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STATE OF WEST BENGAL

*v.*

SUBHAS KUMAR CHATTERJEE & ORS.

(Civil Appeal No. 5538 of 2008)

AUGUST 17, 2010

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**[B. SUDERSHAN REDDY AND SURINDER SINGH NIJJAR, JJ.]**

*Administrative Tribunals Act, 1985:*

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*s. 19 – Application before tribunal by certain employees of West Bengal, seeking revision of scale of pay and fixation of benefits – Tribunal directing the Chief Engineer to decide the application – Chief Engineer revising the scale of pay –* D *Order of tribunal accepting claim of employees accordingly – Upheld by High Court – On appeal, held: In the State of West Bengal pay scales are fixed under statutory Rules – Administrative tribunals by their orders cannot create/ constitute any quasi-judicial authorities and entrust matters* E *for their decision which otherwise are not within their jurisdiction – Order of tribunal directing Chief Engineer to decide the dispute with regard to pay scales is void ab initio and cannot be given effect to – Administrative decisions by executive authorities do not bind the courts, much less operate as res* F *judciata – No court can issue Mandamus directing the authorities to act in contravention of the Rules – Decision of Chief Engineer being contrary to ROPA Rules, 1998, cannot be enforced even if such a decision was taken under the directions of the tribunal – Orders of High Court as well tribunal* G *set aside – Constitution of India, 1950 – Article 226 – Service law – West Bengal Services (Revision of Pay and Allowances) Rules, 1998 – Res judciata.*

*s. 19 – Jurisdiction of tribunal – Tribunal directing*

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*application to be decided by executive authority – Held: Power conferred upon the Administrative Tribunals under the provisions of the Act flows from Article 323-A of the Constitution – Such power can never be delegated except under a valid law made by Parliament – Tribunals in the country henceforth should not repeat such practice of sending the original applications filed before them to the Executive Authorities for their disposal – Constitution of India, 1950 – Article 323-A.*

**The post of Senior Laboratory Assistant, in the Roads and Buildings Research Institute and various other divisions under the Public Works (Roads) Department, is the feeder post to the Research Assistant. Under the Revision of Pay and Allowances Rules, 1981, the pay scale for the post of Research Assistant was fixed at scale no. 9 (Rs. 300-910) and for the post of Senior Laboratory Assistant at scale no. 6 (Rs. 300-685). The Senior Laboratory Assistants filed a writ petition claiming scale no. 11 under the Rules on the allegation that they were performing similar duties as that of Senior Research Assistants. The Single Judge of the High Court granted scale no. 11, however, passed a direction that the said pay scale would be paid w.e.f 1st April, 1981. The 3rd Pay Commission constituted for the State of West Bengal granted only scale no. 6 (revised to Rs. 1040-1920) to the Senior Laboratory Assistants and scale no. 9 (revised to Rs. 1260-2610) for the Research Assistants. The State Government framed West Bengal Services (Revision of Pay and Allowances) Rules, 1990 allowing scale nos. 6 and 9 respectively to the Senior Laboratory Assistants and Research Assistants. The 4th Pay Commission retained the same pay scales. However, the pay structure was revised. The State Government of West Bengal framed West Bengal Services (Revision of Pay and Allowances) Rules, 1998.**

A Thereafter, the respondents-Research Assistants filed an application before the tribunal seeking revision of scale of pay and fixation of benefits w.e.f 1st April, 1981 in scale no. 14. The tribunal directed the Chief Engineer, Public Works (Roads) Directorate to dispose of the B application by a reasoned order. The Chief Engineer extended the scale no. 11 to the respondents. Thereafter, the tribunal directed the State to revise the pay scale in terms of the orders of the Chief Engineer. The appellant-State filed a writ petition. The High Court dismissed the C writ petition and upheld the order passed by the tribunal. Therefore, the appellant-State filed the instant appeal.

Allowing the appeal, the Court

D HELD: 1.1 The tribunals cannot travel beyond the power conferred on them and delegate their essential function and duty to decide service related disputes. Such delegation is ab initio void. No judicial tribunal can delegate its responsibilities except where it is authorized to do so expressly. The power conferred upon the E Administrative Tribunals under the provisions of the Administrative Tribunals Act, 1985 flows from Article 323-A of the Constitution of India, 1950. Such power can never be delegated except under a valid law made by Parliament. The tribunals by their own act cannot delegate F the power to decide any dispute which in law is required to be decided exclusively by such tribunals. Such is the extent of awesome powers and jurisdiction conferred upon the tribunals. It is their bounden duty to adjudicate the matters coming before them but not delegate its G jurisdiction to extra-constitutional authorities. Such practice is fraught with undesirable consequences destroying the very purpose and scheme under which they are created and constituted to adjudicate disputes

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in specified areas. The tribunals in the country henceforth should not repeat such practice of sending the original applications filed before them to the Executive Authorities for their disposal. The order of the Administrative Tribunal directing the Chief Engineer, Public Works (Roads) Directorate to decide the dispute raised by the respondents with regard to their pay scales is void ab initio and cannot be given effect to. [Paras 19 and 24] [120-F-H; 121-A-D; 122-E]

1.2 The Chief Engineer while acting under the directions of the tribunal passed the order declaring that the respondents are entitled to the relief as prayed for by them and accordingly granted scale no. 11 to the respondents. In the State of West Bengal pay scales are fixed under the statutory Rules. The Chief Engineer completely ignored the statutory rules under which the respondents are entitled to only scale no. 9. The Government did not implement the same. The respondents once again approached the tribunal seeking appropriate directions for implementation of the order passed by the Chief Engineer. The tribunal having allowed the application of the respondents held that they are entitled to fixation of pay as recommended by the Chief Engineer and the State must give effect to the same. It cannot be appreciated as to how the Administrative Tribunal could have directed the State to implement the recommendations of the Chief Engineer which run counter not only to the recommendations of the Pay Commission but also the West Bengal Services (Revision of Pay and Allowances) Rules, 1981. [Paras 15 and 16] [119-C-F]

1.3 The High Court while rejecting the writ petition held that the Chief Engineer has discharged "a solemn duty undertaking the task of quasi-judicial duty has now

A reached its finality. Now, it is a question of implementation of the same". The High Court went to the extent of holding that the decision rendered by the Chief Engineer pursuant to the order of the tribunal operates as res judicata if not issue estoppel. The High Court B advanced such an unstatable proposition. The Chief Engineer did not undertake any task of discharging of any quasi-judicial duty. The Administrative Tribunals by their orders cannot create and constitute any quasi-judicial authorities and entrust matters for their decision C which otherwise are not within their jurisdiction. [Para 22] [121-G-H; 122-A]

1.4 The High Court fell into serious error in construing the orders passed by the Chief Engineer as D a decision. There was no adjudication as such of any lis between the parties by the Chief Engineer. The Chief Engineer in law was not entitled to decide any dispute and much less with regard to any dispute and complaint with respect to conditions of service of any persons E appointed to public posts controlled by the State Government. The Chief Engineer was not acting in any judicial or quasi-judicial capacity. Administrative decisions by the executive authorities do not bind the courts and much less operate as res judciata. In the F circumstances, the view taken by the Chief Engineer that the respondents were entitled to scale No.11, cannot operate as res judicata. [Para 25] [122-F-H; 123-A]

1.5 The State Government having accepted the recommendations of the successive Pay Commissions G gave effect to those recommendations by framing statutory rules being ROPA Rules and scales of the employees have been accordingly fixed. The respondents did not challenge the vires of the Rules under which they were entitled to only a particular scale H

of pay. The State Government is under obligation to follow the statutory Rules and give only such pay scales as are prescribed under the statutory provisions. Neither the Government can act contrary to the Rules nor the court can direct the Government to act contrary to Rules. No Mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue Mandamus directing the authorities to act in contravention of the Rules as it would amount to compelling the authorities to violate the law. Such directions may result in destruction of rule of law. In the instant case, the impugned order of the High Court virtually compelled the State to give pay scales contrary to statutory Rules under which pay scales of the employees are fixed. The decision of the Chief Engineer being contrary to West Bengal Services (Revision of Pay and Allowances) Rules, 1998, cannot be enforced even if such a decision was taken under the directions of the Administrative Tribunal. The orders of the tribunal as well as of the High Court suffer from incurable infirmities and are set aside. [Para 26] [123-B-F]

1.7 Courts should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. The constitutional courts clothed with power of judicial review

A **have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post. [Para 13] [118-C-F]**

B *Union of India v. Arun Jyoti Kundu* **2007 (7) SCC 472;** *State of Haryana and Anr. v. Haryana Civil Secretariat Personal Staff Assn.* **2002 (6) SCC 72 – relied on.**

**Case Law Reference:**

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| C **2007 (7) SCC 472** | **Relied on.** | **Para 13** |
| **2002 (6) SCC 72** | **Relied on.** | **Para 13** |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5538 of 2008.

D From the Judgment & Order dated 19.12.2007 of the High Court of Calcutta in W.P.S.T.No. 33 of 2007.

Bhaskar P. Gupta, Rana Mukherjee, Anchan Chakraborty, Goowill Indeevar for the Appellant.

E Dipak Kumar Jena, Minakshi Ghosh Jena Manmohan for the Respondents.

The Judgment of the Court was delivered by

F **B. SUDERSHAN REDDY, J.** 1. This appeal by special leave is directed against the final judgment and order dated 19th December, 2007 passed by the Division Bench of the High Court of Calcutta in W.P.S.T No. 33 of 2007 whereby and whereunder the High Court dismissed the writ petition preferred G by the State of West Bengal, appellant herein and confirmed the judgment and order dated 18th August, 2005 passed by the State Administrative Tribunal, West Bengal.

2. In order to consider the question as to whether the

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judgment suffers from any infirmities requiring our interference, it may be just and necessary to notice the relevant facts. A

3. The controversy involved in the present matter requiring resolution centers around the issue as to whether the Senior Laboratory Assistants in the Roads and Buildings Research Institute and various other divisions under the Public Works (Roads) Department, Government of West Bengal are entitled to the same pay scale at par with the Research Assistants in the same department? B

4. On 4th July, 1972 the Government of West Bengal, in exercise of its power conferred by the proviso to Article 309 of the Constitution of India made the Rules for regulation of recruitment to the post of Senior Research Assistant, Research Assistant and Senior Laboratory Assistant in the Roads and Buildings Research Institute and various other divisions under the Public Works (Roads) Department. The post of Senior Laboratory Assistant is a feeder to the post of Research Assistant. The pay scale fixed under the Revision of Pay and Allowances Rules, 1981 ( for short ROPA Rules) for the post of Research Assistant was scale no. 9 ( Rs. 300-910) and for the post of Senior Laboratory Assistant scale no. 6 (Rs. 300-685). C D E

5. In the year 1982, three Senior Laboratory Assistants filed a Writ Petition in the Calcutta High Court claiming scale no. 11 under ROPA Rules on the allegation that they were performing similar duties as that of Senior Research Assistants. The said Writ Petition was disposed of by a learned Single Judge of the High Court granting scale no. 11 as claimed by the writ petitioners therein vide judgment dated 25th November, 1987. Be it noted that the said writ petition was disposed of on the doctrine of non-traverse since the State Government was unrepresented and no affidavit filed on its behalf. However, the learned Judge granted relief directing the said pay scale to be paid w.e.f 1st April, 1981 but, directed that the petitioners therein would be entitled to arrears only w.e.f April, 1987. The F G H

A State was also directed to place the matter before the 3rd Pay Commission so that the Commission could consider the case of the Senior Laboratory Assistants for higher scale duly taking into consideration their qualifications and duties.

B 6. On 30th June 1987, 3rd Pay Commission for the State of West Bengal was constituted to consider the revision of pay and emoluments of its employees. The Commission submitted its report in December, 1988, granting only scale 6 (revised to Rs. 1040-1920) to the Senior Laboratory Assistants and scale 9 (revised to Rs. 1260-2610) for the Research Assistants. The C State Government having accepted the recommendations framed ROPA Rules, 1990 allowing scale nos. 6 and 9 respectively to the Senior Laboratory Assistants and Research Assistants. The 4th Pay Commission retained the same pay scales. However, the pay structure was revised. The State D Government accordingly framed ROPA Rules, 1998.

7. The respondents herein who are the Research Assistants approached the Tribunal after a period of more than 12 years claiming revision of scale of pay and fixation of E benefits w.e.f 1st April, 1981 in scale no. 14. Their case essentially was based upon the judgment of the High Court in Writ Petition No. 2893W of 1982 granting scale no. 11 to Senior Laboratory Assistant which was the feeder post to the Research Assistant and therefore, the Research Assistants were entitled F to the proportionate hike in their scale of pay. The Tribunal disposed of the O.A filed by the respondents herein directing the Chief Engineer, Public Works (Roads) Directorate to treat the application filed before it along with its annexures as a representation and to dispose of the same by a reasoned G order.

8. Be that as it may, by order dated 31st August, 2001 the Chief Engineer extended the scale no. 11 to the respondents which was not acceptable to the State Government. The respondents once again approached the Administrative

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Tribunal in the year 2002 seeking appropriate directions as against the State to revise the pay scale in terms of the orders of the Chief Engineer. The Tribunal while rejecting the objections of the State that the Chief Engineer was not competent to modify or amend ROPA Rules as he did by his order, allowed the claim of the respondents.

9. The appellant State challenged the said order of the Tribunal in a writ petition filed before the High Court. The High Court vide impugned order dismissed the writ petition and confirmed the order of the Tribunal. Hence this appeal.

10. Shri Bhaskar P. Gupta, learned senior counsel submitted that the impugned order suffers from errors apparent on the face of the record. The High Court completely misdirected itself in deciding the matter in controversy by ignoring the well settled legal principles. It was submitted that Revision of Pay and Allowances Rules (ROPA) are framed by the Government of West Bengal by the directions of the Governor under Article 309 of the Constitution of India and are binding in their nature. The Rules are amended from time to time based upon the recommendations of successive Pay Commissions. The successive Pay Commissions have consistently recommended scale no. 9 for the Research Assistants to which category the respondents belong. The State cannot be compelled to act contrary to statutory rules framed by it in exercise of the powers under proviso to Article 309 of the Constitution. It was also submitted that the Pay Commission fixed pay scales after evaluation of duties of the concerned class of employees, educational qualifications, total pay structure, finances of the Government and various other factors. The State having accepted the recommendations made necessary amendments to the Rules and cannot be compelled to make isolated changes in one of the category inasmuch as such a change may have a cascading effect on the whole pay structure of its employees.

11. The learned counsel for the respondents strongly

A supported the impugned judgment. It was submitted that the Government having implemented the directions of the learned Single Judge in case of Senior Laboratory Assistants in the feeder category, cannot fix the pay scales of Research Assistants in the lower pay scale than that of the Senior B Laboratory Assistants.

12. Now we shall proceed to consider the submissions made by the counsel during the course of the hearing of this appeal.

C 13. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination D of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an E expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. [See: *Union of India V. Arun Jyoti Kundu*[1] *and State of Haryana & Anr. V. Haryana Civil Secretariat Personal Staff Assn.*[2]]. It is no doubt, the constitutional courts F clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post.

14. In the present case, the 3rd Pay Commission vide its G recommendations made in December, 1988 allowed only scale no. 6, to the Senior Laboratory Assistants and scale no. 9, for the Research Assistants. The Government having accepted the

1. (2007) 7 SCC 472.

H 2. (2002) 6 SCC 72

recommendations framed rules allowing scale no. 6 and 9, respectively to the Senior Laboratory Assistants and Research Assistants. The 4th Pay Commission retained same scales though the actual pay structure was revised. It appears from the record that in the State of West of Bengal pay scales are fixed under statutory rules. The constitutional validity of those rules under which the pay scales are fixed has not been challenged.

15. Be that as it may, the Chief Engineer while acting under the directions of the Tribunal passed the order declaring that the respondents are entitled to the relief as prayed for by them and accordingly granted scale no. 11 to the respondents. The Chief Engineer completely ignored the statutory rules under which the respondents are entitled to only scale no. 9. The Government did not implement the same. The respondents once again approached the Tribunal seeking appropriate directions for implementation of the order passed by the Chief Engineer.

16. The Tribunal vide its order dated 18th August, 2005 having allowed the OA of the Respondents held that they are entitled to fixation of pay as recommended by the Chief Engineer and State must give effect to the same. We fail to appreciate as to how the Administrative Tribunal could have directed the State to implement the recommendations of the Chief Engineer which run counter not only to the recommendations of the Pay Commission but also the ROPA Rules, 1998.

17. Being aggrieved by the order of the Tribunal the appellant-State of West Bengal filed a writ petition in the High Court of Calcutta and the same was dismissed by the High Court. The High Court while upholding the validity of the order passed by the Administrative Tribunal adopted a very peculiar reason which in our considered opinion is totally untenable and unsustainable in law. The High Court took the view that "*the Tribunal, in exercise of its power under Article 226 read with Section 19 of the Central Administrative Tribunals Act, has*

A *delegated rather conferred power upon" the Chief Engineer "to decide the issue and has done it with reason and the same remains unchallenged. As such, even if on fact or in law, both the two orders might or might not be correct one, once the same is passed and is not set aside by the appropriate forum* B *and the same is binding between the parties."*

18. According to the High Court the decision of the Chief Engineer is a quasi judicial one in its nature and the same has been passed in exercise of delegation of powers by the Tribunal to decide the dispute between the parties as regards C the fixation of pay scales. The High Court also held that the order of the Chief Engineer operates as res-judicata. We shall deal with this aspect of the matter a little later.

19. This court on more than one occasion decried such practices adopted by the tribunals directing applications filed D before them to be treated as representations before the executive authorities for their decision on merits. It is for the tribunals that are empowered to examine service disputes on merits. Such delegation of power apart from being illegal and unconstitutional amounts to avoidance of constitutional duties E and functions to decide such disputes which are exclusively entrusted to them by law. In pursuance of the power conferred upon it by Clause (1) of Article 323-A of the Constitution, Parliament enacted Administrative Tribunals Act, 1985. The Statement of Objects and Reasons of the Act, indicates that it F was being enacted to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other G authority within the territory of India. Chapter III deals with the jurisdiction, powers and authority of the Tribunals. Sections 14, 15 and 16 deal with the jurisdiction, powers and authority of the Central Administrative Tribunals, the State Administrative Tribunals and the Joint Administrative Tribunals respectively. H The Tribunals under the Act possess jurisdiction and powers

of every other court in the country except the jurisdiction of the Supreme Court, in respect of all service related matters. The Administrative Tribunals are conferred with the jurisdiction to hear matters where even the vires of statutory provisions are in question. Their function, however, in this regard is only supplementary inasmuch as such decisions are subject to scrutiny of the High Courts. Such is the extent of awesome powers and jurisdiction conferred upon the Tribunals. It is their bounden duty to adjudicate the matters coming before them but not delegate its jurisdiction to extra constitutional authorities. Such practice is fraught with undesirable consequences destroying the very purpose and scheme under which they are created and constituted to adjudicate disputes in specified areas. We hope and trust that the Tribunals in the country henceforth will not repeat such practice of sending the original applications filed before them to the Executive Authorities for their disposal.

20. The origin of this controversy lies and is traceable to the improper exercise of jurisdiction by the Tribunal remitting the original application made to it to the Chief Engineer for his decision. We are at a loss to appreciate as to how the tribunal could have issued such a direction virtually surrendering its jurisdiction to the Chief Engineer.

21. Now we shall revert to the question as to whether the High Court was justified in rejecting the writ petition filed by the appellant herein.

22. The High Court while rejecting the writ petition held that the Chief Engineer has discharged "a solemn duty undertaking the task of quasi-judicial duty has now reached its finality. Now, it is a question of implementation of the same". The High Court went to the extent of holding that the decision rendered by the Chief Engineer pursuant to the order of the Tribunal operates as res judicata if not issue estoppel. We are bewildered to note that the High Court advanced such an unstatable proposition. The Chief Engineer did not undertake any task of discharging of any quasi-judicial duty. The Administrative Tribunals by their

A orders cannot create and constitute any quasi-judicial authorities and entrust matters for their decision which otherwise are not within their jurisdiction.

23. Whether the Administrative Tribunal can delegate its power of judicial review and confer the same upon a Chief B Engineer? The Tribunals cannot travel beyond the power conferred on them and delegate their essential function and duty to decide service related disputes. Such delegation is ab initio void. It is too elementary to restate that no judicial tribunal can delegate its responsibilities except where it is authorized C to do so expressly. The power conferred upon the Administrative Tribunals under the provisions of the said Act flows from Article 323-A of the Constitution. Such power can never be delegated except under a valid law made by Parliament. The Tribunals by their own act cannot delegate the D power to decide any dispute which in law is required to be decided exclusively by such Tribunals.

24. For the aforesaid reasons, the order of the Administrative Tribunal directing the Chief Engineer, Public Works (Roads) Directorate to decide the dispute raised by the E respondents with regard to their pay scales is void ab initio and cannot be given effect to.

25. The next question that arises for our consideration is whether the decision of Chief Engineer operates as res-F judicata? The High Court fell into serious error in construing the orders passed by the Chief Engineer as a decision. There was no adjudication as such of any lis between the parties by the Chief Engineer. The Chief Engineer in law was not entitled to decide any dispute and much less with regard to any dispute and complaint with respect to conditions of service of any G persons appointed to public posts controlled by the State Government. The Chief Engineer was not acting in any judicial or quasi-judicial capacity. Administrative decisions by the executive authorities do not bind the courts and much less operate as res judciata. In the circumstances, the view taken H by the Chief Engineer that the respondents were entitled to

scale No.11, cannot operate as res judicata.

26. Yet another question that arises for our consideration is whether a writ of mandamus lies compelling the State to act contrary to law? The State Government having accepted the recommendations of the successive Pay Commissions gave effect to those recommendations by framing statutory rules being ROPA Rules and scales of the employees have been accordingly fixed. The respondents did not challenge the vires of the said Rules under which they were entitled to only a particular scale of pay. The State Government is under obligation to follow the statutory rules and give only such pay scales as are prescribed under the statutory provisions. Neither the Government can act contrary to the rules nor the Court can direct the Government to act contrary to rules. No Mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law. In the instant case, the impugned order of the High Court virtually compelled the State to give pay scales contrary to statutory rules under which pay scales of the employees are fixed. The decision of the Chief Engineer being contrary to ROPA Rules, 1998, cannot be enforced even if such a decision was taken under the directions of the Administrative Tribunal. The orders of the Tribunal as well as of the High Court suffer from incurable infirmities and are liable to be set aside.

27. For the reasons above, the impugned judgment of the High Court as well as the judgment of the Tribunal is set aside. However, the amounts if any paid to the respondents pursuant to the impugned orders shall not be recovered.

28. The appeal is accordingly allowed without any order as to costs.

N.J. Appeal allowed.