

DEB NARAYAN SHYAM AND ORS.
v.
STATE OF WEST BENGAL AND ORS.

DECEMBER 1, 2004

[B.N. AGRAWAL AND A.K. MATHUR, JJ.]

Service Law:

*West Bengal Service (Revision of Pay and Allowance) Rules, 1961—Surveyors and Amins working in different Departments—Parity in pay scale by Amins with Surveyors—Claim of—Principle of 'Equal pay for equal work'—Applicability of—Held: Nature of duties and functions and essential recruitment qualifications of Amins different from that of Surveyors—As such principle of 'Equal pay for equal work' not applicable—Hence, Amin not entitled to claim parity in pay scale with Surveyor—However, various decisions of High Court giving parity in scale treating an earlier decision giving parity as precedent despite clear stipulation that it should not be treated as precedent, unchallenged by the State Government—Effect of—Held: Earlier decisions cannot operate as **res judicata** or **estoppel**—In another matter, Division Bench of High Court held the earlier decisions to be **per incuriam** and cannot be treated as precedent against which beneficiaries of earlier decision filed SPL as their rights adversely affected on not being heard by Division Bench—This order of Division Bench was set aside and matter was remitted back, which amounted to review of the whole issue—Also the effect of earlier decisions neutralized by filing of SLP—However, if the earlier decisions are allowed to remain it would create anomalous situation by creating two groups, one getting pay scale 9 and other getting scale 6 or 7, and also resulting in overburdening of State exchequer—As such inherent powers under Article 142 invoked—Amins directed to be fixed in pay scales as given in the Rules—However, pay drawn by them under the earlier decisions not to be recovered—Code of Civil Procedure, 1908, Section 11—Evidence Act, 1872, Section 115—Constitution of India, 1950, Article 142.*

Amins recruited in the State of West Bengal filed a petition to claim same pay scale as that of Surveyors. Single Judge of High Court without discussing whether the qualification and duties of Amin and Surveyor

A are same or not and on reference from a Commissioner that Amins performed same duties as Surveyors directed that the Amins be granted same pay scale. However, the Government did not contest the same. Thereafter, as the Amins were not given the said pay scale, contempt petition was filed. The Government was directed to give Amins the same pay scale as that of Surveyors and it was clarified that the order will not be treated as precedent for any other cases and the Government would contest the other cases. However, subsequently in 36 cases the Government did not file any application nor pointed to the High Court about the precedent stipulation and the High Court following the previous decision granted the Amins the same pay scale as that of Surveyors.

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C Thereafter, Amins in another matter claimed the same relief as granted in earlier decision. Single Judge of High Court disapproved the earlier decision and dismissed the writ petition. The beneficiaries of the earlier decisions filed Special Leave Petition before this Court on the ground that the writ petitioners in all the 36 cases were not heard by the Division Bench and as such their rights are going to be adversely affected. This Court set aside the order of Division Bench of High Court and remitted the matter to the Division Bench of High Court. Division Bench held that the decision in earlier case should not be treated as precedent; that Amins cannot be equated with Surveyors, however, looking to the qualification of Surveyors with only school final pass or Madhyamik and practical experience they were given pay Scale 7 and as such directed the State Government to give Amins pay scale 7; that the Amins enjoying Scale 9 pursuant to the order of the Court would be placed in Scale 7; and no recovery would be made from them prior to October 1, 2001. Hence, the present appeals by the State Government and the private parties.

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Private respondents contended that the qualifications of the Amins and Surveyors might be different but since the duties discharged by them are identical, they are entitled to get the pay scale of Surveyors on the principle of "equal pay for equal work"; and that the earlier decisions given in all the 36 writ petitions having remained unchallenged by the State Government will operate as *res judicata* and estoppel against the State.

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State Government contended that the duties the qualification, training of the Surveyors and that of the Amins are different and as such

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Amins cannot be treated at par with Surveyors; that the State exchequer should not be unnecessarily overburdened by giving the remaining Amins the pay scale No. 9; that this Court should exercise its inherent jurisdiction under Article 142 of the Constitution; and that the order passed by High Court for giving pay scale No. 7 to Amins is not correct. A

Dismissing the appeals of the private parties and allowing the State Government's appeals, the Court B

HELD : 1.1. The Technical Rules and Instructions of the Settlement Department clearly show that the work and duties which are being discharged by the Surveyors are of technical nature by use of sophisticated instruments as against the Amins who do the job with the aid of relatively simple equipment, as they are not equated with that of the Surveyors. The qualifications prescribed for the Surveyors and Amins are also different. The Surveyor is supposed to be a technically trained person and whereas Amins is a non-technical person. The Amins have to undergo related course of duration of six months or so, as against the Surveyors' two years certificate course. The Surveyors stand on superior footing than that of the Amins. They are not discharging identical duties and are separate and cannot be equated from the functional point of view as well as qualification point of view. Therefore, the view taken by the Division Bench of the High Court that the Amins cannot be equated with the Surveyors is correct. [573-D-F] D E

1.2. While the work and duties performed by the Amins and Surveyors are not identical, there is no question of giving them the equal pay for the equal work. The principle of 'equal pay for equal work' depends upon the nature of duties performed by a particular category of posts and the qualifications for their recruitment. In the instant case, there are categorical findings that both the categories of posts, the Surveyor and the Amins, discharge different functions and duties and also the recruitment for the posts of Amins and Surveyor is not identical as the qualification for recruitment for the both the posts is different, there is no question of granting equal pay on the principle of 'equal pay for equal work'. [573-G; 574-A-B, H; 575-A] F G

State of U.P. & Ors. v. J.P. Chaurasia & Ors., [1989] 1 SCC 121; *Secretary, Finance Department & Ors. v. West Bengal Registration Service* H

- A *Association & Ors.*, [1993] Supp. 1 SCC 153; *Shyam Babu Verma & Ors. v. Union of India*, [1994] 2 SCC 521; *State of W.B. & Ors. v. Hari Narayan Bhowal & Ors.*, [1994] 4 SCC 78; *Union of India & Ors. v. Ram Gopal Agarwal & Ors.*, [1998] 2 SCC 589; *Union of India & Ors. v. Pradip Kumar Dey*, [2000] 8 SCC 580 and *Government of W.B. v. Tarun K Roy & Ors.*,
 B [2004] 1 SCC 347, referred to.

2.1. In the model cases, the State did not place any material before the Court and neither the Single Judge of High Court examined the detailed functions of the Amins and that of the Surveyors but only relied on an opinion expressed by the Deputy Commissioner. Thereafter, in all these 36 writ petitions, the State Government did not file any affidavit nor took proper steps to represent the case before Single Judge to come to a correct conclusion. These cases were decided in the line of the model case despite the clear stipulation that it will not be treated as precedent. Further the State Government did not take any steps for challenging the orders of the Court before the Division Bench properly or before this Court which shows the total lack of application of mind while dealing with these cases and as a net result the State Government had to suffer great financial burden. It is only when the matter came up before the Single Judge he held that the earlier decision given by the Courts cannot be accepted and dismissed the writ petition. Subsequently, when some more matters came to be heard by him, on reference by him, the Division Bench found all these decisions given by the Single Judge were without any affidavit being filed by the State and without properly examining the duties and functions of the writ petitioners and they were treated to be *per incuriam*. It had put the matter in proper prospective holding that the earlier judgment cannot be treated as precedent and it cannot decide the rights of the parties. More so, the effect of these judgments was neutralized when beneficiary of these judgments filed Special Leave Petition before this Court on the ground that all these writ petitioners in all these 36 cases were not heard by the Division Bench and their rights are going to be adversely affected. This Court set aside the judgment of the Division Bench and remitted that matter back to the Division Bench to decide the matter after hearing these writ petitioners, which amounts to reviewing the whole issue. Therefore, the writ petitioners cannot take a plea that by virtue of *res judicata* or issue estoppel the benefit enjoyed by them cannot be withdrawn.

H [575-C-D, B; 576-H; 577-A; 576-D-G; 578-E-H; 579-A]

The Regional Manager & Anr. v. Pawan Kumar Dubey, AIR (1976) SC 1766; *Raja Sri Sailendra Narayan Bhanja Deo v. The State of Orissa*, [1956] SCR 72; *Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior & Ors.*, [1987] 1 SCC 5 and *Laxmi Narain Gododia v. Mohd. Shaji Bari*, AIR 36 (1949) East Punjab 141, referred to.

Thoday v. Thoday, [1964] All E.R. 341, referred to.

Salmond on Jurisprudence (12th Edition), referred to.

2.2. If all these 36 judgments are allowed to remain which were passed without reference to the material which ought to have been taken into consideration, it will create two groups i.e. one in whose favour orders have been passed by Court and the others without any order and they will be governed by the existing Rules. Some Amins are getting scale No. 9 and some in Scale No. 6 or 7. This will create an anomalous position in same cadre. It will create disharmony and discrimination amongst the same class. Therefore, two options are available i.e. the Amins who are not getting the benefit of Scale No. 9 should be given same as is being given to Amins under order of Court i.e. Scale No. 9 or all should be brought on par without overburdening the State exchequer, and a uniform pay scale be enforced in the whole State. The anomalous situation create by the State has to be rectified and the whole matter has to be put in proper perspective. [580-B-D]

2.3. In order to do complete justice to the parties, it is a fit case to invoke the inherent power under Article 142 of the Constitution. It is directed that all the Amins irrespective of their qualification in the minimum scale of pay would be given scale No. 6 and would be entitled to promotion as per Rules in scale Nos. 7 and 8 as the case may be. Further since the law has now been declared by this Court, no recovery should be effected from all these Amins in 36 writ petitions till the date of this judgment and they should be properly fixed in the pay scale provided for Amins in ROPA Rules and their pay should be protected in the respective pay scale and would be entitled to further career advancement scheme. [582-B-D, G-H; 583-A-B, G, H; 584-C-D]

E.S.P. Rajaram & Ors. v. Union of India, [2001] 2 SCC 186 and *Union of India v. M. Bhaskar*, [1996] 4 SCC 416, referred to.

A 2.4. The Division Bench of High Court erred in giving pay scale No. 7 to the Amins even though it observed that the Amins and Surveyors discharge different functions and their qualifications are not the same. Division Bench erred while making observation that the surveyors with only a school pass or Madhyamik qualification and practical experience were given scale No. 7, same being the position with Amins, as the qualification for the Amins is same, therefore, they may be given same pay scale No. 7, is not correct and amounts to contradiction. Hence, the direction given by the Division Bench granting the Amins the pay scale No. 7 being unjustified is set aside. [582-G-H; 583-A-B, G-H; 584-A]

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C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1179 of 2002.

From the Judgment and Order dated 28.9.2001 of the High Court at Calcutta in C.O. No. 10955 (w) of 1995.

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C.A. Nos. 1180, 1181, 1182, & 1183-84 of 2002.

E R. Venkatarammani, D.P. Gupta, M.N. Rao, Altaf Ahmad, Sanjay Ghosh, Avijit Bhattacharjee, Ashok Panigrahi, J. Kar, Rana Mukherjee, Siddharth Gautam, Goodwill Indeevar, Ms. Sumita Ray, Pranab Kumar Mullick, Prashant Venkatesh, Anupam Lal Das, Manish Verma, Ms. Pramila Chaudhary Ranjan Mukherjee, T.A. Khan and Chanchal Kumar Ganguli for the appearing parties.

F The Judgment of the Court was delivered by

A.K. MATHUR, J. : All these appeals raise common question of law, therefore they are disposed off by this common order.

G The questions involved in all these appeals are : (i) Whether the Amins and Surveyors discharge the same duties or not; (ii) Whether the Amins are entitled to the same pay scale i.e. Scale No. 9 of Surveyors and (iii) What is the effect of various decisions of the High Court of Calcutta passed from time to time in favour of the Amins treating them equivalent to that of Surveyors and allowing them pay scale

H No. 9.

The controversy with regard to the issue whether the Amins and the Surveyors discharge similar duties and therefore the Amins should be treated equivalent to the Surveyors started with the first litigation initiated in the High Court of Calcutta by filing of a petition by one Md. Anwarul Haque & others being Civil Rule No.3469(W) of 1982 and the other by Abdul Bari & others being Civil Rule No.3470 (W) of 1982, which were disposed of by order dated June 6, 1985 by learned Single Judge, Justice Subhas Chandra Sen (as he then was). The case of the petitioners in those civil rules was that they were recruited as Amins under the Land Records and Surveyors, Directorate, Government of West Bengal. It was alleged that the work of Surveyors and Amins are identical. It was also contended that the qualifications for recruitment are almost identical. Therefore, there was no difference between the surveyors and Amins in the matter of qualifications and also in the matter of work that they discharge. But by virtue of a notification issued by the Department of Finance, Government of West Bengal being Notification No. 5472-F dated December 27, 1961 published in the Calcutta Gazette Extraordinary on January 2, 1962 in Part I to the West Bengal Service (Revision of Pay and Allowance) Rules, 1961, different scales of pay were prescribed for Surveyors and Amins working in different Departments under Government of West Bengal. Therefore it was alleged to be discriminatory and Amins claimed same pay as Surveyors on principle of equal pay for equal work. The learned Single Judge without discussing whether the qualifications and duties of the Amins and the Surveyors are same or not granted equal pay for the Amins as that of the Surveyors on the basis of well recognized principle of 'equal pay for equal work'. Learned Single Judge further observed that there is no reason to differentiate between an Amin and a Surveyor when an Amin is appointed on the basis of same qualification and discharges the same duties that of a Surveyor. Learned Single Judge referred to a communication from Commissioner, Jalpaiguri Range and on that basis, he concluded that the Amins perform the same duties as Surveyors, though that letter, which we will deal later, is nothing but a proposal submitted by the Additional Commissioner in response to a representation by Amins. On the basis of this letter, learned Single Judge concluded that the pay scale which is being given to the surveyors should also be given to the Amins. Learned Single Judge further held that by notification dated July 29, 1981, issued by the Government of West Bengal, Department of Finance, the scale of pay of the Surveyors has been revised to Rs.380-910. Therefore, the learned Single Judge directed to grant the same pay scale to the Amins also. However, no counter affidavit was filed,

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A therefore, the allegations were not denied and nobody appeared on behalf of the Government. On that basis, learned Single Judge directed that same pay scales should be given to the Amins as that of the Surveyors. When the said pay scale was not given, a contempt petition was filed and that contempt petition was disposed of by learned Single Judge directing the State
B Government to allow the petitioners in those two Civil Rule Nos. 3469 and 3470 of 1982 same scale of pay as that of Surveyors. But at the same time it was clarified that the order passed in the contempt petition on August 16, 1989 will not be a precedent for any other cases and the other cases will be fought by the State Government by filing affidavits. It is unfortunate that
C against this order no appeal was preferred and subsequently all 36 cases which were filed by different persons same order was passed. The net result is that all these persons were given the same pay scale as that of the Surveyors. In some cases appeals were filed but the same were not pressed, in some cases appeals were dismissed and in some cases the appeals were allowed to be withdrawn. So much so that a Special Leave Petition was filed
D in this Court which was withdrawn. It is also unfortunate that in the State Government nobody examined the matter and they totally ignored the rules on the subject and the duties performed by the Amins and Surveyors and the Government allowed them the benefits of the pay scales of the Surveyors. Number of decisions were given by the High Court of Calcutta following the decision in Md.Anwarul Haque's case though in the said case it was
E clearly mentioned that the order passed in this case will not be treated as precedent for other cases. Be that as it may, there was total lack of application of mind on the part of the State Government in not defending the cases properly, even in subsequent cases no counter affidavit was filed. The attention of the Court was not invited in subsequent cases that in Anwarul
F Haque's case Court has observed that it will not be treated as precedent. This only reflects total indifference and gross negligence on the part of the State Government in not properly defending the cases thereby creating an unfortunate situation for themselves. This indifferent attitude of the Government of West Bengal has costed them a huge salary liability. The State Government accepted the decision of the High Court and they treated
G the posts of Amins and that of the Surveyors identical and they granted higher pay scales to those litigant Amins. This state of affairs would have continued but for the fact that subsequently the Amins in the Cooch Behar District filed a writ petition in the High Court and sought the same relief which was given to the Amins in the series of decisions given by the High
H Court of Calcutta. There they challenged that they must be given the equal

pay for equal work as is being given to Amins of other Department. In that context, the matter was examined by the learned Single Judge (Justice Satya Brata Sinha, as he then was). Learned Single Judge examined the matter and found that no material was placed by the said petitioners for seeking the parity treatment. Learned Single Judge observed that technical Rules and instructions relating to survey *inter alia* provides that the surveyors are to carry out their duties like for the purpose of traversing survey whereas the Amins *inter alia* are required to do their work in cadastral survey by using a 20 metre chain divided by 100 links. The surveyors are required to possess, apart from their general qualifications, Diploma from Industrial Training Institute which the Amins do not possess. The Surveyors are specially trained in using sophisticated survey equipments like Theodolite, automatic levels, electronic distance measurement etc. The course content for a senior surveyor is a two years' duration wherein the surveyors are given specialized training in various subjects including all surveying, engineering mechanics, engineering drawing, topographic and hydro-graphic surveying, mine surveying, quantity surveying and costing etc. So far as the Amins are concerned, their basic qualifications are Madhyamik or equal. The post of Amin can be filled up from peons who are group 'D' employees, whereas the surveyors are appointed by direct recruitment. The amins are merely given simple and rudimentary survey equipments like Guntur's chain and optical square and other related accessories. The value of survey equipments used by the Amins ranges between Rs.100 and Rs.150. The methodology used by the Amins for doing their job is absolutely simple. They are given training for office work for about 3-4 months when they are given first posting in erstwhile settlement camps or any other offices. It is alleged that the job of Amin begins where the job of Surveyor ends. From this the learned Single Judge inferred that the nature of duties of Surveyors and Amins are absolutely distinct and separate. Learned Judge examined and found that the Surveyors and Amins are placed in different scales of pay throughout from the report of the Second Pay Commission. Those Surveyors with qualification of Overseer were granted the pay scale of Rs. 300-600 whereas the Amins are placed in the pay scales of Rs. 150-350. It was observed that the Second Pay Revision Committee examined the duties and qualifications of both the posts i.e. Surveyors and Amins and after detailed examination, they have been put in two different pay scales. All the earlier judgments were placed before the learned Single Judge. Learned Single Judge after examining all the earlier decisions given by learned Single Judge which were not contested by the State Government, no reply was filed by State, disagreed with the

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A earlier decisions and found that the earlier decisions were *per incuriam*. Therefore, learned Single Judge did not follow the earlier decisions and dismissed the writ petition. This judgment was delivered by the learned Single Judge on February 16, 1995. Thereafter, when some more matters came up before learned Single Judge, Justice Sinha (as he then was), he recorded detailed reasons and referred the matters to the Chief Justice for referring it to a larger Bench. The matter was referred to the larger Bench by the Chief Justice and the matter came to be disposed off by a Division Bench presided over by Justice B.P.Banerjee & Justice Vidyanand. Justice B.P.Banerjee examined the matter at length and after examining the matter in great detail held that the Amins cannot be treated at par with the Surveyors and accordingly dismissed the writ petitions without any order as to costs. Justice Banerjee in the Division Bench examined the qualifications of the Amins as well as job requirement, methodology and work discharged by them *vis-à-vis* that of the Surveyors and found that it is difficult to hold that the Amins and Surveyors are discharging the same duties as they are recruited on the basis of different qualifications and therefore the Amins cannot be treated at par with that of the Surveyors. Aggrieved against this judgment the matter was take up by the Amins before this Court and their grievance was that the appellants herein were not parties to the writ petition but the benefits which had accrued in their favour by the order of the learned Single Judge in different cases were sought to be taken away by the impugned judgment and this Court after hearing both parties at length passed a detailed order and remitted the matter back to the High Court of Calcutta. This Court observed as follows:

F “ in view of the diverse submissions, the question for consideration is what the pay scale the respondents would be entitled to in view of the mandamus issued by the learned Single Judge on June 8, 1987. It is not disputed that under ROPA Rules different scale of pay exist for Surveyors having different qualifications. It is not the case of the respondents that they possess the qualification for being absorbed as Overseer. On the other hand, they possess the qualification of School Final or its equivalent with practical experience. That being the position, it is unexceptionable that only scale of pay which the respondents would be entitled to pursuant to the mandamus issued by the learned Single Judge of Calcutta High Court by its order dated June 8, 1987 is the scale of Rs.340

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H 750 and in fact the State Government by its order dated August 25,

1993 rightly granted that scale of pay. We, therefore, do not find any justification in holding the respondents guilty of contempt nor there was any justification for the Division Bench of the Calcutta High Court to order that they would get higher pay scale of Rs. 380-910. The aforesaid direction of the Division Bench directing to pay the respondents in the scale of Rs.380- to Rs.910 accordingly stands quashed.

Mr. Sanyal said that since this Court had remitted the matter at the behest of several Amins to the Calcutta High Court for getting an opportunity of hearing in the writ petition the same relief should be given to him. We allow this prayer and the present respondents be added as party to the pending Writ Petition which we have remitted by setting aside the judgment of the Division Bench. Mr. Sanyal undertakes to enter appearance before the Division Bench within two weeks from today and would file whatever additional papers within 4 weeks from today. Needless to mention that these respondents will continue to draw in the scale of pay of Rs.340- to Rs.750 which had been ordered by the Government in its order dated 25-8-1993 until the same is modified or altered by the Division Bench of Calcutta High Court. We are told that the State Government has also preferred an appeal against the order of Single Judge. Those appeals may be heard also by the Division Bench. If the salary has not been given to the respondents and if there is any arrear they may be paid within 3 months from today.

The appeal is disposed of accordingly."

The matter was remitted back by this Court before the Division Bench of the High Court of Calcutta and the same came to be heard by a Bench presided over by Justice Altamas Kabir and Justice Gora Chand De. The Division Bench examined the matter in great detail and after a detailed discussions, the Division Bench framed two questions i.e. (i) Do Amins perform the same or similar nature of duties as Surveyors in the different departments of the State Government and are their responsibilities, training and qualifications comparable which would entitle them to equal pay for equal work with Surveyors ? and (ii) Can the benefits received by a section of Amins who had moved this Court earlier in several writ petition and were drawing higher scale of pay than that recommended by the successive Pay

A Commissions pursuant to orders passed in such writ petitions be withdrawn in the event it is held in these two writ petitions that Amins are not entitled to the same scale of pay as Surveyors working in the different departments of the State Government? This Division Bench had also observed that in the earlier writ petitions which were filed by Md.Anwarul Haque & Ors. (C.R.3469 (W) of 1982) and Abdul Bari & Ors. (C.R.3470 (W) of 1982) were disposed of on the doctrine of non-traverse and therefore this need not be treated as precedent for future cases. It appears that the decisions in the aforesaid Civil Rule petitions were given by the Single Judge of the High Court without there being any affidavit filed by the State Government and without examining the duties and responsibilities performed by Amins and Surveyors and even no attention was paid to the order of the learned Single Judge, Justice Subhas Sen (as he then was) while disposing of the matter it was observed that this order will not be treated as precedent. Matters were disposed of by one after the another Bench without the affidavit of the State Government, it is equally a sad state of affairs that appeals filed by the State Government against the order of the learned Single Judge were allowed to be withdrawn or were dismissed. The Division Bench examined the matter and found that the Amins and Surveyors primarily undertake survey work but the duties performed by them are essentially different. It was found that the method of recruitment and the required qualification for recruitment of these posts are different. It was also found that the nature of duties performed by them is also different. It was observed that the work of Amins begins where the work of the Surveyors ends. The Division Bench further observed that before successive Pay Commissions for revision of pay scales, the matter was examined by the Experts and they have prescribed different pay scales for the Amins as well as the Surveyors. Unfortunately, all these recommendations of the Pay Commissions which ultimately formed part of the ROPA Rules were not brought to the notice of the Court nor the State Government examined the matter with reference to the ROPA Rules and mechanically followed the orders without approaching the higher Court and bringing to the notice of the Court the correct picture. The Division Bench examined the matter with regard to the nature of duties and successive reports of the Pay Commissions and observed as follows:

H “ On a comparison of the qualification, training and expertise and the work performed by Amins and Surveyors, it is apparent that the same cannot be equated and the two posts cannot be treated as equal as far as the higher categories of Surveyors are concerned. Even

the responsibilities shouldered by Surveyors and Amins do not bear comparison as will be evident from the Technical Rules and Instructions. The only point of comparison between Amins and Surveyors is with regard to the lower categories of Surveyors who do not have the requisite qualifications, training and expertise to do the work performed by Surveyors of higher categories.”

The Division Bench has also quoted the extracts from the report of the Fourth Pay Commission which reads as under :

“ Having regard to the duties and responsibilities attached to the post of Amin and those attached to the post of Surveyor and also the essential recruitment qualifications of these two categories of posts, we are of the view that the post of Amin cannot be equated with that of Surveyor, both in respect of qualification as well as in respect of duties and responsibilities.

In our view the scale of Rs.1040-1920 (Scale No.6) as allocated to the post of Amin is just and proper. We accordingly recommend revised Scale No.6 for the post of Amin.”

However, the Division Bench held that both Amins and Surveyors belong to different categories and their duties are not comparable and therefore, they cannot be treated at par with each other. Notwithstanding that the Division Bench observed as follows:

“ In fact, since surveyors with only a School Final Pass or Madhyamik qualification and practical experience were given Scale No.7, in our view, it will only be fair to give Amins having the same qualification and expertise and performing similar functions the same scale.”

Though the Division Bench held that the Amins stand on a different footing therefore, they cannot get the same scale of pay as that of the Surveyors but still looking to the qualification of the Surveyors with only a School Final Pass or Madhyamik qualification and practical experience they were given the pay scale No.7 & directed the State Government to give pay scale No.7 to the Amins. Aggrieved against this direction the State Government has filed Special Leave and aggrieved by the other part of order the private

A parties have filed Special Leave. Therefore, all these Appeals which were clubbed together are being disposed of by this common order.

The final direction issued by the Division Bench reads as under:

B “ We, therefore, answer the reference by holding that Amins
in general cannot be equated with Surveyors and in order to
rationalize and bring about an uniformity in the pay scales of Amins
in general we dispose of these writ applications by directing the
C State Government to revise the pay scales of Amins in general and
to place them in Scale No.7 with notional effect from 1st January,
1986, with corresponding revisional benefits and with actual effect
from the date of implementation of the ROPA Rules, 1998. Amins
Grade-I and Amins who have been given the benefit of Career
Advancement Schemes will continue to retain and receive such
benefits.

D As far as Amins who had been enjoying Scale No.9 pursuant
to orders of Court are concerned, on and from 1st October, 2001,
they shall also be placed in Scale No.7 in such manner so that they
are not given less pay than they are now receiving and no recovery
shall be made from them for the period prior to 1st October, 2001.”

E In this background, the whole controversy has now come up before this
Court.

F Learned counsel for the private respondents has submitted that with
reference to the various orders of the Government and notifications issued
from time to time that the Amins and Surveyors discharge same duties, their
qualification may differ but the duties discharged by them are identical.
Therefore, they are entitled to get the pay scale prescribed for the Surveyors
on the principle of “equal pay for equal work”. It has also been submitted
G that all earlier decisions given in all the 36 writ petitions will operate as *res*
judicata and estoppel against the State Government because the State
Government has not challenged the said order in all the 36 writ petitions.
In some appeals were filed but were allowed to be withdrawn, in some
appeals were dismissed and against some appeals were not filed. Therefore,
the State Government cannot wriggle out from the situation created by
H themselves and they are bound by it. It was also pointed out that Courts can

always mould the reliefs. Learned counsel has also pointed out that it is no longer contestable. As against this, it was submitted on behalf of the State Government that the duties of the Surveyors and Amins are different and that classification has been maintained throughout.

It was submitted that by virtue of some observations made by some State authorities, it cannot override the statutory provisions like the recommendations of the Pay Commissions, the ground realities are that the qualification, training of the Surveyors and that of the Amins are separate and therefore there is no question of the Amins being treated at par with that of the Surveyors as both are not comparable. In this connection, various documents have been filed by the State Government. It was also contended by the State Government that the Division Bench has gone wrong in giving direction for pay scale No.7 to the Amins. It was submitted that the Courts cannot give pay scale as the pay scales are given on the basis of the recommendations of the Expert Committee like Pay Commission which examines the nature of duties and qualifications for each post and if the Court started directing for giving pay scales then it will have cascading effect on the part of the other pay scales and specially in the case of Amins when Division Bench on one hand has found that both posts are not identical. Yet the Court has given Amins pay Scale No.7 which is not proper. Therefore, learned counsel submitted that the order passed by the High Court for giving pay scale No.7 on the basis of the qualification of phased out Surveyors is not correct.

An affidavit has been filed by Samir Ghosh, Principal Secretary to the Government of West Bengal, Finance Department. In that affidavit, he has pointed out that the Amins are found in the Land Acquisition Offices under the Land & Land Reforms Department; Integrated Set Up of Land Reforms under the Land & Land Reforms Department and under the Refugee Relief & Rehabilitation Department of the Government of West Bengal. He has also stated that there was no prescribed qualifications for the Amins and there was no recruitment rules. In 1989, after the Integrated Set Up of Land Reforms came into being the recruitment qualification for Amins in the said Department was prescribed in the recruitment Rules framed under proviso to Article 309 of the Constitution, as pass in School Final or its equivalent. These Recruitment Rules came into force with effect from April 24, 1990. Consequent upon framing of the Recruitment Rules, Amins in Integrated Set Up under the Land & Land Reforms Department received two scales of pay

A namely Non-School Final Amins, Scale No.5 and School Final Amins, Scale No.6. Subsequently, in 2001 as well as in 2003 Recruitment Rules were framed in the Land Acquisition Office as well as in Refugee Relief and Rehabilitation Department. The minimum qualification prescribed for Amins now in all Departments as mentioned above is Madhyamik or its equivalent

B which is equivalent to School Final qualification. However, it is also stated in the affidavit , as a policy decision, the Government had decided that all Amins in the Basic Grade, working in the aforesaid departments, irrespective of their qualifications would now be allowed scale No. 6 under Revision of Pay & Allowance Rules, 1998, effective from January 1, 1996. This decision is also taken to bring about uniformity amongst the Amins. He further stated,

C “I say that Amins in the Basic Grade, in whichever department they are posted would now be allowed Scale No.6 under Revision of Pay & Allowance Rules, 1998.” He further states on oath, “With regard to Amins in the Basic Grade, who have received Career Advancement benefit strictly in terms of the Career Advancement Scheme, 1990 would be allowed the revised scale

D No.7 under Revision of Pay & Allowance Rules, 1998, with effect from 01.01.1996. Amins in general will also be allowed modified career advancement scheme under ROPA Rules, 1998. All posts of Amin Grade-I, which is the promotional post of Amins, will be allowed Scale No.8 under the Revision of Pay & Allowance Rules, 1998 in all the Departments.” He further states, “While fitting the Amins in the respective Scales Nos. 6, 7

E and 8, as aforesaid, their basic pay will be taken into consideration and their total pay which is being received by them respectively will be protected, so that in no case the Amins receive less pay than what they are receiving under orders of Court passed earlier in 36 judgments up to 1993/94. No recovery shall be made from them for the period prior to 01.10.2001 as

F directed by the Hon’ble Division Bench.” He further states, “Amins who have retired or expired prior to the introduction of ROPA Rules, 1998 (i.e. up to 31.12.1985) will be allowed to have their retiral benefit or family pension on the basis of last pay drawn pursuant to the Court’s order in scale

no.7 or 9 (unrevised) without creating any precedence.”

G The respondents have also filed counter affidavit to this affidavit. Ziaul Haque has filed the said affidavit and he has denied that the recruitment qualification of Amins and Surveyors are separate. He has pointed out that Government of West Bengal has issued Memo No.4884, S & S dated June 22, 1990 and expressed their view regarding qualification for direct

H recruitment to the post of Amin in the Integrated Set-up i.e. a pass certificate

in School Final/Madhyamik examination of the West Bengal Board of Secondary Education or equivalent; good working knowledge of written and spoken Bengali and diploma or certificate in Survey from a recognized institution. He further submitted that recruitment qualifications of Amins are equal to the recruitment qualifications of Surveyor in Grades III & IV. He has also stated that Government of West Bengal in 1992 have modified the qualification for both the posts having the qualification of School Final and Non-School Final at Rs. 300-685 Scale No.6 and it was duly implemented by the District Magistrate and Collector of the District and District Settlement Officer of the Districts. Therefore, it was submitted that the Amins were never in the Scale No. 5. It was pointed out that prior to 2003, Amins of the Land Acquisition Offices and Land Reforms Circles under the Land & Land Reforms Department were recruited by the Government orders and/or policy under Special Recruitment Rules so framed by the Government of West Bengal for such appointment prior to framing of recruitment Rules in 2003. It was contended that prior to framing of Recruitment Rules, Amins were recruited with qualification of pass certificate in School Final/Madhyamik Examination of the West Bengal Board of Secondary Education and it is contended that there is no question of up-gradation of the qualification of the Amins. It is also mentioned that the career advancement scale was given to the employees and they will be entitled to scale No.7 after completion of 10 years of service; and after completion of 20 years of service to scale No.8 and after completion of 25 years of service to scale No. 9.

It was pointed out that now the respondents are fitted into the pay scale lower than scale No.9 with effect from April 1, 1981 which will result in stagnation and scale No.9 under the ROPA Rules cannot be taken away because of *res judicata* as a result of the earlier decisions of the Court. It was pointed out that most of Amins joined the service during the period of 1973-1980 and they have already completed 25-30 years of service. Any new pay scale determined for them be notionally fixed from their date of joining the service while protecting the benefits which had already been received by them under pay scale No.9 and no recoveries should be effected. It was pointed out that pay scale No.9 enjoyed by the Amins pursuant to earlier 36 judgments of the High Court should be maintained.

Now, in this background, the first question which is framed by us whether the qualifications, the duties discharged by the Surveyors and Amins are same and identical so as to treat the Amins at par with that of

A the Surveyors may be taken up for consideration. In support of this, lot of materials have been placed by the Amins before the Division Bench at Calcutta presided over by Justice Banerjee as well as the subsequent Division Bench presided over by Justice Altamas Kabir. Both the Division Benches have considered exhaustively all the materials placed with regard to the functions and duties of the Amins and their qualifications and have recorded a categorical finding that both Amins and Surveyors are discharging different duties as well as there is different qualifications for recruitment. In this connection, our attention was also invited to various materials which were placed before us, like Circular dated September 18, 1956 issued by the Assistant Secretary relating to the standardization of work of Surveyors & Amins. This circular also does not in any way treats the Surveyors and Amins on the same footing. It only lays norms for discharge of duties of various categories of the posts namely, Surveyors, Amins, Calculators and Moharrirs. That does not treat the Amins equivalent to that of the Surveyors. It is only the norms and standardization of work which has been laid down for each category of persons i.e. Amins, Surveyors, Calculators and Moharrirs. Similarly, order dated February 26, 1964 issued by the Additional District Magistrate, Burdwan relating to standardization of work of Surveyors or Amins. That also does not treat the Amins and the Surveyors as equivalent to each other. That would not change the duties performed by the Amins and the Surveyors. Similarly, by communication dated April 25, 1975 views were sought with reference to the representation made by the Amins attached to different L.R. Circle Officers in the Burdwan district for allowing them the pay scales attached to the post of Surveyors. That communication was sent by the Deputy Commissioner, Jalpaiguri for Commissioner, Jalpaiguri in which an opinion was expressed by the Deputy Commissioner, Jalpaiguri that identical duties are being performed by the Surveyors and Amins This opinion was of the Deputy Commissioner, Jalpaiguri. That does not change the ground realities of the functions and duties discharged by Surveyors & Amins. This communication was made the basis in the first judgment of the High Court in Anwarul Haque's case without making any further probe and no affidavit was filed by the State Government. Therefore, the learned Single Judge relied on this communication and proceeded to decide the matter. We will deal with this communication at appropriate time when we will deal with the effect of various orders passed by learned Single Judge of the High Court from time to time. Similar is the instructions issued on October 29, 1980 regarding standardization of work relating to the Amins, Surveyors, Calculators and Muharrirs. Likewise is the memo dated February

5, 1983 of the Special Land Acquisition Officer, Purulia showing the action to be taken for completion of land acquisition cases. This material does not in any case take the case of the Amins far to show that they can be treated as equivalent to the Surveyors. Number of orders passed by the High Court of Calcutta has been filed to show that the Amins and Surveyors have been treated equally but those judgments/orders will be dealt with separately but that cannot be the basis to show that the Amins and Surveyors should be treated as equivalent to each other as the validity of those orders is in doubt as the subsequent Division Bench presided over by Justice Banerjee has already taken a view that no affidavit was filed by the State and also some of the appeals which have been filed by the State were not pressed. All these materials cannot be taken to be the guideline to decide the issue that the Surveyors and the Amins are equivalent to each other. As against this, the State has relied upon the decision of the learned Single Judge (Justice Sinha, as he then was) on February 16, 1995; the order passed by the Division Bench on April 6, 1998 and the order passed by this Court on November 28, 2000 remitting the matter before the Division Bench and lastly, the order passed by the Division Bench in pursuance of the direction given by this Court on September 28, 2001 to show that the posts of Amins and Surveyors are not identical. Similarly, the State has also produced the extracts from the Second Pay Commission Report, Third Pay Commission Report and the Fourth Pay Commission Report. In all these reports, the Commissions have examined the duties and functions of the Amins and Surveyors and have kept a distinction in the pay scales. In the Second Pay Commission report, the proposed pay scale which has been prescribed is as under:

“ Land Acquisition Office, Calcutta.

Post	Proposed scale
Surveyor & Valuer	11
Amin, Grade II	5
District Collectorate including Calcutta Collectorate	
Amin	5
Refugee Relief & Rehabilitation Deptt.	
Amin	5.”

A As against this, the pay scale recommended for the Surveyors is No.9.

The recommendation of the 4th Pay Commission reads as under:

B “ 3.3.10: The posts of Amin are filled up by direct recruitment to the extent of 75% and balance 25% are filled up by promotion from qualified Group ‘D’ employees. The recruitment qualification for the post of Amin is Madhyamik or equivalent. Knowledge of Survey works/diploma or Certificate in survey from a recognized Institution is only desirable but not an essential qualification.

C The post of Amin is borne in scale no.6 (1040-1920) as basic grade. A section of the Amins is now enjoying scale no.9 by Court’s order.

D Representations have been made demanding that Amin should be treated on a par with Surveyors and should be allotted scale no.9. It has been contended that the Amins perform same and similar functions like Surveyors.

E We have considered the demand from all perspective. We find that the recruitment qualification for appointment as Surveyor is Madhyamik or equivalent with Trade Certificate from Industrial Training Institutes or Senior Survey Certificate from the Survey Institutes, Bandel. Having regard to the duties and responsibilities attached to the post of Amin and those attached to the post of Surveyor and also the essential recruitment qualification of these two categories of posts, we are of the view that the post of Amin cannot be equated with that of Surveyor, both in respect of qualification as well as in respect of duties and responsibilities.

F
G In our view the scale of pay of Rs.1040-1920 (Scale No. 6) as allocated to the post of Amin is just and proper. We accordingly, recommend revised scale no.6 for the post of Amin.”

H The Fourth Pay Commission recommended the pay scale for Amins as scale No.6 and after carefully examining the matter they recorded that the demand of the Amins for being equated with the Surveyors cannot be

accepted as recruitment qualification for appointment as Amin is Madhyamik or equivalent with trade certificate from Industrial Training Institute or Senior Survey Certificate from the Survey Institute and have further observed that having regard to the duties and responsibilities attached to the post of Amin and those attached to the post of Surveyor and also the essential recruitment qualification of these two categories of posts, the Amins cannot be equated with that of Surveyors. A comparative chart showing the pay scales of Amins and Surveyors since Independence has also been produced before us which will give us the synoptic picture of the pay scales which have been granted from time to time reflecting the pay scales of both the posts. The same is reproduced as under.

CHART SHOWING THE PAY SCALE OF AMIN AND SURVEYORS SINCE INDEPENDENCE

POST	1950-51	1961	1970	1981	1989	1990	1998	Scale No.
AMIN:								
Calcutta L.A. Office Amin	55-130	100-140	180-350	280-617	No change	980-1755	3150-5680	5
Amin Grade-I				340-750	-do-	1140-2160	3600-7050	7
R.R. & R.Deptt.- Amin	50-80	100-140	180-350	280-617	-do-	980-1755	3150-5680	5
Amin Grade-I				340-750	-do-	1140-2160	3600-7000	7
Settlement Wing and Management Wing under L. & L.R.Deptt. Amin Amin Grade I	50-80	100-140	180-350	280-617 } 340-750 }	Abolished by Integration	None	None	5 7
Integrated set up introduced in 1989 vide Govt. Order dated 18.2.89 by integrating settlement aWing and Management Wing of L. & L.R. Deptt. Have following classes of Amins:	Not yet created	Not yet created	Not yet created	Not yet created	Integrated set up created with the following pay scale			
Amin having non-S.F. Qualification					280-617	980-1755	3150-5680	5
Amin Grade-I (Non-S.F.)					340-750	1140-2160	3600-7050	7
Amin with S.F. Qualification (Scale allowed in 1995 with effect from 1.4.81)					300-685	1040-1920	3350-6325	6
Amin Grade I (S.F. Qualification)					360-815	1200-2360	3800-7775	8
Amin who did not opt for Integrated set up and remained Under District Collectors	None	None	None	None	280-617	980-1755	3150-5680	5
Amin Grade I					340-750	1140-2160	3600-7050	7

A SURVEYOR:								
i) With qualification of Overseer (Engineering Diploma)	125-250	200-400	300-600 higher initial -300	380-910	No change	1260-2610	4000-8850	9
ii) With Sub-Overseer qualification since abolished and replaced by certificate from ITI or Survey Institute, Bandel.	100-225	175-325	300-600	380-910	No change	1260-2610	4000-8850	9
B iii) Certificate from Survey School	80-180	150-250	230-425 higher initial -275	340-750	No change	1140-2160	3600-7050	7
C iv) School Final with Practical experience	None	125-200	230-425	340-750	No change	1140-2160	3600-7050	7
v) With practical experience only	None	100-140	150-350	280-617	No change	990-1755	3150-5680	5

N.B. The last categories of qualification mentioned in (iii), (iv) and (v) are not being recruited since 1981.

D It may also be relevant to mention here that the note given below this is very significant and it has been clearly mentioned that the last categories of qualification mentioned in (iii), (iv) and (v) of the Surveyors are not being recruited since 1981. That shows that the Surveyors with certificate from Survey School, school final with Practical experience and with practical experience are not recruited since 1981. Therefore, any reference to them subsequently will be of no consequence as we will deal with that while dealing with the finding given by the Division Bench of the High Court that since the qualification of these posts are almost equivalent to the Amins, therefore, they should be given the pay scale No.7, was not justified.

E However, we will advert to this aspect subsequently. All these materials which have been placed by both the sides and which have been reproduced above, would show the contentions of the rival parties. Therefore, the materials which are on record categorically show the distinction has already been brought between the posts of Amins and Surveyors and their nature of duties and functions are also separate. The Technical Rules and Instructions relating to survey work indicate that Surveyors use more sophisticated equipment involving superior training and skills than Amins. Surveyors use Theodolite for conducting traverse survey requiring knowledge of trigonometry and they are also trained in the use of equipment for the measurement of automatic levels and electronic distance measurement. The

G Surveyors have to undergo a two- year specialized training in different kinds

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of surveying such as Topographic and Hydrographic surveying and Mine surveying, and are also trained in mechanics and drawing. On the other hand, the Amins are given training in simple survey work and in the use of relatively simple equipment such as Guntur's chain, plane table, optical square. It is true that both Surveyors and Amins undertake the survey work but the nature of duties discharged by both of them are different. The Surveyors are technical persons and the Amins are non-technical persons. The Surveyors are fully qualified in the engineering surveys whereas the Amins are not supposed to be so qualified. Therefore, looking to the nature of duties which is being discharged and the instructions which have been issued go to show that the Amins and Surveyors are not discharging identical duties. Therefore, from the nature of duties and the qualifications required for both the posts, it is absolutely clear that they are separate and it is not wrong when it was submitted that the work of Amins starts after the work of Surveyors ends. The Technical Rules and Instructions of the Settlement Department as mentioned above, clearly show that the work and duties which are being discharged by the Surveyors are of technical nature by use of sophisticated instruments as against the Amins who do the job with the aid of relatively simple equipment as they are not equated with that of the Surveyors. The qualifications prescribed for the Surveyors and Amins are also different. The Surveyor is supposed to be a technically trained person and as against this, the Amin need not be. The Amins have to undergo related course of a duration of six months or so, as against the Surveyors' two years certificate course. Therefore, from the survey of this discussion we are of opinion that the Surveyors stand on superior footing than that of the Amins and they cannot be equated from the functional point of view as well as qualification point of view. Therefore, we are of opinion that the view taken by the Division Bench of the High Court that the Amins cannot be equated with the Surveyors is correct.

While the work and duties performed by the Amins and Surveyors are not identical, there is no question of giving them the equal pay for the equal work. The principle of 'equal pay for equal work' depends upon the nature of duties performed by a particular category of posts and the qualifications for their recruitment. From the above discussion, it is clear that neither the duties nor functions are identical nor the recruitment for the posts of Amins and Surveyors is identical as the qualification for recruitment for both the posts is different. Large number of decisions have been cited before us with regard to the principle of 'equal pay for equal work' by both sides. We need

A not deal with the said decisions to overburden this judgment. Suffice it to
 say that the principle is settled that if the two categories of posts perform
 the same duties and function and carry the same qualification, then there
 should not be any distinction in pay scale between the two categories of
 posts similarly situated. But when they are different and perform different
 B duties and qualifications for recruitment being different, then they cannot
 be said to be equated so as to qualify for equal pay for equal work. In this
 connection reference has been made to the following decisions.

- C
1. [1989] 1 SCC 121:
State of U.P. & Ors. v. J.P. Chaurasia & Ors.
 2. [1993] Supp. (1) SCC 153:
*Secretary, Finance Department & Ors. v.
West Bengal Registration Service Association & Ors.*
 - D 3. [1994] 2 SCC 521:
Shyam Babu Verma & Ors. v. Union of India & Ors.
 4. [1994] 4 SCC 78:
State of W.B. & Ors. v. Hari Narayan Bhowal & Ors.
 - E 5. [1998] 2 SCC 589:
Union of India & Ors. Ram Gopal Agarwal & Ors.
 6. [2000] 8 SCC 580: *Union of India & Ors. v. Pradip
Kumar Dey*
 - F 7. [2004] 1 SCC 347:
Government of W.B. v. Tarun K Roy & Ors.

G We need not deal with the aforesaid cases on the subject of the
 principle of equal pay for equal work as it is more than clear that the post
 of Amin is different from that of the Surveyor as the Amins do not discharge
 the same duties as that of the Surveyors and as such they are not entitled
 to claim equal pay for equal work. All these cases which have been referred
 to above are only for the purpose of showing that in each case there are some
 peculiar reasons which have persuaded the Court to grant benefit in some
 H cases and decline to grant benefit in other cases. In the present case, there

are categorical finding that both the categories of posts discharge different functions and duties and there is no question of granting equal pay on the principle of 'equal pay for equal work.'

Now, coming to the next question that what is the effect of various decisions/orders passed by the learned Single Judge in 36 writ petitions from 1986 to 1993. It is unfortunate that in all these 36 writ petitions the State Government did not file any affidavit and the Courts were not properly assisted to come to a correct conclusion. In fact, the first decision in point of time is the case of Mr. Anwarul Haque and others and Abdul Bari and others and there was no affidavit filed by the State and the Court recorded in its order that the State despite opportunity being granted to it no affidavit has been filed and no material has been placed by the State before the Court and neither learned Single Judge examined the detailed functions of the Amins and that of the Surveyors but only relied on an opinion expressed by the Deputy Commissioner, Jalpaiguri on a representation filed by the Amins that they discharge similar functions and duties. On the basis of that opinion alone, the Court inferred that the Amins discharge the same functions as that of the Surveyors. In fact that communication was only of a Deputy Commissioner on the representations filed by the Amins and that did not reflect the correct position. In Md. Anwarul Haque's case, learned Single Judge, Justice Subhas Sen (as he then was) referred to the communication of the Commissioner, Jalpaiguri, referred to above which was Annexure-C to that petition and observed as follows:

"The petitioners have also relied on annexure 'C' to the petition where the Commissioner of Jalpaiguri Range came to the conclusion after scrutiny and analysis of the work and performance of the Amins that the works performed by the Amins and the Surveyors are identical and the Amins had been deprived of the benefit of the scale of pay attained to the post of surveyor."

In fact, this opinion given by the Deputy Commissioner for Commissioner, Jalpaiguri Range was a single document and without further examining the matter, the learned Single Judge came to the conclusion that the Amins discharge the duties similar to that of the Surveyors. But the fact of the matter is that the posts of Surveyors are far distinct and superior to that of the Amins as mentioned above. Therefore, the two categories of posts i.e. Surveyors and the Amins by no stretch of imagination be treated equivalent

A to each other from the functional point of view and from the qualification point of view also. But unfortunately there is complete failure on the part of the State Government that they did not take proper steps in the matter to represent the case before learned Single Judge. Apart from that this case was proceeded as a model case and all other remaining cases were decided in the line of this case alone. In such situation, some times reference of Md.Anwarul Haque's case and sometimes Abdul Bari's case was made in subsequent judgments and sometime no reference was made and it was assumed that the posts of Amins and Surveyors are similar and the High Court proceeded to give directions to give the pay scales of the Surveyors. The State Government filed Letters Patent appeals in some of the cases before the Division Bench and there also the State Government did not pursue those appeals. Some of them were withdrawn and some other were dismissed in default, so much so that even the Finance Department had to comply with the direction issued by the learned Single Judge and pointed out that it will involve additional burden of Rs.3 crore. No steps were taken for challenging the orders of the Court before the Division Bench properly or before this Court and State Government passed orders giving the benefit to the petitioners therein. In one of the matters which was taken up to this Court, there also the State Government withdrew the Special Leave Petition. This only shows the total lack of application of mind while dealing with these cases and the net result of this is that the State Government had to suffer great financial burden. It is only when the matter came up before the Justice Sinha (as he then was), he after examining the matter held that the earlier decision given by the Courts cannot be accepted and dismissed the writ petition. When some more matters came to be heard by learned Single Judge, Justice Sinha (as he then was) he referred the matters to the learned Chief Justice for being placed before the Division Bench. The learned Chief Justice of the High Court referred the matter to the Division Bench. The Division Bench presided over by Justice Banerjee took up the matter in reference and the Division Bench found all these decisions given by learned Single Judge were without any affidavit being filed by the State and without properly examining the duties and functions of the writ petitioners and they were treated to be *per incuriam*. Again, most surprising feature is that when a contempt petition was filed as the decisions given in Md.Anwarul Haque and Abdul Bari's case was not implemented by the State Government, while disposing of the contempt petition learned Single Judge, Justice Subhas Sen (as he then was) in his order dated August 16, 1989 clarified that the order passed today will not be a precedent for any other cases and the other cases

may be fought by the State Government by filing affidavit. Even this observation made by learned Single Judge was not brought to the notice of subsequent Benches. We can express our anguish the way in which the cases were conducted by the State Government.

Salmond on Jurisprudence (12th Edition) , Prof. P.J. Fitzgerald has explained the concept of sub silentio as under :

“A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

In *Gerard v. Worth of Paris, Ltd. (k)* the only point argued was on the question of the priority of the claimant's debt, and, on this argument being heard, the Court of Appeal granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided “without argument, without reference to the crucial words of the rule, and without any citation of authority”, it was not binding and would not be followed.”

Similarly it was further observed as follows:

“The rule that a precedent sub silentio is not authoritative goes back

A at least to 1661, when counsel said: “An hundred precedents sub silentio are not material”; and Twisden, J., agreed:” Precedents sub silentio and without argument are of no moment”.

B This Court also in the case of *The Regional Manager & Anr. v. Pawan Kumar Dubey* reported in AIR (1976) SC 1766 has observed as follows:

C “It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusion in two cases even when the same principles are applied in each case to similar facts.”

D Therefore, it is unfortunate that the first case which was decided by the learned Single Judge in *Md. Anwarul Haque & Abdul Bari*, no material was examined by the learned Single Judge that what were the exact duties of the Amins and of the Surveyors. The only communication by the Deputy Commissioner, Jalpaiguri Range was based as the decisive factor to come to the conclusion that the duties discharged by the Amins and Surveyors are identical. Thereafter, learned Single Judge while disposing of the contempt petition has observed that this order passed today will not be treated as precedent. But unfortunately, this judgment has been followed by the High Court in remaining 36 cases and to the utter negligence of the State Government, letter patent appeals filed were withdrawn. However, subsequently the Division Bench put the matter in proper prospective holding that earlier judgment cannot be treated as precedent and it cannot decide the rights of the parties. More so, the effect of these judgments was neutralized when beneficiary of these judgments filed Special Leave Petition before this Court aggrieved against the judgment passed by Justice Banerjee on the ground that all these writ petitioners in all these 36 cases were not heard by the Division Bench and their rights are going to be adversely affected. This Court set aside the judgment of the Division Bench and remitted the matter back to the Division Bench of Calcutta High Court to decide the matter after hearing these writ petitioners, this amounts to reviewing the whole issue and petitioners cannot bank upon the principle of *res judicata* or issue estoppel. Dr. Rajeev Dhawan appearing for some of the respondents rightly admitted that technically it may not amount to *res judicata* but it certainly operates as estoppel. Therefore, it is not open to make grievance

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for these writ petitioners that by virtue of *res judicata* or issue estoppel the benefit enjoyed by them cannot be withdrawn. When the whole matter has been rip open by this Court while remitting back to the Division Bench of Calcutta High Court at their instance. A

Similarly, Mr.R.Venkataramani, learned Senior counsel has invited our attention to a decision of the Australian High Court in the case of *Thoday v Thoday* reported in [1964] All E R 341 on the question of distinction between issue estoppel and *res judicata*. So far as the principle of law is concerned, there is no dispute. B

In the case of *Raja Sri Sailendra Narayan Bhanja Deo v. The State of Orissa*, reported in [1956] S.C.R. 72 it was observed that a judgment by consent is as effective in creating an estoppel between the parties as a judgment on contest and the test is whether the judgment in the previous case could have been passed without the determination of the question which is put in issue in the subsequent case where the plea of estoppel is raised. Similarly in the case of *Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior, & Ors.* reported in [1987] 1 SCC 5, it was observed as follows : C D

“Where a petitioner withdraws a petition filed by him in the High Court under Article 226/227 without permission to institute a fresh petition, remedy under Article 226/227 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition and it would not be open to him to file a fresh petition in the High Court under the same article, though other remedies like suit or writ petition before Supreme Court under Article 32 would remain open to him.” E F

It was further observed as follows :

“ The principle underlying Rule 1 of Order XXIII of the CPC should be extended in the interests of administration of justice to cases of withdrawal of writ petition also.” G

In the case of *Laxmi Narain Gododia v. Mohd. Shaji Bari & Ors.* reported in AIR (36) 1949 East Punjab 141, it was observed that a consent decree has to all intents and purposes, the same effect as *res judicata* and H

A it raises an estoppel as much as a decree passed in invitum.

B But the fact of the matter is that if all these 36 judgments are allowed to remain which were passed without reference to the material which ought to have been taken into consideration, it is going to cause great anomalous situation. It will create two groups i.e. one in whose favour orders have been passed by Court and the others without any order and they will be governed by the existing Rules. This will create an anomalous position in same cadre. Some Amins are getting scale No. 9 and some in Scale No. 6 or 7. How can persons similarly situated be discriminated? This will create disharmony and discrimination amongst the same class. Therefore, two options are available i.e. the Amins who are not getting the benefit of scale No. 9 should be given same as is being given to Amins under order of Court i.e. Scale No. 9 or all should be brought on par without overburdening the State exchequer, and a uniform pay scale be enforced in the whole State. This anomalous situation has to be rectified and the whole matter has to be put in proper perspective.

D In this connection, learned Senior Counsel Shri Dipankar Gupta, appearing for the State of West Bengal submitted that in fact there is no gain saying that there has been negligence on the part of the State Government in not prosecuting the cases properly but by that the State exchequer should not be unnecessarily overburdened by giving the remaining thousands of Amins the pay scale No.9 which will have a cascading effect on the whole State and this will create disparity amongst other pay scales of the employees in the entire State. The submissions of Mr. Gupta appears to be justified. We cannot close our mind to the fact that the decisions in all these 36 cases emanating from the decision rendered in Md. Anwarul Haque & Abdul Bari has created the confusion. The decision in Md. Anwarul Haque's case was rendered without any affidavit being filed by the State Government and relevant material was not placed before the Court and simply one letter issued by the Deputy Commissioner, Jalpaiguri Range for Commissioner, Jalpaiguri has been made the basis for grant of the relief. That cannot be sustained. Notwithstanding the fact that the learned Single Judge has himself clarified that the decision rendered in Md. Anwarul Haque's case shall not be treated as precedent but rightly or wrongly this fact was not brought to the notice of the subsequent Benches which decided the remaining writ petitions and that order has been taken to be final order.

Mr. Gupta, learned senior counsel strenuously urged before us that the whole house may be put in order and this Court may exercise its inherent jurisdiction conferred under Article 142 of the Constitution of India so that for all time to come the controversy may be put to an end. Mr. Gupta has also invited our attention to the decision of this Court in the case of *E.S.P. Rajaram & Ors. v. Union of India & Ors.* reported in [2001] 2 SCC 186 in which similar anomalous situation was created and Their Lordships exercised the power under Article 142 of the Constitution of India in the interest of justice and it was observed as under.

“In the present case, the controversy relates to the scale of pay admissible for Traffic Apprentices in the Railways appointed prior to the cut-off date. The controversy in its very nature is one which applies to all such employees of the Railways; it is not a controversy which is confined to some individual employees or a section of the employees. If the judgment of CAT which had taken a view contrary to the ratio laid down by judgment of the Supreme Court in *M. Bhaskar* case was allowed to stand then the resultant position would have been that some Traffic Apprentices who were parties in those cases would have gained an unfair and undeserved advantage over other employees who are or were holding the same post. Such an enviable position would not only have been *per se* discriminatory but could have resulted in a situation which would be undesirable for a cadre of large number of employees in a big establishment like that of the Indian Railways. To avoid such a situation the Supreme Court made the observations in para 17 of the judgment. The appellants’ argument on the merits of the directions of the Supreme Court is not an impressive one. If some employees were unjustly and improperly granted a higher scale of pay and on that basis were given promotion to a higher post then the basis of such promotion being non-existent; the superstructure built on such foundation should not be allowed to stand. This is absolutely necessary for the sake of maintaining equality and fair play with the order similarly-placed employees. However, it will be just and fair to clarify that any amount drawn by such employees either in the basic post (Traffic Apprentice) or in a promotional post will not be required to be refunded by the employee concerned as a consequence of the judgment herein. This position also follows as a necessary corollary from the observations made in para 18 of the

A judgment in M. Bhaskar case.”

Their Lordships referred to the decision rendered in the case of *Union of India v. M. Bhaskar* reported in [1996] 4 SCC 416. Therefore, in order to do complete justice to the parties, it is a fit case where we need to invoke our inherent power under Article 142 of the Constitution of India. Learned Senior counsel appearing for the State of West Bengal has made a categorical submission that all the Amins irrespective of their qualifications will be entitled to pay scale No.6 and no money which has been drawn by the Amins in the 36 writ petitions will be recovered from them prior to October 1, 2001 as directed by the Division Bench of the High Court. Therefore, we direct that all the Amins irrespective of their qualification in the minimum scale of pay will be given scale No. 6 and they will be entitled to promotion as per Rules in the scale Nos. 7 & 8 as the case may be. Though the Division Bench has directed that no recovery shall be made from the Amins drawing higher pay scale for the period prior to October 1, 2001 but since the law has now been declared by this Court, we extend that period till this date i.e. no recovery shall be effected from all these Amins in 36 writ petitions and they shall be properly fixed in the pay scale provided for Amins in ROPA Rules and their pay should be protected in the respective pay scales. This is being done because of the fact that the State Government is responsible for creating such anomalous situation. Had the State Government contested the matter and consequently pursued the remedies available under law, then this anomalous situation would not have been created. Though the Division Bench has given the benefit of the pay scales up to October 1, 2001, the said cut off date is extended till this date because we are invoking the inherent jurisdiction under Article 142 of the Constitution of India.

Now, coming to State of West Bengal appeal, State Government has challenged the part of finding of the Division Bench of the High Court directing the State Government to give pay scale No.7 to the Amins. In fact, the Division Bench has already held that on comparison of the qualification, training and expertise and the work performed by the Amins and Surveyors, that the same cannot be equated and the two posts cannot be treated as equal. It was observed that the responsibilities shouldered by the Surveyors and Amins do not bear comparison yet the Division Bench directed to give pay scale No.7 to the Amins which, in our opinion, is not correct. Once it is found that the Amins and Surveyors discharge different functions and their qualifications are not the same, then we see no reason to give the Amins

the same pay scale. The Division Bench has gone wrong while making observation that the surveyors with only a school pass or Madhyamik qualification and practical experience were given scale No.7, Same being the position with Amins, as the qualification for the Amins is same therefore they may be given same pay scale No.7. This observation, in our view, is not correct. This amounts to contradiction. Once it is held that the Amins perform different duties and different functions then how can we go back and say that because the qualification of the Surveyors is school final pass or Madhyamik with practical experience, they are given pay scale No.7, similar pay scale No.7 be given to Amins as they are also required to have same qualification is not correct. It appears that it was not brought to the notice of the Division Bench of the High Court that for three categories of Surveyors i.e. persons having certificate from Survey School, School Final with Practical experience and with practical experience only no recruitment has been made since 1981. While dealing with the comparative pay scales of Amins and Surveyors as reproduced above since independence there is note given below that recruitment with this qualification has been abandoned since 1981. It appears this fact was not brought to the notice of the Division Bench of the High Court. In order to clarify the matter, we may reproduce the note appended below Surveyors' post which reads as under :

“SURVEYOR:

xx xx

(iii) Certificate from Survey School

(iv) School Final with Practical experience

(v) With practical experience only

N.B. The last categories of qualification mentioned in (iii), (iv) and (v) are not being recruited since 1981.”

The attention of the Division Bench was not invited to this note. In fact recruitment to the posts of Surveyors with these qualifications has already been stopped since 1981. As such the Division Bench while dealing with the Amins with these qualifications has granted the pay scale No.7 which, in our opinion appears to be totally incorrect appreciation of fact. The order

A passed by the Division Bench of the High Court directing the State Government to grant the Amins the minimum pay scale of No.7 does not appear to be justified and accordingly, we allow the State appeal and set aside the direction given by the Division Bench of the High Court granting the Amins the pay scale No.7.

B As a result of our above discussion, we allow the appeals preferred by the State of West Bengal and the direction given by the Division Bench of the High Court granting pay scale No.7 to the Amins is set aside. We dismiss all the appeals filed by the private appellants but direct that the benefits which have been accrued to the Amins of all those 36 writ petitions, no recovery shall be made till the date of this judgment and all these Amins should be given the pay scale Nos. 6, 7 & 8 as per the qualifications and their pay shall be fixed at the appropriate stage in these pay scales and they will be entitled to further career advancement scheme. There will be no order as to costs.

D N.J. Appeals dismissed.