1988, as per Rule 5(3) thereof. The higher scale if granted to an employee is referred to as "Gradation Scale".

40. Rule-4 of the ROP Rules, 1999 deals with "Scale of pay of Posts", as per which, from the date of commencement of the rules, the scale of pay of every post/grade whose existing scale is specified in column-(3) of Annexure- "C" shall be as specified in column-(4) thereof with effect from 1.1.96. Certain explanations with examples have been furnished under Rule-5 under the head Drawal of Pay in the Revised Scales. The term alongwith Example-3 reads as follows:

Drawal of pay in the Revised scales- State as otherwise provided in the rules, a Government servant shall draw pay in the revised scale applicable to the post/service or gradation scale applicable to the post to which he is appointed.

An UDC had scale of 1300-3220/- on 1.1.96 after 10 years of services as UDC without promotion. The gradation scale and pre-revised scale corresponding to revised scale of the UDC post is same with effect from 1.1.96. On 1.1.96, the pay may be fixed in 5000-10,300/-

...However, in another case an UDC has gradation scale of 1450-3710 on 1.1.96 after 18 years of service as UDC without promotion. Since the gradation scale is higher than pre-revised scale corresponding to revised scale of the posts, pay may be fixed again in 5000-10,300/- on 1.1.96.

41. In Annexure-"C" to the ROP Rules, 1999, the existing scale of the UDA has been shown as Rs. 1250-2890/- and the revised scale with effect from 1.1.96 as Rs. 4200-8650/-. The existing scale of the next higher grade of Head clerk etc. has been shown as Rs. 1450-3710/- and the revised scale as Rs. 5000-10,300/-. It is on this analogy, learned Counsel for the Appellants contended that the Plaintiffs are also entitled to the scale of pay of Rs. 7450-13,000/-, same being the corresponding revised scale of the existing scale of Rs. 1700-3980/-, although, as against the prerevised scale of Rs. 1450-3710/-, the revised scale has been shown as Rs. 5000-10,300/-. It has further been contended in reference to Note-1 appearing at page 87 of the ROP Rules, 1999 that it is only the posts not appearing in the list will have revised scale as shown in column-2, Annexure-"A" corresponding to the existing scale in column-1.

42. Annexure-"A" of the Rules, prescribes the revised scale of Rs. 5500-10,700/- against the existing scale of pay of Rs. 1700-3980/-. However, under Annexure-"C" against the existing scale of Rs. 1450-3710/- in respect of SI of Police has been shown revised to Rs. 5000-10,300/- while that of Rs. 1700-3980/- applicable to Inspector of Police to that of Rs. 7450-13,000/-. It is the case of the Plaintiffs that since they are in the scale of 1700-3980/- (pre-revised), they are entitled to the revised scale of Rs. 7450-13,000/-, which position was also prevalent under the RP Rules of 1988 in respect of pre-revised scales.

43. The Trial Court after noticing the provisions of ROP Rules, 1999 naturally found that the scale of Rs. 7400-13,000/- is the revised scale of Rs. 1700-3980/-. In the written statement, the Defendants admitted that by notification dated 21.9.95 the scale of Rs. 1700-3980/-, which was equal to the scale of Inspector of Police, was given to the SI of Police on completion of 10 years of service from 1.11.92. As per Annexure "C" to the ROP Rules of 1999, in the Police Department, the revised scale of Rs. 7450-13,000/- has been shown against the pre-revised scale of Rs. 1700-3980/-. The following observation of the Trial Court is significant to be noted:

So it is clear that the scale of pay in respect of post/grade whose existing scale

against that post or grade is specified in column-3 of the Annexure-"C" shall be specified as per column No. 4 thereof w.e.f. 1.1.96 and as per 3rd amendment (Ext. 6) the benefit which was give to an employee as a gradation scale of pay upto 31.12.98 is also allowed.

44. However, the Trial Court on the reasoning that against the post of SI of Police the pre-revised scale of Rs. 1700-3980/- is not specified in column No. 3 of Annexure-"C" and thus as per clause-4 noted above, the scale of SI of Police cannot be fixed as per Annexure-"C", answering the issue against the Plaintiffs. At the same time, the Trial Court recorded the admitted position that the Plaintiffs were given the scale of Rs. 1700-3980/- on or from 1.11.92, which was equal to the pre-revised scale of Inspector of Police. It went on to observe that although, such upgraded scale was provided to SI of Police which was at par with the scale of Inspector of Police considering the stagnation being faced without any promotion, but the same did not mean that the Plaintiffs would not be given the revised scale of Inspector of Police. Inspite of such clear observation the Trial Court held that although the Plaintiffs were given the pre-revised scale of Inspector of Police, they are not entitled to the revised scale corresponding to the pre-revised scale of Rs. 1700-3980/-. It further held that it being the discretion of the authority to upgrade the scale of any post considering the importance and status of the post, but the benefits accrued by way of such upgradation cannot give rise to the claim of the revised sale of the upgraded scale, which is the scale of superior post. It is on such analogy, the Trial Court declined to grant the relief to the Plaintiffs and answered the Issue No. viii in the negative.

45. The Appellate Court in its impugned judgment and order dealing with the Issue No. viii simply referred to the definitions of Existing Scale, Revised Scale and Rule- 4 of the ROP Rules 1999 under the head "Scale of Pay of Post" referred to above without any discussions on the same. According to the Appellate Court the Plaintiffs reached the pre-revised scale of Rs. 1700-3980/- under CAS for not having any promotion in the same post within 10 years of service and thus they are not entitled to the revised scale of the said pre-revised scale. While holding so, the Appellate Court has referred to the 3rd proviso to Rule 10 of the ROP Rules, 1999 dealing with CAS, which reads as follows:

(iii) The existing employees who have already availed the prescribed No. of scale advancements by way of promotion or gradation under Part-B or C of TSCS (revised pay) rules, 1988 as per Rule 5(3) thereof as on 1.1.99 after entry in the service, will not be eligible for any further advancement.

46. The definitions of Existing Scale, Revised Scale and Gradation coupled with Rule-4 of the Rules, which have been noted above make the position clear. As per the definition of Existing Scale, it includes the Gradation Scale applicable to the posts or the personnel scale applicable to the Govt. Servant. The definition of Revised Scale means the corresponding revised scale of pay in relation to the existing scale of pay introduced from 1.1.96. The term "Gradation" has been

quoted above, which make a reference to Part-B of Schedule-III of RP Rules, 1988. In terms of this definition, gradation means advancement of scale in reference to Part-B of Schedule-III of RP Rules, 1988 as per Rule 5(3) thereof. The higher scale if granted to an employee is referred as "Gradation Scale". Rule, 5(3) of RP Rules, 1988 reads as follows:

Notwithstanding the provisions contained in Sub-rule (1) and (2), where in pursuance of the note below Part-A of Schedule-1 and the notes, if any, Part A, Part-B, Part-C of Schedule-III and notes in column 7 thereof, a Govt. Servant is entitled to pay in a revised scale different from the one applicable to the post to which he is appointed, he shall draw pay in such different revised scale.

47. Going by the aforesaid provisions of the ROP Rules, 1999 including the example No. 3 in respect of UDC quoted above, and when there is no dispute that the Plaintiffs were in the pay scale of Rs. 1700-3980/- (pre-revised), which was the scale of pay of the promotional post of SI of Police, I see no reason as to why the Plaintiffs would not be entitled to the revised pay scale of the said pre-revised scale. In this connection the corrigendum dated 12.10.88 a copy of which is available on record the corrigendum dated 12.10.88 a copy of which is available on record and about which a reference has also been made in the OM dated 21.9.95 may be referred to. In terms of this corrigendum, Note-5 was inserted below Note-4(b) of the RP Rules, 1988 and this Note-5 reads as follows:

Note-5: Notwithstanding anything contained in Notes 3 and 4 no Government servant shall be allowed under the provisions of (b)(2) of Note 3 and Note 4 a revised scale higher than that of his next promotion post.

48. Thus, from the above, it will be seen that a revised scale may be admissible in reference to the next promotion post, but not beyond that. The Trial Court broadly agreeing with the plea of the Plaintiffs for their entitlement to the revised pay scale of Rs. 7450-13,000/- denied the same to them on the ground that same is the revised scale of the promotion post of Inspector of Police, unmindful of the fact that the Plaintiffs were already in the pre-revised scale of Rs. 1700-3980/-, which was the pre-revised scale of Inspector of Police.

49. If the Plaintiffs had been put to the pre-revised scale of Rs. 1700-3980/-, I see no reason as to why they shall not be entitled to the revised scale of the pre-revised scale i.e. Rs. 7450-13,000/-. The denial of the benefit on ground of there being bar under Rule 10 of the ROP Rules, 1999, which deals with CAS will be opposed to the actual position which has emerged from the discussions made above. It is in this context, learned Counsel for the Plaintiffs/Appellants argued that the gradation scale was not given to the Plaintiffs as career advancement, but was made applicable to the Plaintiffs as per RP Rules of 1988 and the three notifications referred to above. Clause iii of Rule 10 of the ROP Rules, 1999 on which the first Appellate Court placed reliance is not on the issue. The said clause is only in respect of debarment of further advancement after availing prescribed numbers of scale advancement by way of promotion or gradation, but not on the

issue of entitlement to the corresponding revised scale of a pre-revised scale, which in the instant case is Rs. 7450-13000/- as against the pre-revised scale of Rs. 1700-3980/-.

50. In view of the above, the Issue No. viii is answered in favour of the Plaintiffs reversing the findings arrived at by both the Courts below. Consequently, RSA Nos. 46/2003 and 47/2003 stand allowed and judgment and decree passed by the Appellate Court so far as the same relates to Issue No. viii is set aside and quashed.

51. Substantial questions of law formulated in all the appeals are answered in the above manner. Issue Nos. iv and viii both stand answered in positive and in favour of the Plaintiffs. Consequently, the RSA Nos. 44/2003 preferred by the State stand dismissed affirming the first Appellate Court's finding in respect of Issue No. iv while the RSA Nos. 46/2003 and 47/2003 preferred by the Plaintiffs stand allowed reversing the finding of the First Appellate Court in respect of Issue No. viii.

52. RSA Nos. 44/2003 and 45/2003 stand dismissed. RSA Nos. 46/2003 and 47/2003 stand allowed.

53. The Registry shall transmit the case records to the Court below after observing necessary formalities.