

(2018) 02 AHC CK 0015
In the Allahabad High Court
Case No : 35611 of 2007

Virendra Bahadur Katheria

APPELLANT

Vs

State Of U.P. And Others

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

Constitution of India, Article 141, Article 136 - Law declared by Supreme Court to be binding on all courts - Special leave to appeal by the Supreme Court

Citation : (2018) 02 AHC CK 0015

Hon'ble Judges : Sangeeta Chandra

Bench : Single Bench

Advocate : Amit Saxena,Rajendra Prasad,K. Shahi,R.P.?Shukla,Sunil Kumar Singh,Ashok Khare

Final Decision : Allowed

Judgement

1. The writ petition no. 35611 of 2007 has been filed by Virendra Bahadur Katheria praying for quashing of orders dated 26.6.2007 and 7.12.2005. A further prayer has been made for issuance of a mandamus commanding the respondents to pay the entire pension along with arrears calculated at the last salary drawn by the petitioner along with 24% interest on delayed payment from the date it became due till its payment and to go on making regular payment of the same in accordance with law and to release the remaining 10% of the gratuity amount forthwith along with interest from the date it became due.

2. Writ-A No. 44334 of 2011 has been filed by Virendra Bahadur Katheria along with 2 others praying for a writ in the nature of certiorari for quashing the order dated 14.7.2011 as amended on 15.7.2011 passed by the respondent no. 1 with a further prayer for issuance of mandamus to the respondents to fix salary of the petitioner nos. 1 & 2 in the pay scale of Rs. 7500-12000 w.e.f. 1.9.1996 and to pay the arrears accordingly. A similar prayer has been made separately for the petitioner no. 3 also.

3. These two writ petitions have been taken up together as the issues involved in them are more or less the same. Virendra Bahadur Katheria was appointed as a teacher in a Junior High School and later on promoted as Head-Master of the said school on 18.10.1979 and on that basis his salary was fixed at Rs. 1450/- w.e.f. 1.1.1986 in the pay scale of Rs. 1450-2300. On revision of pay scales w.e.f. 1.1.1996 his salary was fixed in the pay scale 4800-7650 Virendra Bahadur Katheria was selected for the post of Sub Deputy Inspector of Schools (herein after referred to as SDI) under 10% promotion quota by order dated 19.3.1997 and he joined on 3.4.1997.

4. At the time of joining on 20.7.2001 on the post of Sub Deputy Inspector of Schools the petitioner was working in selection grade as meant for Head-Masters of Junior High School and his pay was Rs. 6000/- per month on 20.7.2001. The salary of Head-Masters of Junior High School were further upgraded in the pay scale of Rs. 7500-12000. Since the petitioner no. 1 had already been promoted as SDI he was entitled to get salary only in the pay scale of 4500-7000, but due to some misconception, he was given higher salary and he continued to get higher salary till the time of his retirement on 31.7.2004.

5. At the time of retirement of Virendra Bahadur Katheria only provident fund dues payable to him were released, but no pension and gratuity were given to him, and no reasons were disclosed. Ultimately, the Director of Basic Education issued a letter dated 22.11.2004 addressed to the District Basic Education Officer that after examining the service book of the petitioner by the Finance Controller of the department of Education at Allahabad, it was found that the office of the District Basic Education Officer had miscalculated and therefore fixed the salary of the petitioner in the pay scale admissible to that of Head-Masters of the Junior High School. The excess amount paid should be adjusted from the dues payable to the petitioner at the time of making final payment of the remaining dues.

6. Since the petitioner had no knowledge of this correspondence, he continued to make representations for relief of the retiral benefits and ultimately the Director, Basic Education by a letter dated 7.12.2005 directed the District Basic Education Officer that the excess amount paid as indicated in the said order, due to rectification of mistake be adjusted in the retiral dues of the petitioner. In the said letter dated 7.12.2005, it was indicated in the form of a chart the excess payment made to the petitioner which was as follows:-

Date of Payment

Admissible Salary

Given Salary Excess Payment

01/01/86

1450 1450 -

18/10/89

1595 1570 -
01/01/90
1640 1640 -
01/01/96 5850 5850 -
04/04/97
6000 6200 200
01/04/98
6125 6200 75
01/04/99
6250 6375 125
01/04/2000 6375 6725 350
01/07/2001
6500 8825 2325
01/04/2002
6625 9000 2375
01/04/2003 6750 9000 2250
01/04/2004
6875 9000 2125
31/07/2004 6875 9000 2125

7. The petitioner represented against the order dated 7.12.2005 and the Director Basic Education issued an order for payment of interim pension and gratuity to the petitioner. Thus gratuity amounting to 90% and interim pension calculated at monthly salary of Rs. 7875 was paid to the petitioner upto 31 December 2005, and thereafter no pension even at the reduced scale, was paid to the petitioner. The Director Basic Education Officer passed an order dated 12.2.2007 rejecting petitioner's representation and directed for recovery of the excess payment made. The District Basic Education Officer directed the petitioner to deposit the alleged excess payment made to the petitioner or else the same would be adjusted from the retiral dues of the petitioner.

8. The petitioner filed Writ-A No. 35611 of 2007 and this Court on 3.8.2007 gave an interim mandamus that except for the amount which was allegedly paid in excess to the petitioner, rest of the amount of retiral dues etc. admissible to the petitioner be released forthwith. This writ petition remained pending and affidavits were exchanged therein by the parties. In the meantime, the

Government passed an order dated 14.7.2011 with its corrigendum dated 15.7.2011, which has been challenged by the petitioner Virendra Bahadur Katheria along with two others in Writ Petition No. 44334 of 2011.

9. It is the case of the petitioners that the post of Head- Masters of the Junior High School is the feeding cadre post for Sub Deputy Inspector of Schools / Assistant Basic Shiksha Adhikaris and Deputy Basic Shiksha Adhikari and since the very beginning the Head-Masters of the Junior High School given salary in a lower pay scale than was given to the Sub Deputy Inspector of Schools / Assistant Basic Shiksha Adhikari and Deputy Basic Shiksha Adhikari. As per the chart mentioned in paragraph 10 of the writ petition, there was discrepancy in determining the salary of the Head-Master of the Junior High School as against the promotional post which occurred after the issuance of the Government Order dated 20.7.2001 w.e.f. 1.7.2001. The chart is being reproduced as follows:-
"VERNACULAR MATTER OMITTED"

10. It is the case of the petitioners that the registered Association of Sub Deputy Inspector of Schools / Assistant Basic Shiksha Adhikari and Deputy Basic Shiksha Adhikari, aggrieved by the discrepancy in determining the pay scale of the promotional post filed Writ Petition No. 675 of 2002 for issuance of a mandamus to the respondents to sanction the pay scale of Rs. 7500-12000 to the Sub Deputy Inspector of Schools / Assistant Basic Education Officer and the pay scale of Rs. 8000-13500 to Deputy Basic Education Officer w.e.f. 1.7.2001. The said writ petition was allowed by this Court on 6.5.2002, the operative portion of the order of the Division Bench is being quoted herein below:- "In view of the above discussion, the writ petition is allowed. A mandamus is issued to the respondents to grant to the Sub Deputy Inspector of Schools / Assistant Basic Shiksha Adhikari and Deputy Basic Shiksha Adhikaris forthwith the pay scales as prayed for in the petition. A further mandamus is issued to the respondents to consider grant to the petitioner of high pay scales than that of Head Master of Junior High School, since they were enjoying higher pay scale before 20.7.2001."

11. Aggrieved by the order passed by the Division Bench, the State of U.P. filed SLP No. 900 of 2003 before the Supreme Court and since there was no interim order therein, the Director, Basic Education issued a letter proposing to give pay scale of Rs. 7500-12000 to Sub Deputy Inspector of Schools / Assistant Basic Education Officers and the pay scale of Rs. 8000-13500 to Deputy Basic Education Officer w.e.f. 1.1.1996, on the ground that in the meanwhile the Government had issued orders further increasing the pay scale of Head-Master of Junior High School giving them selection grade in the pay scale of Rs. 6500-10500. Assistant Teachers were given the pay scale of Rs. 5500-9000 at the initial stage and selection grade of Rs. 6500-10500 and promotional pay scale of Rs. 7500-12000. It was proposed by the Directorate of Basic Education that since Sub Deputy Inspector of Schools / Assistant Basic Education Officers and Deputy Basic Education Officers were exercising supervisory and administrative control over teachers and Head-Masters of Junior High School,

now that the salary of teachers and Head-Masters of Junior High School had been further upgraded, officers like the petitioners working in supervisory and administrative capacity should also be given pay scale of Rs. 7500-12000 w.e.f. 1.7.2001. The State Government however shot down the proposal of the Director of Basic Education and issued an order on 11.7.2003 for revision of pay scale of Assistant Basic Education Officers only and the salary of Sub Deputy Inspector of Schools and Deputy Inspector of Schools were not revised.

12. The petitioners filed an Intervention Application before the Supreme Court and the Supreme Court on 10.11.2003 passed an order for maintenance of status quo as on date as regards the designation of respondents. The Intervention Application No. 3 was also disposed of accordingly. The order dated 11.7.2003 therefore could not be implemented during the pendency of Special Leave Petition. The petitioner no. 1 retired on 31.7.2004 and since the Director, Basic Education passed an order for recovery of excess amount paid to the petitioner as aforesaid, he filed Writ Petition No. 35611 of 2007, in which an interim order was passed in his favour staying recovery and directing payment of rest of the retiral dues to the petitioner forthwith, except for the excess payment already made to the petitioner.

13. During the pendency of the Special Leave Petition, the State Government referred the matter to the Chief Secretary's Committee or the Rizvi Committee constituted in 2008 for consideration of the proposal for increase in pay scale of Sub Deputy Inspector of Schools / Assistant Basic Education Officers and Deputy Basic Education Officers. The said Committee submitted a report dated 28.4.2009. A true copy of the said report dated 28.4.2009 has been filed by the petitioners in the second writ petition as an Annexure, in which it proposed granting of pay scale of Rs. 7500-12000 to Sub Deputy Inspector of Schools / Assistant Basic Education Officers w.e.f. 1.7.2001 i.e. from the date when the salary of Head-Masters was revised by the Government.

14. The Chief Secretary's Committee also proposed restructuring of cadre and merging the post of Sub Deputy Inspector of Schools / Assistant Basic Education Officers and Deputy Basic Education Officers into one cadre consisting of 1031 posts, with the designation of Block Education Officer. The Government however prepared a proposal which was at variance with the recommendations of the Chief Secretary's Committee and in the Government Order issued thereafter on 12.1.2010, it proposed giving of the pay scale of Rs. 7500-12000 to the newly designated post of Block Education Officer w.e.f. 1.1.2006 on a virtual basis with actual benefit being given w.e.f. 1.12.2008 only.

15. However in the said Government Order in paragraph 3 the Government mentioned that this decision was subject to consent between the parties i.e. the petitioners of Writ Petition No. 675 of 2002 and further proposed to file an affidavit along with an application in SLP No. 900 of 2003 before the Supreme Court praying for modification of the judgment and order dated 6.5.2002 to the said extent of grant of higher pay scale w.e.f. 1.1.2006 instead of w.e.f.

1.7.2001, as directed by the judgment of the High Court dated 6.5.2002.

16. The Director of Basic Education issued a letter accordingly to the petitioners on 22.2.2010 asking the petitioners to submit their consent. The petitioners rejected the proposal and did not give consent to giving of higher pay scale only w.e.f. 1.1.2006. They communicated their unwillingness by writing a letter dated 27.2.2010. However, this correspondence was not brought to the notice of the Supreme Court and when the Civil Appeal was taken up for hearing on 8.12.2010, the said Civil Appeal was dismissed with the observation that the Government had already taken a decision on 12.1.2010 for restructuring of cadre and up-gradation of posts of the respondents therein.

17. The Supreme Court quoted the Government Order dated 12.1.2010, mistakenly mentioned as 12.5.2010 in the operative portion of the judgment and order dated 8.12.2010 and observed thus:- " We do not find any error to have been committed by the High Court in issuing the impugned directions. However, there is no need to further dilate on this issue since the Government itself appears to have realised the anomaly in fixation of the pay scales as is evident from the proceedings dated 12th May, 2010 emanating from Secretary, Finance Department, Government of Uttar Pradesh and addressed to the Secretary, Basic Education Department, Government of Uttar Pradesh. The proceedings disclose that an appropriate decision has been taken to rectify the pay discrepancies in respect of the post of Deputy Inspector of Schools / Deputy Basic Education Officer of the Department of Education on the recommendations of the Pay Committee (2008).

The operative portion of the said proceedings reads as under:-

"According to the above as a result of cadre constitution getting sanctioned imaginary the pay scale of Rs. 7500-12000/- from 1.1.2006 for the post of Block Education Officer, the real benefit be given from 1.12.2008"

By the same proceedings, a decision was taken to file the same into this Court together with application supported by an affidavit in as much as such decision was taken with mutual consent of the parties. But for whatever reason, the same has not been filed into the Court.

Since the Government itself has taken appropriate decision in the matter as is evident from the proceedings referred to herein above, no further cause as such survives requiring any further adjudication of this appeal and the Government having taken appropriate decision cannot go back from implementing the same.

In the circumstances, the Civil Appeals are accordingly dismissed."

(emphasis supplied)

18. It is the case of the petitioners that despite observations of the Supreme Court that the Government cannot go back from implementing the decision taken with mutual consent of the parties, although such mutual consent had not been

filed in the Court, the Government issued an order dated 14.7.2011 quoting the operative portion of the judgment and order dated 6.5.2012 and the observation made by the Supreme Court on 8.12.2010 and in the concluding portion of the said Government Order, it has directed that 1360 posts of Sub Deputy Inspector of Schools in the pay scale of Rs. 4500-7000 and 157 posts of Deputy Inspector of Schools in the pay scale of Rs. 6500-10500 be merged, and 1031 posts be created giving the designation of Block Education Officer in the pay scale of Rs. 7500-12000, and consequent to the said restructuring of cadre the pay scale of 7500-12000 be given notionally w.e.f. 1.1.2006 with actual payment being made w.e.f. 1.12.2008. The said Government Order had made the said decision subject to the decision of the Supreme Court in the clarification application proposed to be filed before the Supreme Court for judgment and order dated 8.12.2010. The Government Order dated 14.7.2011 had certain clerical / typographical errors and a corrigendum was issued on 15.7.2011.

19. It is the case of the petitioners in Writ Petition No. 44334 of 2011 that no clarification application was filed thereafter. In fact the same, although proposed by the department, was refused to be filed by the Advocate on record in the Supreme Court on the ground that the Supreme Court order was clear and it did not permit the Government from going back on the decision dated 12.1.2010, which was on the record of the SLP before the Supreme Court.

20. It is the case of the petitioners that the Government Order dated 14.7.2011/15.7.2011 is almost contemptuous in nature and amounts to playing fraud with the decision of this Court and of the Supreme Court and it works out to the detriment of the petitioners who retired from the post of Sub Deputy Inspector of School and Assistant Basic Education Officers on 31.7.2004.

21. Sri K. Shahi, who appeared for the petitioners in Writ Petition No. 44334 of 2011 has argued that the cut off date of 1.12.2008, fixed for actual payment of higher salary of Rs. 7500-12000 to the newly created post of Block Education Officer is only to deprive the petitioners of the benefit of the judgment and order dated 6.5.2002 and 8.12.2010 and the cut off date has no nexus with the object sought to be achieved i.e. the compliance of the judgment passed by this Court and the Supreme Court.

22. Moreover, there is no intelligible criteria for fixation of cut off date of 1.12.2008 as the petitioners have attained their age of superannuation much before the cut off date. The cut off date has been fixed for no other purpose except to deprive the petitioners of the benefit of the judgments rendered in their favour.

23. It has also been argued that although in the impugned order, it has been so stated that the said order shall be subject to decision on the clarification application proposed to be moved before the Supreme Court, no such clarification application was ever moved.

24. It has also been argued that the restructuring and redesignation of posts is

against the provisions of U.P. Subordinate Education (Sub Deputy Inspector of Schools) Service Rules 1992 and unless the said Service Rules are repealed and fresh Service Rules notified by the Government, such manner of restructuring of cadre by merging the three posts cannot be undertaken by the Government.

25. It has also been argued by Sri K. Shahi that the petitioner no. 1 has already filed a Writ-A No. 35611 of 2011 praying for grant of benefit of judgment and order dated 6.5.2002 passed in Writ Petition No. 675 of 2002 and recovery cannot be made of alleged excess payments to him as he is claiming higher salary on the basis of judgment rendered in his favour and also on the basis of observations made by the Supreme Court.

26. Smt. Archana Tyagi, learned Additional Chief Standing Counsel arguing on behalf of the State respondents has relied upon the affidavits filed by the respondents in Writ-A Nos. 35611 of 2007 and 44334 of 2011, wherein it has been stated that due to a mistake made by the department, the pay scale of the petitioner no. 1 was wrongly fixed and the said mistake has been rectified by the orders of the Director, Basic Education dated 7.12.2005 and 12.2.2007.

27. It has also been informed to this Court that in pursuance of the interim order granted by this Court in Writ Petition No. 35611 of 2011, all payments have been made to the petitioner except for the recovery proposed to be made against him of the excess payment. Final pay fixation could not be done due to pendency of writ petition filed by the petitioner and therefore final pension payment order could also not be issued. Hence, provisional pension has been sanctioned and paid to the petitioner through Cheque No. 994575 dated 5.5.2006 w.e.f. 1.8.2004.

28. It is the case of the respondents that the petitioner was only entitled to payment of salary @ Rs. 6875/- at the time of his retirement on 31.7.2004, but was actually paid Rs. 9000/- and the orders dated 7.12.2002 and 12.2.2007 have been rightly passed by the Director, Basic Education.

29. Smt. Archana Tyagi has also argued with regard to the claim made by the petitioners in Writ-A No. 44334 of 2011 that the cut off date for making payment in the pay scale of Rs. 7500-12000 only w.e.f. 1.1.2006 notionally with actual payment w.e.f. 1.12.2008 was brought to the notice of the Supreme Court and the Government order dated 12.1.2010 has been quoted by the Supreme Court in the operative portion of its judgment dated 8.12.2010.

30. In the counter affidavit filed in Writ Petition No. 44334 of 2011, it has further been stated that petitioner no. 1 - Virendra Bahadur Katheria retired from service on 31. 7.2004 from the post of Sub Deputy Inspector of Schools. At the time of his retirement, the pay scale admissible to his post was only Rs. 4500-7000 and accordingly he is entitled to claim salary only in the said pay scale. Petitioner No. 2 - Lal Pratap Singh retired on 30.6.2010 and whatever benefit under Government Order dated 14.7.2011 as will be admissible to him shall be given to him and his pay scale shall be fixed in the upgraded pay scale of Rs. 7500-12000

virtually w.e.f. 1.1.2006 and actual paymet shall be made to him of arrears w.e.f. 1.12.2008. In so far as petitioner no. 3 is concerned, Sri R.P. Verma was promoted to the post of District Basic Education Officer much before his retirement on 28.2.2006 and was getting salary in the pay scale of 8000-13500, which is definitely higher to the salary of the post of Block Education Officer as determined by the Government Order dated 14.7.2011.

31. It has also been stated in the counter affidavit that the provisions of filling up of 10% posts of Sub Deputy Inspector of Schools from Head-Masters of Junior High School has been done away with by a notification on 10.4.2003. Similarly, the provision of filling up of 10% of the post of Sub Deputy Inspector of Schools from CT Grade Teachers and Craft teachers has also been done away with. All persons, who are working as such, have been absorbed in the service of the Sub Deputy Inspector of Schools.

32. It has been further stated in the counter affidavit that Sub Deputy Inspector of Schools / Assistant Basic Education Officers and Deputy Basic Education Officers were all getting lesser pay scale than what was admissible to Head-Masters of the Junior High Schools w.e.f. 1.1.1986 onwards, as Head-Masters were working in the pay scale of Rs. 1450-2300 whereas Sub Deputy Inspector of Schools / Assistant Basic Education Officers were working in the pay scale of Rs. 1400-2300. In 2001, the Government had taken a decision for granting parity in pay scales to teachers and Head-Masters, with persons working in the same designations and the posts in the Central Government and because of such policy decision taken in 2001, the pay scale of Head-Masters of Junior High Schools and teachers were also upgraded w.e.f. 1.1.1996 notionally, actual payments being made w.e.f. 1.7.2001 by means of the Government Order dated 20.7.2001.

33. In 2001, the pay scale of other Government servants including that of Sub Deputy Inspector of Schools / Deputy Basic Education Officers were not revised, as they had been revised prior to 1.7.2001 in 1996 itself in accordance with the recommendations of the Pay Committee 1997- 1999 and the Committee of the Chief Secretary. The pay scale of Rs. 5500-9000 was made admissible to the post of Assistant Basic Education Officer, and 50% of the said posts were liable to be filled in by promotion on the criteria of seniority subject to rejection of unfit from amongst Sub District Inspector of Schools, by a Government Order dated 11.7.2003, but due to the interim order dated 10.11.2003 passed in SLP No. 900 of 2003, status quo as regards the designation of the petitioners was maintained and the said Government Order could not be implemented. Now by means of the order dated 14.7.2011 / 15.7.2011, the post of Sub Deputy Inspector of Schools / Assistant Basic Education Officers and Deputy Basic Education Officers have been merged and a new designation of Block Education Officer has come into existence. The higher pay scale of Rs. 7500-12000 had become admissible on a notional basis w.e.f. 1.11.2006 and actual payments had become admissible w.e.f. 1.12.2008.

34. This Court had heard the matter at length on an earlier occasion and had passed a detailed interim order:- "8. It is apparent from a perusal of the judgment and order dated 8th of December, 2010 of the Hon''ble Supreme Court that the proceedings undertaken by the State Government vide order dated 12.01.2010 (mentioned in the Hon''ble Supreme Court's judgment as 12th May, 2010) have been translated and quoted in the said judgment and order in Civil Appeal while dismissing the Civil Appeal. It cannot be said that the Supreme Court was unaware of giving of the benefits notionally w.e.f. 01.01.2006.

9. However, it is the case of the petitioners that since they were members of the Association that has approached this Court, they were liable to be given the benefit of judgment and order dated 06.05.2002 and the Government Order dated 12.01.2010 has been issued in purported compliance of the order of this Court and of the Supreme Court, yet the benefits have been denied to the petitioners.

10. From What has been submitted by the counsel for the petitioners, this Court deems it appropriate that a supplementary counter affidavit be called for from the State-Respondents through an Officer not below the rank of Special Secretary to indicate the reasons for fixing the cut off date notionally w.e.f. 01.01.2006."

(emphasis supplied)

35. In purported compliance of this Court's order dated 2.8.2017, an affidavit has been filed by Sri Dev Pratap Singh, Special Secretary (Finance) Government of U.P. saying that fixing of cut off date is the prerogative of the Government. In its 8th report with regard to Sixth Central Pay Commission, the Vetan Samiti, U.P. 2008 has recommended reorganisation of the cadre and creation of post of Block Education Officers. The recommendations of the Vetan Samiti have been implemented and it is a policy matter of the Government of U.P., therefore, the petitioners are not entitled for any relief. The State respondents have relied upon judgment and order dated 4.10.2010 in Writ Petition No. 978 SB of 2008 (Narendra Pratap Singh Vs. State of U.P.) and judgment and order dated 30.8.2012 in Writ Petition No. 1708 SB of 2006 (Vidhyawati Shukla Vs. State of U.P.) passed by High Court.

36. Having considered the entire pleadings and the rival submissions, I am of the considered opinion that the aforesaid two judgments are distinguishable. I happened to have argued both the writ petitions as a standing counsel on behalf of the State Government, before the Hon''ble Division Bench at Lucknow. The facts of the aforesaid two writ petitions judgments of which are being relied upon by the State respondents are completely different. It is evident from a bare perusal of the aforesaid two judgments also.

37. It is settled law that no judgment can be quoted out of context and the absence or presence of a few additional facts make the applicability of an otherwise binding judicial precedent doubtful. A judgment can be said to be

binding only with respect to what has been held therein, and not what can be inferred therefrom.

38. In the case of the petitioners, there are two judgments in their favour. In the judgment rendered by this Court on 6.5.2002 in Writ Petition No. 675 of 2002, this Court had held on the basis of facts as narrated in the said writ petition filed by the registered Association of the petitioners, that the post of Sub Deputy Inspector of Schools was a promotional post to be filled up by Head- Masters of the Junior High School having 10 years of service or more in the 10% quota as prescribed in the Service Rules of 1992.

39. The Hon"ble Division Bench had found on a comparison of duties and powers of the post of Sub Deputy Inspector of Schools that the said post was supervisory and administrative in nature and higher in rank than Head-Masters of the Junior High Schools.

40. Similarly, the post of Assistant Basic Education Officer was also a post having supervisory and administrative jurisdiction over the Head-Masters of the Junior High School. From amongst Sub Deputy Inspector of Schools and Assistant Basic Education Officers further promotion was made to the post of Deputy Inspector of Schools. In the past, the post of Sub Deputy Inspector of Schools / Assistant Basic Education Officers and Deputy Basic Education Officers were enjoying a better pay scale than Head-Masters of Junior High School and only because of the Government Order dated 20.7.2001 due to upward revision of the pay scale of the post of Head-Masters of the Junior High School and anomaly had resulted, this Court had therefore directed rectification of the anomaly and grant of pay scale of Rs. 7500-12000 w.e.f. 1..7.2001 to Sub Deputy Inspector of Schools / Assistant Basic Education Officers and a correspondingly higher pay scale (8000-13500) to Deputy Basic Education Officers w.e.f. 1.7.2001, the date of up-gradation of pay scale of Head- Masters of Junior High School.

41. Aggrieved by the mandamus issued by this Court, the State respondents had filed SLP No. 900 of 2003. However, during the pendency of the said Civil Appeal on the basis of various orders passed by the Supreme Court itself, the matter was referred to Rizvi Committee in 2008. The Rizvi Committee compared the powers and duties of Sub Deputy Inspector of Schools / Assistant Basic Education Officers and Deputy Basic Education Officers with those of Head-Masters of the Junior High School and also carefully examined the judgment and order dated 6.5.2002 passed by the Division Bench of this Court in its report dated 28.4.2009, which has been filed as Annexure to the Writ Petition No. 44334 of 2011. The post of Sub Deputy Inspector of Schools re-designated as Assistant Basic Education Officers by Government Orders dated 10.5.1996 and 12.9.1996, was found to be exercising administrative and supervisory control over the post of Head-Masters of the Junior High School. Similarly the post of Deputy Inspector of Schools / Deputy Basic Education Officers was also found to be exercising supervisory control over teachers and Head-Masters of Primary Schools and Junior High Schools. At the same time the Rizvi Committee 2008

found on the basis of the duties and powers of the aforesaid two posts that they could easily be merged into one single cadre and be given the new designation of Block Education Officer. The restructuring of cadre as proposed, would make available one Officer at the Tahsil / Block level to help out Basic Education Officers and District Inspector of Schools in the carrying out of their administrative and supervisory duties. Accordingly a restructuring of cadre was proposed with the merger of all three posts and the creation of one post of Block Education Officer, who was to be a Gazetted Officer recruited through open selection by the U.P. Public Service Commission.

42. The Rizvi Committee also took into account that in pursuance to the recommendations of the Pay Committee 2008, the pay scale of Head-Masters of Junior High School, which were upgraded to 6500-10500 w.e.f. 1.7.2001, had further been upgraded and pay scale Rs. 7500-12000 with corresponding Pay Band and Grade Pay had been made admissible w.e.f. 1.12.2008, and therefore recommended the pay scale of Rs. 7500-12000 to the newly created supervisory post of Block Education Officer. The Rizvi Committee was of the opinion that in several departments, supervisory posts were enjoying the same pay scale as that admissible to the lower cadre and it would address the anomaly sufficiently.

43. However, the Rizvi Committee took into account the judgment and order dated 6.5.2002 in Writ Petition No. 6750 of 2002 by this Court and the pendency of SLP No. 900 of 2003, and proposed that such a decision can be taken only if consensus can be arrived at with the petitioners i.e. the Association, U.P. Vidhyalaya Nirikshak Sangh and an affidavit to the said effect along with application is filed before the Supreme Court in the pending SLP for a modification of judgment and order dated 6.5.2002 by the Supreme Court to this effect. The Committee in its recommendation therefore in paragraph 3 observed thus:- "VERNACULAR MATTER OMITTED"

44. A Government Order dated 12.1.2010 was issued thereafter, which has been mentioned herein above, which proposed to implement the decision w.e.f. 1.1.2006 notionally with actual benefits becoming available w.e.f. 1.12.2008, only after consensus is arrived at as aforesaid, between the petitioners of Writ Petition No. 6750 of 2002 and the State Government.

45. The Supreme Court in its judgment and order dated 8.12.2010 has observed regarding the Government Order dated 12.1.2010 as follows:- "by the same proceedings, a decision was taken to file the same into this Court together with application supported by an affidavit in as much as such decision was taken with mutual consent of the parties. But for whatever reason the same has not been filed into the Court-----."

46. In the Government Order dated 12.1.2010, the recommendations of the Rizvi Committee were incorporated in paragraphs 2 & 3 as follows:- "VERNACULAR MATTER OMITTED"

47. It is apparent that the Supreme Court was not informed by the State

respondents that the decision dated 12.1.2010 was only a proposal, subject to its acceptance by the writ petitioners of Writ Petition No. 6750 of 2002, and subject to modification being made in the mandamus issued by this Court in its judgment and order dated 6.5.2002 by the Supreme Court in Civil Appeal changing the date of applicability of higher pay scale from 1.7.2001 to 1.1.2006.

48. The Supreme Court was also not made aware of subsequent developments and further up-gradation of pay scale of Head-Masters of Junior Higher Schools and Assistant Teachers also. The Supreme Court was also kept in the dark that no consent had been given by the writ petitioners, the registered Association, and therefore no affidavit could be filed in the Supreme Court.

49. It is only because of non comprehension by the Hon"ble Judges of the Supreme Court of the niceties of Hindi language used in the Government Order / proposal dated 12.1.2010 that the Government could get away with the misrepresentation made before the Supreme Court, as recorded in the judgment and order dated 8.12.2010, in SLP No. 900 of 2003.

50. Taking advantage of misrepresentation before the Supreme Court, the Government Order dated 14.7.2011 was issued, but the Officers of the department were aware that the judgment and order dated 8.12.2010 needed clarification, and therefore in the Government Order dated 14.7.2011, a mention was made that the decision taken by the Government shall be subject to decision on the clarification application proposed to be moved before the Supreme Court.

51. No clarification application was moved and in contemptuous disregard of the judgment and order dated 6.5.2002, and only because of misrepresentation resorted to by them, the State respondents have implemented the decision of giving higher pay scale / equivalent pay scale to Sub Deputy Inspector of Schools / Assistant Basic Education Officers with that of Head-Masters of Junior High School, on a notional basis w.e.f. 2006, actual payments being made in corresponding Pay Band and Grade Pay w.e.f. 1.12.2008. In effect the judgment and order dated 6.5.2002 has been nullified, even though the Supreme Court found nothing wrong in the said judgment and order dated 6.5.2002 passed by the Division Bench of this Court and had dismissed the Civil Appeal No. 8869 of 2003 (SLP No. 900 of 2003)

52. It has been held by the Supreme Court in Supreme Court Employees" Welfare Association Vs. Union of India & another 1989 (4) SCC 187 that where the Supreme Court gave reasons while dismissing a Special Leave Petition under Article 136, the decision becomes one which attracts Article 141. Once the High Court had decided a case finally and the Special Leave Petition was dismissed by the Supreme Court by a reasoned and speaking order, such as in this case, the question decided by the High Court shall act as a res-judicata, in a subsequent suit or proceedings. It is only when judgment of the High Court decides an abstract question of law unrelated to facts, it cannot operate as res-judicata.

53. If a judgment is rendered by the High Court which does not decide any

abstract question of law and no question of jurisdiction is involved, but according to executive authorities, it is erroneous on a finding of fact, it would still operate as res-judicata between the same parties in a subsequent suit or proceeding over the same cause of action, so that as far as the parties are concerned, they will always be bound by the said decision.

54. The Supreme Court in the aforesaid judgment in Supreme Court Employees' Welfare Association (supra) has also held that even if a judgment is erroneous on facts but the Special Leave Petition has been dismissed against the said judgment by a reasoned order by the Supreme Court, it not only becomes final between the parties, but the benefit of such a decision will also have to be given to similarly situated employees. The Supreme Court rejected the contention raised by the Union of India that the decision of the Delhi High Court was erroneous on facts and therefore the benefit of such wrong decision should not be conferred upon future employees of the Delhi High Court or on employees of the Supreme Court as the Courts being not only of equity but of law, cannot allow an erroneous decision to perpetuate.

55. The Supreme Court held that the judgment of the High Court does not infringe the fundamental rights of any of the employees and therefore the question as to correctness of the judgment and the benefit of the same being extended to other employees even if it is erroneous cannot be considered.

56. In the instant case the Supreme Court considered the judgment of the High Court dated 6.5.2002 rendered on the merits of the case and did not find any error of fact or of law in it. It affirmed the judgment rendered by the Division Bench and dismissed the Civil Appeal No. 8869 of 2003. This judgment rendered on merits of the case, after issues were framed and decided, would act as resjudicata inter-se parties. It is not open for the Government to overreach and render nugatory a judgment rendered by the High Court as this judgment has attained finality.

57. By means of the impugned order, the State respondents have tried to nullify the benefits otherwise available to the petitioners if an honest compliance had been made of the directions of this Court and of the Supreme Court. No doubt this Court is not sitting in contempt jurisdiction and cannot fix responsibility on Officers concerned for contemptuous behaviour and deliberate misrepresentation of facts before the Supreme Court, this Court can certainly take cognizance of the conduct of the Officers involved. Once a judgment is rendered by a competent Court of law after due appreciation of all facts regarding the controversy and such judgment attains finality, it becomes law declared under Article 141 of the Constitution and unless such law declared by the Supreme Court is modified by the Supreme Court itself, it shall be binding on all Subordinate Authorities including the State respondents therein.

58. The impugned order dated 14.7.2011 as amended on 15.7.2011 in Writ Petition No. 44334 of 2011 is set aside. The Writ Petition No. 44334 of 2011 is

allowed. As a consequence of the observation made herein above, Writ37 A No. 35611 of 2007 also deserves to be allowed. Additionally, this Court may remind the State respondents of the observations made by the Supreme Court in State of Punjab Vs. Rafique Masih (White Washer) & others 2015 (4) SCC 334 in paragraph 18, which is as follows:-. "18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

59. Let appropriate orders be passed in this regard by the State Government in the light of the observations made herein above within a period of three months from the date a certified copy of this order is produced before it.