

UNION OF INDIA AND ORS.

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v.

BIJOY LAL GHOSH AND ORS.

MARCH 4, 1998

[K. VENKATASWAMI AND A.P. MISRA, JJ.]

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Service Law :

Fixation of higher pay scales as recommended by National Commission for teachers—Respondents, primary school teachers under Dandakaranya Development Project (DDP) of Ministry of Home Affairs—Rendered surplus on handing over of the schools to the state government—Taken on the roll of Central surplus Staff Cell— Later, on respondents were relieved from the Surplus Cell and redeployed in post in various non- teaching cadres in various department and offices of Central Government - National Commission's Report accepted by the Central Government vide Circular dated 12-8-1987 w.e.f. 1-1-1986—Nothing on record to show the exclusion of the respondents from entitlement of the benefits contained in the said report—Held, respondents entitled to the benefit of the recommendation of the National Commission w.e.f.1-1-1986—Denial of such benefit to respondents would be violative of Article 14 of the Constitution—Constitution of India, Article 14—Arbitrariness—Government of India MHRD (Dept. of Edu.) Circular No. F-5-180/86-UT-I-dated 12-8-1987.

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CCS (Redeployment of Surplus Staff) Rules, 1990—Framed in exercise of powers conferred by the proviso to Article 309 of the Constitution in Suppression of Redeployment of Surplus Staff against Vacancies in the Central Civil Service and Posts (Group 'C') Rules, 1967—Redeployment of Surplus Staff against Vacancies in the Central Civil Service and Posts (Group 'D') Rules, 1970—Redeployment of Surplus Staff against Vacancies in the Central Civil Services and Posts (Group 'A' and 'B') Rules, 1986—Redeployment of Surplus Staff in the Central Civil Service and Posts (Supplementary) Rules, 1989—Framed for regulating redeployment and readjustment of surplus staff against vacancies in the Central Civil Service and Posts—Rule 2(g)- "surplus staff" and "surplus employees"—To mean the Central Civil Servants (other than those employed on ad hoc casual, work-charged or contract basis)—Rule 2(g)(b)(3) refers to such employees who have been rendered surplus along with the post from the ministries, departments, offices of the Government

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A of India, as a result of abolition and winding up either in whole or in part of an organisation of the Central Government.

The respondents were initially appointed as primary school teachers under the Dandakaranya Development Project (DDP) in the Ministry of Home Affairs from 1966 onwards. As a result of the policy decision by the Central Government, to handover all the aforesaid schools under the DDP to the State Governments, and other employees rendered surplus were taken on roll of Central Surplus Staff Cell of the Department of Personnel and Training vide order dated 28-4-1986. In pursuance of this, respondents were transferred to the surplus staff cell w.e.f. 1-4-1986. Thereafter they were re-deployed in the various departments and the offices of the Central Government. Subsequently, the respondents were relieved from the surplus cell w.e.f. 22-9-1986 onwards to join the new postings in various non-teaching cadres. These respondents were given the pay scales as recommended by the 3rd and 4th pay Commission. A Commission called Chattopadhyay Commission was appointed to give recommendation for the teachers and the grievance of the respondents were that they were not given the benefit of this Commission, which was accepted by the Government by way of issuing a Circular dated 12-8-1987.

The claims of the respondents were denied by the appellants but the same was allowed by the Central Administrative Tribunal. Hence this Appeal.

The main contention of the appellants was that the respondents were neither Government servants nor the National Commission Report was applicable to all the teachers. It was also submitted that the Circular dated 12-8-1987 was not applicable only the teachers working under DDP. It was applicable to such departments which have accepted its report. It was further submitted education being a State subject and the schools under DDP having been transferred to the State Government concerned, teachers under it would be benefited when the State Government accepted the report.

dismissing the appeal, this Court

HELD : 1.1. The respondents are entitled to receive the benefit of the recommendation of the National Pay Commission w.e.f. 1-1-1986.

1.2. The respondents were teachers working with the Central Government between 1-1-1986 and 1-4-1986. The Government absorbed them in its various departments with the same pay scale which they were drawing

then. The Central Government has accepted the National Commission (Chattopadhyay Committee) Report and gave benefit thereof to all the teachers working in the Union Territory and some of its departments and all the States in India have also accepted the same. The documents on record also reveal that, apart from the teachers working in the Union Territory, the Central Government approved other teachers working in some other departments. The pith and substance and spirit of the reply to the question in the Parliament indicates at least Central Government's total acceptance for all its teachers to whom the said report was applicable. The Union of India has not brought on record anything to the contrary to show the exclusion of the respondents from being given the said benefit on the relevant date, as were given to all the teachers, who were placed in the same position as the respondents. The only argument advanced was, not on the basis of any record but as submission that as the institutions under DDP were handed over to the States of Orissa and Madhya Pradesh on 1-1-1986 and its being not in existence, the respondents having been taken as surplus and were in due time absorbed in the various departments, the benefit of the increase in pay scale as recommended by the National Commission was not given to them. The respondents are not claiming all or other benefits which were given and to be received in future to the teachers but confining their claim to the period when, admittedly, they were teachers and all the teachers irrespective of the fact that they were taken by the State Government or with the Central Government were given that benefit. If that be so, there could be no justifiable reason to exclude that benefit to the respondents. [85-B-F]

2.1. In the present case, the Government has stoutly supported the recommendations and the same is said to have been implemented in the Union Territories and some of its departments. There is nothing to show that there were other departments in which similar teachers were employed but such benefit was not given. In fact, all the departments of the Central Government could not have teachers. There is nothing to show apart from cases of respondents that any other class of teachers in the Central Government departments were excluded. On the contrary, the letter dated 12-8-1987 is from the Education Department viz. the Human Resources Department, the parent department under which all teachers fall and was issued with the concurrence of Department of Finance. Thus, the stand of the appellants that they were not considered as an institution under the DDP, as DDP itself stood transferred or for lack of either consideration or lack of approval cannot be accepted. This apart, the letter dated 12-8-1987 in its second para records that "...all Union territories (except Chandigarh)

A including government-aided school and organisations like Kendriya Vidyalaya Sangathan and Central Tibetan Schools' Administration will be as under".

[86-A-C]

2.2. The use of words "organisation like" and the word "etc." indicate similar other organisations, institutions etc. The same was not exhaustive.

B In consideration of this, one has to include the teachers who were working in DDP as respondents. Hence non-consideration of this legitimate claim of the respondents when all those belonging to that class received the benefit at the relevant date, is arbitrary and violative of Article 14 of the Constitution.

[86-D-E]

C *Purshottam Lal v. Union of India*, [1973] 1 SCC 651, relied on.

Union of India v. Rajendra Singh Rajput, [1997] 10 SCC 426 and *Union of India v. Secretary, Madras Civil Audit and Accounts Association*, [1992] 1 SCR 530, distinguished.

D *P. Parmeswaran v. Secretary to the Government of India*, [1987] Suppl. SCC 18 and *Lalji Dubey v. Union of India*, [1974] 2 SCR 249, referred to.

2.1. On the question whether the respondents are government servants or not, the stand that they are not government servants is not sustainable. This is evident even by a letter dated 16-9-1985 by this Ministry of Home Affairs, Department of Home Affairs (Rehabilitation Division) Dandakaranya Development Authority, Office of Zonal Administration which contains office Order No. 528/85 which records that "consequent on promotion to the post of untrained Graduate Teacher, the pay has been fixed at Rs. 350 with effect from 9-1-1984 with date of next increment on 9-1-1985/1-1-1995 as per pay fixation statement". This letter also refers to one of the Assistant Teachers who was promoted to the post of untrained graduate teacher in the same Dandakaranya Development Authority and the Government itself describes such teacher as government servant. The CCS (Redeployment of Surplus Staff) Rules, 1990 which has been framed in exercise of powers conferred by the proviso to Article 309 of the Constitution and in supersession of the Redeployment of Surplus Staff against Vacancies in the Central Civil Service and Posts (Group 'C') Rules, 1967, Redeployment of Surplus Staff against Vacancies in the Central Civil Service and posts (Group 'D') Rules, 1970 and the Redeployment of Surplus Staff against Vacancies in the Central Civil Services and Posts (Group 'A' and 'B') Rules, 1986, and the Redeployment of Surplus Staff in the Central Civil Services and Posts (Supplementary) Rules, 1989 were framed for regulating redeployment and readjustment of surplus staff against vacancies in the Central Civil Service and Posts. Rule

2(g) defines “surplus staff” and “surplus employee or employees” to mean the Central Civil servants (other than those employed on *ad hoc* casual, work-charged or contract basis) and Rule 2(g)(b)(3) refers to such employees who have been rendered surplus along with the post from the ministries, departments, offices of the Government of India, as a result of abolition and winding up either in whole or in part of an organisation of the Central Government.

2.2. In view of the said letter, said rules and the Central Government giving to the respondents the benefit of the 3rd and 4th Pay Commission Report, it leaves no room for doubt that the respondents were and are government servants and treated as such. [80-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 12448, 12504-12505 and 12449 of 1996.

From the Judgment and Order dated 31.3.95, 15.5.95 & 22.9.95 of the Central Administrative Tribunal, Calcutta and Central Administrative Tribunal, Jabalpur, in O.A. No. 591/91, 872/91 and O. A. Nos. 30 & 53 of 1991.

A Subba Rao, (P. Parmeswaran) (NP) for the Appellants.

Tapas Ray, H.K. Puri, Rajesh Srivastava and Ujjwal Banerjee for the Respondents.

The Judgment of the Court was delivered by

MISRA, J. The common question raised in the aforesaid appeals is, whether the respondents, who were primary school teachers under the Dandakaranaya Development Project (hereinafter referred to as ‘DDP’), under the Ministry of Home Affairs, Department of Rehabilitations, Government of India, in the relevant period would be entitled to the higher pay scale as per the recommendations of the National Commission on Teachers headed by Professor D.P. Chatopadhyaya (hereinafter referred to as “National Commission”) in terms of the circular dated 12th August, 1987 issued by the Ministry of Human Resources Development, Department of Education. The appellants denied such claim as the aforesaid circular applies only to the teachers of the schools under the Union Territories (except Chandigarh) including Government aided schools and organisations like Kendriya Vidyalaya Sangathan and Central Tibetan Schools Administration etc. The claim of the respondents was allowed by the Central Administrative Tribunal, Calcutta Bench (hereinafter referred

A to as 'Tribunal') upholding the contention of respondents and directing the appellants to pay at the revised scale with effect from 1st January, 1986 in line with the Railway Ministry's circular dated 11th April, 1988 or the aforesaid HRD Ministry's circular dated 12th August, 1987 and also give consequential refixation of the pay under the rules. Aggrieved by the said order, the present appeals are filed by the Union of India and others.

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To appreciate the controversy, we refer to short facts. The respondents were initially appointed as primary school teachers under the DDP as aforesaid in the Ministry of Home Affairs from the year 1966 onwards. They have been posted at the various primary schools under the said project. As a result of policy decision by the Central Government, it was decided on the 1st April, 1986 to handover all the aforesaid schools under the DDP to the State Governments and any teachers and other employees rendered surplus were taken on roll of Central Surplus Staff Cell of the department of Personnel and Training vide order dated 28th April, 1986. In pursuance of this, respondents were transferred to the aforesaid surplus staff cell with effect from 1st April, 1986. Thereafter they were re-deployed in the various departments and offices of the Central Government consequently were relieved from the surplus cell with effect from 22nd September, 1986 onwards to join the new postings in various non-teaching cadres. This is not in dispute that these respondents while working as teachers earlier were given pay scale of Rs. 260-400 with effect from 1st January, 1973 as per the recommendations of the 3rd Pay Commission which was subsequently revised on the basis of the 4th Pay Commission and were paid in the scale of Rs. 950-1500 with effect from 1st January, 1986. The grievance of the respondents is that they have not been given the benefit of the recommendations of the National Commission of the Teachers by the aforesaid Chatopadhyya Committee. The said report was accepted by the Ministry of Human Resources Development, Department of Education, which is evident from the circular dated 12th August, 1987, through which higher pay scale to school teachers were made admissible. As this report was given effect from 1st January, 1986, the respondents claim the benefit as they were factually working on this date as primary school teachers under the aforesaid DDP.

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The appellants denying this claim submits that this circular is not applicable to the teachers working under DDP. The National Commission report is applicable only to such departments which have accepted its report. The reliance placed by the respondents only refers to the acceptance by the Defence and Railway department and not Home Ministry under which aforesaid

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DDP was working. Further, since education being a state subject under the legislative entry under the Constitution and the schools under DDP having been transferred to the State Government concerned, teachers under it would be benefitted when the State Government accepts the report. The said report was accepted specifically only for the Union Territories as it is also evident by the aforesaid circular dated 12th August, 1987. It is further submitted that on the date of the said circular there could not be any consideration for the primary school teachers under DDP as the very institution under DDP, was no more in existence, stood transferred to the State Governments.

The National Commission recommended the following pay scales for the primary school teachers :-

Primary School Teachers	:	Rs. 1200-2040
Senior Scale (After 12 years)	:	Rs. 1400-2600
Selection Scale (After 12 years in senior scale and attainment of qualifications laid down for TGTs)	:	Rs. 1640-2900

Learned counsel for the appellants, Mr., Subba Rao, submits that the respondents were neither Government servants nor the National Commission report is applicable to all the teachers.

We will revert back to this last submission but before it, we refer to the letter No. 1028/A/W/(School) dated 15th March, 1989, of Ministry of Defence, Ordnance Factory Board. The relevant portion is quoted hereunder :-

“Sanction of President has been received under Ministry of Defence letter quoted above, addressed to Ordnance Factory Board copy to all concerned ordnance Fys. among others regarding the application of revised scales of pay, teaching allowance and special allowance as sanctioned in Ministry of Human Resources Development (Department of Education) letter No, F. 5-180/86-UT-I dated 12.8.1987 (based on the recommendation of the National Commission on Teachers under the Chairmanship of Prof. D.P. Chattopadhyaya enclosed with the above letter to the teachers of Ordnance Factory Schools.”

Similarly another letter No. E(P&A) I.87/PS.5.PE.5, dated 11th January, 1988 of Railway Board. The relevant portion is quoted hereunder :

A "Sub :- Revision of pay scales of school teachers.

The Ministry of Railways have on the recommendations of the National Commission on Teachers, under the Chairmanship of Prof. D.P. Chattopadhyay, decided that the revised (4th Pay Commission) scales and selection Grades for teachers on the Railways should be further revised as in the Annexure attached.

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3. The revised pay scales, Teaching Allowance and special Allowance and special Allowance will be applicable w.e.f. 1.1.1986. The arrears of pay for the period from 1.1.1986 to 31.3.1986, which will accrue over and above the arrears of pay consequent upon the introduction of the revised scales of pay on the recommendations of the 4th Pay Commission, vide this Ministry's letter No. PC-IV/86/IMP/Schedule/1 dated 24.9.1986, shall be deposited in the provident fund accounts of the employees. Amendments to the Railway Service (revised pay) Rules, 1986, regulating the fixation of pay in the newly introduced scales will follow separately."

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The aforesaid two letters indicate, so far the departments of Defence and the Railway adopted the pay scales as recommended by the aforesaid National Commission, which was over and above the 4th Pay Commission. It is also significant that the acceptance of the said report is with effect from 1st January, 1986 which is in consonance with the aforesaid circular dated 12th August, 1987.

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Now, reverting to the aforesaid last submission, we find that the appellant itself has accepted respondents as Government servants and gave them the scales as recommended both by the 3rd and the 4th Central Pay Commission. When the 4th Central Pay Commission came, Government was aware of the aforesaid National Commission, hence, the scale of the 4th Pay Commission granted to the teachers was as an interim measure till recommendation of the National Commission. This fact is also evident from the aforesaid circular dated 12th August, 1987. The relevant portion is quoted hereunder :

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"I am directed to say that the National Commission on Teachers' under the Chairmanship of Prof. D.P. Chattopadhyay has made various recommendations concerning pay and services conditions of teachers at school level, pending Government's decision on the report of

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National Commission on Teachers the Fourth Central Pay Commission only recommended the replacement scales for school teachers. Accordingly, these pay scales were implemented vide Ministry of Finance (Department of Expenditure)'s Notification No. F. 15(1)-IC-/86 dated 13th September, 1986 and 22nd September, 1986. Subsequently, it was clarified that the revised scales of pay for different grades of teachers are based only on the recommendations of the fourth Central Pay Commission, that decision on the recommendation of National Commission on Teachers is yet to be taken and that it would be done as soon as possible.

2. In partial modification of Finance Ministry's Notification No. F15(1)/IC/86 dated 13th September, 1986 and 22nd September, 1986, by which replacement scales were given to school teachers, it has now been decided that the revised pay scales of school teachers in all Union Territories (Except Chandigarh) including Government aided schools and organisation like Kendriya Vidyalaya Sangathan and Central Tibetan Schools Administration etc. will be as under."

Next repelling the contention for the appellants that Chattopadhyya Committee report is not applicable to all the teachers, Shri Tapas Ray, learned senior counsel appearing for the respondents, placed before us the relevant portion of the aforesaid report of the National Commission to show that the said report was not confined nor was constituted for any specified Territory, State or Union or class of teachers but was wide enough to include all facets of all classes of teachers in the entire territory of this country. He placed the book 'The Teacher And Society' containing report of the National Commission on Teachers - I, 1983-85. Page 89 gives the resolution of the Government of India, Ministry of Education and Culture (Department of Education) to constitute National Commission on Teachers. Under that two National Commissions were set up to advise the Government on various aspects relevant to the teaching community as specified in terms of reference. The National Commission No.1 was to deal with the issues relating to the teachers at the school stage and the National Commission No.2 to deal with the issues relating to the teachers at the higher education level (including technical education). Broadly, the terms of reference included to lay down the objectives for the teaching profession with reference to the search for excellence, breadth of vision and cultivation of values in keeping with the country's heritage and ideals of democracy, secularism and social justice. To suggest measures for fostering dynamism in the profession and attracting and retaining talented

- A persons in the teaching profession. To recommend measures to enhance the role of teachers in facilitating, motivating and inspiring students in the acquisition of knowledge, skills and values and promoting them through the spread of the scientific temper, secular outlook, environmental consciousness and civic responsibility. Also the adequacy of arrangements for promotion of teachers' welfare with special reference to the National Foundation of Teachers Welfare and to suggest modifications wherever necessary.
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- C Chapter 1 page 1 of the report shows that the Commission and its members visited 21 State Capitals and few other districts and discussed the matter with leaders and senior officials of the Government and also visited selected institutions to make on the spot assessment. At page 26 it reveals under para 5.16 that the Commission dealt with primary teachers and referred to the bad condition of the primary school teachers. The Commission also recorded at para 5.23 :-

- D “The Commission feels that a stage has been reached in the development of education in this country, when a bold decision must be taken in favour of replacing the present jungle of salary scales for teachers and educational administrators by composite running scales (See Appendix XIII(xvi)).....”

- E As para 5.25 it records as under :-”As an illustration of the kind of running scale, we have in mind we would suggest a scale beginning with Rs.500 as the starting salary of a primary teacher and ending with Rs. 3950 as the maximum of the grade for the State Director of Education.”

- F Then, page 92 gives the summary of the recommendations which clearly reveals that the Commission has dealt with the subject with national goal, the role of the teachers under Chapter II, towards a new design of education under Chapter III, Social justice : Universalisation of elementary education under Chapter IV, the status, working conditions and welfare of the teacher under Chapter V, supply and recruitment of teachers under Chapter VI and the training of teachers under Chapter VII, etc. After perusing the ‘National Commission Report’, apart from its very name, there can be no doubt that its recommendations are neither confined to any specific Territory nor only for the Union Territory, but was actually for the whole country.
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- H Further, this fact is also borne out from the question and answer in the Parliament placed by the appellants themselves in one of the aforesaid appeals,

which reveals the concern of the Parliament about its implementation apart from the Union territory. The relevant portion of the said question and answer is also reproduced below :-

Q. "Will the Minister of Human Resources Development (a) Whether Union Government have issued any directives to the States for giving uniform pay scales to the teachers throughout the country as recommended by Chattopadhyay Commission; _____
_____?"

Ans. Keeping in view the recommendations of the NCT-I, the Fourth Central Pay Commission and National Policy on Education, the pay scales for teachers in the Union Territories have been revised by the Government. For the teachers in the States, the Government is of the view that the State Government have their own mechanism for periodically revising the pay scales and related service conditions. It is for the State Governments concerned to suitably revise the pay scales applicable to their teachers. The report of NCT-I has been forwarded to all State Governments for appropriate action."

In other words, it reveals Government's total acceptance of the report of the National Commission and, in turn, to pay the same scales to its teachers and the acceptance was not confined to the Union Territory but included the concerned State Governments.

Next question is whether the respondents, who were teachers on the relevant date, were Government servants or not? The stand of the appellant that they are not. is not sustainable. This is evident even by the letter dated 16th September, 1985 by the Ministry of Home Affairs, Department of Home Affairs (Rehabilitation Division) Dandakaranaya Development Authority, Office of Zonal Administrator which contains Office Order No. 528/85 which records the following :

"Consequent on promotion to the post of untrained Graduate Teacher from Asstt. Teacher, the pay of Shri..... has been fixed at Rs. 350/- with effect from 9.1.1984 with date of next increment on 9.1.1985/ 1.1.1985-----as per pay fixation statement given below :-

PAY FIXATION STATEMENT

1. Name of the Govt. Servant : Sri Nirmal Kr. Mandal

A 2. Post held and scale of pay : Asstt. Teacher Rs. 260-6-290-EB-6-326-B-366-EB-B -390-10-400/-

3. Date of promotion as U.G. Teacher : 9.1.1984 Forenoon.

B Admittedly, like respondents the aforesaid letter also refers to one of the Assistant Teachers who was promoted to the post of untrained graduate teacher in the same Dandakaranaya Development Authority and the Government itself describes such teachers as Government servant. We also find CCS (Redeployment of Surplus Staff) Rules, 1990 which has been framed in exercise of powers conferred by the proviso to Article 309 of the Constitution and in supersession of the Redeployment of Surplus Staff against vacancies in the Central Civil Services and Posts (Group 'C') Rules, 1967, the Redeployment of Surplus Staff against vacancies in the Central Civil Services and Posts (Group 'D') Rules, 1970, the Redeployment of Surplus Staff against vacancies in the Central Civil Services and Posts (Groups 'A' and 'B') Rules, 1986, and the Redeployment of Surplus Staff in the Central Civil Services and Posts (Supplementary) Rules, 1989. This was framed for regulating redeployment and re-adjustment of surplus staff against vacancies in the Central Civil Services and Posts. Rule 2 (g) defines 'surplus staff' and 'surplus employee or employees', to mean the Central Civil servants (other than those employed on ad hoc, casual, work-charged or contract basis) and Rule 2 (g)(b) (3) refers to such employees who have been rendered surplus along with the post from the Ministries, Departments, Offices of the Government of India, as a result of abolition or winding up either in whole or in part of an organisation of the Central Government.

F In view of the aforesaid letter of the appellant, the aforesaid rules and the Central Government giving to the respondents the benefit of the 3rd and the 4th Pay Commission report, it leaves no room for doubt that the respondents were and are Government servants and treated as such.

G Learned counsel for the appellants, Mr. Subba Rao, referred to the case of *Union of India and Another v. Rajendra Singh Rajput*, [1997] 10 SCC 426. This case, in our opinion, does not help the appellants. This was a case where respondent, a Junior Engineer in Dandakaranaya Project since 29.9.1983, was later transferred being surplus to the Central Public Works Department and he claimed the higher pay scale of Rs. 1640-2900 on the ground that Junior Engineers in the CPWD were getting that scale on the principle of 'equal pay for equal work'. That was upheld and later Junior Engineers/Section Officers

(Horticulture) in the CPWD who could not be promoted to the post of Assistant Engineer in the scale of Rs. 2000-3500 due to non-availability of vacancies in that grade, was allowed the scale of Assistant Engineer, that is to say Rs.2000-3500 on a personal basis after completion of 15 years of total service but when later, the aforesaid Junior Engineer from the Dandakaranaya Project also claimed this upgraded scale, the same was rejected with the following observations :-

“He cannot claim the benefit of ungraded scale available to Junior Engineers in CPWD. Moreover, merely because under order dated 8.8.91, the respondent was given the pay scale of Rs. 1640-2900 on the basis of the principle of ‘equal pay for equal work’ cannot mean that the respondent is also entitled to claim the benefit of the upgraded scale of Rs. 2000-3500 which is available in CPWD only having regard to the conditions in that department and is not applicable to Junior Engineers in other departments of the Central Government. The respondent could not, therefore, be extended the benefit of pay scale of Rs. 2000-3500 on the ground that he has completed 15 years of service as Junior Engineer.”

This was a case where claim of Junior Engineer of DDP against another Junior Engineer in CPWD, who was given upgraded scale subsequently, was rejected on the facts of that case which has no application in the present case. The present case is neither a case of ‘equal pay for equal work’ nor claim based on parity of another on any upgraded post or scale. Here the claim is based on their own right under the said National Commission Report.

The crux of controversy is the justifiability of the claim of the respondents to receive the benefit of scale of the difference of pay scale between what was given by the 4th Pay Commission and later enhanced by the National Commission to the teachers similarly to the class to which respondents belong. Their claim is confined to the period between 1st January, 1986 to 1st April, 1986. The significance of this is that on 1st April, 1986 respondents were declared as surplus and were gradually absorbed thereafter in the various Government departments at the same scale as they were drawing on the said date. The adjudication of this claim have bearing as it would decide what pay scale they would be entitled during this period and in case their absorption at the relevant time was at a lower scale then they would be entitled at such adjudicated higher pay scale including consequential increments in accordance with the rules. Respondents are not claiming any benefit given to the teachers under the said report after 1st April, 1986. In this regard, even the stand of

A the appellant is not in doubt. The appellant has accepted that absorption of respondents to the various Central Government offices were on posts carrying equal pay scales which they were drawing at the relevant time. The same is evident from para 5 of the SLP itself where it records that in the process of winding up of Dandakaryanya Project, all the educational institutions run under it were handed over to the State Government of Madhya Pradesh and Orissa and respondents who were in excess were declared surplus and rendered to the Central (Surplus staff) Cell, after allowing them revised/replacement scales. It is further stated on their redeployment, they were relieved of their duties from the DDP for joining in different Central Government offices, organisations in various posts carrying *equivalent pay scales*.

C Here the question is, in case the pay scale as given by the the National Commission is applicable to the respondents they would be entitled for their higher pay scales at the relevant time. Admittedly, between 1st January, 1986 and 1st April, 1986, the respondents were drawing the pay scale as per the 4th Pay Commission report which was interim in nature as it awaited pay scale to be given by the National Pay Commission. If on the relevant date, they are entitled for the pay scale as per the National Commission report, the claim of the respondents would succeed, as upheld by the tribunal as their absorption have not been on this upgraded pay scale.

E For the respondents, strong reliance is placed in the case *Purshottam Lal and others v. Union of India and another*, [1973] 1 SCC 651. Relevant portion is quoted hereunder :-

F “Para 15. - Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned.”

H Mr. Tapas Ray, learned senior counsel, submits even in the present case, reference was made to the National Commission for all classes of

teachers comprehensively and the Central Government has accepted the said report and applied to all the teachers under it, either under Union Territory or other departments, referred to above, then there is no justification for excluding the respondents who were working as teachers at the relevant time under Central Government.

Mr. Subba Rao, learned counsel for the appellants, referred the case of *Union of India and Others v. Secretary, Madras Civil Audit & Accounts Association and Anr, etc.*, [1992] 1 SCR 530 to show, though case of *Purshottam Lal* (supra) was referred, yet report as a whole was not implemented. Relevant portion is quoted hereunder :-

“Having given our earnest consideration we are unable to agree with the view taken by the Full Bench of CAT that the principle of equal pay for equal work is attracted irrespective of the fact that the posts were identified and upgraded in the year 1987. There is no dispute that after such upgradation, officers in both the wings who are doing the equal work are being paid equal pay. But that cannot be said to be the situation as well on 1.1.86 also. The learned counsel, however, submitted that the recommendations of the Pay Commission should be accepted as a whole in respect of all the categories of employees. In this context he relied on two decisions of this Court. In *Purshottam Lal and Others v. Union of India and another*, [1973] 1 SCC 651 a question came up whether the report of the second Pay Commission did not deal with the case of those petitioners. It was held thus :

‘Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepted the recommendations it is bound to implement the recommendations in respect of all Government employes. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. That is what the Government has done as far as these petitions are concerned.’

In *P. Parmeswaran and Ors. v. Secretary to the Government of India*, [1987] Suppl. SCC 18 in a short judgment this Court observed that because of the administrative difficulties the Government cannot deny the benefit of the revised grade and scale with effect from January 1, 1973 as in the case of other person.”

This decision does not dilute the principle as laid down in the case of

A *Purshottam Lal* (supra). In this case, the appellants submitted that the office memorandum dated 12th June, 1987 was passed on the recommendation of the 4th Central Pay Commission which consisted of two parts. The first part recommended corresponding pay scale for the existing posts in the Accounts Wing giving effect from 1st January, 1986. The other part was contained in para 11.38. Pursuant to those recommendations, the Government decided to implement the same, namely, the second part with effect from 1st April, 1987. The following passage in this case makes it clear that it has not deviated from the principle as laid down in *Purshottam Lal* (supra) but its resultant view was on the special facts and circumstances of that case.

C “There is no dispute that in the instant case the terms of reference of Pay Commission applied to all the categories of Government servants. But the question is as to from which date the other category referred to above namely Assistant Accounts Officer etc., should get the higher scales of pay. Identification of these posts and the upgradation cannot be treated as mere administrative difficulties. The implementation of the recommendations of the Pay Commission according to the terms thereof itself involved this exercise of creation of posts after identification which naturally took some time. Therefore, the above decisions relied upon by the learned counsel are of no help to these respondents.”

E The question raised there was, whether two different dates of the applicability of the same recommendation could be upheld when the report was accepted by the Government. This Court held that different dates of applicability was necessary since the Government in terms of the Pay Commission recommendation was to create posts after identification which naturally has to take some time. Hence, two different dates of its applicability when other posts were yet to be created in terms of recommendation itself cannot be said to be bad in law. There is no such fact so far as the present case is concerned.

G For the respondents, reliance was also placed in the case of *Laljee Dubey and Others v. Union of India and Others*, [1974] 2 SCR 249. Here also the appellants’ contention was that letter dated 17th November, 1953 should be implemented because Government accepted the recommendation of ‘Kalyanwala Committee’. Hence, denial of its benefit to the appellants is violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution. It was submitted there that other checkers performing duties similar to those of the appellants have been guaranteed the benefit of the said order. This case relying on the decision and principle of the *Purshottam Lal*

(supra) allowed the appeal of the appellants.

After giving our due consideration both to the facts and the law, which we have referred above, it is not in dispute that the respondents were teachers working with the Central Government between 1st January, 1986 and 1st April, 1986. The Government absorbed them in its various departments at the same pay scale which they were drawing then. The Central Government has accepted the National Commission (Chattopadhyay Committee) report and gave benefit to all its teachers working in the Union Territory and some of its departments and that all the States in India have also accepted the same. The documents on record also reveals, apart from the teachers working in the Union Territory, Central Government approved other teachers working in some other departments. The pith and substance and spirit of the reply at the Parliament indicates at least Central Government's total acceptance for all its teachers to whom the said report was applicable. The appellant, namely, Union of India, has not brought on record anything to the contrary to show the exclusion of respondents from giving the said benefit on the relevant date, as were given to all the teachers, who were placed in the same position as the respondents. The only argument advanced was, not on the basis of any record but as submission that since the institutions under DDP were handed over to the States of Orissa and Madhya Pradesh on the 1st January, 1986 and that not being in existence, respondents having been taken as surplus and were in due time absorbed in the various departments, the benefit of the increase in pay scale as recommended by the National Commission was not given to them. Apart from the fact that there is nothing on the record to show even this reasoning for declining the said claim, we find even otherwise, this submission has no merits. The respondents are not claiming all or other benefits which were given and to be received in future to the teachers but confining their claim to the period when, admittedly, they were teachers and all the teachers irrespective of the fact that they were taken by the State Government or with the Central Government were given that benefit. If that be so, there could be no justifiable reason to exclude that benefit to the respondents.

It is always possible to exclude any class based on reasonable classification to the benefit under any policy decision, the classification having direct nexus with the object sought to be achieved. But in the present case, in the absence of any material placed, we do not find any such so far the respondents are concerned. Reading that would be arbitrary and violative of Article 14 of the Constitution. In the present case, we find that the Government has stoutly supported the recommendations and the same is said to have been implemented in the Union Territories and some of its departments.

- A There is nothing to show that there were other departments in which similar teachers were employed but such benefit was not given. In fact, all the departments of the Central Government could not have teachers. Nothing to show apart from cases of respondents that any other class of teachers in the Central Government departments were excluded. In fact, on the contrary, we find the aforesaid letter dated 12th August, 1987 is from the Education
- B Department viz. the Human Resources Department which is the parent department under which all teachers fall and was issued after concurrence of Department of Finance. Thus, the stand for the appellants that they were not considered as institution under DDP itself stood transferred or for the lack of either consideration or lack of approval cannot be accepted. This apart, we find the aforesaid letter dated 12th August, 1987 in its second para while
- C approving the sanction records it to the following :

“.....all Union Territories (except Chandigarh) including Government aided schools and *organisations like* Kendriya Vidyalaya Sangathan and Calcutta Tibetan Schools Administration *etc.* will be as under.”

- D The use of words “organisations like” and the word “etc.” indicate similar other organisations, institutions etc. the same was not exhaustive. In consideration to this, we conclude and include the teachers who were working in DDP as the respondents. We further conclude, if for the aforesaid reasons, their claims were not considered, this non-consideration of their this legitimate claim, when all such belonging to that class received at the relevant date, is
- E arbitrary and violative of Article 14 of the Constitution.

In our considered opinion respondents are entitled to receive the benefit of the recommendation of the National Pay Commission. We further conclude, in every case so far as the Central Government is concerned, to give benefit of the National Pay Commission to its teachers from 1st January, 1986, the respondents are also entitled to receive the same benefit under it from the same date.

For the aforesaid reasons and the findings recorded herein before, we do not find any merit in these appeals. These appeals are accordingly dismissed. Cost on the parties.

G R.K.S.

Appeals dismissed.