SECRETARY, FINANCE DEPARTMENT AND ORS. A

v.

WEST BENGAL REGISTRATION SERVICE ASSOCIATION AND ORS.

FEBRUARY 20, 1992 B

[A.M. AHMADI AND M.M. PUNCHHI, JJ.]

Service Law—Determination of pay scale. Powers of Court—Determination of pay scales and equation of posts is executive function—But Court can interfere if employees are treated arbitrarily—Necessary and relevant factors for determination of pay scale discussed—Relevance of educational qualification in determination of pay scale—What is. C

West Bengal Registration Service—Post of Sub-Registrar—Conferment of gazetted status—Government notification—Inclusion of registration service in State Service—Entitlement of Sub-Registrars to pay scale equivalent to State Level Officers—Held pay scale must reflect nature of duties and responsibilities—Mere conferment of gazetted status and inclusion in State Service does not justify higher scale—Sub-Registrars and Munsiffs held not equal as their duties are different in nature—Grant of scale to Sub-Registrar not equivalent to that payable to State Level Officers held not arbitrary—Supreme Court's direction to State Government to determine appropriate pay scale for Sub-Registrars and posts above them. D E

The West Bengal Registration Service comprised the post of Sub-Registrars and other posts above the level of sub-Registrars. By a resolution dated May 22, 1952 the post of Sub-Registrar was directed to be regarded as gazetted w.e.f. 1st April, 1952. Thereafter by a Notification dated 17th July, 1953 the Registration Service was, with effect from the date of its constitution i.e. 30th January, 1953 included in the West Bengal State Service. F G

The respondents alleged that notwithstanding the commitment made by the 1953 Notification that they would be accorded all the privileges admissible to officers belonging to State Service, their pay scale was not revised equivalent to the minimum pay scale admissible to State Service Officers. Even when pursuant to the recommendations of the Pay Com- H

A mittee the pay-scales were revised they were placed on a scale which was lower than the minimum scale payable to State Service Employees. Further though the First State Pay Commission recommended a Scale of Rs. 425-825 for Sub-Registrars yet the recommendation did not find favour with State Government and their pay scale was fixed at Rs. 300-600. Also B pursuant to the recommendations of the Second State Pay Commission their pay scale was revised to Rs. 425- 1050 i.e. scale No. 11, although the minimum scale fixed for the State Service Officers was Rs. 660-1600 i.e. Scale No. 17.

C Feeling aggrieved by the decision of the State Govt. the respondents filed a writ petition in the High Court of Calcutta under Article 226 of the Constitution for a mandamus to award scale No. 17 of Rs. 660-1600 as admissible to State Service Officers. During the pendency of the writ petition the Third State Pay Commission submitted its report. This Commission also rejected their claim of pay scale of Rs. 660-1600, the D minimum scale for State service, on the ground that their duties and responsibilities did not justify the higher pay scale.

By its judgment dated 28th June, 1989, a Division Bench of the High Court allowed the writ petition and awarded revised scale No. 17 by E holding that the Government had acted arbitrarily and in violation of Articles 14 and 16 of the Constitution in not awarding scale No. 17 to the Sub-Registrars. The High Court based its decision on the facts that (i) the post of Sub-Registrar was a gazetted post belonging to the State Service; (ii) the first State Pay Commission recommended a higher pay scale which was turned down by Finance; and (iii) the revised educational F qualification for Sub-Registrar, a law degree, was the same as required for Munsiffs.

Subsequently the respondents filed an application for interim relief seeking permission to exercise option for the corresponding scale No. 17 G of Rs. 2200-4000 equivalent to the old scale of Rs. 660-1600 which was allowed by the High Court by its order dated 16th March, 1990. They also filed an application seeking clarification of the Court's order dated March 16, 1990 and by its order dated 30th March, 1990 the High Court permitted the officers belonging to the posts above the level of Sub-Registrars to opt H for corresponding scales Nos. 18 and 19.

In appeals to this court against the judgment of the High Court dated 28th June, 1989 and orders dated 16th and 19th March, 1990 it was contended on behalf of the appellant that (i) the High Court committed a serious error in revising the pay-scale of sub-Registrars in exercise of its extraordinary jurisdiction under Article 226 of the Constitution because pay fixation was essentially an executive function ordinarily undertaken by an expert body like a Pay Commission whose recommendations are not justiciable; (ii) there being no scheme as 'Constituted State Service' the employees have been categorised as Group 'A', 'B', 'C', and 'D' on the basis of evaluation of their work and the recruitment policy. For examination purposes the State Public Service Commission has placed the Sub-Registrars in Group 'D' whereas those in scale No. 17 fall in Group 'A'. Therefore, they are not comparable and cannot be placed in same pay scale.

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On behalf of the respondents it was contended that since after 1981 the qualification of a degree in law, as required in the case of Munsiffs, was also added to their eligibility criterion, they should be equated with Munsiffs in the matter of pay-scale.

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Allowing the appeals and setting aside the orders of the High Court, this Court,

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HELD : 1. The High Court committed a serious error in law in holding that the Government's action in not granting the scale No. 17 to Sub-Registrars was violative of Article 14 of the Constitution. [915G]

2. Equation of posts and determination of pay-scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction. [912E-F]

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Parbat Kiran Maithani & Ors. v. *Union of India & Anr.*, AIR 1977 SC 1553; *State of U.P. & Ors.* v. *J.P.Chaurasia & Ors.*, AIR 1989 SC 19, cited.

3. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educa-

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A tion/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and verticle relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay etc. These factors have to be kept in view while evolving a pay structure and the horizontal and verticle relativities have to be carefully balanced keeping in mind the hierarchial arrangements, avenues for promotion etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. [913C-E]

4. One of the basic principles for pay fixation is that the salary must reflect the nature of duties and responsibilities attached to the post, meaning thereby that the pay scale must be commensurate with the task to be performed and the responsibility to be undertaken by the holder of the post. Merely because the Sub-Registrars were conferred gazetted status and the Registration Service was included in State Service did not entitle the Sub-Registrars to be placed in the higher scale if their duties and responsibilities did not justify the same. By conferment of gazetted status or placement in State Service, no qualitative change was brought about in the job performance of the Sub-Registrars and their superiors. [914E-G]

4.1 The High Court failed to evaluate the difference in the nature of duties and responsibilities of a Munsiff and a Sub-Registrar. The duties and responsibilities of a Munsiff and a Judicial Magistrate are far more onerous than those of a Sub-Registrar. The Sub-Registrar's duties are relatively simple – namely to receive, examine and register the document – whereas the duties of a Judicial Officer at the floor level are to hear cases, examine witnesses, interpret and construe different laws, hear oral arguments and deliver reasoned judgments. He has to keep abreast with a host of laws unlike a Sub-Registrar who is expected to study only a couple of laws connected with the registration of documents like the Registration Act, the Stamp Act etc. The responsibilities of a Judicial Officer are therefore far greater than those of Sub-Registrars. Therefore, to compare the Sub-Registrars with Judicial Magistrates-Munsiffs is to compare unequals. It would, therefore, be wholly arbitrary to place them in the same pay scale. [915D-G]

5. One of the inputs for pay determination is educational requirement for the post. The higher the educational qualification the better

would be the quality of service rendered and the end result would in the ultimate be far more satisfactory. That indeed cannot be disputed. But educational qualification is only one of the many factors which has relevance to pay fixation. The complexity of the job to be performed and the responsibilities attached thereto are entitled to great weight in determining the appropriate pay scale for the job. *Prima facie* there appears substance in the grievance of the Sub- Registrars that while the minimum educational qualification for direct entry into the post has been periodically raised, the level of pay scale, for the post has not undergone any change, whatsoever. [916A-C]

6. The State Government is directed to re-examine the question of the appropriate pay scale for Sub-Registrars by a speaking order after hearing the representatives of the respondent association. If the State Government decides on the upward revision of the salary of the Sub-Registrars, it will simultaneously consider the question of upward revision of the pay scales of higher posts in the department. [916E-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2023, 2024 & 2025 of 1990.

With

I.A. Nos. 7-9 of 1991.

From the Judgment and Order dated 28.6.89 & 16.3.90 of the Calcutta High Court in Appeal No. 498 of 1988.

A.K.Mitra, P.K.Chatterjee, Jaydip Kar and Ms. Radha Rangaswamy for the Appellants.

Narayan Shetty, Gopal Subramaniam, Atin Banerjee and D.P. Mukherjee for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J. These three appeals by special leave arise out of the Judgement & Order dated 28th June, 1989 passed by the Division Bench of the High Court of Calcutta and from the subsequent orders dated March 16, 1990 and March 30, 1990 made in pursuance thereof. The brief facts

A giving rise to these three appeals may be stated as under.

The West Bengal Registration Service comprising the Sub-Registrar's post was administered by the Judicial Department of the State. Under the West Bengal (Revision of Pay & Allowances) Rules, 1951 B (hereinafter called 'the ROPA Rules') the scale of pay for the said post was fixed at Rs. 100-250. By a resolution dated May 22, 1952 the said post of Sub-Registrar was directed to be regarded as Gazetted with effect from April 1, 1952 and thereafter by notification dated July 17, 1953 the Governor, in exercise of powers conferred by Rule 188 of the Civil Service (Classification, Control & Appeal) Rules read with Articles 313 and 372 C of the Adoption of Laws Order, 1950 and all other related powers, declared that the West Bengal Registration Service comprising (1) Registrar of Assurances, Calcutta, (ii) Inspectors of Registration Offices, (iii) Departmental District Sub-Registrars, (iv) Sub-Registrar of Assurances, Calcutta (v) District Sub-Registrars, and (vi) Sub-Registrars shall, with D effect from January 30, 1953, the date of constitution of the said service, be deemed to be included in the State Service. The respondents who belong to the said service contend that after the issuance of the said notification a commitment was made by the State Government that Sub-Registrars would be accorded all the privileges admissible to officers belonging to the State Service. Notwithstanding the said commitment the E respondents contend that their pay scale was not revised to Rs. 200-400 which was the lowest pay-scale admissible to State service officers. Thereafter pursuant to the recommendation of the Pay Committee, the pay scale underwent an upward revision but the Sub-Registrars were placed in the revised scale of Rs. 200-400 which corresponded to the old scale of Rs. F 100-250, even though the minimum scale for State service employees was raised to Rs. 250-550 under the ROPA Rules, 1961. The First (State) Pay Commission was then constituted in 1967. That body examined the grievance of this service and observed that it was an extremely ill-paid service. After evaluating the job requirements, recruitment standard and responsibilities attached to the post belonging to the said service it recom- G mended a scale of Rs.425-825 for Sub-Registrars and corresponding higher scales for other posts, the highest being Rs. 850-1600 for Registrar of Assurances, Calcutta and Inspectors of Registration Offices. It appears that this recommendation did not find favour with the State Government. This is obvious from the fact that under the ROPA Rules, 1970, the pay H scale for the post of Sub-Registrar was fixed at Rs. 300-600 only. Pursuant

to the recommendations of Second (State) Pay Commission the pay scale for the post was revised to Rs. 425-1050 under ROPA Rules, 1981. This was Scale No. 11. According to the respondents they ought to have been placed in scale No. 17 which carried a pay scale of Rs. 660-1600 but, contend the respondents, grave injustice was done to them because of the biased and negative attitude of the Finance Department of the State Government. It was contended that since the basic minimum pay scale for State service officers was fixed at Rs. 660-1600, there was no valid reason to deny the same to the Sub-Registrars and to deny higher pay scales to officers above the level of Sub-Registrars in the West Bengal Registration Service. Feeling aggrieved by the decision of the State Government the respondents, therefore, filed a Writ Petition No. 1993 of 1987 in the High Court of Calcutta under Article 226 of the Constitution for a Mandamus to award to the Sub-Registrars the pay scale No. 17 of Rs. 660-1600 with all other privileges admissible to State service officers. In the said writ petition the learned Single Judge of the High Court passed certain interim orders against which an appeal No. 498 of 1988 was preferred before a Division Bench of the High Court. At the hearing of the said appeal the Division Bench felt that it would be proper to dispose of the writ petition itself on merits and accordingly it heard the writ petition by consent of parties instead of disposing of the appeal against the interim order and leaving the hearing of the writ petition to the learned Single Judge. The Division Bench of the High Court allowed the writ petition and directed that the Sub-Registrars should be placed in the pay scale of Rs. 660-1600 with effect from April 1, 1981 and their pay scales should be fixed notionally on that basis without paying the difference in salary up to January 1, 1986. The arrears of salary for the subsequent period was, however, directed to be paid within 8 weeks from the date of the judgment. Certain other directions were also given but it is not necessary to notice them.

It may here be mentioned that during the pendency of the writ petition the Third (State) Pay Commission constituted by the State Government had submitted its report sometime in December, 1988. Before the said body it was represented on behalf of the Sub-Registrars that they should have been placed in the pay scale of Rs. 600-1600 instead of Rs. 425-1050 as that was the basic minimum scale for State service and the scale for higher posts in the West Bengal Registration Service should be correspondingly raised. The Commission spurned this request as in its opinion the duties and responsibilities of the Sub-Registrars did not justify

A the higher pay scale. Pursuant to the recommendations of the Pay Commission the ROPA Rules, 1990 came to be issued whereunder the Sub-Registrars were placed in the revised Scale No. 11 of Rs. 1390-2970. The High Court took notice of the recommendations of the Pay Commission as well as the ROPA Rules, 1990 while disposing of the writ petition by its
B judgment dated 28th June, 1989.

After the High Court's Judgment awarding Scale No. 17 to the Sub-Registrars, the respondents took out an application for interim relief seeking permission to exercise option for the corresponding Scale No. 17 of Rs. 2200-4000 and for granting an option to officers above the level of
C Sub-Registrars for placement in the corresponding Scales Nos. 18 and 19 with effect from April 1, 1981. The Division Bench of the High Court passed an ad-interim order dated March 16, 1990 permitting the Sub-Registrars to opt for the revised Scale No. 17. The Civil Appeal No. 2023 of 1990 is against the main judgment of the High Court dated June 28,
D 1989. Civil Appeal No. 2024 of 1990 is against the interim order dated March 16, 1990 by which the Sub-Registrars were permitted to opt for the revised Scale No. 17. On March 19, 1990 the respondents took out an application for clarification of the order dated March 16, 1990. The High Court while disposing of this application permitted the officers belonging to the posts above the level of Sub-Registrars to opt for corresponding
E Scales Nos. 18 and 19. Civil Appeal No. 2025 of 1990 is against that order. Since the subsequent two appeals Nos. 2024 and 2025 of 1990 also flow from the main judgment dated June 28, 1989, which has given rise to Civil Appeal No. 2023 of 1990 we have thought it proper to dispose of all the three appeals by this common judgment.

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The history of the West Bengal Registration Service has been traced by the High Court right from 1826 but it is unnecessary to re-state the same. Suffice it to say that except the top post of the Registrar of Assurances, Calcutta, the remaining cadres in the said service belonged to the Subordinate Services of the State. Generally speaking the West Bengal Services
G were divided into (i) Provincial Services and (ii) Subordinate Services leaving out certain special categories of posts. Subordinate Services comprised certain minor administrative, executive and ministerial posts to which appointment could be made by the Local Government or by an authority subordinate thereto, specially empowered. The other cadres and
H posts belonged to the Provincial Service. By a notification dated Novem-

ber 25, 1949 recruitment rules were framed which provided that recruitment of Sub-Registrars shall be made through West Bengal Civil Service examination. The minimum educational qualification for Sub-Registrars was prescribed as 'graduate of a recognised University'. Subsequently, by a resolution dated May 22, 1952 it was provided that Sub-Registrars shall be regarded as Gazetted Officers with effect from April 1, 1952. Soon thereafter by a notification dated July 17, 1953 the West Bengal Registration Service was included in the State Service. Thus according to the respondents the position that emerged after the notification of 1953 can be summed up as under :

(i) The West Bengal Registration Service was expressly declared to be in the West Bengal State Service (the former Provincial Service);

(ii) The recruitment rules of the State Service were identical to the recruitment rules of the other State Services;

(iii) Gazetted status and concomitant privileges of State Services were conferred on the Sub-Registrars belonging to the West Bengal Registration Service; and

(iv) The powers relating to the recruitment, conditions of service and disciplinary matters in regard to members belonging to the West Bengal Service including the Sub-Registrars were to be exercised by the State Government.

By a notification dated July 6, 1966, the West Bengal Registration Service was declared as the West Bengal Junior Registration Service and subsequently by a notification dated October 17, 1966 rules were framed under Article 309 of the Constitution which superseded all previous rules on the subject and provided that appointment to the post of Sub-Registrar shall be made by the Government through the West Bengal Civil Service (Executive) and Allied Services Examination. The educational qualification for appointment to the post of Sub-Registrar was stated to be a graduate of a recognised University and the age criteria was fixed as not below 21 years and not exceeding 24 years. The system of classification of Government employees into Gazetted and Non-Gazetted and Classes I, II, III, & IV adopted hitherto was done away with by the notification dated September 25, 1978 and Government employees were placed in Groups A,

A B, C, and D according to pay and scale of pay. The new grouping of services was not expected to cause any immediate disturbance in the existing framework of job charts, responsibilities and facilities. Rule 5 (4) of the West Bengal Service Rules, 1971, Part I, was amended and read as under :

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"5(4) - West Bengal State Services means those services and posts under the Administrative control of the Government which have been classified as Group A, Group B, Group C and Group D."

C A note at the foot thereof provided as under :

"Note 1 (a) - Subject to the provisions of paragraph (b) services or posts under Group A, Group B, Group C and Group D shall consist of the services or posts specified respectively against them in the table below :

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S.No	*Classification of Post and Services*	*Classification of the Services and posts*
1.	Group 'A'	All Government employees drawing a pay or a scale of pay with the maximum above Rs. 1,170.
2.	Group 'B'	All Government Employees drawing a pay or a scale of pay with a maximum of Rs. 1170 or below, but above Rs. 700.
3.	Group 'C'	All Government employees drawing a pay or a scale of pay with a maximum of Rs. 700 or below, but above Rs. 415.
4.	Group 'D'	All Government employees drawing a pay or a scale of pay with a maximum of Rs. 415 or below.

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(a) Government may, by special order include any other class or posts carrying any pay or scale of pay in a class of service

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consisting of posts or services carrying a higher pay or scale of pay. A

(b) If a service consists of posts with more than one time scale or if there be a Selection Grade, pay attached to a service or post, post carrying the different time-scales or the Selection Grade pay may be classified in different services according to the pay or the maximum scale of pay of the post. B

Provided further that the aforesaid classification of posts and services shall not interfere with other existing framework of duties, functions, responsibilities and facilities of Government employees on the basis of the existing classification." C

This classification had an impact on the recommendations made by the Pay Commission which were finally approved under the ROPA Rules, 1981. This, in brief, is the history of the West Bengal Registration Service. D

The grievance of the respondents was that even after the Sub-Registrars were placed in the Gazetted category and their service was declared to be included in the State Service and entry into service was through a competitive examination with the minimum qualification for appointment being graduation, the pay scale for Sub-Registrars was fixed at Rs. 100-250 notwithstanding the Government notification of 1953 providing that the said officers belonging to the Registration Service will enjoy the benefits and privileges admissible to State Service officers. On the representation made by the officers of the Registration Service, the then Chief Minister granted the relief of Rs. 50 at the minimum and maximum of the pay scale thereby virtually enhancing the pay scale from Rs. 100-250 to Rs. 150 -300. Thus after the report of the Pay Committee when the scale of pay of Sub-Registrar was revised to Rs. 200-400 in effect the pay at the minimum got reduced by Rs. 10 as the Sub-Registrars were drawing Rs. 5 as DA and Rs. 5 as CCA besides Rs. 50 granted pursuant to the orders of the then Chief Minister. This was totally overlooked by the Finance Department while drawing up the ROPA Rules, 1961. Subsequent representations for upward revision of the scale were ingored by the Finance Department till the First (State) Pay Commission came to be constituted. That body observed as under : E F G

"This is an extremely ill-paid service. The work that the H

A Registration Officers have to do is not negligible in importance. The work involves the interpretation of documents and the assessment of stamp duties and registration fees with reference to the value of the subject matter involved. The scale of pay should be improved. The following scales are recommended :

B (a) Registrar of Assurances and Inspectors of Registration Offices Rs. 850-50-1000-60-1600.

(b) District Registrars and Sub-Registrars of Assurance, Calcutta - Rs. 475-35-825-EB-50-1325.

C (c) District Sub-Registrars - Rs. 450-15-600- EB- 25-825.

(d) Sub-Registrars - Rs. 425-10-475-15-700.

The majority members however, recommended the higher scale of Rs. 450-15-600-25-825 for Sub-Registrars."

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Notwithstanding the said recommendation the pay scale for Sub-Registrars was fixed at Rs. 300-600 under ROPA Rules, 1961. The respondents contend that the injustice done to them in ignoring the above extracted recommendation of the Pay Commission resulted in their being placed in the equivalent Scale No. 11 throughout by the subsequent Pay Commissions also. A strong letter of protest written by the Head of the Department also did not yield the desired result thereby necessitating the filing of a writ petition in which the impugned order came to be passed. It is in this background that we must examine the correctness or otherwise of the impugned judgment and the subsequent impugned interim orders made by the High Court.

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The partition of Bengal in the wake of independence necessitated grant of relief to millions of persons who were uprooted and their rehabilitation. This brought into existence new departments and organisations increasing the number and categories of employees required to handle the enormous task. The history of pay revision in the State of West Bengal would show that under the ROPA Rules, 1950 the total number of pay scales was reduced from 500 to 78 but by the time the Pay Committee was appointed in 1959 the number had once again gone up to 143 but was reduced to 39 by the Pay Committee. The number of pay scales again proliferated from 39 to 81 but the First (State) Pay Commission brought it

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down to 34. The Second (State) Pay Commission appointed in 1977 found 36 standard scales, 19 new intermediate selection grade scales and 20 non-standard pay scales besides a few pay scales introduced on different dates for non-Governments employees. That body reduced the number of pay scales to 29. The Third (State) Pay Commission found the total number of pay scales to be 29 primary pay scales and brought it down to 24 pay scales. The situation thus created on account of the increase in the stratification of administrative hierarchy and the consequential fragmentation of duties and responsibilities on the one hand and the reduction in the number of pay scales on the other necessitated higher initial pay and attaching of special pay to a increasing number of posts to avoid anomalies in the pay structure thereby throwing an increased financial burden on the State Government. The minimum pay fixed for State employees has always been higher than that prescribed for Central Government employees. When the pay structure was related to the index average 200 (1960 : 100) the minimum pay of Central Government employees was Rs. 196 per month while that of the State Government employees was Rs. 220; a weightage of Rs. 24 recommended by the Second (State) Pay Commission on account of dietary habits of State employees. At the index average of 608 the minimum pay for Central Government employees has been fixed by the Fourth Central Pay Commission at Rs. 750 per month whereas the Third (State) Pay Commission has fixed the same at Rs. 800 per month. The maximum pay for State Government employees has been fixed in the scale of Rs. 5900-200-7300. For the old scale 11 (Rs. 425-1050) the new scale prescribed is Rs. 1360-2800. The revised equivalent for the old scale No. 17 (Rs.660-1600) is Rs. 2200-4000. With regard to the demand for higher pay scales for officers belonging to the Registration Service, the Pay Commission observed :

> "It has been represented to us that the scale of pay for the post of Sub-Registrar should have been Rs. 660-1600 which is the basic scale for the State Services and that the scales of pay for the higher posts in the Registration Directorate as mentioned earlier should have been correspondingly higher. In view of the duties and responsibilities of the posts we are of the opinion that upgradation of the scales of pay of these posts will not be justified. The posts should carry the proposed scales of pay and special pay corresponding to their existing scales and special pay."

A As pointed out earlier the High Court took notice of the revised scales fixed by this body and by subsequent orders directed that the Sub-Registrars should be placed in revised scale No. 17, i.e. Rs. 2200-4000, and the officers above them should be placed in the revised scales Nos. 18 and 19. In taking the view that the Registration Service was underpaid, B the High Court was greatly impressed by the fact that the Sub-Registrars were conferred gazetted status and the entire service was designated as State Service and being the head of office and the drawing and disbursing officer as well, he exercised administrative and financial power and now that the recruitment rule had been brought on par with the educational qualification as prescribed for Munsiffs, the pay-scales of Sub-Registrars C ought to be the same and cannot be less than that of Munsiffs. Strong reliance was also placed by the High Court on the observations of the First (State) Pay Commission, extracted earlier, in support of its conclusion that the State Government had arbitrarily brushed aside the demand of the Sub-Registrars for higher wages. Holding that the position of a Sub-D Registrar was equivalent to others in State Services, the High Court ruled that they were victims of hostile discrimination and the Government decision not to accept the weighty recommendations of the Pay Commission was wholly arbitrary and violative of Articles 14 and 16 of the Constitution. In that view that it took it allowed the Writ Petition and awarded scale No. 17 (Rs. 660-1600 now revised to Rs. 2200-4000) to them and E scales Nos. 18 and 19 to higher level officers in the same department. It is against these orders that the present appeals are preferred.

From the resume of facts set out hereinabove it clearly emerges that prior to 1953 the post of Sub-Registrars belonged to the Subordinate F Service but by the notification dated July 17, 1953 it was placed in the State Service w.e.f. January 30, 1953. Being the head of office, a drawing and disbursing officer with certain administrative and financial powers, and also required to perform certain quasi-judicial functions, such as, interpreting recitals contained in the documents and provisions of concerned statutes and rules, counsel for the respondents contended that till 1981 when the G educational qualification for entry into that post was graduation of any discipline, the Sub-Registrars were entitled to be treated above members belonging to Junior Service and pay-scale so determined but the State authority failed to do so. Counsel further contended that after 1981 the additional qualification of a degree in law was added to the eligibility H criterion and thus the same was brought on par with Munsiffs and hence

they should have been equated with Munsiffs in the matter of pay-scale, since officers in all services recruited from practising advocates were given the same scale. Accepting this line of reasoning the Division Bench of the High Court concluded that the Government had acted arbitrarily and in violation of Articles 14 and 16 of the Constitution in not awarding scale No. 17 (Rs. 660-1600) earmarked for State Services by the Second (State) Pay Commission (which the Government had accepted and implemented) to the Sub-Registrars. It is thus manifest that the decision of the High Court was based on the facts (i) the post of the Sub-Registrar was a gazetted post belonging to the State Service (ii) the First (State) Pay Commission had recommended a higher scale (which was still lower than the one demanded by the Sub-Registrars) for Sub-Registrars observing that it was an extremely ill-paid service (a recommendation which was turned down by the Finance Department) and (iii) the eligibility criterion for entry into service was graduation up to 1981 and thereafter the requirement of a law degree was added to it, thus bringing the required educational criterion to that of a Munsiff.

The appellants contend that the High Court committed a serious error in revising the pay-scale of Sub-Registrars in exercise of its extraordinary jurisdiction under Article 226 of the Constitution in total ignorance of the settled legal position that pay fixation is essentially an executive function ordinarily undertaken by an expert body like a Pay Commission whose recommendations are entitled to great weight though not binding on the Government and are not justiciable in a court of law since the court of law is not well equipped to take upon itself the task of job evaluation which is a complex exercise. In support of this contention a catena of decisions beginning with the case of *Parbat Kiran Maithani & Ors.* v. *Union of India & Anr.*, AIR 1977 SC 1553 and ending with the case of *State of U.P. & Ors.* v. *J.P.Chaurasia & Ors.*, AIR 1989 SC 19 at 29 was relied on. The appellants also contest the contention that the Sub-Registrars are a part of the constituted State Service which is awarded scale No. 17. They contend that there is no such service as 'Constituted State Service' and therefore, the question of granting them scale No. 17 never arose. On the contrary they point out that the employees are categorised as belonging to Group A, Group B, Group C, and Group D and are placed in one group or the other on the basis of evaluation of their work and the recruitment policy adopted by the Government. By placing the Sub-Registrars in scale No. 17 the High Court has given them a jump which is likely to give a severe

A jolt to the pay structure and would destroy the verticle heirarchial relativities carefully built-up by the Pay Commission. The appellants, therefore, contend that the High Court had acted in haste in placing the Sub-Registrars in scale No. 17 without realising its impact on the pay structure. For examination purposes the State Public Service Commission has placed the Sub-Registrars in Group D whereas those in scale No. 17 B fall in Group A. Those belonging to Group A are required to sit for six papers whereas those belonging to Group D are required to answer four papers only. While those belonging to Group A are allowed to take one or more optional papers not exceeding three and have to appear for a compulsory personality test of 200 marks, those belonging to Group D are C allowed only one optional paper and have not to appear for the personality test. Thus the examination for Group A employees is far more stringent than for those belonging to Group D employees and, therefore, contend the appellants, they are not comparable and cannot be placed in the same pay-scale invoking the equality clause in Article 14 of the Constitution. D Lastly, it is said that the financial burden which will fall on the State Government on the implementation of the impugned judgment will be in the vicinity of Rs. 1.45 crores which is not justified since the High Court has failed to appreciate the issues in their proper perspectives. We find considerable force in the submissions made on behalf of the appellants.

E We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well-settled that equation of posts and determination of pay-scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left F to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account G of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department H (ii) the nature of contribution expected of him (iii) the extent of his

responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay-scales to a reasonable number. Such reduction in the number of pay-scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job-charts in a common scale. Substantial reduction in the number of pay-scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and verticle relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and verticle relativities have to be carefully balanced keeping in mind the hierarchial arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the registration service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice.

A B C D E F G

There can be no dispute that by Government Resolution No. 226 dated 22nd May, 1952 gazetted status was conferred on Sub-Registrars w.e.f. 1st April, 1952. So also there is no dispute that by notification dated H

A 17th July, 1953 the Registration Service was, with effect from the date of its constitution, i.e., 30th January, 1953, included in the West Bengal State Services. Subsequently, by a notification dated 10th October, 1953, all the entries in column I of the Schedule under the heading 'Registration Department' of the Bengal Subordinate Service (Discipline & Appeal) Rules, 1936 were omitted along with the corresponding entries in columns B 2 to 5 thereof. Thus, contend the respondents, the West Bengal Registration Service, including the Sub-Registrars was brought on par with other 'Constituted State Services', with effect from 30th January, 1953. Chapter 18 of the Third (State) Pay Commission would show that the Constituted Service may comprise of tiers, such as, Subordinate Service, Junior Service C and State Service with or without corresponding higher or senior service. Paragraph 18.5 of that chapter shows: 'There are 4 tiers of constituted service in some of the Government Departments viz., Higher or Senior Service, State Service, Junior Service and Subordinate Service'. Paragraph 18.6 recites that the State Services are generally in scale No. 17(Rs.660-D 1600). The Junior Services are generally in scales Nos. 11 to 16 and the pay scales for Subordinate Services range from scale No.4 to scale No. 13. It would, therefore, appear that the contention of the respondents that the State Service employees were generally placed in scale No. 17 is *prima facie* accurate. Yet that body turned down the plea of the Sub-Registrars to be placed in scale No.17 on the ground that the duties and responsibilities of E the post did not justify upgradation of the scale as is evident from the observation extracted earlier. This clearly shows that the Commission determined the pay scale for Sub-Registrars keeping in view their duties and responsibilities. Therefore, merely because the Sub-Registrars were conferred gazetted status and the Registration Service was included in F State Service did not entitle the Sub-Registrars to be placed in the higher scale if their duties and responsibilities did not justify the same. One of the basic principles for pay fixation is that the salary must reflect the nature of duties and responsibilities attached to the post, meaning thereby that the scale must be commensurate with the task to be performed and the responsibility to be undertaken by the holder of the post. Merely because G of conferment of gazetted status or placement in State Service, no qualitative change was brought about in the job performance of the Sub-Registrars and their superiors.

Before November, 1949 appointments to the posts of Sub-Registrars H was made by nomination of candidates who were undergraduates or even

of lower academic qualification. By the notification dated 25th November, 1949, made under section 211(2)(b) of the Government of India Act, 1935, the recruitment rules framed in supersession of all previous rules, the minimum educational requirement for Sub-Registrars was raised to graduation. The revised recruitment rules for Sub-Registrars framed under the proviso to Article 309 of the Constitution dated 17th October, 1966 also prescribed the minimum educational requirement as graduate of a recognised university. By the subsequent notification dated 4th November, 1981 issued under the proviso to Article 309 of the Constitution, the recruitment rules of 17th October, 1966 were amended whereby rules 3 and 4 were replaced. The newly inserted rule provided for recruitment to the posts of Sub-Registrars on the basis of West Bengal Civil Service (Executive) and Allied Service Examination conducted by the State Public Service Commission and the selection was to be made in consultation with that body. For direct recruitment the educational qualification was raised to a degree in law from a recognised University/Institute or equivalent qualification and experience of 3 years at the Bar. Since this revised educational requirement is the same as required for Munsiffs, the High Court has thought it proper to place them in the scale of the latter i.e. scale No.17 (Rs. 660-1600). But in doing so the High Court has, with respect, failed to evaluate the difference in the nature of duties and responsibilities of a Munsiff and a Sub-Registrar. The duties and responsibilities of a Munsiff and a Judicial Magistrate are far more onerous than those of a Sub-Registrar. The Sub-Registrar's duties are relatively simple – namely to receive, examine and register the document – whereas the duties of a Judicial Officer at the floor level are to hear cases, examine witnesses, interpret and construe different laws, hear oral arguments and deliver reasoned judgments. He has to keep abreast with a host of laws unlike a Sub-Registrar who is expected to study only a couple of laws connected with the registration of documents like the Registration Act, the Stamp Act, etc. The responsibilities of a Judicial Officer are also far greater than those of Sub-Registrars. Therefore, to compare the Sub-Registrars with Judicial Magistrates – Munsiffs is to compare unequals. It would, therefore, be wholly arbitrary to place them in the same pay scale. In our view, therefore, the High Court, with respect, committed a serious error in law in holding that the Government's action in not granting the same pay scale to Sub-Registrars was violative of Article 14 of the Constitution. In fact to put them on par is wholly unjustified.

A B C D E F G H

A It was then submitted that the Third (State) Pay Commission had failed to notice the upward revision of the educational requirement for direct recruitment as Sub-Registrars. It was rightly pointed out that one of the inputs for pay determination is educational requirement for the post. The higher the educational qualification the better would be the quality of service rendered and the end result would in the ultimate be far more B satisfactory. That indeed cannot be disputed. But educational qualification is only one of the many factors which has relevance to pay fixation. The complexity of the job to be performed and the responsibilities attached thereto are entitled to great weight in determining the appropriate pay scale for the job. *Prima facie* there appears substance in the grievance of C the Sub-Registrars that while the minimum educational qualification for direct entry into the post has been periodically raised, the level of pay scale for the post has not undergone any change, whatsoever. We think the State Government ought to re-examine the question of the appropiate pay scale for Sub-Registrars in the light of the above and if it decides to upgrade the D pay scale it may also consider if the pay scales of their superiors in the hierarchy need an upward revision.

In the result we allow these appeals and set aside the judgement and orders of the High Court impugned herein but make no order as to costs throughout. We, however, direct the State Government to re-examine the E question of the appropriate pay scale for Sub-Registrars within three months by a speaking order after giving a hearing to the representative of the respondent association and communicate the decision so taken to the association. If the State Government decides on the upward revision of the salary of the Sub-Registrars, it will simultaneously consider the question of upward revision of the pay scales of higher posts in the department. I.A. F Nos.7-9 of 1991 will also stand disposed of.

T.N.A. Appeals allowed.