PETITIONER:
SUPREME COURT EMPLOYEES WELFAREASSOCIATION ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ANR. ETC. ETC.

DATE OF JUDGMENT24/07/1989

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
THOMMEN, T.K. (J)

CITATION:
1990 AIR 334 1989 SCR (3) 488
1989 SCC (4) 187 JT 1989 (3) 188
1989 SCALE (2)107
CITATOR INFO :
R 1992 SC1546 (12)

ACT:
Constitution of India--Articles 14, 16, 32, 136, 141 and 146--Special Leave Petition dismissed simpliciter--No declaration of law-When does a decision of Court operate as res judicata--Conditions of Service of Officers' and servants of Supreme Court--Primarily the responsibility of Parliaments--But if Parliament does not lay down the conditions of service--Chief Justice or any other person authorised by him can do so--Service Rules are liable to be struck down, it unjust, oppressive, outrageous or directed to an unauthorised end.

Article 226--Writ--Dismissal of--In limine or on ground of laches or availability of alternative remedy---Dismissal--Would not operate as res-judicata.

Supreme Court Officers' and Servants (Conditions of Service and Rules--l961--Rules amended upto December 1985--Rules not reflect the enhanced pay Scales adopted on the basis of interim Orders of the Supreme Court or pay scales recommended by Pay Commission Supreme Court employees--Revision of pay scales--Reference to Pay Commission whether valid or incompetent.

HEADNOTE:
These writ Petitions have been filed by the employees of the Supreme Court through their Welfare Associations praying, in substance, for enhancement of their present pay scales. Writ Petition No. 801 of 1986 has been filed by the Welfare Association representing class II and class 111 employees whereas Writ Petition No. 1201/86 has been filed by Welfare Association representing class IV employees and the third Writ Petition has been filed by retired employees.

In order to deal with and make recommendations in regard to various representations highlighting grievances regarding service conditions made by the staff. of the Supreme Court, the Chief Justice of India constituted a committee consisting of five Judges of the Supreme Court. The committee was also asked to make recommendations whether the pay scales of different categories of the staff warranted

upward revision. The Committee after consideration of the issues raised, made several recommendations but as regards the pay scale revision, it recommended that the matter be referred to the Third Pay Commission, then sitting. However in the meanwhile, the High Court of Delhi, allowed various Writ Petitions filed before it by the members of the staff of Delhi High Court belonging to different categories. The result of the Orders passed by the Delhi High Court was. that the staff of that High Court started drawing more pay in some categories of class IV, class Il & III employees, than the employees of the Supreme Court similarly placed.

Taking cue from the orders of the Delhi High Court, the petitioners have filed these petitions invoking in aid the principle of "Equal pay for equal work". It is urged by the petitioners that the duties performed by the staff of the Supreme Court are similar rather more responsible, arduous and onerous to those performed by the members of the staff of Delhi High Court, hence they are entitled to pay like similar if not enhanced pay scales. It is urged that Special Leave Petition filed by the Government before this Court against the orders of the Delhi High Court having been dismissed by this Court, the order of Delhi High Court has became final.

In Writ Petition No. 801 of 1986, by an interim order dated 25.7.86 this Court directed that the officers and members of the staff of the registry should get the same pay and allowances which were then being enjoyed by the officers and the members of the staff of the Delhi High Court belonging to the same category with effect from the date from which such scales of pay has been allowed to the officers and the members of the staff of the Delhi High Court. The Court also by the same order directed Respondent Nos. 1 and 2 to take necessary steps to refer the question of revision of pay scales to the Fourth Pay Commission as suggested by the five Judges Committee.

Some other interim orders were also passed giving higher pay to certain categories of employees, as was done by Delhi High Court.

The Fourth Pay Commission to which the question of revision of pay scales of the staff of Supreme Court was referred did not grant any enhancement. It did not even grant the benefit of higher pay given under the interim orders of this Court. After the report of Fourth Pay Commission, the petitions have been listed for final hearing.

Disposing of the Writ Petitions, this Court

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HELD: Per M. M. Dutt, J.

When no reason is given, but a Special Leave Petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution. [505B]

Indian Oil Corporation Ltd. v. State of Bihar, [1986] 4 SCC 146; Union of India v. All India Services Pensioner Association, AIR 1988 SC 501.

A decision on an abstract question of law unrelated to facts which give rise to a right cannot operate as res-judicata. Nor, also can a decision on the question of jurisdiction be res-judicata in a subsequent suit or proceeding but, if the question of law is related to the fact in issue, an erroneous decision on such a question of law may operate as res-judicata between the parties in a subsequent, suit or proceeding, if the cause of action is the same. [506G-H; 507A-B]

Mathura.. Prasad Rajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, [1970] 3 SCR 830 and Thakore Sobhag Singh v. Thakur Jai

Singh, [1968] 2 SCR 848.

The doctrine of res-judicata is a universal doctrine laying down the finality of litigation between the parties. When a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Article 14 of the Constitution. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such decision on the ground that such decision violates the equality clause under the Constitution. [508H; 509A-B]

From Article 146(2) it is apparent that it is primarily the responsibility of Parliament to lay down the conditions of service of the officers and servants of the Supreme Court, but so long as Parliament does not lay down such conditions of service. the Chief Justice of India or some other Judge or officer of the Court authorised by the Chief Justice of India is empowered to make rules for the purpose. [516B-C]

The conditions of service that may be prescribed by the rules framed by the Chief Justice of India under Article 146(2) will also necessarily include salary. allowances, leave and pensions of the officers and servants of the Supreme Court. [516D]

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The proviso to Article 146(2) puts a restriction on the power of the Chief Justice of India by providing that the rules made under Article 146(2) shall. so far as they. relate to salaries, allowances, leave or pensions, require the approval of the President of India. [516E]

The rules framed by the Chief Justice of India though it is a piece of subordinate legislation, it is not a full-fledged legislative act requiring assent of the President of India. [517C]

Going strictly by Article 146(2) of the Constitution, the question of any reference to the Pay Commission does not arise. The Chief Justice of India has to frame rules with the aid and assistance of his own officers and other Judges. The Chief Justice of India may appoint a Committee of Judges or a Committee of experts for the purpose of assisting him in framing the rules relating to the conditions of service of the employees of the Supreme Court. Although there is no such provision in Article 146(2), but that is implied and it may be said that the reference to the Fourth Pay Commission was made so that the report or the recommendations of the Fourth Pay Commission relating to the revision of the pay-scales of the Supreme Court employees will be of some assistance to the Chief Justice of India to frame rules. [523D-F]

What should go to the President of India for his approval under the proviso to Article 146(2) is not the report or the recommendation of the Fourth Pay Commission, but the rules framed by the Chief Justice of India. In considering the rules framed by the Chief Justice of India relating to salaries, allowances, leave and pension, it will not be the concern of the President of India how and in what manner the Chief Justice of India has laid down the rules. [523F-G]

All this can be done by the Chief Justice of India or by some other Judge or officer of this Court authorised by the Chief Justice of India. The Chief Justice of India may appoint a Committee of Judges to submit a report relating to all relevant matters and, thereafter, the Chief Justice of India may frame rules after taking into consideration the report of the Committee. It will be absolutely in the dis-

cretion of the Chief Justice of India or his nominee as to how and in what manner the rules will be framed. [529D-E]

Per Thommen, J.

The regulation of the conditions of service of the Supreme Court

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employees is the constitutional responsibility and power of the Chief justice of India, subject. of course, to the two conditions postulated in clause (2) of Article 146. [538E]

Rules were made in this regard by the Chief Justice of India with the approval of the President of India and they are contained in Part II of the Supreme Court Officers and Servants' (Conditions of Service and Conduct) Rules, 1961 as amended upto 16th December, 1985. No amendment of these Rules has been made subsequent to 1985 and consequently the Rules do not reflect the enhanced pay scales adopted on the basis of the interim Orders of this Court or the pay scales recommended by the Pay Commission. [538C-D]

Rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end/or violative of the general principles of the law of the land or so vague that it cannot be predicated with certainty as to what is prohibited by them or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith. [542F]

Union of India & Ant. v. Cynamide India Ltd. & Anr., [1987] 2 SCC 720, 734; S.I. Syndicate Ltd. v. Union of India, AIR (1975) SC 460; P.C.S. Mills v. Union of India, AIR (1973) SC 537; Shree Meenakshi Mills' v. Union of India, AIR (1974) SC 366; E.P. Royappa v. State of Tamil Nadu. AIR (1974) SC 555; Maneka Gandhi v. Union of India, AIR (1978) SC 597; Ajay Hasia v. Khalid Mujib, AIR (1981) SC 485; D.S. Nakara v. Union of India, AIR (1983) SC 126; Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1947] 2 All. E.R. 680; Westminster Corporation v. London and North Western Railway, [1905] AC 426. 430; Barium Chemicals Ltd. v. Company Law Board, AIR (1967) SC 295. referred to.

Until the rules are made by the Chief Justice (or by a Judge or Officer of the Court authorised by him), the question of approval or disapproval by the President does not arise. In making the rules, the Chief Justice would no doubt take into account the recommendations of the Pay Commission or of any other body of experts he may have consulted. He will also take into account the objections raised by the Government to the suggestions made by the Registrar General who, of course. acted as an agent of the Chief Justice. But the refusal of the Government to accede to the proposals of the Registrar General is not a refusal of the President under Article 146(2), 1or such refusal or approval can arise only upon submission to him to duly framed rules. [546G-H; 547A-B]

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The approval of the President is not a matter of mere formality. It would, of course, be wrong to say that in no case can the President, which means the Government, refuse to accord approval. However. once the rules are duly framed by so high a constitutional dignitary as the Chief Justice of India, it will only be in the truly exceptional cases that the President would withhold assent. [547D-E]

Kirit Kumar Chaman Lal Kundaliya v. State of Gujarat, [1981] 2 SCR 718; State of Orissa v. Durga Charan Das, [1966] 2 SCR 907; G.V. Ramanaiah v. The Superintendent of Central Jail. Rajahmundry. [1974] 1 SCR 852; Chandra Bansi Singh v. State of Bihar, [1985] 1 SCR 579; Waman Rao v.

Union of India, [1981] 2 SCR 1; Minor P. Rajendran v. State of Madras, [1968] 2 SCR 786; State of M.P.v. Ram Raghubir Prasad Agarwal, [1979] 3 SCR 41; Roshanlal Kuthiala v. R.B. Mohan Singh Oberai. [1975] 2 SCR 491; Tamil Nadu Education Department Ministerial & General Subordinate Service Association v. State of Tamil Nadu, [1980] 1 SCR 1026; Kishori Mohanlal Bakshi v. Union of India, AIR 1962 SC 1139; State of Punjab v. Joginder Singh. [1963] Supp. 2 SCR 169; Randhir Singh v. Union of India, [1982] 1 SCC 618; Dhirendra Chamoli v. State of U.P., [1986] 1 SCC 687; State of Andhra Pradesh v.G. Sreenivasa Rao, [1989] 1 .IT 615; V. Markendeya v. State of Andhra Pradesh, [1989] 2 JT 108; State of U.P. v. J.P. Chaurasia, AIR 1989 SC 19; Umesh Chandra Gupta v. Oil & Natural Gas Commission, AIR 1989 SC 29; Tarsera Lal Gautam v. State Bank of Patiala, AIR 1989 SC 30;Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh, [1972] 1 SCR 940; State of Andhra Pradesh v.T. Gopalakrishnan Murthi, AIR 1976 SC 123; A.K. Roy v. Union of India,, [1982] 2 SCR 272; Gurumoorthy v. Accountant General Assam & Nagaland, [1971] Suppl. SCR 420; K. Nagaraj & Ors. v. State of A.P. & Anr., [1985] 1 SCC 523, 548; R.K. Garg v. Union of India, [1981] 4 SCC 675, 687; Aeltemesh Rein, Advocate Supreme Court of India v. Union of India & Ors., [1988] 4 SCC 54; State of U. P. & Ors. v. Renusagar Power Co. & Ors., [1988] 4 SCC 59, 104; Kruse v. Johnson, [1989] 2 Q.B. 91; Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1948] 1 K.B. 223; Mixnam Properties Ltd. v. Chertsey U.D.C., [1965] AC 735; Commissioners of Customs & Excise v. Cure & Deeley Ltd., [1962] 1 Q.B. 340; Mceldowney v. Forde, [1971] AC 632; Carltona Ltd., v. Commissioners of Works & Ors., [1943] 2 All E.R. 560, 564; Point of Ayr. Collieries Ltd. v. Lloyd George, [1943] 2 All E.R. 546; Scott v. Glasgow Corporation. [1899] AC 47,492; Robert Baird L.D. & Ors. v. City of Glasgow, [1936] AC 32.42; Manhattan General Equipment Co. v. Commissioner. [1935] 297 US 129, 134; Yates (Arthur) &
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Co. Pty Ltd., v. Vegetable Seeds Committee, [1945] 46--72 CLR 37; Bailey v. Conole, [1931] 34 W.A.L.R. 18; Boyd Builders Ltd. v. City of Ottawa, [1964] 45 D.L.R. (2nd) 211; Re Burns &. Township of Haldimand, [1966] 52 DLR (2d) 101 and Lynch v. Tilden Produce Co., 265 U.S. 315, 320-322, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 801 of 1986 & Etc. Etc.

(Under Article 32 of the Constitution of India)

K. Parasaran, Attorney General, B. Dutta, Additional Solicitor General, D.D. Thakur, G.L. Sanghi (N.P.) M.S. Gujral, Anil Dev Singh, E.C. Agrawala, V.K. Pandian, Atul Sharma, A.K. Sanghi, N.D. Garg, Pankaj Kalra, H.K. Puri, S.K. Bisaria, R.P. Gupta, Ms. A. Subhashini, R. Venkataramani, S.K. Sinha, A.D. Malhotra, P.P. Rao and Sushil Kumar Jain for the appearing parties.

The Judgment of the Court was delivered by

DUTT, J. These Writ Petitions and Civil Miscellaneous Petitions have been filed by the employees of the Supreme Court praying for their pay hike. Two events, which will be stated presently, seem to have inspired the employees of the Supreme Court to approach the Court by filing Writ Petitions. The first of the two events is the report of a Committee of Five Judges of this Court consisting of Mr. Jus-

tice P.N. Bhagwati (as he then was) as the Chairman, Mr. Justice V.D. Tulzapurkar, Mr. Justice D.A. Desai, Mr. Justice R.S. Pathak (as he then was) and Mr. Justice S. Murtaza Fazal Ali. The second event, which is the most important one, is the judgments of the Delhi High Court passed in writ proceedings instituted by its employees.

The Five-Judge Committee in its report stated, inter alia, that no attempt had been made to provide a separate and distinct identity to the ministerial staff belonging to the Registry of the Supreme Court. According to the Committee, the borrowed designations without any attempt at giving a distinct and independent identity to the ministerial staff in the Registry of the Supreme Court led to invidious comparison. The committee observed that the salary scale applicable to various categories to staff in the Registry would show that at least since the Second Pay Commission appointed by the Central Government for Central Government servants, the pay-scales devised by the Pay
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Commission were practically bodily adopted by the Chief Justice of India for comparable categories in the Supreme Court. This was repeated after the recommendations of the Third Pay Commission were published and accepted by the Central Government. Further, it is observed that apparently with a view to avoiding the arduous task of devising a fair pay-structure of various categories of staff in the Registry, this easy course, both facile and superficial, was adopted which led to the inevitable result of linking the pay-structure for the various categories of staff in the Registry with the pay-structure in the Central Services for comparable posts and the comparison was not functional but according to the designations. No attempt was made to really ascertain the nature of work of an employee in each category of staff and determine the pay-structure and then after framing proper rules invite the President of India to approve the rules under Article 146 of the Constitution. The Committee pointed out that the slightest attempt had not been made to compare the workload, skill, educational qualifications, responsibilities and duties of various categories of posts in the Registry and that since the days of Rajadhyakhsa Commission the work had become so complex and the work of even a clerk in the Supreme Court had such a distinct identity that it would be necessary not only to fix the minimum remuneration keeping in view the principles for determination of minimum remuneration but also to add to it the functional evaluation of the post. This, according to the Committee, required a very comprehensive investigation and the Committee was ill-equipped to do it. The Committee, inter alia, recommended that the Chief Justice of India might appoint a Committee of 'experts to devise a fair pay-structure for the staff of the Supreme Court keeping in view the principles of pay determination and on the recommendations of the Committee, the Chief Justice of India might frame rules under Article 146 of the Constitution and submit them for the approval of the President of India. The Committee also took notice of the fact that the Fourth Central Pay Commission appointed by the Central Government and presided over by a former Judge of the Supreme Court, Mr. Justice P.N. Singhal, was then examining the question of pay-scales and other matters referred to it in respect of the stuff of the Central Government. According to the Committee, it was an ideal situation that a former Judge of this Court was heading the Panel and he was ideally situated for examining the question of independent pay-structure for the staff in the Registry of the Supreme Court. The Committee recommended

that the Chief Justice of India with the concurrence of the Central Government might refer the case of the Supreme Court staff to the Fourth Pay Panel presided over by Mr. Justice P.N. Singhal.

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Several Writ Petitions were filed before the Delhi High Court by various categories of its employees, namely, the Private Secretaries and Readers to the Judges, Superintendents, Senior Stenographers, Assistants, Junior Readers, Junior Stenographers, Joint Registrars, Assistant Registrars, Deputy Registrars and certain categories of Class IV employees. In all these Writ Petitions, the Delhi High Court revised their respective pay-scales. With regard to certain categories of Class III and Class IV employees, the Delhi High Court revised their pay-scales also and granted them Punjab pay-scales and Central Dearness Allowance, the details of which are given below:

SI. No.	Date of Judgment	No. of W.P.	Post	Revised scale of pay Rs.
1.	3.2.86 & 23.5.86	W.P. No. 1376/84	Restorer	400-600
2.	11.11.86	W.P. No. 1865/86	L.D.Cs.	400-600
3.	4.12.86	W.P. No. 2236/86	Class IV Sweepers Ushers etc.	300-430
4.	8.1.87	W.P. No. 2318/86	Gestetner Operator	400-600
5.	6.2.87	W.P. 2402/87	Staff Car Drivers	400-600
6.	20.8.87	W.P. No. 1656/87	Despatch Van Drivers	400-600

Several Special Leave Petitions were filed on behalf of the Government to this Court, but all these Special Leave Petitions were summarily rejected by this Court.

The Supreme Court employees have approached this Court by filing the instant Writ Petitions and the Civil Miscellaneous Petitions for upward revision of their pay-scales as were allowed in the case of the employees working in the Delhi High Court. According to the petitioners, the duties and the job assignments in respect of the staff of the Supreme Court being more onerous and arduous compared to the work done by the staff of the Delhi High Court, the petitioners

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claimed that they are entitled to equal pay for equal work and. therefore, they are approaching this Court for redressal of their grievances by means of the present Writ Petitions.

The Writ Petition No. 801 of 1986 has been filed by the Supreme Court Employees Welfare Association seeking higher pay-scales parity in the pay-scales with Delhi High Court employees in the corresponding categories. On July 25, 1986, this Court passed an interim order which provides as follows:--

> "By way of an interim arrangement, pending final disposal of the Writ Petition, we direct that the Officers and staff of the Supreme Court Registry may be paid same pay scales and allowances which are at present being enjoyed by the Officers and the members of the staff of the High Court of Delhi belonging to the same category with effect from the date from which such scales of pay have been allowed to the Officers and the members of the staff of

> the High Court of Delhi, if and in so far as they are higher or better than what the Officers and the members of the Registry of the Supreme Court are getting, as proposed by Respondent No. 2. The Statement showing the posts in the Registry of the Supreme Court and the corresponding posts in the Delhi High Court, which is annexed to the proposal made by Respondent No. 2 will be annexed to this order also. Learned Addl. Solicitor General submits that the Petition for interim directions may be adjourned for a period of four weeks since the Government is actively considering the matter and to his information the Government is inclined to agree with the proposals made by the second respondent. We do not think, it is necessary to postpone the interim directions.
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> The question of interim directions with regard to the categories of the Officers and the members of the staff not covered by the Delhi High Court scales of pay will be considered separately after two weeks. Mr. S.N. Kacker, Counsel for the petitioner, Mr. P.P. Rao for respondent No. 2, Supreme Court of India, and the learned Addl. Solicitor General are requested to assist us to arrive at a suitable formula in regard to them.
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> The Writ Petition is adjourned for four weeks. In the
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> meanwhile, respondent Nos. 1 & 2 may take steps to refer the question of revision of pay scales to the Fourth Pay Commission as suggested by the Committee consisting of Hon'ble Mr. Justice V.D. Tulzapurkar, Hon'ble Mr. Justice D.A. Desai, Hon'ble Mr. Justice R.S. Pathak and Hon'ble Mr. Justice S. Murtaza Fazal Ali."

It appears from the interim order extracted above that this Court directed that the officers and the members of the staff of the Registry might get the same pay and allowances which were then being enjoyed by the officers and the members of the staff of the Delhi High Court belonging to the same category with effect from the date from which such scales of pay had been allowed to the officers and the members of the staff of the Delhi High Court. This Court also by the same interim order directed the respondents Nos. 1 and 2 to take steps to refer the question of revision of pay-scales to the Fourth Pay Commission as suggested by the Five-Judge Committee.

Another interim order dated August 14, 1986 was passed by this Court in Writ Petition No. 801 of 1986. The said interim order reads as follows:

> "Those employees who are not covered by our earlier order will be paid by way of an interim arrangement, a sum equal to 10% of their basic pay, subject to a minimum of Rs.50. The order will take effect from 1.1.1986.
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> The matter was left to us by counsel for all the parties and we have made this interim arrangement.
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> This interim order will be subject to the result of final order in the writ petition.

> The writ petition is adjourned and will be listed for further hearing in usual course."

The said interim order dated August 14, 1986 was, however, modified by a subsequent interim order dated November 14, 1986. The modification was to the effect that the 10 per cent interim relief, subject to a minimum of Rs.50 per month, which was granted with effect from January 1, 1986, was directed to be granted with effect from January 1, 1978, in respect of Class IV staff. Some other interim orders were also passed by this Court. This Court passed interim orders
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giving higher pay-scales to certain categories of employees holding Group B, C and D posts. The Court also ordered that certain Group C posts, that is to say, Junior Clerks, Senior Library Attendants, etc. would be given the same pay-scales of Rs.400-600 from 1.1.1978 as given to Lower Division Clerks in the Delhi High Court. The Court also ordered that Class IV employees would be given the same payscale of Rs.300-430 from 1.1.1978 as given to Class IV employees of the Delhi High Court. The scales of pay of Rs.400-600 and Rs.300-430 were Punjab pay-scales. All these employees, who were given the Punjab pay-scales, were also granted the Central D.A., which brought them at par with the Delhi High Court employees.

Sub-clause (1) of clause 2 of the terms of reference of the Fourth Central Pay Commission provides as under:

> "2(1). To examine the present structure of emoluments and conditions of service, taking into account the total packet of benefits, including death-cum-retirement benefits, available to the following categories of Government employees and to suggest changes which may be desirable and feasible:
> (i) Central Government employees--industrial and nonindustrial.
> (ii) Personnel belonging to the All India Services.
> (iii) Employees of the Union Territories."

Pursuant to the interim order of the Supreme Court dated July 25, 1986, the Ministry of Finance, Department of Expenditure,published a Resolution dated December 24, 1986 in the Gazette of India, Extraordinary, Part I--Section I. By the said Resolution, the terms of reference were amended by the addition of a new sub-clause (iv) below paragraph 2(1)(iii) which is as follows:

> "(iv) Officers and employees of the Supreme Court of India."

It thus appears that although initially the cases of the employees of the Supreme Court were not referred to the Fourth Pay Commission, the Government, however, in obedience to the order of this Court referred their cases by the amendment of the terms of reference.
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After the reference of the cases of the Supreme Court employees to the Fourth Pay Commission, the Registry of this Court sent to the Fourth Pay Commission a copy of the report of the Five-Judge Committee and also copies of all the interim orders passed by this Court. A team of officers of the Commission visited various sections of the Registry of the Supreme Court and spent a number of days for a proper understanding of the working of the various categories of the employees. The FoUrth Pay Commission also visited the Registry to familiarize itself with the nature of their work. The Commission requested the Registrar to bring to the

notice of the Associations as also individual employees of the Supreme Court to submit their Memoranda to the Commission. The Commission had also some discussions with Hon'ble Mr. Justice Y.V. Chandrachud and Hon'ble Mr. Justice P.N. Bhagwati, two former Chief Justices of India, and also with Hon'ble Mr. Justice D.A. Desai, Chairman Law Commission, on various aspects of the pay-structure etc. of the employees of the Supreme Court. The Commission had also met Hon'ble Mr. Justice R.S. Pathak (as he then was) in his chamber on May 18, 1987.

The Fourth Pay Commission submitted its recommendations with regard to the Supreme Court employees. The recommendations are contained in Part III of its report. It is not necessary to state in detail as to the revision of pay-scales made by the Fourth Pay Commission with regard to the employees of the Supreme Court. In a nut-shell, it may be stated that the Fourth Pay Commission reduced the existing 153 pay-scales to 36 pay-scales. The Commission, however, did not revise the pay-scales of the employees of the Supreme Court on the basis of the pay˜scales granted to them by the interim orders passed by this Court in the Writ Petitions following the payscales as revised by the Delhi High Court by its judgments passed in the Writ Petitions filed by its employees.

A copy of the Fourth Pay Commission's report relating to the pay-structure of the officers and employees of the Supreme Court was first sent to the Ministry of Finance, Government of India. The Ministry of Finance forwarded the said copy to the Chief Justice of India. After the receipt of the said copy of the report of the Fourth Pay Commission with regard to the Supreme Court employees, the Registrar General of this Court, by his letter dated July 22, 1987 addressed to the Secretary, Government of India, Ministry of Finance, Department of Expenditure, New Delhi, stated inter alia that if the pay-scales as proposed by the Fourth Pay Commission were accepted, and implemented, it would result in a number of anomalies and the

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Supreme Court would encounter some difficulties in implementing the same. The Registrar General was of the opinion that the Pay Commission should not have made any such recommendation which had the effect of reducing the pay-scales than what had been given by this Court by its various interim orders dated 25.7.1986, 15.1.1987, 19.2. 1987, etc. to different categories of employees. Further, it was stated by him that the Pay Commission should not also have made recommendation which had the effect of taking away the benefit accrued to other categories of employees by the Court's order dated August 14, 1986. It is not necessary for us to refer to the anomalies as pointed out by the Registrar General in his said letter. Suffice, it to say that the Registrar General dealt with the case of each category of employees affected by the report of the Fourth Pay Commission and stressed that while accepting the pay-scales proposed by the Fourth Pay Commission for the officers and employees of the Supreme Court, the Ministry must give full consideration to the anomalies and difficulties pointed out and the suggestions made in his letter and representations enclosed therewith and intimate its decision to the Registry at an early date.

The Joint Secretary to the Government of India, Ministry of Finance, by her letter dated November 23, 1987 addressed to the Registrar General, communicated to him the sanction of the President of India to the revised pay-scales in respect of posts as shown in column 4 of the annexure to the

said letter. In other words, the scales of pay as revised and/or recommended by the Fourth Pay Commission in respect of the posts mentioned in the annexure to the said letter, were accepted by the Government. Further, it was stated that such scales of pay would have effect from January 1, 1986. In the last paragraph of the said letter, it has been stated that the revision of pay-scales for the remaining posts in the Supreme Court Registry, mentioned in Part III of the Report of the Fourth Central Pay Commission, is separately under consideration of the Government. The pay-scales of Junior Clerks and Class IV employees of the Supreme Court, which have not been mentioned in the annexure, are therefore under consideration of the Government. Nothing has been produced before us to show that the Government has separately considered the revision of pay-scales of the Junior Clerks and Class IV employees of the Supreme Court. All the parties including the learned Attorney General, however, proceeded on the assumption that the Government has not sanctioned the pay-scales of the Junior Clerks and the Class IV employees as granted to them by this Court by the interim orders and/or the Government has accepted the pay-scales as recommended
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by the Fourth Pay Commission. Indeed, the learned Attorney General vehemently opposed the granting of Punjab pay-scales and also the Central Government D.A. to the Junior Clerks and the Class IV employees. In view of the submissions made on behalf of the Government, it is clear that although it is stated in the said letter dated November 23, 1987 that the revision of pay-scales of the Junior Clerks and the Class IV employees of the Supreme Court is under consideration of the Government and although no communication has been made to this Court as to the result of such consideration, yet the Government has made up its mind not to allow the pay-scales given to them by the interim order of this Court. Be that as it may, we may now proceed to consider the contentions of the respective parties in these proceedings.

Mr. Thakur, learned Counsel appearing in Writ Petition No. 801 of 1986 on behalf of the Supreme Court Employees' Welfare Association, has made his submissions in two parts. The first part relates to the Junior Clerks and the Class IV employees of the Supreme Court and the second part relates to the other employees of the Supreme Court, who are members of the Supreme Court Employees' Welfare Association. It may be stated here that the Class IV employees have filed a separate Writ Petition, that is, the Writ Petition No. 1201 of 1986.

We shall first of all deal with the submissions of Mr. Thakur with regard to the Junior Clerks and Class IV employees of the Supreme Court. The learned Counsel has placed much reliance upon the judgments of the Delhi High Court in revising the pay-scales of certain categories of Class III and Class IV employees, as stated hereinbefore, granting the pay-scales of Rs.400-600 and Rs.300-430 respectively to L.D.Cs. and Class IV employees. It is submitted that the Delhi High Court was fully empowered under Article 226 of the Constitution to issue appropriate writs, if in its opinion the recommendations of the Third Pay Commission as adopted by the Government of India and as reflected in the revised pay Rules of 1973, in so far as these Rules related to the staff of the Delhi High Court, amounted to discrimination and consequently violated Article 14 of the Constitution of India. Counsel submits that the Special Leave Petitions filed by the Government against the judgments of the Delhi High Court having been dismissed by this Court, the

Delhi High Court judgment revising the pay-scaleS of its employees including the pay-scales of the L.D.Cs. annd Class IV employees have attained finality and operate as res judicata between the parties, namely, the employees of the Delhi High Court and the Union of India. It is submitted that this Court was fully
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justified in passing the interim orders on the basis of the judgments of the Delhi High Court which had become final and conclusive between the parties and binding on them, and that the pay-scales granted by this Court by the interim orders were consonant to justice and equity. It is urged that it was not open to the Fourth Pay Commission while revising the pay-scales of the staff of the Supreme Court to take a pay-scale lower than the one prescribed by this Court by the interim orders, as the basis for revision, as that would amount to negativing and nutralising the effect of the orders passed by this Court. It is submitted by the learned Counsel that the recommendations of the Fourth Pay Commission, if allowed to prevail, would result in the reduction of the salaries of the Junior Clerks and Class IV employees to a level lower than what they were receiving on the date of the revision and it would be highly discriminatory and violative of Article 14 of the Constitution.

On the other hand, the learned Attorney General appearing on behalf of the Union of India, in the first instance, points out that the Delhi High Court judgments, particularly the judgment in C.W.P. No. 1376 of 1984, Shri Kamalanand v. Union of India and others, are based on the doctrine of 'equal pay for equal work' as enshrined in Article 39(d) of the Constitution of India. The learned Attorney General has made elaborate submissions as to the applicability of the said doctrine to the cases of the employees of the Delhi High Court and also of the Supreme Court. We shall, of course, consider the submissions of the learned Attorney General in regard to the doctrine of 'equal pay for equal work', but before we do that we may consider his other submissions.

It is urged by him that the judgments of the Delhi High Court are absolutely erroneous and that, in any event, they are neither final nor do they operate as res judicata, between the parties as contended on behalf of the petitioners. It is pointed out by him that the scales of pay of Rs.400-600 and Rs.300-430 are Punjab pay-scales. Punjab payscales were higher than the Central pay-scales because the Punjab pay-scales were linked to higher Consumer Price Index (for short 'CPI') 320 as on 1.1.1978 instead of CPI 200. On the other hand, the Central pay-scales were linked to CPI 200 as on 1.1.1973. The Punjab High Court employees were getting higher pay-scales because the Dearness Allowance up to 1.1.1978 had been merged in the pay-scales which related to CPI 320 as on 1.1.1978 instead of CPI 200. The Delhi High Court employees were given the higher Punjab scales of pay linked to CPI 320 and also got the benefit of the difference between
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CPI 200 and CPI 320 according to the Central Government D.A. formula which came into effect from 1.1.1973. The Punjab D.A. formula is correspondingly lower than the Central D.A. which is clear from the letter dated April 16, 1980 of the Government of Punjab. It is submitted by the learned Attorney General that the employees of the High Court as also of the Supreme Court cannot have the best of both the worlds, that is to say, they cannot get both the Punjab pay-scales merging into it the Dearness Allowance between CPI 200 and

CPI 320 and, at the same time, the Central Government D.A. Accordingly, it is submitted that the Delhi High Court judgments are absolutely erroneous and should not be relied upon.

The question whether the High Court judgments relating to the L.D.Cs. and the Class IV employees are right or wrong. may not be necessary to be considered. But, the relevant question that requires consideration is whether the said judgments of the Delhi High court have become final and conclusive and binding on the parties. In case it is held that the judgments have not attained finality and do not operate as res judicata between the parties, the question as to the correctness of the judgments may be considered. Let us, therefore, advert to the contention of Mr. Thakur that the Delhi High Court judgments have become final and conclusive between the parties and operate as res judicata.

It has been already noticed that the Special Leave Petitions filed on behalf of the Union of India against the said judgments of the Delhi High Court were summarily dismissed by this Court. It is now a well settled principle of law that when a Special Leave Petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney General. In Indian Oil Corporation Ltd. v. State of Bihar, [1986] 4 SCC 146 it has been held by this Court that the dismissal of a Special Leave Petition in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the Special Leave Petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a Special Leave Petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where Special Leave Petition should be granted. In Union of India v. All India Services Pensioners Association, AIR 1988 SC 50 1 this Court has given reasons for dismissing the Special Leave
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Petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It, therefore, follows that when no reason is given, but a Special Leave Petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 14 1 of the Constitution.

It is true that by the dismissal of a Special Leave Petition in limine, this Court does not lay down any law under Article 141 of the Constitution, but the question is whether after the dismissal of the Special Leave Petition the judgment against which the Special Leave Petition was filed becomes final and conclusive so as to operate as res judicata between the parties thereto. In repelling the contention of the petitioners that the Delhi High Court judgments relating to the L.D. Cs. and Class IV employees operate as res judicata between the parties, the learned Attorney General has strongly relied upon the decision of this Court in Mathura Prasad Rajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, [1970] 3 SCR 830. In that case, this Court observed as follows :--

> "The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in

issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the foundation of the right and the relevant law applicable to the determination of the transactions which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision of law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the

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previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law."

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"It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in s. 11 Code of Civil Procedure means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something

which is illegal, by resort to the rule or res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, 'for a rule of procedure cannot supersede the law of the land."

Thus, a decision on an abstract question of law unrelated to facts which give rise to a right, cannot operate as res judicata. Nor also can a decision on the question of jurisdiction be res judicata in a subsequent suit or proceeding. But, if the question of law is related to the fact in issue, an erroneous decision on such a question of law may operate as res judicata between the parties in a subsequent suit or proceeding, if the cause of action is the same. The Delhi High Court judgments do not decide any abstract question of law and there is also no question of
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jurisdiction involved. Assuming that the question of jurisdiction involved. Assuming that the judgments of the Delhi High Court are erroneous, such judgments being on questions of fact would still operate as res judicata between the same parties in a subsequent suit or proceeding over the same cause of action.

In Kirit Kumar Chaman Lal Kundaliya v. State of Gujarat, [1981] 2 SCR 7 18 it has been laid down by this Court that the doctrine of res judicata or the principles of finality of judgment cannot be allowed to whittle down or override the express constitutional mandate to the Supreme Court enshrined in Article 32 of the Constitution. On the basis of this principle, it has been argued by the learned Attorney General that the judgments of the Delhi High Court might operate as res judicata, but they cannot override the provision of Article 14 of the Constitution. In other words, in spite of the judgments of the Delhi High Court, it is permissible to contend that if the judgments are given effect to the employees of the Supreme Court, it would be discriminatory inasmuch as those who are similarly situated will be getting lesser pay. In Kirit Kumar's case, the order of detention of the petitioner under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act was upheld by the High Court. The petitioner filed a Special Leave Petition against the impugned order of the High Court and also a petition under Article 32 of the Constitution urging certain additional grounds which were not taken before the High Court. A preliminary objection was raised on behalf of the State that the points not taken in the High Court by the detenu could not be agitated in the Writ Petition under Article 32 of the Constitution because that would be barred by the principle of constructive res judicata. In the context of the facts of that case, this Court laid down the above proposition of law that the doctrine of res judicata or the principles of finality of judgment could not be allowed to whittle down or override the express constitutional mandate to the Supreme Court enshrined in Article 32 of the Constitution.

It is, however, the contention of the petitioners, that is, the employees of the Supreme Court, that they are being discriminated against by the Union of India because while the Delhi High Court employees are given a higher scale of pay, the Supreme Court employees who perform at least the same duties are paid a lower scale of pay. The observation that has been made in Kirit Kumar's case-was in the context of the facts of that case, namely, that even though certain points were not raised before the High Court that would not preclude the detenu from urging those points in a petition

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Article 32 of the Constitution relating to the violation of a provision of Article 22(5) of the Constitution. The fact remains that the Delhi High Court employees would be getting higher scale of pay than the employees of the Supreme Court. It is not the case of the Union of India that the Delhi High Court employees are not similarly situated as the Supreme Court employees and that, therefore, there is a reasonable justification for making a discrimination between these two classes of employees.

In this connection, we may consider the contention of Mr. P.P. Rao, learned Counsel appearing on behalf of the Registrar of the Supreme Court. His contention is that the judgments of the Delhi High Court cannot be collaterally challenged and should be treated as res judicata between the parties, even though the said judgments will be violative of Article 14 of the Constitution. In support of this contention, the learned Counsel has placed much reliance upon the decision of this Court in Thakore Sobhag Singh v. Thakur Jai Singh, [1968] 2 SCR 848. What happened in that case was that the Board of Revenue rejected the claim of the respondent to be recognised as an adopted son on the ground that under the Jaipur Matmi Rules the adoption, without the previous sanction of the Ruler, could not be recognised for the purpose of determining succession to the jagir. In the Writ Petition filed by the respondents, the High Court held that the Jaipur Matmi Rules had no statutory force because the Ruler had not given his assent to them. The High Court sent the case back on remand to the Board of Revenue to decide the case in accordance with law declared by the High Court. After the case was sent back on remand by the High Court, Validation Act, 1961 was passed validating the Matmi Rules. The Board of Revenue, however, held after remand that the respondent was the adopted son. On appeal to this Court, it has been held that even though the said Validation Act declared that the Matmi Rules shall have and shall be deemed always to have had the force of law, notwithstanding anything contained in any judgment in any court, the Act did not supersede the judgment of the High Court. It could not be contended that the judgment of the High Court should not be treated as res judicata on that ground that if it was regarded as binding between the parties the equal protection clause of the Constitution would be violated if another person, similarly situated, was to be differently treated by the Board of Revenue. The decision in Thakore Sobhag Singh's case is an answer to the contention of the learned Attorney General.
The doctrine of res judicata is a universal doctrine laying down
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the finality of litigation between the parties. When a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Article 14 of the Constitution. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such decision on the ground that such decision violates the equality clause under the Constitution. There is no question of overruling the provision of Article 14, as contended by the learned Attorney General. The judgment which is binding between the parties and which operates as res judicata between them, cannot be said to overrule the provision of Article 14 of the Constitution even though it may be, to

some extent, violative of Article 14 of the Constitution. So far as the Supreme Court employees are concerned in these proceedings the only enquiry to be made is whether the judgments of the Delhi High Court relating to the L.D.Cs. and the Class IV employees have become final and conclusive between the employees of the Delhi High Court and the Union of India.

It is the contention of the learned Attorney General that the judgments of the Delhi High Court are erroneous on the face of them inasmuch as by these judgments the Delhi High Court has granted to the Restorers L.D.Cs. and the Class IV employees Punjab pay-scales as also the Central D.A. It is urged by the learned Attorney General that such judgments should not be given effect to so far as the Junior Clerks and Class IV employees of the Supreme Court are concerned. It is submitted that because the Special Leave Petitions against the Delhi High Court judgments have been dismissed by this Court, the judgments may be final between the parties, but the benefit of that wrong decision should not be conferred on the employees of the Supreme Court or persons similarly situated. The Delhi High Court has made an error and that error should not be perpetuated.

In support of that contention, the learned Attorney General has placed reliance upon a decision of this Court in State of Orissa v. Durga Charan Das, [1966] 2 SCR 907. In that case, the respondent claimed that he was discriminated by the State of Orissa is not fixing the amount of his pension on the basis of his confirmation as the Registrar of the High Court on August 28, 1956, that is, the date on which his junior had been confirmed as Registrar. The respondent relied upon the fact that one Mr. Beuria was held entitled to get the pay of the Registrar from December 1, 1958 and his junior was promoted. to the rank of Registrar on that date. It was held by this Court

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that granting to Mr. Beuria the salary of the Registrar with effect from December 1, 1948 was erroneous, as it was granted to him on the misconstruction of the relevant rule and, thereafter, it was observed as follows:

> "If the respondent's plea of discrimination was accepted on the strength of the single case of Mr. Beuria, it would follow that because the appellant placed a misconstruction on the relevant Rule, it is bound to give effect to the said misconstruction for all times; that, plainly cannot be said to be sound."

The learned Attorney General has also relied on the decision of this Court in G.V. Ramanaiah v. The Superintendent of Central Jail, Rajahmundry, [1974] 1 SCR 852. In that case, this Court observed as follows:

> "Mr. P.K. Rao next contends in a somewhat half-hearted manner that even if the State Government had extended the benefit of its G.O. owing to a mistake to four other persons, similarly placed, it was not fair to deny the same treatment to the petitioner. This contention must be repelled for the obvious reason that two wrongs never make a right."

It is submitted that this Court is both a court of law and a court of equity, as held in Chandra Bansi Singh v. State of Bihar, [1985] 1 SCR 579. The equitable principles require that the court should not apply the result of an erroneous decision in regard to the pay-scales to the employees of the Supreme Court.

The learned Attorney General has also placed reliance upon the doctrine of prospective overruling and points out that this Court has given effect to the doctrine of prospective overruling in Waman Rao v. Union of India, [1981] 2 SCR 1; Minor P. Rajendran v. State of Madras, [1968] 2 SCR 786 and State of M.P.v. Ram Raghubir Prasad Agarwal, [1979] 3 SCR 41. We are pressed to hold that the judgments of the Delhi High Court are wrong and even though the benefit which has been conferred under the judgments may not be interfered with in respect of those who have got the same, but such benefits may not be conferred on the future employees of the Delhi High Court and on the employees of this Court.

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It is also submitted by the learned Attorney General that if this Court is of the opinion that the judgments of the Delhi High Court are erroneous, this Court should ignore that by such judgments a certain section of the employees of the Delhi High Court has been benefitted and also the hardship that may result in not giving effect to such judgments, so far as the employees of the Supreme Court are concerned. In support of that contention, the learned Attorney General has placed reliance upon a decision of this Court in Roshanlal Kuthiala v. R.S. Mohan Singh Oberai, [1975] 2 SCR 491. In that case, it has been observed by Krishna Iyer, J. that our equitable jurisdiction is not hidebound by tradition and blinkered by precedent, though trammelled by judicially approved rules of conscience. In this connection, we may refer to another observation of Krishna Iyer, J. in Tamil Nadu Education Department Ministerial & General Subordinate Service Association v. State of Tamil Nadu, [1980] 1 SCR 1026. It has been observed that once the principle is found to be rational the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy.

At the same time, the learned Attorney General submits that the benefit which has been conferred on the employees of the Supreme Court should not be taken away all at a time but, as a court of equity, this Court may by way of reconciliation direct freezing of the payscales of the Supreme Court employees, which they are getting by virtue of the interim order of this Court, to be adjusted or neutralised against increments, and if that be done, they would not suffer any appreciate hardship.

We are unable to accept the suggestion of the learned Attorney General that reconciliation can be made by freezing the pay-scales of Supreme Court employees, which they are getting by virtue of the interim orders of this Court, to be adjusted or neutralised against the increments. It is not the business of this Court to fix the pay-scales of the employees of any institution in exercise of its jurisdiction under Article 32 of the Constitution. If there be violation of any fundamental right by virtue of any order or judgment, this Court can strike down the same but, surely, it is not within the province of this Court to fix the scale of pay of any employee in exercise of its jurisdiction under Article 32 of the Constitution. So far as the judgments of the Delhi High Court are concerned, they do not infringe the fundamental rights of the employees of the Supreme Court or any of the petitioners, who are the petitioners before us in the Writ Petitions, and so the question of considering whether the judgments of the Delhi High Court are

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right or wrong does not arise. If the judgments of the Delhi High Court had in any manner interfered with the fundamental rights of the petitioners before us, in that case, the

question as to the correctness of those judgments would have been germane. The petitioners, far from making any complaint against the judgments of the Delhi High Court, have strongly relied upon them in support of their respective cases for pay hike and, accordingly, we do not think that we are called upon to examine the propriety or validity of the judgments of the Delhi High Court.

We may also deal with the contention of the learned Attorney General as to the doctrine of 'equal pay for equal work' which we have so long deferred consideration. It is urged by him that the doctrine of equal pay for equal work', as enshrined in Article 39(d) of the Constitution of India, cannot be relied on by the petitioners in support of their claim for the same pay-scales as granted by the Delhi High Court by the said judgments. Article 39(d) being a provision contained in Part IV of the Constitution dealing with Directive Principles of State Policy is not enforceable by any court in view of Article 37 of the Constitution. He submits that as laid down in Kishori Mohanlal Bakshi v. Union of India, AIR 1962 SC 1139 and State of Punjab v. Joginder Singh, [1963] Supp. 2 SCR 169 the abstract doctrine of 'equal pay for equal work' has nothing to do with Article 14. In Randhir Singh v. Union of India, [1982] 1 SCC 618 this Court has considered the decision in Kishori Mohanlal Bakshi's case and came to same view that the principle of 'equal pay for equal work' was not an abstract doctrine but one of substance. Thereafter, this Court observed as follows:

> "The Preamble to the Constitution of the International Labour Organisation recognises the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled". Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

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It follows from the above decisions that although the doctrine of 'equal pay for equal work' does not come within Article 14 of the Constitution as an abstract doctrine, but if any classification is made relating to the pay-scales and such classification is unreasonable and/or if unequal pay is based on no classification, then Article 14 w411 at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of 'equal pay for equal work', as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of 'equal pay for equal work' will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of 'equal pay

for equal work', as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution. Dhirendra Chamoli v. State of U.P., [1986] 1 SCC 637 is a case of 'equal pay for equal work', as envisaged by Article 14, and not of the abstract doctrine of 'equal pay for equal work'.

The learned Attorney General has also placed reliance on some recent decisions of this Court on the question as to the applicability of the doctrine of 'equal pay for equal work'. In State of Andhra Pradesh v. G. Sreenivasa Rao, [1989] 1 JT 615 it has been observed that 'equal pay for equal work' does not mean that all the members of a cadre must receive the same pay-packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. In V. Markendeya v. State of Andhra Pradesh, [1989] 2 JT 108 it is laid down that on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility and educational qualifications required for the relevant posts, if the Court finds that the classification made by the State in giving different treatment to the two classes of employees is rounded on rational basis having nexus to the object sought to be achieved, the classification must be upheld.

In State of U.P. v J.P. Chaurasia, AIR 1989 SC 19 this Court observed as follows:

> "The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer.
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> The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of. interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it, The Court should not try to tinker with such equivalent unless it is shown that it was made with extraneous consideration."

Relying upon the decision in Chaurasia's case, it has been urged by the learned Attorney General that in the instant case also this COurt should accept the recommendations of the Fourth Pay Commission. Normally, when a Pay Commission has evaluated the nature of duties and responsibilities of posts and has also made the equation of posts, the Court should not interfere with the same. The question is not whether the Court should interfere with such findings or not, but it will be discussed presently that the Chief Justice of India, who is the appropriate authority, is entitled to accept or reject the recommendations or any finding of the Pay Commission.

Again, in Urnesh Chandra Gupta v. Oil and Natural Gas

Commission, AIR 1989 SC 29 it has been observed by this Court that the nature of work and responsibilities of the posts are matters to be evaluated by the management and not for the Court to determine by relying upon the averments in the affidavit in the interest of the parties. It has been observed by us earlier in this judgment that it is not the business of this Court to fix the pay-scales in exercise of its jurisdiction under. Article 32 of the Constitution. It is really the business of the Government or the management to fix the pay-scales after considering various other matters and the Court can only consider whether such fixation of pay-scales has resulted in an invidious discrimination or is arbitrary or patently erroneous in law or in fact.
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The last case that has been relied on by the learned Attorney General is the decision in Tarsem Lal Gautam v. State Bank of Patiala, AIR 1989 SC 30. In that case, this Court held that it was not an instance to which principle of 'equal pay for equal work' could straightaway be applied inasmuch as the qualitative differences in regard to degrees of reliability and responsibility could not be put aside as irrelevant.

So far as the judgments of the Delhi High Court are concerned, we find that the High Court has taken into consideration the decision of this Court on the doctrine of 'equal pay for equal work'. In one of these judgments in Civil Writ Petition No. 1376 of 1984 relating to the pay-scale of the petitioner, who was a Restorer which is equivalent to L.D.C./Junior Clerk, the learned Judges of the Delhi High Court have held that the principle of 'equal pay for equal work' would be squarely available to the petitioner, particularly having regard to the admitted fact that of the two High Courts in relation to which parity is claimed one was the predecessor of this Court and the other its successor. The Delhi High Court before applying the doctrine of 'equal pay for equal work' has come to the finding that if the Restorers working in the Delhi High Court are given a pay-scale lower than the Restorers working in the Punjab High Court, which is a predecessor of the Delhi High Court and in Himachal Pradesh High Court which is a successor of the Delhi High Court, it will be discriminatory and violative of Article 14 of the Constitution. It has been already stated by us that we are not called upon to consider the correctness or otherwise of the judgments of the Delhi High Court, but what we would like to point out is that the Delhi High Court has not straightaway applied the doctrine of 'equal pay for equal work' as an abstract doctrine, as envisaged by Article 39(d) of the Constitution.

Elaborate submissions have been made by the learned Counsel of the parties as to the interpretation and scope of Article 146(2) of the Constitution of India. Article 146(2) provides as follows:

> "146(2). Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:
> Provided that the rules made under this clause shall,
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> so far as they relate to salaries, allowances, leave or pensions, require the approval of the

President."

Under Article 146(2) the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by the rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose. This is, however, subject to the provisions of any law that may be made by Parliament. It is apparent from Article 146(2) that it is primarily the responsibility of Parliament to lay down the conditions of service of the officers and servants of the Supreme Court, but so long as Parliament does not lay down such conditions of service, the Chief Justice of India or some other Judge or officer of the Court authorised by the Chief Justice of India is empowered to make rules for the purpose. The legislative function of Parliament has been delegated to the Chief Justice of India by Article 146(2). It is not disputed that the function of the Chief Justice of India or the Judge or the officer of the Court authorised by him in framing rules laying down the conditions of service, is legislative in nature. The conditions of service that may be prescribed by the rules framed by the Chief Justice of India under Article 146(2) will also necessarily include salary, allowances, leave and pensions of the officers and servants of the Supreme Court. The proviso to Article 146(2) puts a restriction on the power of the Chief Justice of India by providing that the rules made under Article 146(2) shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President of India. Prima facie, therefore, the conditions of service of the employees of the Supreme Court that are laid down by the Chief Justice of India by framing the rules will be final and conclusive, except that with regard to salaries, allowances, leave or pensions the approval of the President of India is required. In other words, if the President of India does not approve of the salaries, allowances, leave or pensions, it will not have any effect. The reason for requiring the approval of the President of India regarding salaries, allowances, leave or pensions is the involvement of the financial liability of the Government.

One important thing that is to be noticed is that under clause (3) of Article 146 the administrative expenses of the Supreme Court including all salaries, allowances, leave and pensions payable to or in respect of the officers and servants of the Court shall be charged upon the Consolidated Fund of India. In view of the provision of clause (3), such administrative expenses shall not be submitted to the vote of Parliament, as provided in Article 113 of the Constitution. It is appa-

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rent that in order to maintain the independence of the judiciary, the framers of the Constitution thought it wise and expedient to make such a provision as contained in clause (3) of Article 146.

It is contended by the learned Attorney General that the function of the President of India approving of the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions is legislative in character and it is analogous to the President of India giving assent to a Bill. It is difficult to accept the contention that the function of the President of India approving of the rules is analogous to giving assent to a Bill. The rules framed by the Chief Justice of India though it is a piece of subordinate legislation, it is not a fullfledged legislative act requiring assent of the President of India. In this connec-

tion, we may refer to the statement of law as to the delegated legislation in Foulkes' Administrative Law, Sixth Edition, Page 57 which reads as follows:

> "It is common for Parliament to confer by Act on ministers and other executive bodies the power to make general rules with the force of law--to legislate. Parliament is said to delegate to such bodies the power to legislate. Thus the phrase 'delegated legislation' covers every exercise of a power to legislate conferred by Act of Parliament. The phrase is not a term of art, it is not a technical term, it has no statutory definition. To decide whether the exercise of a power constitutes 'delegated legislation' we have to ask whether it is a delegated power that is being exercised and whether its exercise constitutes legislation. Clearly an Act, public or private. is not delegated: it is primary legislation. When a minister or other authority is given power by Act of Parliament to make rules, regulations etc. the power has been delegated to him, and insofar as the rules made by that authority are legislative in their nature. they comprise delegated legislation. If the contents of the document (made under delegated powers) are not legislative the document will obviously not be a piece of (delegated) legislation. Ministers and others are in fact given power to make orders, give directions, issue approvals and notices etc. which one would not, because of their lack of generality. classify as legislative but rather as administrative ....."

It has been observed in the statement of law that if the contents

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of the document made under delegated powers are not legislative, the document would obviously not be a piece of delegated legislation. Again, it is stated that Ministers and others are, in fact, given powers to make orders, give directions, issue approval and notices etc. which one would not, because of their lack of generality, classify as legislative but rather as administrative. In view of the said statement of law, it may be contended that the function of the President of India is not strictly legislative in nature, but an administrative act. We do not think it necessary to come to any final decision on the question and we propose to proceed on the assumption that the function of the President of India in approving the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions is a legislative act.

It is vehemently contended by the learned Attorney General that as the President of India performs a legislative act in approving the rules framed by the Chief Justice of India, no writ can lie to compel him to give the approval or to withhold the approval. In support of his contention, reliance has been placed on a decision of this Court in Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh, [1972] 1 SCR 940. In that case, Hegde, J. speaking for the Court observed as follows:

> "What the appellant really wants is a mandate from the court to the competent authority to delete the concerned entry from Schedule A and include the same in Schedule B. We shall not

> go into the question whether the Government of Himachal Pradesh on its own authority was competent to make the alteration in question or not. We shall assume for our present purpose that it had such a power. The power to impose a tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions, the legislature may delegate that power to some other authority. But the .exercise of that power, whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No court can issue a mandate to a legislature to enact a particular law. Similarly no court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact."

There can be no doubt that no court can direct a legislature to
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enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority.

The next decision which has been relied on by the learned Attorney General is the decision in State of Andhra Pradesh v. T. Gopalakrishnan Murthi, AIR 1976 SC 123. This case relates to the proviso to Article 229(2) of the Constitution of India. Provision of Article 229(2) including the proviso thereto is a similar to Article 146(2) and its proviso. Under Article 229(2), it is the Chief Justice of the High Court or his delegate who frames rules relating to the conditions of service of officers and servants of the High Court. Under the proviso to Article 229(2), if the rules framed by the Chief Justice of the High Court or his delegate relate to salaries, allowances, leave or pensions, it shall require the approval of the Governor of the State. So far as the two provisos are concerned, while under proviso to Article 229(2) the rules relating to salaries, allowances, leave or pensions require the approval of the Governor of the State, under the proviso to Article 146(2) it will require the approval of the President of India.

In Gopalakrishnan's case it has been observed that it is not possible to take the view that merely because the State Government does not see its way to give the required approval, it will justify the issuance of a writ of mandamus under Article 226 of the Constitution, as if the refusal of the State Government was ultra vires or made mala fide and arbitrarily.

Another case which has been cited and relied upon by the learned Attorney General in this regard is the decision in A.K. Roy v. Union of India, [1982] 2 SCR 272. What happened in that case was that by a Notification the Central Government had brought into force all the sections of the Forty-fourth Amendment act except section 3. The question before this Court was whether this Court could issue a writ of mandamus directing the Central Government to bring into force section 3 of the Fortyfourth Amendment Act. It has been observed by Chandrachud, C.J. delivering the majority judgment that a mandamus cannot be issued to the Central

Government compelling it to bring the provisions of section 3 of the Fortyfourth Amendment Act into force.
On the basis of the principles of law laid down in the above
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decisions, it is urged by the learned Attorney General that this Court cannot issue a mandate to the President of India to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave and pensions of the officers and servants of the Supreme Court. In other words, the President of India cannot be compelled to grant approval to the proposals of the Registrar General of the Supreme Court, as contained in his letter dated July 22, 1987. There can be no doubt that an authority exercising legislative function cannot be directed to do a particular act. Similarly the President of India cannot be directed by the Court to grant approval to the proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India. It is not also the contention of any of the parties that such a direction can be made by the Court.

The real question is how and in what manner the President of India should act after the Chief Justice of India submits to him the rules framed by him relating to the salaries, allowances, leave and pensions of the officers and servants of the Supreme Court. The President of India is the highest dignitary of the State and the Chief Justice of India also is a high dignitary of the State. Upon a comparative study of some other similar provisions of the Constitution, we find that under Article 98(3), the President of India has been empowered to make rules regulating the recruitments and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be. Article 148(5) provides that the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President of India after consultation with the Comptroller and Auditor-General. Similarly, the Governor has been empowered under Article 187(3) to make rules regulating the recruitment, and the conditions of service of persons appointed to the secretarial staff of the Assembly or the Council after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be. Thus, it appears that except in the cases of the officers and servants of the Supreme Court and those of the High Courts, in other cases either the President of India or the Governor has been empowered to frame rules.
So far as the Supreme Court and the High Courts are concerned,
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the Chief Justice of India and the Chief justice of the concerned High Court, are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor, as the case may, is required. It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries,

allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightaway refuse to grant such approval, but before doing there must be exchange of thoughts between the President of India and the Chief Justice of India.

In Gopalakrishnan's case (supra), relied on by the learned Attorney General, it has been observed that one should expect in the fitness of things and in view of the spirit of Article 229 that ordinarily and generally the approval should be accorded. Although the said observation relates to the provision of Article 229(2), it also equally applies to the provision of Article 146(2) relating to the grant of approval by the President of India. In this connection, we may also refer to a decision of this Court in Gurumoorthy v. Accountant General Assam & Nagaland, [1971] Suppl. SCR 420, which was also considered in Gopalakrishnan's case (supra). In Gurumoorthy's case, this Court took the view that the unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants. of a High Court, it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the Executive except to the limited extent that is provided in that Article. The same observation will apply to the rules framed by the Chief Justice of India under Article 146(2) of the Constitution.

At this stage, it may be noticed that it has been conceded by the learned Attorney General that the validity of the subordinate legislation as provided in Article 146(2) of the Constitution can be challenged on such grounds as any other legislative acts can be challenged. So, if the rules framed by the Chief Justice of India and approved by
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the President of India relating to the salaries, allowances, leave or pensions offend against Article 14 or 16, the same may be struck down by the Court.

In Wade's Administrative Law, Sixth Edition, Page 863 it is stated as follows:

> "Acts of Parliament have sovereign force, but legislation made under delegated power can be valid only if it conforms exactly to the power granted. Even where, as is often the case, a regulation is required to be approved by resolutions of both Houses of Parliament, it still fails on the 'subordinate' side of the line, so that the court may determine its validity."

Again, at page 868 it is observed that just as with other kinds of administrative action, the courts must sometimes condemn rules or regulations for unreasonableness.

Thus a delegated legislation or a subordinate legislation must conform exactly to the power granted. So far as the question of grant of approval by the President of India under the proviso to Article 146(2) is concerned, no such conditions have been laid down to be fulfilled before the President of India grants or refuses to grant approval. By virtue of Article 74(1) of the Constitution, the President of India shall, in exercise of his functions, act in accordance with the advice of the Council of Ministers. In other words, it is the particular Department in the Ministry that considers the question of approval under the proviso to

article 146(2)of the Constitution and whatever advice is given to the President of India in that regard, the President of India has to act in accordance with such advice. On the other hand, the Chief Justice of India has to apply his mind when he frames the rules under Article 146(2) with the assistance of his officers. In such circumstances, it would not be unreasonable to hold that the delegation of the legislative function on the Chief Justice of India and also on the President of India relating to the salaries, allowances, leave and pensions of the officers and servants of the Supreme Court involve, by necessary implication, the application of mind. So, not only that the Chief Justice of India has to apply his mind to the framing of rules, but also the Government has to apply its mind to the question of approval of the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions. This condition should be fulfilled and should appear to have been so fulfilled from the records of both the
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Government and the Chief Justice of India. The application of mind will include exchange of thoughts and views between the Government and the Chief Justice of India and it is highly desirable that there should be a consensus between the two. The rules framed by the Chief Justice of India should normally be accepted by the Government and the question of exchange of thoughts and views will arise only when the Government is not in a position to accept the rules relating to salaries, allowances, leave or pensions.

It has been already noticed that this Court by its interim order directed the respondents Nos. 1 and 2 to refer the question of revision of pay-scales of the Supreme Court employees to the Fourth Pay Commission pursuant to the recommendation in that regard by the Five-Judge Committee and as directed such reference was made. The report of the Fourth Pay Commission was not sent directly to the Chief Justice of India, but it came through the Ministry of Finance, Department of Expenditure, Government of India. It is significant to note that this is the first time that a reference has been made to the Pay Commission for the revision of the pay-scales of the employees of the Supreme Court. If we are to go strictly by Article 146(2) of the Constitution, the question of any reference to the Pay Commission does not arise. The Chief Justice of India has to frame rules with the aid and assistance of his own officers and other Judges. The Chief Justice of India may appoint a Committee of Judges or a Committee of experts for the purpose of assisting him in framing the rules relating to the conditions of service of the employees of the Supreme Court. Although there is no such provision in Article 146(2), but that is implied and it may be said that the reference to the Fourth Pay Commission was made so that the report or the recommendations of the Fourth Pay Commission relating to the revision of the pay-scales of the Supreme Court employees will be of some assistance to the Chief Justice of India to frame rules. What should go to the President of India for his approval under the proviso to Article 146 is not the report or the recommendation of the Fourth Pay Commission, but the rules framed by the Chief Justice of India. In considering the rules framed by the Chief Justice of India relating to salaries, allowances, leave and pensions, it will not be the concern of the President of India how and in what manner the Chief Justice of India has laid down the rules.

Be that as it may, after the report or recommendation of the Fourth Pay Commission, was forwarded by the Ministry

of Finance to the Chief Justice of India, the Registrar General of the Supreme Court, presumably under the authority of the Chief Justice of India, by
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his letter dated July 22, 1987, addressed to the Secretary, Government of India, Ministry of Finance, Department of Expenditure, did not agree with some of the recommendations of the Fourth Pay Commission relating to the revision of pay-scales including the revision of pay-scales of Junior Clerks and Class IV employees of the Supreme Court. It does not appear that there was any exchange of thoughts or views between the Government Department and the Registry of the Supreme Court. The Government has not produced before us any material showing that there was exchange of thoughts and views. But whether that was done or not, is not the question at the present moment. The most significant fact is that no rules were framed by the Chief Justice of India in accordance with the provision of Article 146(2) of the Constitution. Instead, what was done was that the Registrar General made certain proposals to the Government and those proposals were turned down as not acceptable to the Government. There is a good deal of difference between rules framed by the Chief Justice of India under Article 146(2) and certain proposals made by the Registrar General of the Supreme Court, may be under the instructions of the Chief Justice of India. The provision of Article 146(2) requires that rules have to be framed by the Chief Justice of India and if such rules relate to salaries, allowances, leave or pension, the same shall require the approval of the President of India. This procedure was not followed. So, the stage for the consideration by the President of India as to the question of granting approval, as required under the proviso to Article 146(2), had not then reached. Indeed, it is still in the preliminary stage, namely, that the rules have to be framed by the Chief Justice of India.

We have also noticed that after the Registrar General's letter a communication in the form of a letter dated November 23, 2987 was made by the Joint Secretary to the Government of India, Ministry of Finance, Department of Expenditure, addressed to the Registrar General. By that letter, the Registrar General was informed of the sanction of the President of India to the revised scales as shown in column 4 of the annexure to the said letter in respect of certain posts. The revised scales of pay, stated to have been sanctioned by the President of India, were at par with the recommendations of the Fourth Pay Commission. The sanction of the President of India, as communicated by the said letter, does not relate to all categories of employees of the Supreme Court. The most significant fact that should be taken notice of is that contained in paragraph 5 of the said letter which is extracted below:
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> "5. The revision of pay scales, for the remaining posts in the Supreme Court Registry, mentioned in Part III of the Report of the Fourth Central Pay Commission, is separately under consideration of the Government."

The remaining posts referred to in paragraph 5 includes ,the posts held by Junior Clerks and Class IV employees. Even assuming ;that the Chief Justice of India had prepared the rules as per the provision of Article 146(2) of the Constitution and submitted the same for the approval of the President of India relating to the salaries, allowances. leave or pensions, the question of approval of the revision of payscales of the remaining posts including the posts held

by the Junior Clerks and Class IV employees, is still under consideration of the Government. It is curious that although the question as to the revision of pay-scales of the remaining posts is still under consideration of the Government, before us the Government proceeded on the basis that upon such consideration the revision of pay-scales, as suggested by the Registrar General in his said letter, has been turned down. In other words, the President of India has not granted approval to the payscales, as suggested by the Registrar General on behalf of the Chief Justice of India in respect of the Junior Clerks and Class IV employees of the Supreme Court.

It is, thus, apparent that the provision of Article 146(2) has not been complied with. No rules have been framed by the Chief Justice of India as per the provision of Article 146(2) and, accordingly, the question of granting approval to the rules by the President of India under Article 146(2) does not at all arise because that stage has not yet reached. We are, therefore, of the view that the Chief Justice of India should frame rules under Article 146(2) after taking into consideration all relevant factors including the recommendations of the Fourth Pay Commission and submit the same to the President of India for his approval,

It has been strenuously urged by Mr. Thakur that the staff and the servants of the Supreme Court of India constitute a class by themselves totally distinct in the civil services under the Union and the States, having a totally distinct personality and a culture, both because of the nature of the functions assigned to them and because of their being an integral part of the institution which stands on a wholly different pedestal. Counsel submits that it is because of this distinctive function and locational status of the staff and servants of the Supreme Court that the Constitution treated them as a class by themselves,

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apart from the other services under the Union and the States by providing that unlike other services the Chief Justice of India and not the President of India or the Governor will prescribe their service conditions. We have been pressed to hold that the staff and servants of the Supreme Court constitute a class by themselves having a totally distinct personality. It is submitted that the pay-scales of the employees of the Supreme Court shall be fixed on the basis of their distinct personality, qualifications and the arduous nature of work performed by them and not by a mere comparison with the designations of Government employees. In this connection, our attention has been drawn to the observation of the Five-Judge Committee. According to the Committee, the borrowed designations without any attempt at giving distinct and independent identity to the staff in the Registry of the Supreme Court have led to invidious comparison. The Committee took the view that no attempt was made to really ascertain the nature of the work of the employees in each category of staff and to determine the pay-structure and then after framing proper rules invite the President of India to approve the rules under Article 146 of the Constitution. It also appears from paragraph 4.6 of Chapter IV of Part III of the report of the Fourth Central Pay Commission that the Commission could not undertake a detailed study of the job contents and different functions in the Supreme Court.

On the other hand, it is the contention of the learned Attorney General that the fact that this Court is the apex Court where the Judges lay down the law for the country and whose independence has been ensured by the Constitution

cannot, in any manner, lead to the conclusion that the Supreme Court employees should be treated as a separate class having a distinct and separate identity and that should be done by giving them higher pay-scales than the rest of the employees of the Government and that to provide them with different pay-scales on the basis of the alleged separate identity of the institution would be contrary to the basic tenets of equality enshrined in the Constitution. The learned Attorney General has drawn our attention to the Constituent Assembly debates on the draft Article. 122 which is the same as Article 146 of the Constitution. In particular, the learned Attorney General has drawn our attention to the statements of Shri T.T. Krishnamachari and Dr. B.R. Ambedkar made in course of the debate. Shri T.T. Krishnamachari stated before the Constituent Assembly as follows:

> "At the same time. Sir, I think it should be made clear that it is not the intention of this House or of the framers of this
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> Constitution that they want to create specially favoured bodies which in themselves become an Imperium in Imperio, completely independent of the Executive and the legislature and-operating as a sort of superior body to the general body politic. If that were so, I think we should rather chary of introducing a provision of this nature, not merely in regard to the Supreme Court but also in regard to the Auditor-General, in regard to the Union Public Service Commission, in regard to the Speaker and the President of the two Houses of Parliament and so on, as we will thereby be creating a number of bodies which are placed in such a position that they are bound to come into conflict with the Executive in every attempt they make to superiority. In actual practice, it is better for all these bodies to more or less fall in line with the regulations that obtain in matters of recruitment to the public services, conditions of promotion and salaries paid to their staff."

The submission of Dr. B .R. Ambedkar is also extracted below:

> "But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase "with the approval of the President" and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable--I do not say that it will happen--but it is quite conceivable that the Chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants, who are working in other departments besides the judiciary, and I do not think that such a state of things is desirable thing."

Another contention of the learned Attorney General is

that if the Junior Clerks and the Class IV employees are given the Punjab scales of pay and the Central D.A., there would be a heavy financial liability of the Central Government. The Junior Clerks and Class IV employees of the Supreme Court have already been given the Punjab scales and the Central D .A. with effect from January 1, 1978 and this
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has cost the exchequer Rs.2 crores. It is submitted that other employees of the Supreme Court who have not been given this benefit as well as all other Central Government employees including armed forces personnel numbering about 50 lakhs may also demand similar benefit and if they are to be given the same benefit with effect from 1.1.1978 to 21.12.1985, it would involve an expenditure of Rs.8,640 crores. Further, this D.A. would get merged in the pay-scale from 1.1.1986 and would also qualify for D.A. after 1.1.1986 leading to a huge additional expenditure.

At this stage, it may be stated that in the course of the hearing, we enquired from Mr. P.P. Rao, learned Counsel appearing on behalf of the Registrar of the Supreme Court, as to whether the Chief Justice of India was agreeable to prescribe the rules relating to the salaries, allowances, etc. of the Supreme Court employees. We are glad to record that Mr. Rao has informed us that the Chief Justice of India has agreed to make necessary amendments to the existing rules relating to the salaries and allowances of the Supreme Court employees in accordance with Article 146 of the Constitution after considering the recommendations of the Fourth Pay Commission and all other relevant materials, and that the said amendments will be forwarded to the President of India for approval. Mr. Rao has filed a statement in writing signed by the Registrar General, which is extracted below:

> "After obtaining instructions from the Hon'ble the Chief Justice, I hereby state that necessary amendments to the existing rules relating to the salaries and allowances of the Supreme Court employees will be made in accordance with Article 146 of the Constitution after considering the recommendations of the Fourth Pay Commission in respect of the Supreme Court employees and all other relevant materials and that the said amendments to the Rules will be forwarded to the President of India for approval and after obtaining the approval of the President, in terms of the proviso to Clause (2) of Article 146 of the Constitution, the same will be implemented."

In view of the said statement, our task has become easy. It appears from the said statement that the Chief Justice of India has agreed to prescribe the rules relating to salaries and allowances in accordance with Article 146(2) of the Constitution and has further agreed to forward the same to the President of India for approval and to implement the same after obtaining the approval of the President of
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India in terms of the proviso to Article 146(2).

In our opinion, the Chief Justice of India is the proper authority to consider the question as to the distinctive nature and personality of the employees of the Supreme Court, keeping in view the statements made by Shri T.T. Krishnamachari and Dr. B.R. Ambedkar in course of the debates in the Constituent Assembly on the draft Article 122 which is the same as Article 146 of the Constitution. Further, before laying down the pay-structure of the employees

of the Supreme Court, it may be necessary to ascertain the job contents of various categories of employees and the nature of duties which are performed by them. There can be no doubt that at the time of preparing the rules for prescribing the conditions of service including fixing of the pay-scales, the Chief Justice of India will consider the representations and suggestions of the different categories of employees of the Supreme Court also keeping in view the financial liability of the Government as pointed out by the learned Attorney General. All this can be done by the Chief Justice of India or by some other Judge or officer of this Court authorised by the Chief Justice of India. The Chief Justice of India may appoint a Committee of Judges to submit a report relating to all relevant matters and, thereafter, the Chief Justice of India may frame rules after taking into consideration the report of the Committee. It will be absolutely in the discretion of the Chief Justice of India or his nominee as to how and in what manner the rules will be framed.

Before we conclude, it may be recorded that Mr. Kalra, Mr. Gujral, Mr. Ravi Prakash Gupta, Mr. A.K. Sanghi and Mr. A.D. Malhotra have, besides adopting the arguments of Mr. Thakur, made their own submissions. Mr. Kalra and Mr. Aggarwal have, in particular, drawn our attention to different pay-scales sanctioned to the employees of the Central Secretariat, Lok Sabha and Rajya Sabha and submit that the Supreme Court employees have been discriminated, although their nature of work is more arduous and they are better qualified. In view of our decision that the rules have not been framed as per Article 146(2) of the Constitution, we do not think we are called upon to decide the question raised by the learned Counsel.

In the circumstances, as agreed to by the Chief Justice of India he may, after considering the recommendations of the Fourth Pay Commission and other materials that would be available to him and the representations of the employees of the Supreme Court and other matters, as stated hereinbefore, frame rules by making necessary amendments to the existing rules relating to salaries and allowances of
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the Supreme Court employees and forward the same to the President of India for his approval.

The parties are directed to maintain status quo as regards the scales of pay, allowances and interim relief, as on this day, till the framing of the rules by the Chief Justice of India and the consideration by the President of India as to the grant of approval of such rules relating to salaries, allowances, leave or pensions, and the interim orders passed by this Court will also continue till such consideration by the President of India. All the Writ Petitions and the Civil Miscellaneous Petitions are disposed of as above. There will, however, be no order as to costs in any of them.

THOMMEN, J. I agree with the judgment of my learned brother, M.M. Dutt, J. I add the following observations with particular reference to the scope and ambit of clause (2) of Article 146 of the Constitution of India.

This Court has, by order dated 25.7.1986, directed, in the present proceedings, that the officers and servants of the Supreme Court should be placed on the same scales of pay as in the case of the staff of the Delhi High Court. To the employees of this Court not falling within any of the categories of employees corresponding to those of the Delhi High Court, this Court directed payment of a sum equal to 10 per cent of their basic pay subject to a minimum of. Rs.50 per

month.

Counsel appearing for the petitioners in these cases submit that the interim orders of this Court which were made with a view to introducing parity between the employees of this Court and those of the Delhi High Court in regard to pay scales must be made absolute, without prejudice to the claim of the employees of this Court to be placed on a higher scale of pay than the employees of the Delhi High Court by reason of their more arduous duties and responsibilities and functional and locational distinctions. The Fourth Central Pay Commission (the "Pay Commission"), counsel point out, had ignored the legitimate claims of the officers and servants of the Supreme Court.

It is contended on behalf of the Government that it has issued sanction to implement the recommendations of the Pay Commission, and all categories of employees of this Court have benefited by the recommendations except those belonging to Classes III and IV. Employees of those two Classes, constituting about 60 per cent of the

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total strength of the Supreme Court Staff, claim pay scales in parity with their counterparts in the Delhi High Court who are paid, by virtue of various judgments of that Court, salary and allowances on the basis of the Punjab pay scales coupled with the Central dearness allowance. The Class III and Class IV employees of this Court also receive the Punjab pay scales and the Central dearness allowance, notwithstanding the revised pay scales recommended by the Pay Commission, because of the interim orders of this Court in the present proceedings. The Attorney General contends that the Punjab pay scales of Rs.400600 in the case of Class III employees and Rs.300-430 in the case of Class IV employees are higher than the corresponding Central pay scales because the Punjab pay scales are linked to the higher price index of 320 as on 1.1.1978 while the Central pay scales are linked to the price index of 200 as on 1.1.1973. The higher Punjab scales have already absorbed all the D.A. instalments sanctioned upto 1.1.1978. The Punjab D .A. formula is, therefore, correspondingly lower. There is no justification in linking the Punjab pay scales with the Central D.A. The decision of the Delhi High Court, although final being res judicata between the parties, is based on wrong reasoning and cannot, therefore, form a legitimate basis for paying the Class III and Class IV employees of this Court the Punjab pay scales and the Central D.A. Their legitimate entitlement is to the Central Pay scales with the Central D .A. This has been recommended by the Pay Commission.

Referring to the Delhi High Court employees, the Attorney General, in his written submissions, points out:

> "His counterpart in the Punjab High Court enjoyed higher scale of pay but lesser allowances than he, because the D.A. upto 1978 had been merged with pay scales of employees of the Punjab High Court by taking into account the higher price index of 320 as on 1.1. 1978 whereas the Delhi High Court employees' pay scales had been fixed as on 1.1. 1973 by linking to price index of 200 but giving him D.A. for the higher price index of the difference between 200 and 320."

This contention of the Attorney General is sought to be met by counsel appearing for the Class IV Employees' Association in his written submissions in the following words:

> "The Delhi High Court in Kamalanand's case has decided that the Class IV employees of that

court will get Punjab
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pay scales and Central D.A. It is submitted that D.A. has relationship with the place and not with the scale. As the Delhi High Court happens. to be located in Delhi it is the Delhi D.A. which is Central D A. which will apply and the same will be the position of the Supreme Court employees who are also in Delhi."

The Attorney General refutes the petitioners' contention that the Supreme Court employees, by virtue of the special nature of their work or locational or institutional distinction, can legitimately claim higher scales of pay than those applicable to corresponding categories of employees in other sectors of public life. Any such contention, the Attorney General points out, is contrary to the intent of the Constitution makers. The fact that the Delhi High Court has, on a mistaken assumption of law and fact, directed payment to its employees on the basis of Punjab scales of pay with Central D.A. does not justify repetition of the same mistake in respect of other employees, for two wrongs never make a right. To perpetuate any such error, he contends, is not in conformity with Article 14 of the Constitution. In any view of the matter, the Attorney General submits, the exercise of power by the Constitutional authorities under Article 146 of the Constitution is beyond judicial scrutiny on grounds other than those relevant to judicial review of legislation. The President's approval or disapproval of rules made by the Chief Justice of India is an exercise of legislative power and no direction can be issued to the President as regards the exercise of that power.

The genesis of the recommendations of the Pay Commission regarding the employees of the Supreme Court lies in the suggestions of the Committee of Judges of the Supreme Court in may, 1985 to the effect:

"The Chief Justice of India may
(a) appoint a Committee of Judges, and experts to devise a fair pay structure for the staff of the Supreme Court of India keeping in view the principles of pay determination;
or
(b) refer the matter to the 4th Pay Commission which is. at present considering the question of revision of pay-scalas of the Central Government employees and ask it to examine: the question of independent pay structure for the staff of
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the Supreme Court Registry and submit a separate report in this respect to the Chief Justice of India."

Pursuant to the above suggestions and the decision taken thereon, the Government amended; the terms of reference of the Pay Commission to include officers and employees of the Supreme Court of India. A. copy of the Report of the Committee of Judges was made available to the Pay Commission. The Committee of Judges had pointed out the functional differences between the Central Secretariat Services and the Service in the Registry of the Supreme Court. The Pay Commission visited the Registry of the Supreme Court to familiarise themselves with the nature of the work in the Court. They say:

"The Judges Committee had observed that the pay structure for the Supreme Court employees

> should be devised keeping in view the independent identity of tile Registry of the Supreme Court, in evolving the pay structure, the workload, skill, educational qualifications, responsibilities and duties of various categories of posts in the Registry need to be taken into account. We considered it necessary to collect information about these matters by a small team comprising officers from the Secretariat of the Commission' and the Registry of the Supreme Court. The team spent a number of days visiting various sections in the Registry for a proper understanding of the work of different functionaries. They had discussions with the concerned staff and the officers in charge of the sections and also observed in, detail the work being performed by different task holders. The work done by the team of officers within the short: time available and our own visit proved very useful in acquainting ourselves with the role and functions of the personnel in the Supreme Court Registry. While it has not been possible for us to undertake a detailed study, of the job contents of different functionaries in the Supreme Court, we have examined the duties and responsibilities of various categories of posts with the help and assistance of senior officials of the Supreme Court." (emphasis supplied)

This observation of the Pay Commission shows that while an earnest attempt had been made by them to study the distinctive characteristics of the job contents of the Supreme Court employees at
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various levels, and they had borne in mind the observations of Judges' Committee as regards the independent identity of the Registry of the Supreme court, no detailed study of the various aspects of the problem could be undertaken by the Pay Commission within the short time available to them. The Report of the Pay Commission is apparently not based on any thorough study of the job contents of the different functionaries of the Supreme Court Registry.

The main thrust of the contentions of the employees of the Supreme Court is not that they should be paid the Punjab scales of pay and the Central D.A. as such, as in the case of the Delhi High Court employees, but that they should be paid at least as much as, if not better than, the employees of the Delhi High Court. The Supreme Court employees, they say, have to be paid a higher scale of pay than what is paid to the corresponding categories of employees in the Central Government Secretariat or the Secretariat of the Central Legislature because of the functional and institutional distinction of the Supreme Court. Although the employees of the Central Government Secretariat and those of the Supreme Court Registry at various levels are designated alike, there is no functional similarity between them, the nature and quality of their work being dissimilar. If a proper comparison is possible, they say, the Supreme Court employees must be compared with the employees of the Delhi High Court. It would be an anomaly, and a source of discontent, if the Supreme Court employees are not paid at least as much as, if not better than, what the employees of the Delhi High Court are paid. The fact that the judgment of the Delhi High

Court, pursuant to which the employees of that court are placed on a higher scale of pay, may be regarded as wrong in law and fact does not make any difference because those judgments have become final and binding, and consequently the employees of the Delhi High Court, in the absence of any law made by the legislature to the contrary, are entitled to be paid according to the Punjab scales of pay and the Central D.A. It is neither just nor fair, they say, to deny the Supreme Court employees at least the same salary scale as is now current in respect of the Delhi High Court employees.

In the written submissions on behalf of the Assistant Registrars and Deputy Registrars, it is pointed out that the recommendations of the Pay Commission have resulted in their being subjected to invidious discrimination vis-a-vis the Section Officers. It is further contended that there is no justification to place these two categories of Officers on a lower scale of pay than what is applicable to the Under Secretaries and Deputy Secretaries in the Secretariat of the Lok Sabha or the

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Rajya Sabha. They contend that the Pay Commission, in view of the admitted constraint of time, did not make an exhaustive and proper study of the nature of the functions performed by different categories of employees of the Supreme Court Registry in comparison to those working in the Central Government Secretariat and that of the Lok Sabha and the Rajya Sabha.

These are weighty arguments and they require thorough investigation. In this connection, reference may be made to Part II, Chapter I, of the Report of the Committee of Judges stating that despite the functional distinctions, no attempt had been made to provide a separate and distinct identity to the ministerial staff of the Supreme Court Registry. The Committee pointed out that even the designations of various posts had been borrowed from the Central Secretariat Service with marginal modifications. So stating the Committee observed:

> "These borrowed designations without any attempt at giving a distinct and independent indentity to the ministerial staff in the Registry of the Supreme Court led to invidious comparison and as a sequel to an unacceptable outcome. History with regard to the salary scale applicable to various categories of staff in the Registry would show that at least since the Second Pay Commission appointed by the Central Government for Central Government servants, the payscales devised by the Pay Commission were practically bodily adopted by the Chief Justice of India for comparable categories in the Supreme Court. This was repeated after the recommendations of the Third Pay Commission were published and accepted by the Central Government. Apparently with a view to avoiding the arduous task of devising a fair pay structure for various categories of staff in the Registry, this easy course both facile and superficial was adopted which led to the inevitable result of linking the pay structure for the various categories of staff in the Registry with the pay structure in the Central Services for comparable posts.

And the comparison was not functional but according to the designations. No attempt was made to really ascertain the nature of work of an employee in each category of staff and

determine the pay structure and then after framing proper rules invite the President to approve the rules under Art. 146 of the Constitution."

The Committee further pointed out:

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"Equal pay for equal work postulates scientific determination of principles of fair comparison and primarily it must be functional and not by designation because a comparison by designation is more often misleading ..... not the slightest attempt has been made to compare the workload, skill, educational qualification, responsibilities and duties of various categories of posts in the Registry."

The Committee concluded:

"Art. 146(2) casts a duty on the Chief Justice of India to frame rules for determining the conditions of service of officers and servants of the Supreme Court. This is undoubtedly subject to the provisions of any law that may be made by Parliament but so far none has been made. This power conferred on the Chief Justice of India precludes and prohibits the Central Government from undertaking any exercise unless the Parliament enacts a law on the subject to determine conditions of service of officers and staff of the Supreme Court. Whenever therefore the Central Government decides to set up a Pay Panel for revising the pay structure of the Central Government staff, the terms of reference do not include the officers and servants of the Supreme Court. As a necessary corollary they cannot appear before the Pay Panel because their case is not covered by the terms of reference of the Pay Panel. However, when the Pay Panel completes its task and submits its recommendations and the Govt. after accepting the recommendations devises a revised pay structure, the same is bodily applied to the staff of the Supreme Court of India by comparison by designation. Consequently the staff of the Supreme Court of India without any opportunity to influence the thinking of the Pay Panel by its representations and submissions has the unenviable misfortune of being bound by the recommendations of the Pay Panel." (emphasis supplied)

For these reasons the Committee of Judges recommended that in order to assist the Chief Justice in making the rules under Article 146, either a Committee of Judges and experts should be appointed to devise a fair pay structure for the staff of the Supreme Court or refer the whole question to the Pay Commission for theft recommendations. It is pursuant to the recommendations of the Committee of Judges that

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the matter was, as stated earlier, referred to the Pay Commission. The Pay Commission's report was forwarded by the Government to the Registrar of the Supreme Court for his comments on the pay structure of the Supreme Court employees as recommended by the Pay Commission. The Registrar General of this Court wrote to the concerned Secretary of the Central Government a detailed letter pointing out various anomalies and difficulties if the recommendations of the Pay Commission were implemented. He pointed out that implementation of such recommendations would have the unfortunate effect of reducing the pay scales of certain categories of employees of the Supreme Court whose pay has already been enhanced by reason of various orders of this Court. This anomaly, he pointed out,. was glaringly striking in respect of Class IV and Class III employees and certain other categories. The various suggestions of the Registrar General were rejected by the Government except his suggestion for the enhancement of the salaries of the Private Secretaries

to the Judges of this Court. This is what is stated on the point by Shri S. Ghosh, Additional Registrar, in his affidavit sworn on 3rd March, 1989:

"That except the enhancement of the salaries of the Private Secretaries of the Judges of the Supreme Court of India, the rest of the anomalies and infirmities as pointed out by the Registrar General, on behalf of the Chief Justice of India were not appreciated by the Ministry of Finance and the pay 'scales recommended by the Registrar General in respect of various cadres on behalf of the Chief Justice of India were not approved as those recommended by the Pay Commission were sanctioned."

In the light of these facts, which my learned brother, Dutt, J. has discussed more elaborately, I must now examine the scope and ambit of Article 146 of the Constitution of India so far as it concerns the salaries, allowances, leave or pensions of the officers and servants of this Court. The relevant portion of this Article is clause (2) which reads:

"Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

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Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President."

It is clear from clause (2) that, subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court are governed by rules made by the Chief Justice of India or by some other Judge or officer of the Court duly authorised by him. However, these rules, to the extent that they relate to the salaries, allowances, leave or pensions, require the approval of the President of India. These provisions, albeit subject to the abovesaid conditions, are intended to protect the special position of the Court. Rules were made in this regard by the Chief Justice of India with the approval of the President of India and they are contained in Part II of the Supreme Court Officers' and Servants' (Conditions of Service and Conduct) Rules, 1961 as amended upto 16th December, 1985. No amendment of these Rules has been made subsequent to 1985 and consequently the Rules do not reflect the enhanced pay scales adopted on the basis of the interim orders of this Court or the pay scales recommended by the Pay Commission.

The regulation of the conditions of service of the Supreme Court employees is thus the constitutional responsibility and power of the Chief Justice of India, subject, of course, to the two conditions postulated in clause (2) of Article 146. The Pay Commission was in the past not concerned with this category of employees because of the special position of the latter under the Constitution. These employees, however, came to be included within the purview of the Pay Commission on account of the recommendations of the Committee of Judges. The Judges had intended the Pay Commission to study all aspects of the matter in depth and make their recommendations to the Chief Justice of India to aid him in the discharge of his constitutional function under clause (2) of Article 146. In this respect the Chief Justice must necessarily act on the basis of data made available to him by persons he might in that regard appoint, or, as has been done in the present case, by the Pay Commission themselves to whom a reference was made by the Govern-

ment pursuant to the recommendations of the Judges' Committee. The cardinal function of the Pay Commission, while duly acting in connection with the employees of the Supreme Court, is to render effective assistance to the Chief Justice of India to discharge his responsibility of formulating rules under Article 146(2). This is the first step towards the final adoption of the rules governing the conditions of service in relation to salaries, allowances, etc. It is only by
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formulating specific rules in that respect can the President (that means the Government of India) exercise the mind over the question and approve or disapprove the rules. The approval of the President follows the making of the rules, and unless and until rules are made by the Chief Justice of India specifically in regard to salaries, allowances, etc., the President, acting as a constitutional authority, does not and cannot exercise the power of granting or refusing approval. Similar provisions are contained in the Constitution in relation to the High Court (see Article 229). These constitutional requirements are not an empty formality, but are prescriptions required to be strictly complied with to insulate the judiciary from undue executive interference with a view to according it, subject to any law made by the competent legislature, a special position of comparative independence in accordance with the fundamental constitutional scheme of maintaining a harmonious balance between the three organs of State. [See M. Gurumoorthy v. Accountant General Assam & Nagaland & Ors., [1971] Suppl. SCR 420,429].

In the present case, as stated earlier, no rules have been so far made with reference to the recommendations of the Pay Commission or with reference to the pay scales of the Delhi High Court employees, which have been extended to the Class III and Class IV employees of this Court, pursuant to the interim orders of this Court, and consequently the disapproval of the Registrar General's proposals was not an exercise of power by the constitutional authority in terms of clause (2) of Article 146. That this is the correct position is not seriously disputed by any party to the present proceedings. The Attorney General does not dispute that rules have not been so far made by the Chief Justice of India, although certain suggestions had been received from the Registrar General by the concerned Ministry. A statement dated 5.5. 1989 has been filed by the Registrar General of this Court reading as follows:

"After obtaining instructions from the Hon'ble the Chief Justice, I hereby state that necessary amendments to the existing rules relating to the salaries and allowances of the Supreme Court employees will be made in accordance with Article 146 of the Constitution after considering the recommendations of the Fourth Pay Commission in respect of the Supreme Court employees and all other relevant materials and that the said amendments to the Rules will be forwarded to the President of India for approval and after obtaining the approval of the President, in terms of the proviso to
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clause (2) of Article 146 of the Constitution, the same will be implemented."

It is not and cannot be disputed that the Chief Justice of India, by virtue of the constitutional grant, exercises legislative power when he makes rules under Article 146(2). Those rules are in the nature of subordinate legislation having .the force of law to the extent, and subject to the conditions, prescribed by the Constitution. Like all statutory instruments, they are subordinate to the parent law.

The power of the President under the proviso to clause (2) of Article 146 to approve or disapprove the rules made by the Chief Justice of India (relating to salaries, allowances etc.) is likewise legislative in character. It is the approval of the President that stamps such rules, so far as they relate to salaries, allowances, etc,, with the authority of subordinate legislation. The making of the rules by the Chief Justice of India in that respect is a step--indeed a vital step--in the process of law making, but they assume the character of subordinate legislation only on their approval by the President.

The Attorney General strenuously contended that the power of the President under the proviso to clause (2) of Article 146 to grant or refuse approval tantamounts to a legislative function comparable in its nature, ambit and quality to the President's power under Article 111 to assent to, or withhold assent from, a Bill passed by the Houses of Parliament, and consequently his actions in that regard are beyond judicial review. No court can, he says, sit in judgment over the validity or correctness or reasonableness of the President's act of approval or disapproval of the rules. This comparison of the President's power under Article 146 with his power under Article 111 is, with great respect to the Attorney General, misplaced.

The power of the President under Article 111 is primary and plenary and not delegated and subordinate. He exercises legislative power under Article 111 in his capacity as a part of the legislature (see Article 79) and not as a delegate. On the other hand, he acts as a delegate when he acts under the proviso to Article 146(2). This power is no doubt legislative in character, but subordinate in quality and efficacy. The Constitution envisages that the President is not only a part of the legislature, but he is also the ultimate repository of the executive power of the Union (see Article 53(1). It is in the latter capacity that the President acts as a delegate. In the exercise of this function, he does not assume the mantle of the legislature, but functions as the head of the executive to whom the Constitution has delegated specific legisla-

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tive power to make subordinate legislation. This power is limited by the terms, and subordinate to the objects, of delegation. On the advice of his Council of Ministers, the President grants or refuses approval of the rules made by the Chief Justice of India. It is indeed this power of approval, which the Constitution has under the proviso to clause (2) of Article 146 delegated to the President that can vitalise and activate the rules, so far as they relate to salaries, allowances etc., as subordinate legislation. In the making of such instruments, both the Chief Justice and the President act as delegates by virtue of the constitutional conferment of power. They must in this regard necessarily act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts.

The fact that the power exercised by the Chief Justice of India or the President under Article 146(2) is derived directly from the Constitution, and not from a statute, makes no difference to the power of judicial review by a competent court. Any action taken (or refusal to act) on the strength of power derived directly by constitutional delegation is as much justiciable or reviewable upon the same grounds and to the same extent as in the case of any statutory instrument. The fundamental question in determining whether the exercise of power by an authority is subject to judicial review is not whether the source of his power is

the Constitution or a statute, but whether the subject matter under challenge is susceptible to judicial review. Pure questions of facts or questions which cannot be decided without recourse to elaborate evidence or matters which are generally regarded as not justiciable--such as, for example, those relating to the conduct of the external affairs or the defence of the nation--are not amenable to judicial review. See in this connection the principle enunciated in C.C.S.U. & Ors. v. Minister for the Civil Service, [1984] 3 All E.R. 935,948,950.

Rules made under Article 146 being subordinate legislation do not partake of the character of ordinances which are legislation in the true sense for the limited period of their operation, K. Nagaraj & Ors. v. State of A.P. & Anr., [1985] I SCC 523; 548; A.K. Roy v. Union India. [1982] 1 SCC 271, 291 and R.K. Garg v. Union of India, [1981] 4 SCC 675,687. While ordinances cannot perhaps be questioned on any ground which is not relevant to the validity of legislation, it is not so in the case of rules made by virtue of power granted under the Constitution which are, as stated above, liable to be declared void for any of the reasons for which instruments made by virtue of delegation by Acts of Parliament can be declared void. Rules, whether made under the

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Constitution or a statute, must be intra vires the parent law-under which power has been delegated. They must also be in harmony with the provisions of the Constitution and other laws. If they do not tend in some degree to the accomplishment of the objects for which power has been delegated to the authority, courts will declare them to be unreasonable and, therefore, void.

There is indeed a higher degree of presumption of constitutionality in favour of subordinate legislation than in respect of administrative orders. This.is especially the case where rules are made by virtue of constitutional conferment of power. Rules made directly under the Constitution may have in a certain sense greater legislative efficacy than rules made under a Statute; within the field demarcated by the Constitution, the former can, if so provided, operate retrospectively. These rules are, of course, as in the case of all statutory instruments, controlled by the Constitution and the laws: see K. Nagaraj v. State of A.P., (supra); Raj Kumar v. Union of India, [1975] 4 SCC 13, 14 and B.S. Vadera v. Union of India, [1968] 3 SCR 574.

Where the validity of a subordinate legislation (whether made directly under the Constitution or a statute) is in question, the Court has to consider the nature, objects and scheme of the instrument as a whole, and, on the basis of that examination, it has to consider what exactly was the area over which, and the purpose for which, power has been delegated by the governing law.

Rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or violative of the general principles of the law of the land or so vague that it cannot be predicated with certainty as to what is prohibited by them or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith. In the words of Lord Russel of Kilowen, C.J. in Kruse v. Johnson, [1898] 2 Q.B. 91, 99:

"If, for instance, they were found to be partial or unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the

rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires."
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In Union of India & Anr. v. Cynamide 'India Ltd. & Anr., [1987] SCC 720, 734 Chinnappa Reddy, J. observed that price fixation being a legislative activity, it was:

"neither the function nor the forte of the court. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price."

(emphasis supplied)

In S.I. Syndicate Ltd. v. Union of India, AIR (1975) SC 460 this Court stated:

"Reasonableness, for purposes of judging whether there was an 'excess of power' or an 'arbitrary' exercise of it, is really the demonstration of a reasonable nexus between the matters which are taken into account in exercising a power and the purposes of exercise of that power."

In P.C.S. Mills v,. Union of India, AIR (1973) SC 537, this Court, referring to statutory fixation of fair price, stated:

"... But this does not mean that Government can fix any arbitrary price or a price fixed on extraneous considerations or such that it does not secure a reasonable return on the capital employed in the industry. Such a fixation would at once evoke a challenge, both on the ground of its being inconsistent with the guidelines build in the sub-section and its being in contravention of Arts. 19(1)(f) and (g)."

(emphasis supplied)

See also observation to the same effect in Shree Meenakshi Mills v. Union of India, AIR 1974 SC 366.

Any arbitrary exercise of power by a public authority, whether or not it is in the nature of subordinate legislation, is liable to be condemned as violative of Article 14. As stated in E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555:

" ..... equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to
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the whim and caprice of an absolute monarch ..."

See also Maneka Gandhi v. Union of India, AIR 1978 SC 597 Ajay Hasia v. Khalid Mujib, AIR (1981) SC 485 and D.S. Nakara v. Union of India, AIR 1983 SC 126.

An act is ultra vires either because the authority has acted in excess of its power in the narrow sense, or because it has abused its power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness: see the principle stated by Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1947] 2 All. E.R. 880,885. Power is exercised in bad faith where its repository is motivated by personal animosity towards those who are directly affected by its exercise. Power is no less abused even when it is exercised in good faith, but for an unauthorised purpose or on irrelevant grounds, etc. As stated by Lord Magnaghten in Westminster Corporation v. London and North Western Railway, [1905] AC 426, 430:

" .... It is well settled that a public body invested with statutory powers such as those conferred upon the Corporation must take care not to exceed or abuse its powers. 1t

must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first ...."

This principle was restated by this Court in Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295;

" .... Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.

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The true position thus appears to be that, just as in the case of an administrative action, so also in the case of subordinate legislation (whether made directly under the Constitution or a Statute), its validity is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it. See the test adopted by Lord Russet in Kruse v. Johnson, [1898] 2 Q.B. 91 and by Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1948] 1 K.B. 223. See also Mixnam Properties Ltd. v. Chertsey U.D.C., [1965] AC 735; Commissioners of Customs and Excise v. Cure and Deeley Ltd., [1962] 1 Q.B. 340; Meeldowney v. Forde, [1971] AC 632; Carltona Ltd. v. Commissioners of Works and others, [19431 2 All E.R. 560, 564; Point of Ayr. Collieries Ltd. v. Lloyd George, [1943] 2 All E.R. 546; Scott v. Glasgow Corporation, [1899] AC 470, 492; Robert Baird L.D. and others v. City of Glasgow, [1936] AC 32, 42; Manhattan General Equipment Co. v. Commissioner, [1935] 297 US 129, 134; Yates (Arthur) & Co. Pty. Ltd. v. Vegetable Seeds Committee, [1945-46] 72 CLR 37; Bailey v. Conole, [1931] 34 W.A.L.R. 18; Boyd Builders Ltd. v. City of Ottawa, [1964] 45 D.L.R. (2d) 211; Re Burns and Township of Haldimand, [1966] 52 DLR (2d) 101 and Lynch v. Tilden Produce Co., 265 U.S. 315,320-322.

Even if it were to be assumed that rules made by virtue of power granted by a provision of the Constitution are of such legislative efficacy and amplitude that they cannot be questioned on grounds ordinarily sufficient to invalidate the generality of statutory instruments, they are nevertheless liable to be struck down if found to be intrinsically arbitrary or based on an irrational classification or otherwise repugnant to constitutional principles. As stated by this Court in E.P. Royappa v. State of Tamil Nadu, (Supra):

"Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of

equality. Where the operative reason for State action, as distin-
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guished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to malla fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice; in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

These are some of the general principles which must guide the repository of power in all his actions. They apply with equal force to the exercise of power contemplated under Article 146(2), including its proviso. These principles must, therefore, necessarily weigh with the court whenever the action of a constitutional or statutory authority is under challenge. These principles are, however, subject, as stated earlier, to the overriding consideration as to the amenability of the impugned subject matter to judicial review. That of course is a question which must in each case, when challenged, be decided by the court with reference to the facts in issue.

As stated earlier, the constitutional process envisaged under Article 146(2) has not been completed. Initial steps had indeed been taken in that regard and to that end. Constituting the Committee of Judges and their suggestion to refer the question to the Pay Commission, the decision to refer the matter to the Pay Commission, the recommendations of the Pay Commission, and, consideration of the same by the Registrar General and his letter to the Government containing certain suggestions, form the components of a link in the chain leading to the ultimate end; but they are not themselves the ultimate end, which means the making of the rules by the Chief Justice and submitting the same to the President for approval, and the final decision of the. President in that behalf. The Registrar General's letter and the Government's reaction to that letter were at best only the process of consultation preceding the rule making act.

The ultimate authority in this regard being the Chief Justice of India, he alone is competent to make, or authorise the making of the rules. Until the rules are made by him (or by a Judge or officer of the court authorised by him), the question of approval or disapproval by the President does not arise. In making the rules, the Chief Justice would no doubt take into account the recommendations of the Pay Commission or of any other body or experts he may have consulted. He will also take into account the objections raised by the Government
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to the suggestions made by the Registrar General who, of course, acted as an agent of the Chief Justice. But the refusal of the Government to accede to the proposals of the Registrar General is not a refusal of the President under Article 146(2), for such refusal or approval can arise only upon submission to him of duly framed rules.

It is of course true that no court will direct the President to grant approval, for a writ of mandamus will not lie to compel a person to exercise a legislative function in a particular fashion (See A.K. Roy etc. v. Union of India and Anr., (supra) Narinder Chand Hem Raj & Ors. v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh & Ors., [1972] 1 SCR 940. 945. But the President must, upon submission to him of the Rules made by the Chief Justice of India under Article 146(2), exercise his mind as to whether

or not he would grant approval, and, without undue delay, come to a decision on the point: See Aeltemesh Rein, Advocate Supreme Court of India v. Union of India and Others, [1988] 4 SCC 54. In the present case, the time for decision by the President has of course not come.

The approval of the President is not a matter of mere formality. It would, of course, be wrong to say that in no case can the President, which means the Government, refuse to accord approval. However, once the rules are duly framed by so high a constitutional dignitary as the Chief Justice of India, it will only be in the truly exceptional cases that the President would withhold assent. It is but proper and appropriate that, in view of the spirit of the constitutional provision, approval would be accorded in all but the exceptional cases: see the observations of this Court in State of Andhra Pradesh & Anr. v. T. Gopalakrishna Murthi & Ors., [1976] 1 SCR 1008. In this connection the observation of Mukharji, J. in State of U.P. & Ors. v. Renusagar Power Co. & Ors., [1988] 4 SCC 59, 104 is apposite:

"The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated."

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We place on record the statement made by the Registrar General that necessary amendments to the existing rules relating to the salaries and allowances of the Supreme Court employees will be made in accordance with Article 146 of the Constitution after considering the recommendations of the Pay Commission in respect of the Supreme Court employees and all other relevant materials, and that the said amendments to the Rules will be forwarded to the President of India for approval, and, after obtaining the approval of the President in terms of the proviso to clause (2) of Article 146 of the Constitution, the same will be implemented.

In the circumstances, no further order is required in the present proceedings', apart from directing that, until rules are properly made by way of amendments to the existing rules in accordance with Article 146 of the Constitution, the interim orders of this Court dated 25.7.1986, 14.8.1986 and 15.1.1987 shall remain in full force and the status quo as on this day as regards pay and allowances shall be maintained. Accordingly, I agree that there shall be a direction as stated by my learned brother in the final paragraph of his judgment.

Y. Lal. Petitions Disposed of.

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