ITEM NO.1 COURT NO.5 SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 21863/2007

(Arising out of impugned final judgment and order dated 07/05/2007 in DBCSA No. 633/1992 passed by the High Court Of Rajasthan At Jaipur)

RAJASTHAN VIDHI SEWA SANGH Petitioner(s)

VERSUS

STATE OF RAJASTHAN & ORS. Respondent(s)

(With appln(s) for permission to file additional documents and interim relief and office report)
(For Final Disposal)

WITH
W.P.(C) No. 109/2015
(Office Report)

Date : 10/08/2016 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J. CHELAMESWAR
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Dr. Manish Singhvi, Adv.
Mr. Surya Kant,Adv.

Ms. Madhurima Tatia,Adv.

For Respondent(s) Mr. Milind Kumar,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The special leave petition as well as writ petition are dismissed.

(DEEPAK MANSUKHANI)
COURT MASTER

(RAJINDER KAUR)
COURT MASTER

\234

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SUPREME COURT OF INDIA (/)

|| यतो धर्मस्ततो जयः ||

Diary Number	Case Number	Party Name	AOR	Court / Tribunal	Free Text

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Diary No.	Year	
25797	2007	Submit

Diary No.- 25797 - 2007

RAJASTHAN VIDHI SEWA SANGH vs. STATE OF RAJASTHAN .

Case Details

Diary No.	**25797/2007** Filed on 06-09-2007 12:29 PM **[SECTION: XV]** **DISPOSED**
Case No.	SLP(C) No. 021863 / 2007 Registered on 17-11-2007
Present/Last Listed On	**10-08-2016 [HON'BLE MR. JUSTICE J. CHELAMESWAR and HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE]**
Status/Stage	DISPOSED (Motion Hearing [ORDERS (INCOMPLETE MATTERS / IAs / CRLMPs)]) (Disposal Date: 10-08-2016, Month: 8, Year: 2016) JUDGES: HON'BLE MR. JUSTICE J. CHELAMESWAR, HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE
Disp.Type	Dismissed
Category	0610-Service Matters : Pay scales
Act	
Petitioner(s)	1 RAJASTHAN VIDHI SEWA SANGH
Respondent(s)	1 STATE OF RAJASTHAN .
Pet. Advocate(s)	SURYA KANT
Resp. Advocate(s)	MILIND KUMAR
U/Section	

Indexing

Earlier Court Details

Tagged Matters

Listing Dates

Interlocutory Application / Documents

Court Fees

Notices

Defects

Judgement/Orders

Mention Memo

Restoration Details

DropNote

Appearance

Office Report

Similarities

Caveat

13567
28/11/92

7157

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

D.B. CIVIL SPECIAL APPEAL (Writ) NO. 633/92

in

S.B. CIVIL WRIT PETITION NO. 1112/1984

1. State of Rajasthan, through the Chief Secretary, Government of Rajasthan, Jaipur.
2. Special Secretary to the Government, Department of Personnel and Administrative Reforms, (Gr.A), Jaipur.
3. Secretary to the Government, Judicial Department, Rajasthan, Jaipur.

.. Appellants-Non-petitioners

Versus

1. Rajasthan Vidhi Seva Sangh, Jaipur through its Secretary, Sh. Ramesh Chand Jain.
2. Sh. K.C. Chhangani son of Shri Mewa Ram Chhangani, resident of Tonk (Rajasthan).

.. Respondents-Petitioners.

D.B. CIVIL SPECIAL APPEAL U/S 18 OF RAJASTHAN HIGH COURT ORDINANCE AGAINST THE JUDGMENT DT. 8.9.1992 PASSED BY HON'BLE M.R. CALLA J., IN S.B. CIVIL WRIT PETITION NO.1112/84

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Contd.

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

D.B. Civil Special Appeal (Writ)

No. 633/1992

State of Rajasthan & Others

.....Appellants

Versus

Rajasthan Vidhi Seva Sangh & Another

.....Respondents

Date of Judgment :: 7th May, 2007

PRESENT

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Whether this Judgment / Order is to be reported in Law Journal/s; Yes/~~No~~

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

J U D G M E N T

D.B. Civil Special Appeal (Writ)
No.633/1992

1. State of Rajasthan through the Chief Secretary, Government of Rajasthan, Jaipur
2. Special Secretary to the Government, Department of Personnel and Administrative Reforms, (Gr.A), Jaipur
3. Secretary to the Government, Judicial Department, Rajasthan, Jaipur

.....Appellants

Versus

1. Rajasthan Vidhi Seva Sangh, Jaipur through its Secretary, Shri Ramesh Chand Jain
2. Shri K.C. Chhangani son of Shri Mewa Ram Chhangani, resident of Tonk (Rajasthan)

.....Respondents

Date of Judgment :: 7th May, 2007

PRESENT

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. Ghanshyam Singh for Mr. R.S. Rathore,

Additional Advocate General for the appellants-State

Mr. R.A. Katta)
with)
Mr. Vijay Singh) for the respondents

Order Judgment (Per R.M. Lodha,J.):

This special appeal is at the instance of the State Government taking exception to the judgment dated 8th September, 1992 passed by the Single Judge in Writ Petition filed by the present respondents. For the sake of convenience we shall refer to the present appellants, "the Government" and the present respondents "the petitioners".

2. The petitioners prayed in the writ petition that the Government be directed to give pay scale of 860-1750 to the Legal Assistants and pay scale of 1000-1860 to the Head Legal Assistants with effect from 1st September, 1981.

3. The petitioners founded their claim on better pay scale on the recommendations

made by the Law Reforms and Legal Services Committee headed by the then Advocate General Dr. L.M. Singhvi (for short, "Law Reforms Committee") and the recommendations of the B.P. Beri Pay Commission (for short 'Beri Pay Commission'). The petitioners also claimed that the Legal Assistants belonged to the Rajasthan Legal Service and, therefore, they must be accorded pay scales of the Rajasthan Administrative Service, Rajasthan Police Service, Rajasthan Accounts Service, Rajasthan Judicial Service etc., the said pay scale being 1000-1860.

4. The Government contested the claim of the petitioners and denied that the Legal Assistants and the Head Legal Assistants were entitled to the pay scales of Rajasthan Administrative Service, Rajasthan Police Service, Rajasthan

Accounts Service and Rajasthan Judicial Service. The Government also denied their claim that the Legal Assistants were entitled to the pay scale of 760-1420 and the Head Legal Assistants the pay scale of 900-1600. The Government also took the stand that no relief could be granted to the petitioners in exercise of writ jurisdiction under Article 226 of the Constitution of India since no such mandamus could be issued.

5. The Single Judge rejected the claim of the petitioners of parity of the post of Legal Assistant with the Rajasthan Administrative Service, Rajasthan Police Service, Rajasthan Accounts Service and the Rajasthan Judicial Service. In the observations of the Single Judge it is too tall a claim of the petitioners to compare the post of Legal Assistants with that of the Rajasthan Judicial Service. He found the

comparison wholly misconceived.

6. The Single Judge also did not go into the question as to whether the post of Legal Assistant is state service post or a subordinate service post because this controversy was a subject matter of dispute in Writ Petition No. 1565/1985. (We may immediately notice here that writ petition No. 1565/1985 was not pressed by the petitioners before us and we dismissed that writ petition today by a separate order.)

7. Treating the post of Legal Assistant to be a post in a subordinate service, the Single Judge was of the view that it should be considered as the highest post in the subordinate service and should be treated at par with the post in the subordinate service carrying the highest pay scale. According to the Single Judge the post of Legal Assistant should have

been in the pay scale No. 14 (2000-3200) as was for the other posts like Police Inspector, Assistant Accounts Officer, Assistant Research Officer, Programm Computer who have been carrying the pay scale No. 14. In the opinion of the Single Judge since the post of Head Legal Assistant was a post two pay scales higher than that of Legal Assistant, the post of Higher Legal Assistant should be in the pay scale No. 16 (2200-4000).

[illegible]. Relying upon the judgment of this Court in the case of S.K. Ghosh Versus State of Rajasthan (1984 RLR 966) and Madan Kumar Jain Versus State of Rajasthan (1987 (2) RLR 807), the Single Judge held that there was no difficulty in directing the Government to act in accordance with the recommendations of the Law Reforms [illegible] as there was no justification [illegible] recommendations have been put

in oblivion. The Single Judge, accordingly, directed the Government to give due regard to the recommendations made by the Law Reforms Committee and make appropriate provisions so as to give pay scale No. 14 (2000-4000) to the holders of the post of Legal Assistants and pay scale No. 16 (2200-3200) to the holders of the post Head Legal Assistants from 1st September, 1988 i.e. the date from which the Rajasthan Civil Services (Revised Pay Rules) Rules, 1989 came into force.

9. The correctness of the directions given by the Single Judge in his order dated 8th September, 1992 is the core issue before us.

10. It is true that the Law Reforms Committee in its report of 19th June, 1975 opined that the infrastructure of the departmental legal personnel should be strengthened and the opportunities of

promotion and advancement for the departmental legal personnel should be upgraded. The same Reforms Committee also suggested the constitution of Rajasthan Legal Service so as to allow the induction of law graduates with a minimum of two years experience at the bar and to provide for appropriate avenues for their advancement and promotion and for their regular training facilities and refresher courses. The Law Reforms Committee was also of the view that appropriate rules under Article 309 of the Constitution of India be framed to constitute the Rajasthan Legal Service. In its report the Law Reforms Committee suggested that the pay scale for the Rajasthan Legal Service should be roughly analogous to and at par with that of Assistant Commercial Taxes Officers or Assistant Registrars of Cooperative Societies or Employment

Exchange Officers. The scale of pay suggested by the said Committee for a Legal Assistant was Rs. 300-25-600-EB-25-800.

11. It may be noticed here that the Rajasthan Legal Subordinate Service Rules, 1976 included the post of Legal Assistant and Head Legal Assistant. The pay scale of Legal Assistant under these Rules was 200-450 while the pay scale of the Head Legal Assistant was 275-650.

12. That consequent upon the recommendations of the Law Reforms Committee, the Rajasthan Legal Service Rules, 1981 were framed. These Rules were and notified on 20th July, 1981. The said Rules, inter-alia, provide for cadre, recruitment, procedure for direct recruitment and appointment by promotion [illegible]. On 27.7.1985, the title of these Rules was amended. These Rules since then

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are called the Rajasthan Legal (State and Subordinate) Service Rules, 1981. The post of Legal Assistant is 100% by direct recruitment in subordinate service while the posts of Head Legal Assistant, Assistant Draftsman / Assistant Legal Remembrancer, Deputy Legal Remembrancer and the Joint Legal Remembrancer are the posts in state service.

13. It is common ground of the parties that in the year 1979-80, Beri Pay Commission was appointed by the State Government. The Beri Pay Commission recommended the pay scale of 760-1420 for the legal assistant and 900-1600 for the post of Head Legal Assistant. The Government did not accept the pay scale recommended by the Beri Pay Commission in its entirety and granted pay scale of 660-1240 to the Legal Assistant and 800-1550 to the Head Legal Assistant. As a matter

of fact it is this pay that led to the filing of the writ petition and the claim for higher pay scale.

14. During the pendancy of the writ petition, a very important event happened. The Rajathan Civil Services (Revised Pay Scales) Rules, 1989 (for short, 'the Rules of 1989') came into existence, effective from 1st September, 1988. The pay scale provided to the post of Legal Assistant under the legal subordinate service and to the post of Head Legal Assistant to Joint Legal Remembrancer in the State Legal Service in the Rules of 1989 is thus:

1. Legal Assistant	1200-2420	1400-2600 (12)
2. Head Legal Assistant	1490-3050	2000-3200 (14)
3. Asstt. Legal Drafts-man /Asstt. Legal Remembrancer	2100-3550	2500-4250 (17)
4. Deputy Legal Remembrancer	2750-4700	3450-5000 (22)
5. Joint Legal Remembrancer	2750-5000	4100-5300 (24)

15. The Government says that the aforesaid pay scale to Legal Assistants and Head Legal Assistant under the Rules of 1989 with effect from 1.9.1988 is based on the recommendations of the Equivalence Committee constituted by the Government on demand of the employees for grant of equivalent pay scale as that of Central Government employees.

16. That the Government acted pursuant to the report of the Law Reforms Committee and framed statutory Rules under Article 309 of the Constitution of India and entitled the Rajasthan Legal Service Rules, 1981 is not in doubt. Surely the Government was not bound to accept the recommendations of the said committee in its entirety. Insofar as the recommendation of the Law Reforms Committee about the pay scale of Legal

Assistant and Head Legal Assistant being analogous to and at par with that of Assistant Commercial Taxes Officers or Assistant Registrars of Cooperative Societies or Employment Exchange Officers is concerned, we find the said recommendation tentative as is clearly seen from the use of the word, 'roughly'. Such recommendation surely could not bind the Government nor was it mandatory for the Government to accept the rough comparison suggested by the Committee of the post of Legal Assistant with the Assistant Commercial Taxes Officer or the Assistant Registrar of the Cooperative Societies.

17. Be that as it may, in the year 1980, the Beri Pay Commission was constituted by the Government and it partly accepted the recommendations of that Commission and increased the then existing pay scale of

Legal Assistant and Head Legal Assistant from 500-890 to 660-1240 and 620-1100 to 800-1550 respectively; though the Government did not accept the pay scale recommended by the Beri Commission in its entirety. This shows without doubt that the Government has been consciously making selection in respect of the pay scale of Legal Assistant and Head Legal Assistant.

18. Mr. R.A. Katta, the counsel for the petitioners placed before us the statement in the form of compilation-D highlighting that Inspector Grade-I, Commercial Tax Department, Cooperative Inspector Grade-I, Research Assistant, Group Instructor have been fixed in the pay scale higher than that was recommended by the Beri Pay Commission while for the posts of Legal Assistant and Head Legal Assistant, the lower pay scale than that was recommended by Beri Pay Commission has been granted.

He would submit that looking to the qualification, mode of recruitment and the duties that are required to be discharged, the Legal Assistant and the Head Legal Assistant ought to have been given at least the pay scale recommended by the Beri Pay Commission.

10. Comparisons are odious and comparing the two un-equals is dangerous. By no stretch of imagination, the posts of Legal Assistant and Head Legal Assistant can be compared with the Inspectors or the Officers of Commercial Taxes Department or Cooperative Department or other Departments. In our considered view, the comparison of the pay scale of Legal Assistants in the year 1983 and that of the Inspectors Grade-I, Commercial Taxes Department and the Inspectors Grade-I, Cooperative Department to find out that in the year 1983 the pay scale of Legal

Assistants was higher and then that in the year 1987, the pay scale of Legal Assistant and Inspector Grade-I, Commercial Taxes Department and Inspector Grade-I, Cooperative Department was brought at par but in the year 1989, the pay scale of the Legal Assistant was fixed lower to that of Inspector Grade-I of Commercial Taxes Department or that of Cooperative Department, and, therefore, the pay scale of Legal Assistant has to be fixed at the highest in the subordinate ministry, would not be correct legal approach. Different pay scale to different categories of service/s in the Government are fixed in the Rules framed under Article 309 of the Constitution of India. This is acomplex exercise and diverse factors are taken into consideration before the Rules are framed. Once the Rules are framed, they have statutory

force. It is trite principle of law that it is not for the Court to direct the State to make particular law. The only basis for examination before the Court could be the plea of discrimination and violation of Article 14 of the Constitution of India. But for a plea of discrimination or infraction of Article 14 of the Constitution of India, the plea has to be founded on the equals being treated differently; the comparison cannot be made of unequals.

20. We fail to appreciate how a direction could be issued to the Government to upgrade the pay scale of legal subordinate service to the highest pay scale in the subordinate service of the State. We find no legal basis nor any justification for issuing such mandamus to the Government and thereby indirectly making law that the Legal Assistant in legal subordinate

service must be given the highest pay scale of the other subordinate services. For the same reason, the direction of the Single Judge that the post of Head Legal Assistant should be considered a post in two pay scales higher than a post of Legal Assistant and consequently the Head Legal Assistant must be given pay scale No. 16 cannot be legally sustained.

21. In M.P. Rural Agriculture Extension Officers Association Versus State of M.P. and Another {2004 (4) SCC 646}, the Supreme Court held that the recommendation of the pay commission is not binding on the State and cannot be enforced by issuing writ of or in the nature of mandamus. It was held that the State can make the Rules in exercise of the powers under proviso to Article 309 in consistent with or contrary to the recommendations of the Pay Commission by evolving policy

decision.

22. The two Judge Bench of the Supreme Court in the case of State of Haryana and Another Versus Haryana Civil Secretariat Personal Staff Association {(2002) 6 Supreme Court Cases 72} made important observations that fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors are required to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of revised scale of pay. The Supreme Court went on to observe that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. I

was held that in the context of the complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration of the State Government, the Court should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. The Court should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the Court holds that the order passed by the Government is unsustainable, ordinarily a direction should be given to the State Government or the authority taking the

decision to reconsider the matter. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.

23. In the case of Secretary, Finance Department and Others Versus West Bengal Registration Service Association and Others {1993 (Supplementary) (1) SCC 153}, the Supreme Court observed that though the recommendation of the Pay Commission concerning pay fixation is entitled to great weight but the same is not binding on the Government.

24. Mr. R.A. Katta, the counsel for the petitioners, however, heavily relied upon two judgments of this Court viz., (one) S.K. Ghosh Versus State of Rajasthan and Others {1984 RLR 966} and (two) Padam Kumar Jain Versus State of Rajasthan {1987 (2) RLR 806}

25. In the case of S.K. Ghosh, the Single Judge of this Court in paragraph 31 of the report held thus:

> "In fact, the entire approach of the authorities concerned in respect of the question of cadre-constitution and pay scales of the Private Secretaries to Chief Justice and Judges of the High Court is vitiated not only by reason of the fact that they ignored the age-old parity between them on one side and the Private Secretaries to Commissioners and Secretaries to Government on the other, but also they divided the cadre of Private Secretaries to Chief Justice / Judges of the High Court into three artificial units having three different time scale pays, i.e. (i) 740-1420, (ii) Rs. 820-1550 and (iii) Rs. 1210-2040. The Private Secretaries in the time-scale pays of Rs. 740-1420 and Rs. 820-1550 fall in the category of ministerial service which is a class (iii) service in Rajasthan. The Private Secretaries in the time scale pay of Rs. 1210-2040 are members of a class I State Service enjoying a gazetted status. It seems these artificial units were created to correspond to three separate units in the

Secretariat, viz. The Personal Assistants in the pay scale of Rs. 740-1420, the Senior Personal Assistants in the pay-scale of Rs. 820-1550 and the Private Secretaries to Commissioners and Secretaries to Government in the pay scale of Rs. 1210-2040. So far as the Secretariat is concerned, one can quite understand the creation of three different cadres of stenographers with three different designations and pay-scales. As already stated, Personal Assistants are attached to administrative officers like Deputy Secretaries, and Senior Personal Assistants to Special Secretaries and Secretaries not enjoying the rank of Commissioners. Private Secretaries are attached to Commissioners and Secretaries to Government. They form a class apart and have therefore been given the status of a Rajasthan State Service of Class I. Such a classification would have no basis in respect of Private Secretaries to Chief Justices / Judges of the High Court for their duties and responsibilities are of identical nature. One would have therefore thought that all the posts of Private Secretaries to Chief Justice/Judges of the High Court, calculated on the basis of one such post per one

judge, would naturally be included in one and the same cadre, just as posts in the State Secretariat have been constituted to form a single cadre in the pay-scale of 1210-2040. Having constituted the cadre in that manner, a percentage of posts out of the cadre could be ear-marked as selection grade posts, if selection grade posts are also available to the Private Secretaries to Commissioners and Secretaries to Government in the State Secretariat. What the authorities concerned have instead done is to constitute a single cadre of Private Secretaries to Chief Justice / Judges of the High Court in the lowest pay scale of Rs. 740-1420 which is equivalent to the pay scale of Personal Assistants to Officers of the level of Deputy Secretaries in the State Secretariat. This is not only patently violative of the principle of age old parity between the Private Secretaries to Chief Justice / Judges of the High Court on one side and the Private Secretaries to senior officers belonging to the Indian Administrative Service like Commissioners and Secretaries to Government in the State Secretariat on the other, but also grossly arbitrary and discriminatory. No effort has been made to explain why it

was felt necessary to make a radical departure from the principle of parity mentioned above. As already stated, the State Government has not cared to file any return in answer to the rule nisi issued to it. The allegations of discrimination and arbitrariness made by the petitioners in their writ petitions therefore stand uncontroverted."

26. The counsel for the petitioners would submit that from the said decision, an appeal was carried to the Division Bench which was dismissed and then special leave petition was filed and that too was dismissed by the Supreme Court.

27. The case of S.K. Ghosh related to the classification and cadre constitution and disparity of pay scale between the Private Secretaries to the Chief Justice and Judges of this Court with the private secretaries to Commissioners and Secretaries to the Government. In the

light of the facts that had come on record concerning the same post of Private Secretaries though working at different places namely in the High Court and in the Secretariat, the Single Judge held that the allegations of discrimination and arbitrariness made in the writ petition stood un-controverted and the conclusion of arbitrariness was inescapable from the facts. We are afraid the facts of the present case do not lead to any inescapable conclusion of arbitrariness and discrimination. As a matter of fact, the State responded to the recommendations of the Law Reforms Committee by constituting Rajasthan Legal Service and providing the avenues for promotion from the post of Legal Assistant to the higher post of Head Legal Assistant and then Assistant Legal Draftsman/ Assistant Legal Remembrancer, Deputy Legal Remembrancer

and Joint Legal Remembrancer. Even their pay scale has been revised from time to time. The petitioners have miserably failed to establish any malice or ulterior motive on the part of the State Government in fact or in law in fixing the pay scale of Legal Assistant and Head Legal Assistant in the Rules of 1989.

28. We are of the view that the decision in the case of Padam Kumar Jain also cannot be applied to the facts of the present case. We have already referred to the later decisions of the Supreme Court in this regard.

29. The counsel for the petitioners also placed reliance on the judgment of the Supreme Court in the case of Purshottam Lal and Others Versus Union of India and Another (AIR 1973 SC 1088). In that matter before the Supreme Court, the grievance was raised about non implementation of the

report of the Second Pay Commission. Dealing with this aspect the Supreme Court observed in para 15 of the report 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 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."

30. In the case of Purshottam Lal it was found that the Government acted in violation of Articles 14 and 16 in implementation of the revised Pay Scales in a particular category of servants from a date later than that recommended by the

Pay Commission. That is not the case here. Purshottam Lal cannot be applied to the present fact situation.

31. In what we have discussed above, we are of the view that the direction given by the Single Judge, if upheld, shall result in framing the Rules by the Court, which under proviso to Article 309 of the Constitution of India is the sole domain of the Governor. Much water has flown under the bridge after the writ petition came to be filed in the year 1984. As noticed above, the Rajasthan Service (Revised Pay Scale) Rules, 1989 effective from 1st September, 1988 came into force. As a matter fact, there was no direct challenge to the pay scale of Legal Assistant and Head Legal Assistant prescribed in the said Rules by the petitioners in the writ petition. With due regard to the Single Judge, we find

ourselves unable to concur with his view.

32. Consequently, the special appeal is allowed. The judgment and order dated 8th September, 1992 passed by the Single Judge is set-aside. As a result of this, the writ petition filed by the petitioners is dismissed with no order as to costs.

33. Though the writ petition has been dismissed, we observe that the petitioners may make an appropriate and adequate representation to the State Government for redressal of their grievance concerning the pay scale. If such a representation is made within one month from today, we observe that the State Government or the other authority competent to take decision in the matter shall consider all the aspects raised in the representation objectively and in the right perspective and take a decision in the matter which is just, fair and reasonable to the State.

Legal Service insofar as the post of Head Legal Assistant is concerned and the State Legal Subordinate service insofar as the post of Legal Assistant is concerned. We expect the State Government to take decision expeditiously as may be possible and preferably within six months from the date of receipt of such representation.

Sd/-
R.S. Chauhan J.

Sd/-
R.M. Lohata J.

सही - प्रतिलिपि,
प्रशासनिक अधिकारी
राज० उच्च न्यायालय
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55

ANNEXURE P/3

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH JAIPUR

S. B. CIVIL WRIT PETITION NO. 1112/1984

Rajasthan Vidhi Seva Sangh, Jaipur

VERSUS

State of Rajasthan, & ors.

Date of order 8.9.1992.

P R E S E N T

THE HON'BLE JUSTICE M.R. CALLA

Shri B.L. Sharma with Shri R.A. Katta for the petitioner

(on behalf of the State of Rajasthan the case was argued by late Shri M.T. Khan, the then Addl. Advocate General.

BY THE COURT:

Through this writ petition, petitioner No. 1 i.e. Association of Members of Rajasthan Vidhi Seva (a body which is not registered) seeks to espouse the cause of the members of the Legal Service in Rajashtan and petitioner No. 2 who is working as Legal Assistant have sought directions in the matter of pay scales of Legal Assistant and Head Legal Assistant as Rs. 860-1750 and Rs. 1000-1800 with retrospective effect from 1st September 1981. This writ petition was filed on 8th March, 1984 and thereafter the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 came into force from 1st

September, 1988. Therefore, the matter has been argued claiming the corresponding pay scales as per the Rajasthan Civil Services (Revised Pay Scale) Rules, 1989.

As per the pleadings of the parties, contained in paras 3 to 13 of the Writ Petition and the reply to the writ petition filed on behalf of the respondents, it is the common case of the parties that on 10th August, 1978, Government of Rajasthan constituted a Committee known as Legal Service, Legal Aid and Law Reforms Committee, headed by then Advocate General Dr. L.M. Singhvi with Revenue Commissioner, Finance Commissioner, Home Commissioner, Special Secretary (Personnel), law Secretary-cum-Legal Remembrancer, Director, H.C.M. State Institute of Public Administration as its Members and Joint Legal Remembrancer as its Member Secretary. This Committee discussed/the matters relating to the terms of reference with the following eminent jurists, legal luminaries and constitutional functionaries of India and Great Britian before submitting its report to the Government of Rajasthan:-

1. Dr. G.S. Pathak, Former President of India
2. Mr. Justice P.N. Bhagwari, Judge, Supreme Court of India as the relevant time.
3. Mr. Justice P.B. Gajendra-Gadkar, Former Chief Justice, Supreme Court of India, and Chairman Law Commission.
4. Mr. Justice V.R. Krishna Iyer, Former Judge Supreme Court of India.
5. Mr. Justice P.N. Singhal, Former Chief Justice of Rajasthan High Court.

6. Mr. Justice B.P. Beri, Former chief Justice of Rajasthan High Court.
7. Mr. Justice V.P. Tyagi, former Chief Justice of Rajasthan High Court.
8. Mr. Justice C.M. Lodha, Former Chief Justice of Rajasthan High Court.
9. Mr. Justice D.L. Mehta, Judge, Rajasthan High Court.
10. Mr. Justice K.S. Lodha, Former Judge, Rajasthan High Court.
11. Mr. Justice K.S. Lodha, Former Judge, Rajasthan High Court.
12. Mr. Justice Kan Singh, Former Judge, Rajasthan High Court.
13. Mr. Justice M.L. Shrimal, Former Chief Justice, Sikkim High Court and Lokayakta, Rajasthan.
14. Mr. R.C.S. Sarkar, Formerly Law Secretary, Government of India and Chairman Union Public Service Commission.
15. Mr. Justice Seton Pollock, Eminent Jurist, Great Britain.
16. Mr. Norman Marsh, the then Member, British Law Commission, Great Britain.
17. Mr. Justice L.N. Chhangani, Formerly Judge, Rajasthan High Court.
18. Mr. Marudhar Mridul Sr, Advocate Rajasthan High Court, Jodhpur.
19. Mr. P.N. Buxi, Formerly, Member Secretary, Law Commission of India.
20. Mr. J.S. Wasu, then Advocate General of Punjab.
21. Mr. N.N. Jain, Former Advocate General of Rajasthan

Dr. L.M. Singhvi, Chairman of the Legal Services, Legal Aid and Law Reforms Committee submitted the report of the Committee to Shri Harideo Joshi, the then Chief Minister of Rajasthan on 19th June,

1975. As per Pt. XXIV of Chapter 3 of the 'report' the recommendations were as under:-

> "In our opinion there is every justification for constituting a Rajasthan Legal Service so as to allow the induction of Law Graduates with a Minimum of two years experience at the Bar and to provide for appropriate avenue for their advancement and promotion.
>
> "The grade for the Rajasthan Legal Services should be roughly analogous to and at par with that of Assistant Commercial Taxes Officers or Assistant Registrars of Co-operative Societies or Employment Exchange officers. The scale should being at Rs. 300/- (at present Rs. 860) with an annual increment of Rs. 25/-. There should be an efficiency bar at Rs. 600/- (ar present Rs. 2100/-) on crossing the Bar a Legal Assistant should be designation as Head Legal Assistant. Parties is would be better to designate him as section Law Officer or Section Officer (L & W). His grade should go up to Rs. 800/- (at present Rs. 1750/-) with a continuing annual increment of Rs. 25/- his scale of pay should thus be Rs. 300-25-600 25-800 (at present 860-20-900-25-1000-30-1800- 1500-50-1750).
>
> Appropriate Rules under Article 330 may be framed to constitute Rajasthan Legal Service.

While the aforesaid report of the Committee was under consideration with the Government, the Rajasthan Legal subordinate Service Rules, 1976 were promulgated. However, the pay scale of Legal Assistant/Head Legal Assistant continuodo to be Rs. 200-450 and Rs. 275-650 respectively. Later on, after considering the recommendations of the aforesaid Committee contained in para XXXIX Chapter III of the report made by the Committee, the Rajasthan Legal Service Rules, 1981 were made under Art. 309 of the Constitution of India and the Rajasthan Legal Subordinate Service Rules, 1976 were repealed and the posts of Legal Assistants and Head Legal Assistants which earlier found place in the Rajasthan Legal Subordinate Service Rules, 1976 were included in the Schedule-I of the Rajasthan Legal Service Rules. 1981. Thus, the aforesaid two posts which were so far in subordinate service were included in the State Service. During the period from 1976 to 1981 when the aforesaid report was under consideration of the State Government, the Rajasthan Pay Commission headed by Justice B.P. Beri, former Chief Justice of Rajasthan High Court was constituted. The Beri Commission recommended the revision of pay scales of Legal Assistants/ Head Legal Assistants as under:-

(1) Legal Assistant	Rs. 760-1420
(2) Head Legal Assistant	Rs. 900-1600

The Rajasthan Legal Service constituted under the Rules of 1981 was included in Schedule-I of the Rajasthan Civil Service (Class fication, Control & Appeal) Rules, 1958 vide Notification dated 20June, 1983

published in the Rajasthan Raj-patra, Part IV dated 7th July, 1983. Thus, the status of State Service was given to all the posts under the Rajasthan Legal Service, including the posts of Legal Assistants and Head Legal Assistants. As per the circular dated 29th April, 1983, issued by the Judicial Department, it was clearly held out that the posts of Legal Assistants, head legal Assistants Assistant Legal Draftsman/Remembrancer and Deputy Legal Remembrancer have been included in the Rajasthan Legal Service on the recommendations of the Law Reforms and Legal Service Committee and the works to be executed by the members of the Rajasthan legal Service were also enumerated in this circular dated 29th April, 1983, as under:-

HINDI PORTIION

The parties are not at dispute that under the Rajasthan Legal Subordinate Service Rules, 1976, the post of Legal Assistant was required to be filled 100% by recruitment and that of head Legal Assistant 100% by promotion from amongst Legal Assistants having five years' service to their credit and the qualification prescribed for the post of Legal Assistants under the Rajasthan Legal Subordinate Service Rules, 1976 was Law Graduate from a University established by law in India or its equivalent with three years course of proficiency degree. This requirement in respect of the two posts i.e. Legal Assistants and Head Legal Assistants remained the same even after their inclusion in the Rajasthan Legal Service Rules, 1981. The

method of recruitment under the rules of 1976 and that under the Rules of 1981, also remains the same i.e. for Head Legal Assistant 100% by promotion from amongst the Legal Assistants, having five year service to their credit through a DPC, and for the post of Legal Assistant by direct recruitment through examination conducted by the RPSC followed by viva-voce and the recommendation of the Commission made on that basis. The detailed procedure for direct recruitment through the RPSC is provided in Part IV of the Rules.

The parties have joined issues on the question of claim for higher pay scales than what the members of the petitioner association are getting under the Revised Pay Scales. Shri Bajrang Lal Sharma, appearing on behalf of the petitioners, has made the following submission:-

(a) Keeping in view the recommendations made in the report of the Law Reforms and Legal Service Committee the pay scales of Legal Assistants must be analogous to and at par with that of Assistant Commercial Taxes Officer, are Assistant Registrar of the Co-operative Department, and/or Employment Exchange Officer. The existing and revised pay scales of Asstt. Commercial Taxes Officer, Assistant Registrar of the Co-operative Department and Employment Exchange Officer are as under:-

		Existing Pay Scale	Revised Pay Scale
(a)	Asstt. Commercial		

	Taxes Officer	1550-3250	2000-3500 (15)
(b)	Asstt. Registrar in Co-operative Department	1550-3250	2000-3500 (15)
(c)	District/Assistant Employment Officer	1490-3050	2000-3200 (14)

Shri Sharma has submitted that in this view of the matter, the pay scales of members of the petitioner association should also be revised accordingly.

(b) That the duties which the Legal Assistants are required to discharge cannot be undermined in comparison to the duties which are discharged by the ACTO or Asstt. Registrar in the Co-operative Department, or the Employment Exchange Officer, Pay, the Legal Assistants and Head Legal Assistants carry out the duties of Higher responsibility inasmuch as they discharge advisory duties in legal matter on which depend the involvement and fate of the State Government in the litigation. They have to examine and over the pleadings for the State government and its functionary and have to make proposals in the matter of drafting pleadings and among merits in the rules. Such duties by the very dint of nature are advisory duties and have to be treated a foot higher than the duties which are discharged by the holders of the post of ACTO or Asstt. Registrar in the Co-operative Department or District/Assistant Employment Officer etc.

(c) That the Pay Scales of Legal Assistants/Head Legal Assistants are not commensurate with the qualifications prescribed for recruitment to these posts and the Legal Assistants and head Legal Assistants are being discriminated because for RAS, RPS and Rajasthan Accounts Service, the qualification is only graduate, whereas the candidates seeking direct recruitment on the post of Legal Assistant are required to be Law Graduate. He has further submitted that the qualifications prescribed for the post of Legal Assistant/head Legal Assistant are identical to those prescribed for Judicial Officers. He has also submitted that the recruitment's to RAS, RPS, Rajasthan Accounts Service and RJS are also made through the examination conducted by the Rajasthan Public Service Commission as in the case of holders of the post by the members of the petitioner association. In order to claim parity with the officers of the Rajasthan Judicial Service reference has been made to the syllabus for competitive examination for recruitment to the post of Legal Assistant. He has submitted that a comparison of the Gyllabi for the post of Legal Assistant and that prescribed for the Rajasthan Judicial Service would show that the syllabus for the Legal Assistant is of a higher standard as compared to what has been prescribed for the recruitment to the Rajasthan Judicial Service. The syllabi for the post of being Assistant and that for RJS is reproduced for ready reference:-

Legal Assistant	Rajasthan Judicial Service
Paper I-Constitution of India with Special emphasis on Fundamental rights, Directive Principles and enforcement of rights through writs,, Functioning of High Court and Supreme Court and Attorney General.	1. Law: Law Paper I is Designed to test the practical knowledge of the candidates in Civil Law and Procedure e.g. drafting, pleadings, framing issues and writing out judgment etc. in civil cases.
Paper-II Civil Procedure code and Criminal Procedure Code, Provisions required to be referred generally in Government Offices will be given importance.	2. Law paper II: Law Paper II is designed to test the practical knowledge of the candidates in Criminal law and procedure /e.g. framing charges and writing out judgments etc. in Criminal cases.
Paper- III. Evidence Act, Limitation Act, Interpretation of Statues, Drafting and conveyancing.	3. Language (I) Paper I Hindi Essay (II) Paper II English Essay
	4. Viza-Voce

(d) That the posts of Legal Assistant and Head Legal Assistant are State Service posts, having classified an State Service post and the same are gazetted posts and, yet, they are not being paid even the lowest pay scale of the State Service. He has invited my attention to the statement 'F' and 'G' annexed with application dated 14th August, 1991 and has submitted that even the posts which are there to in the subordinated service, which can be said to be comparable with that of

Legal Assistants, carry the pay scale No. 14 (2000-3200), whereas the Legal Assistants are being paid in the Pay Scale No. 12 (1400-2600) only and, further that even the Inspectors of the Commercial Taxes Department Gr. I, and Inspector of the Co-operative Department, Gr. I, are being paid in the Pay Scale No. 13 (1640-2900).

Late Shri M.I. Khan the then Addl. Advocate General who had appeared on behalf of the respondents, made the following submissions:-

(a) That the post of Legal Assistant has throughout remained a subordinate service post and from the very beginning i.e. prior to the Rules of 1976, it was governed by the Rajathan Recruitment of the Subordinate Service Rules, 1960 and, thereafter under the Rajasthan legal Subordinate Service Rules, 1976. He had submitted that the post of Legal Assistant was not intended to be included as State Service and, though, the said post was included in the Rajasthan Legal Service Rules 1981 and was also classified as State Service post under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 it was realised that the inclusion of the post of Legal Assistant in the State Service was erroneous. Thereafter an amendment was brought on 27th July, 1985 in the Rules under proviso at Art. 309 of the Constitution of India and by this amendment the caption of the Rules was changed as Rajasthan State and Subordinate Legal Service Rules, 1981 and, as per this amendment

the post of Legal Assistant is a subordinate service post, although the corresponding amendment has not been issued under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. Shri Khan had submitted that even if the post of Legal Assistant was included in the Rules of 1981 and was classified as State Service post it is no more a State Service post after the issue of the aforesaid amendment, and merely because it is a gazetted post, parity cannot be claimed by the holders of the post of Legal Assistant in the matter of pay scale with other State Service Post.

(b) Shri Khan had submitted that to include a particular post in the State Service or in the subordinate service is a matter to be decided by the Government and the petitioner cannot have any legitimate grievance with regard to the inclusion or exclusion of a particular post in the State Service or subordinate service.

(c) That the Law Reforms and Legal Service Committee had recommended the qualification of Law Graduate and minimum two years experience at the Bar, but under the Rules, for the post of Legal Assistant the recruitment has been kept open to simple law graduate without any requirement of two years practice at the Bar. Therefore, on the basis of the recommendations of the said Committee, the pay scales of ACTO or Assistant Registrar in the Co-operative Department or employment Exchange officer cannot be claimed.

(d) That, may be that simple graduates can compete for RAS, RPS and Rajasthan Accounts Services and for the post of Legal Assistant, Graduate in law in the minimum requirement, but that by itself cannot

be a basis for claiming parity in the matter of pay scales with RAS, RPS and Rajasthan Accounts Service because the selection to these services are made on the basis of a separate competitive examination at standards much different than those prescribed for the post of Legal Assistant. The recruitment to RAS, RPS etc. is a recruitment for the service to be rendered in the filed and such officers have to face the administrative problems and there can be hardly any comparison between the standard at which the candidates are recruited for RAS, RPS etc. and the standard at which the recruitment is scale for the post of Legal Assistant.

(c) So far as the requirement of recruitment to the Judicial Service is concerned, the academic qualification may be Graduation in Law, bar the candidates seeking recruitment to the Rajasthan Judicial Service are tested on the question of application of law and the practical knowledge in Civil & Criminal Law, including the art of judgment-writing and copy writing in Hindi as well as English.

(d) Regarding the comparison of syllabi, it had been submitted that for the post of Legal Assistant, the ability of the candidates with regard to the constitutional Law, CPC, CR. P.C. Evidence Act, Limitation, Act, Interpretation of Statutes, drafting and conveyancing is tested in regard to and with particular reference to certain items only, whereas knowledge of Civil Law and Criminal Law, which is provided in the syllabi for RJS Officers is not confined to procedure only.

(e) Shri Khan had also submitted a statement with regard to the pay scales of various subordinate service post and, according to this statement the highest pay scale in the subordinate service is pay scale NO. 14 i.e. 2000-3200 for the post of Group Inspector ur der the Rajasthan Technical Training Subordinate Service Rules, 1974 and Research Asstt. Under the Rajasthan Town Planning Subordinate Service Rules, 1974 also carry the pay scale of Rs. 2000-3200 (scale No. 14.

With regard to the amendment dated 27th July, 1765 by which the caption of the Rajasthan Legal Service Rules 1981 was changed to that of the Rajasthan State and Subordinate Service Rules, 1981 and by which the post of Legal Assistant was made to be a subordinate service post it was pointed out by Shri B. L. Sharma on behalf of the petitioner association that the Notification dated 27th July, 1985 which was admitted on 13th December, 1986 after issued show cause notice to the respondents and in this case a stay order had also been passed on 17th December, 1986 as under:-

"Hon'ble S.C. Agrawal J.

Mr. G.S. Singhvi for the petitioner

No body present for the respondent

The operation of the Notification Annexure/2 dated July 27, 1985 as published in Rajasthan Gazette dated 30th July, 1985 is stayed to this extent that Legal Assistants who were in service on 30th July, 1985 would continue to

receive all benefits and privilege which were permissible to them before 30th July, 1985 during the pendency of the writ petition.

Sd/- S C. Agrawal. J.

And it was on that basis that the members of the petitioner Association continued to enjoy all the benefits and privileges which were permissible to them earlier.

The Statement "E" which was filed on behalf of the petitioner on 14th August, 1991 shows that the post of ACTO and Assistant Registrar, Co-operative were the posts in the pay scale of 868-1750 in 1983 which was latter on revised to 1550-3250 in the year 1987 and in the year 1989 these posts were placed in the Pay Scale No. 15 i.e. 2000-35000. The Statement 'F' shows that the following subordinate service Gazetted posts are in the scale No. 14 i.e. 2000-3200, under 1989 Rules :-

1. Research Assistant (Town Planning)
2. Inspector Revenue Accounts
3. Police Inspector
4. Assistant Accounts Officer
5. Assistant Agriculture Research Officer.
6. Programmer Compater
7. Tehsildar.

The Statement 'S' shows that upto the year 1988 Legal Assistants were in a higher pay scale (860-1240) in comparison to the holders of the post of Inspectors Owner Taxes Gr. I and Inspector Co-operative Societies Gr. I, (840 1180), whereas in the year 1987 the pay scale of Legal Assistant and Inspector Commercial Taxes Department and Inspector Co-operative societies Gr. I brought at par (1200-2420), but in the year 1989 the pay scale of the Legal Assistant was made to be lower pay scale inasmuch as the per scale of Legal Assistant is 1400-2600 i.e. pay Scale No. 12 and that of Inspector Gr. I of the commercial Taxes and Co-Operative Department is pay scale No. 13 i.e. 1640-2900. The statement of pay scales in the subordinate service post which was filed on 14th August, 1991 by the Addl. Advocate General, shows the pay scales of various posts in the subordinate service, and as per this statement the highest pay scale in the subordinate service is scale No. 14 i.e. 2000 –3200 in respect of the holders of the post of Group Inspector under the Rajasthan Technical Training Service Rules, 1975 and in respect of the Research Assistant under the Rajasthan Town Planning Subordinate Service Rules, 1974 . The case of the petitioner is that there is no question of keeping lower pay scale for the members of the petitioner association as Legal Assistants/head Legal Assistants and they are entitled to higher pay scales in terms of the recommendations of the Committee referred to hereinabove.

I have considered the submissions made on behalf of both the sides.

The submissions of Shri B.L. Sharma claiming parity for the post of Legal Assistant with the posts of RAS, RPS, Rajasthan Accounts Service and the Rajasthan Judicial Service are not worth accepting. Merely because the qualification prescribed for direct recruitment to the RAS, RPS and Rajasthan Accounts Service is graduation and that for the post of Legal Assistant is graduation in law, it cannot be said that the post of Legal Assistant is comparable with the RAS, RPS and Rajasthan Accounts Service. Neither the standard at which the recruitment is held for the aforesaid services nor by duties which the holders of such posts of State Services are required to discharge are comparable with that for the post of Legal Assistants and, I am of the opinion that the posts where the services are required to be rendered in the filed and which also involve the question of facing administrative problems and dealing with the public, the situation of law and order are not at all comparable with these of Legal Assistants. The argument of comparison of the post of Legal Assistant and that of Rajasthan Judicial Service also deserves to be out-rightly rejected. The syllabi which has been prescribed for the Rajasthan Judicial Service clearly indicates the stress on the practical knowledge and the skill of applying the law, the appreciation of the pleadings and evidence, the skill of judgment writing besides

the papers of Hindi and English essay writing as a part of the paper of language in the syllabi prescribed for the Rajasthan Judicial Service. I find that it is too tall a claim to compare the post of Legal Assistants with that of the Rajathan Judicial Service. The comparison is wholly misconceived and the submissions made in this regard are hereby rejected.

Without going into the controversy as to whether the post of Legal Assistant is a State Service post or a subordinate service post, because this controversy is a subject-matter of dispute in another writ petition No. 1565/1985 about which a reference has already been made above, so far as the post of Legal Assistant is concerned even if it is taken to be a post in the subordinate Service as was argued by the Learned Addl. Advocate General with reference to the amendment in the Rules brought about on 27th July, 1985 notwithstanding he classification of this post continuing as State Service post under the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958, at least, this much is clear that for the purpose of pay scales with due regard to the recommendation of the Committee of non of imminence and expertise, as referred to in the earlier part of this judgment, it should be considered as the highest post in the subordinate service and should be treated at par with the post in the subordination service carrying the highest pay scale. It is clearly borne out from the Rajasthan Civil Service Revised (Revised Pay Scale) Rules, 1989 which

have been come into force from 1st September, 1988 that the highest pay scale in the subordinate service is pay scale Nc. 14 i.e. 2000-3200. In the statement, which has been filed on behalf of the respondent on 14th August, 1991 the post of Group Inspector is the post under the Rajasthan Technical Training Subordinate Service Rules, 1975 and it carries the pay scale of Research Assistant in the Rajasthan Town Planning Subordinate Service Rules, 1974 also carries the pay scale of Rs. 2000-3200 i.e. pay scale No. 14. Even accepting the case of the respondents that the post of Legal Asstt. Is no more a State Service post and it is a subordinate service post, the post of Legal Assistant should have been in the pay scale of 2000-3000 ie. Pasy scale NO. 14. Besides this, there are other posts viz. Inspector Revenue Accountant, Police Inspector, Assistant Accounts Officer, Asstt. Research Officer, Programmer Computer and Tehsildar in the subordinate service carrying the pay scale NO. 14 i.e. as per statement 'F) filed by the petitioner . The aforesaid posts are the post of technical nature and Legal Assistant is also a post to be treated at par and for holders of this post, the qualification of graduation in law has been prescribed.

It is to be agreed on all hands that the duties which the Legal Assistants are required to discharge are of consideration importance as on the on hand, they are also advisory and do have considerable impact on the fate of the litigation by and

against the State, as also the proposal which may be required to be made in the matter of amendment in the Rules, Reference in this connection may be made to the following observations made by the Division Bench of this Court in DBC No. 1989/88, Ashok Saxena Vs. The State of Rajasthan & ors, decided on 1st August, 1988:-

> 'The Government should seriously consider fixing accountability of passing such illegal orders thereby burdening the State Exchequer with unnecessary expenses. Perhaps in all Departments there are Legal Assistants who are under the Law Secretary, Government of Rajasthan and if their opinion is sought, perhaps these cases will not arise and thereby action only in accordance with law is likely to be taken. It will also save valuable time of this Court.

Now, coming to the question of holders of the post of Head Legal Assistants, I find that the post of Head Legal Assistant is at present a post in the pay scale No. 14 i.e. 2000-3200 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989, which is post two pay scale higher is a post carrying pay scale No. 12 i.e. 1400-2600. Thus, from a reasonable standard, the post of Head Legal Assistant should be a post in two pay scales higher than the post of Legal Assistant and, once it is held that the post of Legal Assistant should be a post in the pay scale of 2000-3200 i.e. pay scale No. 14,

it must follow as an essential concomitant that the post of Head Legal Assistant should be a post in the pay scale No. 16 i.e. 2200-4000.

Shri Khan the then Addl. Advocate General had argued that this court cannot go into the question of reasonableness of the pay scale prescribed for the post of Legal Assistant and this Court cannot issue a writ of mandamus in the matter of pay scales. On the hand, B.L. Sharma submitted that the reasonability of pay scales can be looked into in such matters with reference to Art. 14 and 16 of the Constitution of India and that a mandamus even to amend rules with regard to pay scales had been issued by the Rajasthan High Court in the case of S.K. Ghosh Vs. State of Rajasthan 91884 RLR 966) and Padam Kumar Jain, President, RJJ Association Vs. State of Rajasthan 91987 (2) RLR 807).

I have considered the submissions the made by the parties and I am of the opinion that in the facts and circumstances of a given case, if the Court comes to the conclusion that the respondents are not acting reasonably and they are not even prepared to make an objective consideration of the recommendations made by the Committee of men of eminence and expertise appointed by the Government itself, the employees who are the subjects of the State cannot be left in lurch; it is a question of awarding socio-economic justice which is the very bed-rock of our Constitution. The Preamble of

the constitution of India speaks of socio-economic justice and in order to achieve the object of the Constitution, which we cherish the most, the arms of this Court under Art. 226 of the Constitution of India must reach whenever and wherever in justice is being done. When the right of equality, life and liberty is being denied, when the State itself seeks to ignore or refuse to consider and turn a deal car to the recommendation made by expert bodies, the Committee with men of considerable expertise in the relevant filed are appointed by the Government itself and then their reports are thrown in the stores and there is total inaction and want of application of mind to such recommendations which are obtained from the Committee after spending a sizeable amount from the State Exchequer, this Court cannot act as a silent spectator. In the case of S.K. Ghosh Vs. State of Rajasthan (supra), a clear mandamus was issued directing the respondents to amend the High Court staff Rules, or otherwise make an executive order in the matter of posts and pay scales, and a Division Bench in Padam Kumar Jain (President, RJS Association) Vs. State of Rajasthan (supra) categorically held, in para 5),while dealing with the same objections of the Additional Advocate General viz., no amendment can be issued in the matters of pay scales, that the objection raised by the State does not survive in view of the decision in the case of S.K. Ghosh (supra), which was approved by the Division Bench and special leave petition filed against the above decision of the Division Bench before the Supreme Court was dismissed. In the case of Padam Kumar Jain Vs. State of Rajasthan (supra), the Division Bench in order to do justice to the Rajasthan

Judicial Officers directed that the ordinary scale, senior scale, selection scale and super-time scale shall be allowed to the officers of the Rajsthan Judicial Service on almost identical basis on which such pay scales had been given to RAS Officers. Thus, the decision in the case of S.K. Ghosh (supra) was relied upon by the Division Bench in the case of Padam Kumar Jain (supra) wherein the direction had been issued to grant ordinary scale, senior scale, selection scale and super-time scale to the officers of the Rajasthan Judicial Service on the parity with the Rajasthan Administrative Service Officers. On the reasoning as aforesaid, I do not find any difficulty in directing the respondents to act in accordance with the recommendations of the Committee which was appointed way back in the year 1973 known as Legal Service, legal Aid and Law Service Committee headed by one then Advocate General, Dr. B M. Singhvi which gave its report way back on 19th June, 1975. In such matters, if the Government does not even consider the recommendations of a Committee headed by its own Advocate General made after discussing matters with persons of high legal and judicial acumen and of national eminence, it cannot be said that the Government is acting reasonably, rather one is left to conclude that despite the recommendations of such an expert body, the justice is being denied by the State to its own employees which has a telling effect and results not only leading to frustration and stagnation and consequential adverse effect on the efficiency but also upon the fate of the State litigation and the litigation increased rather than being minimized. No justification has been given for not adhering to the recommendations of the Committee. No reason much less any

convincing reason has been shown for putting these recommendations in oblivision and, I am of the considered opinion that in such cases either the executive should have the courage to say that the recommendations made by the committee deserve to be discarded for such and such reasons, or else it should not hesitate in implementing the same so as to take it to its logical and rather than keeping the issue pending and avoiding a question which has to be faced. To be mute and indifferent to an issue is neither a cure nor the solution of the problem.

In the facts and circumstances of the case, this writ petition is allowed and the respondents are directed to give due regard to the recommendations made by the Committee headed by then Advocate General of the State namely Dr. L.M. Singhvi and make appropriate provisions accordingly so as to give pay scale No. 14 i.e. 2000-3200 to the holders of the post of Legal Assistants and Pay Scale No. 16 i.e. 2200-4000 to the holders of the post of Head Legal Assistant from 1st September, 1985 i.e. Pay Scale0 Rules, 1989 were deemed to have come into force. The directions as above shall be carried out as early as possible, but the date the certified copy of this order is made available to the respondent.

The writ petition is allowed as indicated above with no order as to costs.

Sd/-

(M.R. Calla) J.

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