UNION OF INDIA AND ANR.

*v.*

MAHAJABEEN AKHTAR

NOVEMBER 1, 2007

**[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]**

*Service Law:*

*Pay Scale—Revision in—Research Assistant working in Bureau of Promotion of Urdu Language (BPU) in pay scale of Rs.1640–2900—NCPUL constituted in place of BPU—Option given to employees of BPU to either get transferred to NCPUL or continue to work in Government Department—Respondent opted to stay in Government service as surplus—Deployed as Librarian—Application for upgradation of pay scale—Allowed by Tribunal on the ground that Research Assistant in BUP and Institutions like CHD, CIIL are similarly qualified and performing similar functions—Affirmed by High Court—On appeal, held: Doctrine of equal pay for equal work not applicable as essential educational qualifications and nature of duties of incumbent in other departments are different—As Union of India has already applied its mind and revised respondent's pay, it was for respondent to show that she had been discriminated against—Neither in fact nor in law, any case of discrimination has been made out—Hence, in the facts and circumstances of the case, no relief granted to appellant—However, in exercise of jurisdiction under Article 142, amount already paid to respondent not to be recovered—Pay Scale—Fixation of—Determining factors—Stated—Constitution of India, 1950—Articles 14, 39(d), 142—Doctrine of equal pay for equal work.*

**The Respondent was appointed as Technical Assistant of Urdu Language in the Bureau of Promotion of Urdu Language (BPU). She was promoted as Research Assistant in the pay scale of Rs.550-900. The said pay scale was revised to Rs.1640-2900 on the**

A recommendations of the Fourth Pay Revision Commission. The Central Government constituted National Council for Promotion of Urdu Language (NCPUL) in place of the BPU. NCPUL started functioning from 1.4.1996. Employees of the BPU were given an option either to continue to work in the Government Department or B get themselves transferred to NCPUL. Respondent opted for Government service. Her name was, therefore, referred to surplus cell for redeployment. She was redeployed as Librarian in National Gallery of Modern Art and designated as Assistant Librarian and Information Assistant. Her pay was upgraded in the scale of C Rs.6500-10500. Indisputably, the scale of pay of Rs.1640-2900 was revised to Rs. 5500-9000.

Consequent upon the recommendations of the Fifth Pay Commission, Respondent filed a representation for upgradation of her pay-scale which was not acceded to. Her application before the D Tribunal was allowed based on the analogy of the scale granted to Research Assistant in other Offices in the Education Department, in view of the similarity in qualifications, functions and responsibilities of the post of Research Assistant in the BPU on one hand and in the CHD, CSTT, CIIL on the other. High Court dismissed E the writ petition on the principle of equality on the basis of similarity in the nature of discharging of duties.

In appeal to this Court, the appellant contended that the Tribunal and the High Court failed to take into consideration the fact that the nature of qualification and other relevant factors clearly F point out that the post of Librarian is not equivalent to that of the post of Research Assistant in other regional languages.

Dismissing the appeal in view of observations made, the Court

G HELD: 1. Respondent has been paid the amount by way of difference in the scale of pay only for a short period. She has been held to be entitled only for a sum of Rs.7,000/- and odd. Therefore, in exercise of jurisdiction under Article 142 of the Constitution, it is directed that the amount already paid need not be recovered.

[Para 27] [822-D, E]

H

**2.1. The requisite criteria in regard to appointment, promotion, transfer as well as the nature of duties required to be performed by the incumbents of posts of Research Assistant (Hindi) and Research Assistant (Other languages) *vis-a-vis* that of Research Assistant (Urdu) are different. Knowledge of English for Research Assistant (Urdu) is not necessary whereas for the Research Assistant (Hindi) and other regional languages, the same is essential.**

**[Para 17] [819-B, C]**

**2.2. The essential qualifications are absolutely different for the Research Assistant for CIIL. So far as the educational qualifications required for promotion to the said post by the incumbents of the Research Assistant to Research Assistant (Hindi) is concerned, different educational qualifications are required. Not only that, the nature of duties is also different. Whereas the Research Assistants in respect of Urdu language are required to assist the officer with whom they are attached, the Research Assistants in Hindi and Research Assistants of CIIL are required to assist implementation of the scheme. The Tribunal and consequently the High Court might not, thus, be correct in opining that the educational qualifications as also the nature of duty being the same, respondent was entitled to the benefit of the said scale of pay. [Para 18] [819-C, D, E]**

**3. Large number of factors, namely, educational qualifications, nature of duty, nature of responsibility, nature of method of recruitment etc. are relevant for determining equivalence in the matter of fixation of scale of pay. [Para 19] [819-F]**

*Secretary, Finance Department & Ors.* **v.** *West Bengal Registration Service Association & Ors.,* **[1993] Supp.1 SCC 153;** *State of U.P. & Ors.* **v.** *J.P. Chaurasia & Ors.,* **[1989] 1 SCC 121;** *Union of India & Ors.* **v.** *Pradip Kumar Dey,* **[2000] 8 SCC 580; and** *State of Haryana & Anr.* **v.** *Haryana Civil Secretariat Personal Staff Association,* **[2002] 6 SCC 72, relied on.**

*Government of West Bengal* **v.** *Traun K. Roy & Ors.,* **[2004] 1 SCC 347;** *U.P. State Sugar Corporation Ltd. & Anr.* **v.** *Sant Raj Singh & Ors.,* **[2006] 9 SCC 82; and** *State of Haryana & Ors.* **v.** *Charanjit Singh*

A *& Ors.,* **[2006] 9 SCC 321, referred to.**

**4. On the facts obtaining in this case, therefore, the doctrine of equal pay for equal work has no application. The matter may have been different, had the scales of pay have been determined on the basis of educational qualification, nature of duties and other relevant** B **factors. Ordinarily the scales of pay of employees working in different departments should be treated to be at par and the same scale of pay shall be recommended. Respondent did not opt for her services to be placed on deputation. She opted to stay in the Government service as a surplus. She was placed in list as Librarian in National** C **Gallery of Modern Art. She was designated as Assistant Librarian and Information Assistant. Her pay scale was determined at Rs.6500-10500 which was the revised scale of pay. Her case has admittedly not been considered by the Fifth Pay Revision Commission. If a scale of pay in a higher category has been refixed** D **keeping in view the educational qualifications and other relevant factors by an expert body, no exception thereto can be taken. Concededly it was for the Union of India to assign good reasons for placing her in a different scale of pay. It has been done. Not only the essential educational qualifications are different but the nature** E **of duties is also different. Article 39(d) as also Article 14 of the Constitution of India must be applied, on the premise that equality clause should be invoked in respect of the people who are similarly situated in all respects. [Para 24] [821-A, B, C, D, E]**

*The Employees of Tennery and Footwear Corporation of India* F *Ltd. & Anr.* **v.** *Union of India & Ors.,* **[1991] Supp.2 SCC 565; and** *Alvaro Noronha Ferriera & Anr.* **v.** *Union of India & Ors.,* **[1999] 4 SCC 408, relied on.**

**5. As the Union of India has already applied its mind and revised the respondent's pay in the scale of pay of Rs.5500-9000, it was for** G **the respondent to show that she had been discriinated against. Neither in fact nor in law, any case of discrimination has been made out. [Para 25] [822-A, B]**

*State of U.P. & Ors.* **v.** *U.P. Sales Tax Officers Grade II* H *Association,* **[2003] 6 SCC 250; and** *Haryana State Adhyapak Sangh*

*& Ors.* **v.** *State of Haryana & Ors.,* **[1988] 4 SCC 571, referred to.** A

**6.1. The findings of the Tribunal was that the incumbents to the post of Research Assistants in the BUP and Institutions like Central Hindu Directorate and Central Institution of Indian Languages etc. are similarly qualified and they have been performing similar functions. There was no factual foundation for arriving at the said finding. Consequently, the said conclusion was wrongly drawn by the Tribunal. Furthermore, no formula having mathematical exactitude can be pressed into service in a situation of this nature. The Tribunal and consequently the High Court, therefore, was not correct in arriving at the said decision. [Para 26] [822-B, C, D]** B C

*Punjab National Bank & Ors.* **v.** *Manjeet Singh & Anr.,* **[2006] 8 SCC 647, relied on.**

**6.2. However, in the facts and circumstances of the case, no relief is granted in favour of appellant. [Para 28] [823-A]** D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5087 of 2007.

From the final Judgment/Order dated 19.8.2004 of the High Court of Delhi at New Delhi in W.P. (C) No. 3719/2002. E

A. Sharan, A.S.G., Sunita Sharma and Sushma Suri for the Appellants.

Sudhir Kulshreshtha for the Respondent.

The Judgment of the Court was delivered by F

**S.B. SINHA, J.** 1. Leave granted.

2. Applicability of the doctrine of 'equal pay for equal work' is in question in this appeal which arises out of a judgment and order dated 19.08.2004 passed by a Division Bench of the High Court of Delhi in Civil Writ Petition No.3719 of 2002 dismissing the writ petition filed by G the appellant questioning an order dated 11.9.2000 passed in Original Application No.52 of 2000 by the Central Administrative Tribunal directing to consider the question of grant of replacement pay-scale of Rs.6500-10500 to the respondent, with consequential benefits in her favour. H

A 3. Basic fact of the matter is not in dispute.

4. Respondent herein was appointed as Technical Assistant of Urdu Language in the Bureau of Promotion of Urdu Language. She was placed in the pay scale of Rs.425-700. She was promoted as Research Assistant in the scale of pay of Rs.550-900. The said scale of pay was revised to B Rs.1640-2900 on the recommendations of the Fourth Pay Revision Commission.

5. The Central Government constituted National Council for Promotion of Urdu Language (NCPUL) in place of the Bureau of C Promotion of Urdu Language. NCPUL started functioning from 1.4.1996. Employees of the Bureau were given an option either to continue to work in the Government Department or get themselves transferred to NCPUL. Respondent opted for Government service. Her name was, therefore, referred to surplus cell for redeployment. She was redeployed as Librarian D in National Gallery of Modern Art and designated as Assistant Librarian and Information Assistant. Her pay was upgraded in the scale of Rs.6500-10500.

6. Indisputably, the scale of pay of Rs.1640-2900 was revised to Rs.5500-9000.

E

7. Consequent upon the recommendations of the Fifth Pay Commission, Respondent filed a representation for upgradation of her pay-scale which was not acceded to. She thereafter filed an application before the Central Administrative Tribunal. By reason of an order dated F 11.9.2000, the learned Tribunal allowed the said application opining :

> "In the above view of the matter the application succeeds and is accordingly allowed. The respondents are directed to consider the grant of the replacement scale of Rs.6500-10500/- to the applicant, keeping in view the similarity in essential qualification, functions in G responsibilities with those in CHD, CIIL, CSIT w.e.f 01.01.96, with consequential benefits. This should be done within four months from the receipt of this order. Parties to bear their own costs (sic manner) ."

In arriving at the said conclusion, the Tribunal held :

H

"All the institutes including BPU were functioning on 01.01.1996 when the recommendations of the 5th Pay Commission were implemented. BPU came to be abolished only on 31.3.1996, and, therefore, there is no reason why the Research Assistant in BPU should have been treated in a different matter." A

8. A writ petition filed by the appellant herein against the said order has been dismissed by the High Court by reason of the impugned judgment stating : B

"The case of the respondent in her OA was that the post of Research Assistant in the Bureau of Urdu and also in the other sister departments was in the pay scale of Rs.1640-2900 upto 31.12.1995 and that qualifications required for the incumbents also were the same and that duties, functions performed were also similar in nature and, therefore, if post of Researeh Assistant was placed in the pay scale of Rs.6500-10500 in those Department under the same Education Department, she was also entitled to the same pay scale on the principle of equality. We find that there is no specific denial or rebuttal to this by the petitioners in their reply to the OA. Their stands seems to be couched in general terms. They also seem to be suffering from some misconception that since the post of Research Assistant was abolished in the Bureau of Urdu (NCPUL) and, therefore, the analogy of the pay scale granted to Research Assistant in other sister Departments could not be applied to her case. What *is missed* is that respondent was asking for the revised pay scale at par with the Research Assistants in other offices under the Education Department on the basis of similarity in the nature of discharging of duties etc. which was not controverted by the petitioner and to which she was entitled in the absence of any denial in this regard. Therefore, it can't be said the Tribunal has gone wrong in directing petitioner to consider this respondent for grant of pay scale of Rs.6500-10500 from 1.1.1996 on the analogy of the scale granted to Research Assistant in other Offices in the Education Department, in view of the similarity in qualifications functions and responsibilities of the post of Research Assistant in the Bureau on one hand and C D E F G H

A in the CHD, CSTT, CIIL on the other. The Tribunal order is accordingly affirmed and petition is disposed of."

9. Mr. Amrendra Sharan, learned Additional Solicitor General of India appearing on behalf of the appellants, submitted that the Tribunal and consequently the High Court committed a serious error in arriving at B the aforementioned conclusion in so far as they failed to take into consideration the fact that the nature of qualification and other relevant factors clearly point out that the post of Librarian is not equivalent to that of the post of Research Assistant in other regional languages.

C 10. Mr. Kulshreshtha, learned counsel appearing on behalf of the respondent, on the other hand, would submit that as the respondent had been in the job of the Bureau of Promotion of Urdu Language as on 1.1.1996 from which date the recommendations of the Fifth Pay Commission came to be implemented, the impugned judgment and order D should not be interfered with.

11. Promotion of regional languages is undertaken by various bodies including Central Hindi Directorate of the Ministry of Human Resources Development, Department of Education, Central Institute of Indian Language, Commission for Scientific and Technical Terminology, Ministry E of Human Resources Development, Department of Education and Bureau for Promotion.

12. So far as the educational and other qualifications required by direct recruits for promotion of the Urdu language are concerned, following F are stated to be the essential qualifications :

"(i) Master's Degree of a recognized University or equivalent.

(ii) Must have taken Urdu as optional subject at the graduation level for 3 years/2 years degree course in the case of M.As. or must have taken Urdu as a second language upto 2nd years G of 3 years degree graduation in case of MA/M.Sc. M.Com or must have taken Urdu at High School/Higher Secondary School level in the case of M.Sc/M.Com where offering Urdu as a second language at degree level is not furnished.

H (iii) One years experience of teaching or terminological and/or

translation/editing work in Urdu

Note 1 : Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.

Note 2 : The qualification regarding experience is relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to the scheduled castes and Schedules Tribes if, at any stage of selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

Desirable : Working knowledge of one or more, modern *Indian* languages other than Urdu."

13. However, in respect of Hindi language, the qualifications prescribed are as under :

"(i) For post of Research Assistant (Hindi) : Master's Degree in Hindi or Sanskrit with Hindi as an elective subject at Degree stage from a recognized university or equivalent and should have studied English as a compulsory/optional subject at degree level.

(ii) For Post of Research Assistant (Regional Language) Master's Degree in Hindi with knowledge of regional language concerned and English at Secondary School level or Master's Degree in the regional language concerned with Hindi and English as compulsory/optional subject at secondary school examination level. (Regional language includes only those languages which have been specified in the Eighth Schedule of the Constitution of India, as amended from time to time, baring Hindi and Sanskrit).

(iii) For post of requiring knowledge of *Medicine : Degree in* Integrated System of Indian Medicine Bachelor of Indian Medicine and Surgery/Bachelor of Ayurvedic Medicine and Surgery or Ayurveda/Pharmacy or equivalent from a

recognized university or board with Hindi and English as compulsory/optional subject at secondary school examination level.

(iv) For post requiring knowledge of Engineering : (Civil, Mechanical, Electrical, Electronics, Computer Science, Textile, Mineral Leather Technology) : Diploma of a recognized Institution/University or equivalent in the subject concerned with Hindi and English as compulsory/optional subject as secondary school examination level.

(v) For post of Research Assistant (Management)/Research Assistant (Public Administration) : Post-graduate diploma in Management/Public Administration respectively from a recognized university or equivalent with knowledge of English and Hindi as compulsory/optional subject at secondary school examination level or equivalent.

(vi) For post of Research Assistant (Journalism): Master's degree in Hindi with Diploma in Journalism/Mass Communication with English as compulsory/optional subject at secondary school examination level.

(vii) For posts in any subject other than these mentioned above : Master's Degree of recognized University or equivalent in the subject concerned with English and Hindi as compulsory/ optional subject at Secondary School Examination level.

Note 1 : Qualification are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.

Note 2 : Selected candidates will have to complete a departmental training programme during their probation.

Desirable : Only for posts of Research Assistant (Hindi) : Certificate/ Diploma from a recognized Institute in Translation or Applied Linguistics or Functional Hindi."

14. The essential qualifications required for other languages in CIIL

are stated to be as under :

"(i) Master's Degree in Linguistic/Comparative Philology/Indian Language and Literature/ Psychology/Education/Sociology/ Anthropology/Folklore/Statutics from recognized University or equivalent.

(ii) One years research/teaching experience.

(iii) Proficiency in any Indian Language as a subject at the Secondary School Level in the case of Master of Arts in Linguistics or Comparative Philology or as a subject at the degree level in the case of Master of Arts in Subject other than Linguistics and Comparative philology.

Note 1 : Specific requirement will be indicated at the time of recruitment."

15. We may also note that in the case of recruitment by promotion, deputation, transfer and grades from which promotion or deputation or transfer to be made, the following are the requisite qualifications :

*Urdu*

Promotion :

Technical Assistant (Urdu) working in the Bureau for Promotion of Urdu with 5 years regular service in the grade.

Transfer or deputation :

(a) Officers under the Central Government/State Government :

(i) holding analogous posts; or

(ii) with 5 years service in posts in the scale of pay of Rs.425-700 or equivalent; and

(b) Possessing the Education qualifications and experience prescribed for direct recruits under column-7. Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same organization/department shall ordinarily not exceed 3 years."

A *Hindi*

Transfer on deputation/transfer :

Officers under the Central Governments

B (a) (i)Holding analogous posts in regular posts on regular basis, or

(ii) With 5 years regular service in post in the scale of pay of Rs.1400-2300/2600 or

(iii) with 15 years regular service in post in the scale of Rs.950-1500 or equivalent.

C

(b) possessing the educational qualifications and experience prescribed for direct recruitment under column 8. (period of deputation including period of deputation in another ex cadre post held immediately preceding this appointment in the same or some other organization/department of the Central D Government shall ordinarily not to exceed 3 years. The maximum age limit for appointment by transfer on deputation including transfer shall be not exceeding 56 years, as on the closing date of receipt of applications."

E 16. We may now consider different nature of duties required to be performed by the these categories of officers :

*"Urdu*

To assist the officer with whom they are attached in implementing F the publication programme BPU at various stages. This includes organizing of subjects panel melting, implementing their decisions, checking and editing mss, organizing Terminology committee meeting and preparing of glossary of technical terms maintenance of record of all the above mentioned activity and programming the G duty allotted from time to time in furtherance of the activity of BPU.

*Hindi*

To assist in the implementation of schemes relating to periodicals, preparation of Dictionaries— Lingual Bilingual, Trilingual and H Multilingual, preparation of Dictionaries in Foreign Languages under

Cultural Exchange Programme. A

*Other Regional Languages*

To assist in Linguistic and in material production in various Indian Languages including the non-scheduled languages."

17. The requisite criteria in regard to such appointment, promotion, transfer as well as the nature of duties required to be performed by the incumbents of posts vis-à-vis that of Research Assistant (Urdu) therefor, are different. Knowledge of English for Research Assistant (Urdu) is not necessary whereas for the Research Assistant (Hindi) and other regional languages, the same is essential. B C

18. So far as the Research Assistant for CIIL is concerned, the essential qualifications therefore are absolutely different. So far as the educational qualifications required for promotion to the said post by the incumbents of the Research Assistant to Research Assistant (Hindi) is concerned, therefore also different educational qualifications are required. Not only that, the nature of duties is also different. Whereas the Research Assistants in respect of Urdu language are required to assist the officer with whom they are attached, the Research Assistants in Hindi and Research Assistants of CIIL are required to assist implementation of the scheme. The Tribunal and consequently the High Court might not, thus, be correct in opining that the educational qualifications as also the nature of duty being the same, respondent was entitled to the benefit of the said scale of pay. D E

19. The question came to be considered in a large number of decisions of this Court wherein it unhesitantly came to the conclusion that a large number of factors, namely, educational qualifications, nature of duty, nature of responsibility, nature of method of recruitment etc. will be relevant for determining equivalence in the matter of fixation of scale of pay. {See *Secretary, Finance Department & Ors.* v. *West Bengal Registration Service Association & Ors.*, [1993] Supp. 1 SCC 153; *State of U.P. & Ors.* v. *J.P. Chaurasia & Ors.*, [1989] 1 SCC 121; *Union of India & Ors.* v. *Pradip Kumar Dey*, [2000] 8 SCC 580 and *State of Haryana & Anr.* v. *Haryana Civil Secretariat Personal Staff* F G H

A *Association,* [2002] 6 SCC 72}.

20. In *Government of West Bengal* v. *Traun K. Roy & Ors.,* [2004] 1 SCC 347, this Court held as under :

> "Question of violation of Article 14 of the Constitution of India on
B the part of the State would arise only if the persons are similarly placed. Equality clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentia."

C 21. In *U.P. State Sugar Corporation Ltd. & Anr.* v. *Sant Raj Singh & Ors.*, [2006] 9 SCC 82, this Court opined :

> "The doctrine of equal pay for equal work, as adumbrated under Article 39(d) of the Constitution of India read with Article 14
D thereof, cannot be applied in a vaccum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher qualification has all along been treated by this Court to be a valid basis for classification of two categories of employees"

E 22. Same principle was reiterated by a Three Judge Bench of this Court in *State of Haryana & Ors.* v. *Charanjit Singh & Ors.,* [2006] 9 SCC 321.

23. We are not oblivious of some decisions of this Court wherein
F salary on the basis of revised pay scales has been directed to be paid on the premise that no change in the duties and functions of employees similarly situated had taken place although the concerned employees were working in the different public sector undertakings {See *The Employees of Tennery and Footwear Corporation of India Ltd. & Anr.* v. *Union*
G *of India & Ors.,* [1991] Supp. 2 SCC 565} or where scale of pay is to be fixed for the judicial officers posted in the State cadre *vis-à-vis* Union Territory Cadre {*Alvaro Noronha Ferriera & Anr.* v. *Union of India & Ors.,* [1999] 4 SCC 408} but such a question does not arise herein, as different scale of pay was recommended by an expert body having
H regard to the nature of duties and functions. It is not a case where

discrimination is sought to be made on the basis of territory or posting in public sector undertaking. A

24. On the facts obtaining in this case, therefore, we are of the opinion that the doctrine of equal pay for equal work has no application. The matter may have been different, had the scales of pay have been determined on the basis of educational qualification, nature of duties and other relevant factors. We are also not oblivious of the fact that ordinarily the scales of pay of employees working in different departments should be treated to be at par and the same scale of pay shall be recommended. Respondent did not opt for her services to be placed on deputation. She opted to stay in the Government service as a surplus. She was placed in list as Librarian in National Gallery of Modern Art. She was designated as Assistant Librarian and Information Assistant. Her pay scale was determined at Rs.6500-10500 which was the revised scale of pay. Her case has admittedly not been considered by the Fifth Pay Revision Commission. If a scale of pay in a higher category has been refixed keeping in view the educational qualifications and other relevant factors by an expert body, no exception thereto can be taken. Concededly it was for the Union of India to assign good reasons for placing her in a different scale of pay. It has been done. We have noticed hereinbefore that not only the essential educational qualifications are different but the nature of duties is also different. Article 39(d) as also Article 14 of the Constitution of India must be applied, *inter alia*, on the premise that equality clause should be invoked in respect of the people who are similarly situated in all respects. B C D E F

25. Mr. Kulshreshtha has placed strong reliance on *State of U.P. & Ors.* v. *U.P. Sales Tax Officers Grade II Association,* [2003] 6 SCC 250. In that case the Pay Revision Commission did not consider cases of a group of employees. On the aforementioned premise, they were held to be entitled to the scale of pay which had been granted to the persons similarly situated. We are not concerned with such an issue herein as the case of the respondent has been considered and she has been given the benefit of a revised scale. It was not necessary for the Government which had the requisite jurisdiction to remove anomaly as has been held by this Court in *Haryana State Adhyapak Sangh & Ors.* v. *State of Haryana* G H

A *& Ors.*, [1988] 4 SCC 571, whereupon Mr. Kulshreshtha relied on. As the Union of India has already applied its mind and revised the respondent's pay in the scale of pay of Rs.5500-9000, it was for the respondent to show that she had been discriminated against. We have noticed hereinbefore that neither in fact nor in law, any case of B discrimination has been made out.

26. Our attention has been drawn to the findings of the Tribunal that the incumbents to the post of Research Assistants in the Bureau and Institutions like Central Hindu Directorate and Central Institution of Indian Languages etc. are similarly qualified and they have been performing similar C functions. There was no factual foundation for arriving at the same finding. Consequently, the said conclusion was wrongly drawn by the Tribunal. Furthermore, no formula having mathematical exactitude can be pressed into service in a situation of this nature. The Tribunal and consequently the High Court, in our opinion, therefore, was not correct in arriving at D the said decision.

27. Another aspect of the matter, however, cannot be ignored. Respondent has been paid the amount by way of difference in the scale of pay only for a short period. She has been held to be entitled only for E a sum of Rs.7,000/- and odd. We are, therefore, of the opinion that this Court, in exercise of its jurisdiction under Article 142 of the Constitution, should direct that the amount already paid need not be recovered. Similar direction has been passed by this Court in *Haryana Civil Secretariat Personal Staff Association* (supra) stating :

F "The courts 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 G the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale H of pay and compelling the Government to implement the same."

{See also *Punjab National Bank & Ors.* v. *Manjeet Singh & Anr.*, [2006] 8 SCC 647} A

28. We, therefore, although agree with the submissions of learned Additional Solicitor General, in the facts and circumstances of this case, decline to grant any relief in favour of the appellant. The appeal is dismissed in view of our observations aforementioned. There shall, however, be no order as to costs. B

D.G. Appeal dismissed.