

PETITIONER:
N.P. VERMA & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 31/01/1989

BENCH:
DUTT, M.M. (J)
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DUTT, M.M. (J)
NATRAJAN, S. (J)

CITATION:
1989 AIR 939 1989 SCR (1) 362
1989 SCC Supl. (1) 748 JT 1989 (1) 389
1989 SCALE (1) 234

ACT:

Labour and Services: Employees of ESSO, Lube India and Caltex Oil Refining Co.--Amalgamation with HPCL--Fitment in equivalent groups--Equation of different posts to be in accordance with functional equivalence and co-equal responsibility.

HEADNOTE:

ESSO Standard Refining Company of India Ltd. and Lube India Ltd. were acquired by the ESSO (Acquisition of Undertakings in India) Act, 1974 and vested in the Hindustan Petroleum Corporation Ltd. In 1978 Caltex Oil Refining India Ltd., another Government company was amalgamated with HPCL. Consequent upon this integration of management staff of CORIL and HPCL, dispute arose as to their fitment in equivalent groups and fixation of inter se seniority. The Tandon Committee appointed to examine the issues recommended the application of the principles of (1) functional similarity, and (2) co-equal responsibility, for equating positions in the two companies. The HPCL appointed two functional directors for framing a rationalisation scheme. In the said scheme for the purpose of equation of 10 grades of CORIL with 8 grades of HPCL some compression was made in the lower grades, namely, R6-A and R6-B of CORIL were clubbed together and equated with grade A of HPCL. Again, grade R7-A and R7-B were clubbed together and equated with grade B of HPCL.

The complaint of the petitioners, former officers and employees of CORIL, was that the rationalisation scheme was arbitrary, in that the fitment of officers of CORIL and those of the ESSO/LIL in the HPCL scales of pay had been made without the equation of posts, which was a sine qua non for integration of officers coming from different sources, so much so that they had been consistently fitted in one or two grades lower in HPCL vis-a-vis their counterparts in ESSO/LIL performing similar duties and having similar responsibilities and status; that in the Tandon Committee report, the post of General Sales Representative of ESSO had been equated with the post of Retail Development Supervisor of CORIL on the principle of functional similarity and co-equal responsibility; that since these two posts were congruent, they should have been fitted in the same group, that

is, in Group B of the new HPCL

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Grade structure, whereas in the said scheme the post of General Sales Representative of ESSO (E-6) and that of Depot Superintendent (E-6) have been placed in the Salary Group B of HPCL, while the post of Retail Development Supervisor (R6-A) and Depot Superintendent/ Relief Depot Superintendent (R6-B) of CORIL have been placed in Salary Group A of HPCL. It is further averred that the post of Depot Superintendent-A (R7-B) and that of Marketing Representative (RT-A) of CORIL have been placed in the Salary Group B of HPCL, but similar posts of ESSO being E-5/E5A have been placed in Salary Group C of HPCL; that the compression should have been made at the higher grades namely, grades R-11 and 12 and the grade of General Manager, and that the petitioners were forced to signify their consent to the said scheme under duress. They, therefore, prayed for a declaration that the said scheme was violative of Articles 14 and 16 of the Constitution of India.

For the respondents, it was contended that the two committees that were appointed by the Chairman of HPCL considered the different methods of fitment and equivalence of different pay-scales of ESSO, LIL and CORIL with the pay-scales of IOC, that the reports submitted by these two committees were considered by the HPCL along with the submissions made by the officers' association through their representations before approval, that the terms and conditions of the new appointments as per the rationalisation scheme were circulated to each of the CORIL employees with its letter dated July 7, 1980 and they having accepted in writing the said scheme they were precluded from challenging the same.

Allowing the writ petitions,

HELD: 1. While it is not within the domain of the Court to make the equation of posts for the purpose of integration, it is surely the concern of the Court to see that before the integration is made and consequent fitment of officers in different grades/scales of pay is effected, there must be an equation of different posts in accordance with the principle of functional equivalence and co-equal responsibility. [372G-H]

In the instant case, no evidence or material has been placed before the Court on behalf of the HPCL in support of such equation of posts. The rationalisation scheme with regard to the placing of the officers of CORIL in different IOC/HPCL grades of pay, therefore, cannot be accepted in full. [372H]

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2. This is not for the Court to say whether the compression should have been made in the lower grades or in the higher grades. By such compression, grades R6-A and R7-A have been upgraded and the persons placed in those grades have been benefitted. If compression had been made in the upper grades there would have been much complications in view of the functional differences, for the grade of General Manager cannot be clubbed together with a lower grade. The contention that the compression should have been made in the higher grades of CORIL cannot, therefore, be accepted. [371F-G]

3. The apprehension of the petitioners that in the event of their refusal to accept the scheme, their services will be terminated cannot be rejected. It may be that there was no reasonable basis for such apprehension, but the plea that because of such apprehension the petitioners had no other alternative than to accept the scheme, cannot be disbe-

lieved. [371B]

4. Having regard to the interest of several officers of HPCL who would be affected if the scheme is set-aside, and in view of the fact that during the eight years in which the scheme had been in operation many changes had taken place with regard to the positions and ranks of the officers of HPCL including petitioners, HPCL is directed to appoint a committee consisting of high officials of HPCL and Central Government, other than those who were in the previous committees, within one month for the purpose of considering the question of equation of posts on the basis of functional similarity, equivalence and co-equal responsibility, and to give effect to the same. Promotions and the existing positions of the officers of HPCL by virtue of the implementation of the impugned scheme, not to be interfered with. [373D, F-G; 374B]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions (C) Nos. 331-47 of 1984.

(Under Article 32 of the Constitution of India.)

Rajinder Sachar and K.T. Anantharaman for the Petitioners.

Narayan B. Shetty, G.B. Pai, S.S. Shroff, Mrs. P.S. Shroff, Miss Girja Krishan, S.A. Shroff, Mrs. Pallavi Shroff, O.C. Mathur and A.M. Dittia for the Respondents.
The Judgment of the Court was delivered by
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DUTT, J. In these writ petitions, the petitioners are former officers and employees of the Caltex Oil Refining (India) Ltd., which has since been amalgamated with the Hindustan Petroleum Corporation Limited. The complaint of the petitioners is with regard to the inter se fitment of the officers and employees of the Caltex Oil Refining (India) Ltd. and the other two Companies which have also been amalgamated with Hindustan Petroleum Corporation Ltd., namely, ESSO Standard Refining Company of India Ltd. and Lube India Ltd.

In 1974, the Undertakings in India of ESSO Eastern Inc. that is, ESSO Standard Refining Company of India Ltd. (for short 'ESSO') and Lube India Ltd. (for short 'LIL') were acquired by the ESSO (Acquisition of Undertakings in India) Act, 1974 and vested in Hindustan Petroleum Corporation Ltd. (for short 'HPCL'), a Government Company. In 1977, the shares of Caltex Oil Refining (India) Ltd. and Undertakings in India of Caltex (India) Ltd. were acquired by the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and the Undertakings in India of Caltex (India) Ltd. Act, 1977 and vested in Caltex Oil Refining (India) Ltd. (for short 'CORIL'), a Government Company. On May 5, 1978, by the order of the Company Law Board, CORIL was amalgamated with HPCL.

By an order dated June 17, 1978, the Central Government appointed a one-man Committee of Mr. B.B. Tandon, IAS (Retd.), for the purpose of examining the problems arising out of the integration of the management staff of CORIL and HPCL. The said Committee was to make recommendation inter alia on the following:

(i) fitment in equivalent Groups;

(ii) criteria to be adopted for determination of seniority and fixation of inter se seniority; and

(iii) placement in appropriate positions.

In September, 1970, the Tandon Committee submitted a report to the Central Government recommending that for

equating positions in the two companies and fitting them in equivalent groups, the following two principles should be followed:

1. The principle of functional similarity
2. The principle of co-equal responsibility.

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We shall have occasion to refer to the report of the Tandon Committee later in this judgment, for much reliance has been placed by the petitioners on the report. While the report of the Tandon Committee was under the consideration of the Central Government, HPCL appointed two functional directors for the purpose of formulating a rationalisation scheme. In this connection, we may refer to a letter dated July 28, 1979 of the Central Government whereby it advised HPCL that the pay-scales and perquisites of management and employees in the nationalised oil companies should be rationalised and fitted into the pay-scales of the Indian Oil Corporation, hereinafter referred to as 'IOC', a public sector Company. Further, it was stated in the said letter that the guiding principle to be adopted for the purpose was to find out the equivalence, that is to say, the equality of duty and also the equality of responsibility.

On July 7, 1980, a circular letter was issued by HPCL annexing thereto a rationalisation scheme consisting of two parts. In the first part, the past service benefits that would be admissible to each employee of CORIL on the basis of existing pay-scales and in the second part, details were given of the rationalised conditions of service, pay-scales, perquisites and retirement benefits. In the circular it was stated as follows:

"In relation to your fitment or fixation of salary in the proposed rationalised scales, should you have any grievance you will be at liberty to represent your case to a Grievance Committee, which has been specially constituted for the purpose.

I am directed to request you to signify your acceptance of this offer within 30 days from the date of receipt of this letter by returning the duplicate copy of this letter duly signed by you. On receipt of your acceptance, consequent letters will be issued."

In the scheme the pay-scales of ESSO, LIL and CORIL sought to be equated with the pay-scales of HPCL are as follows:

From ESSO Salary Group	To : HPCL Salary Group	HPCL Salary Scale RS.
E-7, E-8	A	750-40-1150-50-1550
E-6	B	1050-50-1450-60-1750
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E-5, E-5A	C	1450-60-1690-65-1950
E-4	D	1600-65-2120
E - 3	E	1850-100-2350
E-2	F	2000-100-2500
O & E-1 & Unclassified	G	2250-100-2750
General Manager	H	2500-100-3000
From : LIL Salary Group	To : HPCL Salary Group	HPCL Salary Scale
L-7	A	750-40-1150-50-1550
L-6	B	1050-50-1450-60-1750
L-5	C	1450-60-1690-65-1950
L-4	D	1600-65-2120
L -3	E	1850-100-2350

L -2	F	2000-100-2350
L- 1	G	2250-100-2750
General Manager	H	2500-100-3000
From CORIL	To : HPCL	HPCL
Salary Group	Salary Group	Salary Scale
R-6 A, R-6 B	A	759-40-1150-50-1550
R-7 A, R-7 B	B	1050-50-1450-60-1750
R-8	C	1450-60-1690-65-1950
R-9	D	1600-65 -2 120
R- 10	E	1850-100-2350
R- 11	F	2000-100-2500
R- 12	G	2250-100-2750
General Manager	H	2500-100-3000

So far as CORIL is concerned, it appears that it has 10 grades, while HPCL has 8 Grades. For, the purpose of equation of these 10 grades of CORIL with 8 Grades of HPCL, some compression has been made in the lower Grades, namely, R6 A and R6 B have been clubbed together and equated with Grade A of HPCL. Again Grades R7 A and R7 B of CORIL have been clubbed together and equated with Grade B of HPCL. In ESSO, the Grades E-7 and E-8 have been clubbed together and equated with Grade A of HPCL. In the Salary Group of ESSO, the Grades E-5 and E-SA have been shown to be two different Grades, but it is not disputed before us that these two Grades are really one Grade.

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The complaint of the petitioners is that in the matter of fitment/ integration of the officers of CORIL, that is, the petitioners, and the officers of ESSO/LIL into HPCL/IOC Grades, gross disparities have been made to the prejudice of the officers of CORIL. It is the case of the petitioners that the officers of CORIL have been fitted by HPCL consistently in one or two Grades lower in HPCL vis-a-vis their counterparts in ESSO/LIL, performing similar duties and having similar responsibilities and status. It is urged on behalf of CORIL that in integrating the officers CORIL with those of ESSO and LIL, HPCL did not make any attempt to equate all the positions held by the officers of CORIL with those held by the officers of ESSO/LIL. It is submitted that before any fitment can be made into any scale of pay, it is incumbent to make an equation of posts and without such equation the officers of CORIL could not be fitted into the pay-scales of HPCL along with the officers of ESSO and LIL.

In support of the contention that HPCL has not made any equation of posts before fitment in HPCL/IOC scales of pay, Mr. Sachar, learned Counsel appearing on behalf of the petitioners, has placed much reliance on the Tandon Committee's Report. In the said report, the post of General Sales Representative of ESSO has been equated with the post of Retail Development Supervisor of CORIL. In the scheme prepared by HPCL, the post of General Sales Representative of ESSO (E-6) and that of Depot Superintendent (E-6) have been placed in the Salary Group B of HPCL, while the post of Retail Development Supervisor (R6-A) and Depot Superintendent/Relief Depot Superintendent (R6-B) of CORIL have been placed in the Salary Group A of HPCL. In Tandon Committee's Report, it has been observed that the functional similarities and the responsibility carried by both these functionaries, namely, Retail Development Supervisor of CORIL and General Sales Representative of ESSO, are alike. Further, it has been observed that since these two posts are congruent, they can be fitted in the same Group, that is, in Group B of the new HPCL Grade Structure representing IOC scales of pay. The post of Depot Superintendent-A (R7-B) and that of Marketing Representative (R7-A) of CORIL have been placed in

the Salary Group B of HPCL, but similar posts of ESSO being E-5/E-5A have been placed in the Salary Group C of HPCL. It is thus complained that the scheme, which has been prepared by HPCL, is arbitrary and is not based on a proper equation of posts.

On the other hand, it is the case of HPCL that before the rationalisation scheme was finalised. HPCL Employees Management

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Staff Association and CORIL Staff Association submitted their written submissions on December 6, 1977 and July 17, 1977 respectively. These representations were considered by the Government and after several meetings between the Chief Executives of HPCL and CORIL and the Secretary and other senior officers of the Ministry and Bureau of Public Enterprise, Government formulated the guidelines for rationalisation and communicated its decision to both CORIL and HPCL by its letter dated July 28, 1979. With a view to giving a further opportunity to the employees of erstwhile ESSO and CORIL group of officers, the Chairman of HPCL appointed two Committees to submit their recommendations as to the equivalence and fitment of existing officers on the basis of IOC's scales of pay in accordance with the Government guidelines. HPCL considered the reports submitted by the said two Committees and also different methods of fitment and equivalence of different pay-scales of ESSO, LIL and CORIL with the pay-scales of IOC and, keeping in view all these factors including the submissions made by the Officers' Association through their representations, HPCL approved the proposal of rationalisation of pay-scales, allowances and perquisites. Accordingly, an offer letter dated July 7, 1980 together with the terms and conditions of new appointment as per the rationalisation scheme was sent to each of the employees. The further case of HPCL is that without exception every one of the CORIL Management Employees accepted the fresh terms offered to them by the said letter dated July 7, 1980.

It is, accordingly, contended by Mr. Pai, learned Counsel appearing on behalf of HPCL, that the impugned rationalisation scheme having been finalised after repeated consultations with the officers of CORIL and their Association and all the officers of CORIL having accepted in writing the said scheme, they are precluded from challenging the same.

Another fact, upon which reliance has been placed on behalf of HPCL, is an order of this Court dated December 17, 1979 passed in Civil Appeal No. 3214 of 1979 whereby HPCL challenged the judgment of the Delhi High Court quashing a circular dated March 8, 1978 issued by the Board of Directors of CORIL, on the writ petition filed by the employees of CORIL being Writ Petition No. 426 of 1978. Two other appeals being Civil Appeal No. 3212 of 1979 and Civil Appeal No. 35 186 of 1979 were also filed by the officers of CORIL and Bharat Petroleum Corporation Ltd. respectively. The said order is as follows:

"The petitioner-Corporation will be at liberty to frame a

scheme, if it wishes to do so, in accordance with the judgment of the High Court under appeal. If the scheme is framed, it will not be implemented for a period of three weeks from the date of its framing and the respondents will be at liberty within the period of 3 weeks to apply to this Court for stay. This order will be without prejudice to the rights and contentions of the petitioner-Corporation in the appeal."

Admittedly, no application was made to this Court by the officers of CORIL praying for stay of the rationalisation

scheme within a period of three weeks. Relying on the said order of this Court and also on the fact that no application for stay was made to this Court within the period allowed, it is submitted on behalf of HPCL that the petitioners accepted the rationalisation scheme which is also evidenced by their written acceptance. If they had any objection to the scheme, they would have surely made a representation to this Court in the said Civil Appeal No. 3214 of 1979 which was then pending.

In the writ petition, the petitioners have emphatically denied the allegation of HPCL that discussions were made with individuals and groups of Management Staff of CORIL with regard to the rationalisation scheme. As to the acceptance of the rationalisation scheme, the case of the petitioners is that on July 12, 1980 a news item appeared in the Bombay edition of the Times of India to the effect that under the scheme of rationalisation, the services of nearly 950 officers of HPCL would be terminated, and that such officers would simultaneously be reappointed on the basis of public sector salary. In view of the said news, the petitioners filed an application in this Court in the said Civil Appeals praying for stay or suspension of the operation of the said offer letter dated July 7, 1980 and for restraining HPCL from terminating the services of the Management Staff of CORIL pending the disposal of the Civil Appeals. HPCL filed an affidavit in opposition to the said application of the petitioners to the effect that no decision had been taken by HPCL to terminate the services of the officers of CORIL. Accordingly, this Court disposed of the said application recording that in view of the said affidavit of HPCL, no order was needed to be passed. Further, the case of the petitioners is that in spite of the said order of this Court, the petitioners still apprehended that HPCL would terminate the services of the petitioners in the event of their refusal to accept the said scheme and, as such, the petitioners under duress were forced to signify their consent to the said scheme.

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We have considered the explanation of the petitioner justifying the acceptance of the said offer letter dated July 7, 1988 and the rationalisation scheme sent therewith and also the contention of HPCL in that regard. In our opinion, the apprehension of the petitioners that in the event of their refusal to accept the scheme, their services will be terminated cannot be rejected on the face of it. It may be that there was no reasonable basis for such apprehension, but the plea that because of such apprehension the petitioners had no other alternative than to accept the scheme, cannot be disbelieved. At the same time, we do not also put any blame on HPCL for implementing the said scheme which was accepted by the petitioners and other officers of CORIL. Instead of disposing of these writ petitions on this technical grounds, we may proceed to consider the respective contentions of the parties on merits.

The main grievance of the petitioners appears to be that in the rationalisation scheme a compression has been made at the lower level, namely, Grades R6 A and R6 B have been clubbed together and instead of placing them in the Salary Group B of HPCL, as has been done for the equivalent Grade E-6 of ESSO, they have been placed in the Salary Group A of HPCL. Similarly, the Grades R7 A and R7 B have been clubbed together and placed in Salary Group B of HPCL, while the equivalent Grade of ESSO has been placed in the Salary Group C of HPCL.

The contention of the petitioners is that the compres-

sion should have been made at the higher grades, namely, Grades R11 and R12 and the Grade of General Manager. This is not for this Court to say whether the compression should have been made in the lower grades or in the higher grades. By such compression, Grades R6 A and R7 A have been upgraded and the persons placed in those Grades have been benefited by such upgradation. There is much substance in the contention made on behalf of HPCL that if compression had been made in the upper grades, there would be much complications and, moreover, such compression in the upper grades was not convenient to be made in view of functional differences. The Grade of General Manager cannot be clubbed together with a lower grade. In the circumstances, we are unable to accept the contention of the petitioners that the compression should have been made in the higher grades of CORIL.

The most important question that requires consideration is whether in framing the rationalisation scheme HPCL has really made the equation of posts of CORIL with those of ESSO/LIL. It is the

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positive case of the petitioners that no such equation has been made and the fitment of the officers of CORIL and those of ESSO/LIL in the IOC/HPCL scales of pay have been made without the equation of posts, which is a sine qua non for integration of officers coming from different sources. The petitioners have mainly relied upon the recommendation of the Tandon Committee that General Sales Representative of ESSO has been equated with the post of Retail Development Supervisor of CORIL. In the scheme prepared by HPCL, the post of General Sales Representative of ESSO and that of Depot Superintendent have been placed in the Salary Group B of HPCL, while the post of Retail Development Supervisor and Depot Superintendent/Relief Depot Superintendent of CORIL have been placed in the Salary Group A of HPCL.

As against this, the contention of HPCL is that the two Committees that were appointed by the Chairman of HPCL considered the different methods of fitment and equivalence of different pay-scales of ESSO, LIL and CORIL with the pay-scales of IOC. Except the bare allegation, no material has been produced before us on behalf of HPCL to show that the said Committees had, as a matter of fact, considered the question of equation of posts on the basis of the principle as laid down by the Central Government while referring the matter to the Tandon Committee, namely, functional similarity and co-equal responsibility. In the affidavits filed on behalf of HPCL, no particulars have been given with regard to the functional equivalence or otherwise of the different grades of these officers of CORIL, ESSO and LIL. It is also not stated what happened to the consideration by the Government of the Tandon Committee's report. There can be no doubt that the Government is not bound to accept the recommendation of the Tandon Committee but, at the same time, the equation of posts has to be made on the principle of functional equivalence and co-equal responsibility. As no materials have been produced in that regard on behalf of HPCL, it is difficult for us to hold that the different grades of posts have been compared before placing the officers of these companies in the IOC/HPCL scales of pay. While it is not within the domain of the Court to make the equation of posts for the purpose of integration, it is surely the concern of the Court to see that before the integration is made and consequent fitment of officers in different grades/scales of pay is effected, there must be an equation of different posts in accordance with the principle stated above. As there is no evidence or material in support of

such equation of posts, it is difficult to accept the rationalisation scheme with regard to the placing of the officers of CORIL in different IOC/HPCL grades of pay.

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The petitioners approached the Grievance Committee, but the Grievance Committee did not consider the objections of the petitioners to the said scheme. In our opinion, there is much substance in the contention made on behalf of HPCL that it was not the business of the Grievance Committee to consider the propriety or otherwise of the rationalisation scheme, but if any officer has not been placed in the proper grade, the Grievance Committee may place such officer in the proper grade in accordance with the rationalisation scheme.

Be that as it may, in the view which we take, namely, that there has been no equation of posts, the rationalisation scheme cannot be accepted in full. The prayer of the petitioners in the writ petition is for a declaration that the said scheme is violative of Articles 14 and 16 of the Constitution of India and for a writ, order or direction in the nature of mandamus directing HPCL to remove the discrimination against the petitioners in regard to the impugned rationalisation scheme.

The question is whether we should set aside the scheme after the lapse of about eight years. During these eight years, by virtue of implementation of the scheme, many changes have taken place with regard to the positions and ranks of the officers of HPCL including the petitioners and to set aside the whole scheme at this stage would surely affect the service structure of HPCL. We are also not oblivious of the order of this Court dated July 20, 1984 recording the statement made in the affidavit of HPCL that if this Court would ultimately decide the matter in favour of the petitioners, HPCL would accord to them all the benefits which they would be entitled to. That is an undertaking given by HPCL, but we should also look to the interest of several officers of HPCL who would be affected, if the scheme is set aside.

In the circumstances, without setting aside the scheme, we direct HPCL to appoint a Committee consisting of high officials of HPCL and Central Government, other than those who were in the previous Committees, within one month from date for the purpose of considering the question of equation of posts on the basis of functional similarity, equivalence and co-equal responsibility, that is to say, whether on that basis Grades R6 A and R6 B of CORIL, either jointly or separately, can be equated with the Grade E-6 of ESSO and, similarly, Grades R7 A and R7 B of CORIL, either jointly or separately, can be equated with Grade E-5/E-5A of ESSO. In considering the question of equation of posts, the respondents shall also take into its consideration the report of the Tandon Committee. Such consideration shall be

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made within six months from today. If such equation is found to be in favour of the petitioners, HPCL shall give effect to the same. But, in view of the lapse of about eight years for which the petitioners are also to some extent responsible, the date or dates from which the consequential benefit will be given effect to and also the quantum of such benefit will be such as may be deemed fit and proper by the respondents, having regard to the financial involvement and the changes that have taken place. We make it clear that, in no event, promotions and the existing positions of the officers of HPCL, by virtue of the implementation of the impugned scheme, will be interfered with.

The writ petitions are disposed of as above. There will

be no order as to costs.
P.S.S
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Petitions allowed.

JUDIS