2024 INSC 524

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. _____ / 2024
(Arising out of Special Leave to Appeal (C.) No. 7130 / 2024)

State of Uttar Pradesh and Anr. ....Appellant(s)

versus

Virendra Bahadur Katheria and Ors. ....Respondent(s)

JUDGEMENT

SURYA KANT, J.

Leave granted.

2. This Civil Appeal is directed against the order dated 06.04.2023 passed by a Division Bench of the High Court of Judicature at Allahabad **(hereinafter, 'High Court')**, whereby an intra-court appeal preferred by the State of Uttar Pradesh **(hereinafter, 'State')** challenging the Single Judge's judgement dated 02.02.2018 was dismissed on the ground of delay. Consequently, the judgment of the Single Judge, which effectively directed to grant the pay scale of 7500-12000 to Sub-Deputy Inspectors of Schools/ Assistant Basic Shiksha Adhikaris **(hereinafter, 'SDI/ABSA')** and the Deputy Basic Shiksha Adhikaris **(hereinafter, 'DBSA')**, with effect from the year 2001, stood affirmed.

3. Since the instant appeal arises out of a long-drawn saga, where multiple rounds of litigation occurred *inter-se* the parties before various fora, including this Court, it would be appropriate to narrate the factual events before delving into the legal issues raised before us concerning the law of precedents, the doctrine of merger and the principle of *res judicata*.

FACTS

4. The controversy centers around the alleged discrepancy in the pay scales of SDI/ABSA and DBSA of the Basic Education Department, State of Uttar Pradesh *vis-à-vis* the Headmasters of Junior High Schools **(hereinafter, 'Headmaster')**. The genesis of this disparity can be traced back to the Government Order dated 20.07.2001 **(hereinafter, '2001 Order')**, issued on the basis of the recommendations of the Fifth Central Pay Commission, pursuant to which the pay scales of State Government teachers, including Headmasters, were brought on par with Central Government teachers, with effect from 01.07.2001.

5. The effect of the 2001 Order, in essence, was that the basic pay scale of Headmasters stood revised from 4625-125-7000 to 6500-200-10500, with a further revision of their Selection Grade from 4800-150-7650 to 7500-250-12000. There was, however, no alteration in the pay scales of SDI/ABSA and DBSA and resultantly, their pay scales became lesser than those granted to the Headmasters.

6. In order to gain a comprehensive understanding of this issue, it is essential to take into account the revision in pay scales across various posts over time.

7. The pay scale granted for the post of Sub-Deputy Inspector of Schools (SDI) since the year 1945, with consequent revisions, is depicted in a tabular format hereinbelow:

Pay Scale with Effect From	**Pay Scale Granted to Sub-Deputy Inspector of Schools (Rupees)**
1945	120-200
1955	120-300
1965	150-350
1972	325-575
01.07.1979	540-910
01.01.1986	1400-2300
01.01.1996	4500-7000
01.07.2001	Not Revised

The position of the ABSA, being equivalent to that of SDI, likewise bore the same pay scale of 4500-7000, with effect from 01.01.1996.

8. The pay scale assigned for the post of DBSA since 1945, with subsequent revisions, is outlined in the table below:

Pay Scale with Effect From	**Pay Scale Granted to Deputy Basic Shiksha Adhikari (Rupees)**
1945	200-250
1955	250-250
1965	250-600
1972	450-950
01.07.1979	770-1600

01.01.1986	2000-3500
01.01.1996	6500-10500
01.07.2001	Not Revised

9. Lastly, the pay scale apportioned for the post of Headmaster since 1945, with subsequent revisions, is detailed in the table below:

Pay Scale with Effect From	**Pay Scale Granted to the Headmaster, Junior High Schools (Rupees)**
1945	75-175
1955	100-200
1965	100-125
1972	240-390
01.07.1979	490-860
01.01.1986	1450-2300
01.01.1996	4625-7000 (4800-7650)*
01.07.2001	6500-10500 (7500-12000)*

*Selection Grade Pay Scale

10. It may be seen from the above table that the post of Headmaster was placed in the pay scale of 4625-7000 w.e.f. 01.01.1996. Thereafter, the said pay scale was revised to 6500-10500 w.e.f. 01.07.2001, and in addition, the Selection Grade of Rs. 7500-250-12000 was also granted through the 2001 Order. Additionally, Headmasters also got a promotion grade pay scale of 8000-13500 *vide* a subsequent government order dated 03.09.2001. No corresponding revision in the pay scales of SDI/ABSA and DBSA was, however, made w.e.f. 01.07.2001.

11. The perceived anomaly in pay scales being the hallmark of disputation, it may be useful to reflect the differentiation in pay scales, which have been granted to SDI/ABSA, DBSA and Headmasters since 1945, along with subsequent revisions, by way of the following comparative tabulation:

Pay Scale with Effect From	**Pay Scale Granted to SDI/ABSA (Rupees)**	**Pay Scale Granted to DBSA (Rupees)**	**Pay Scale Granted to the Headmaster (Rupees)**
1945	120-200	200-250	75-175
1955	120-300	250-250	100-200
1965	150-350	250-600	100-125
1972	325-575	450-950	240-390
01.07.1979	540-910	770-1600	490-860
01.01.1986	1400-2300	2000-3500	1450-2300
01.01.1996	4500-7000	6500-10500	4625-7000 (4800-7650)*
01.07.2001	**Not revised**	**Not revised**	**6500-10500 (7500-12000)***

*Selection Grade Pay Scale

12. The recruitment to the posts of SDI/ABSA is governed by the Uttar Pradesh Subordinate Educational (Sub Deputy Inspector of Schools) Service Rules, 1992 **(hereinafter, 'Rules').** As per the Rules, 80% of the posts of SDI/ABSA are mandated to be filled by direct recruitment through the Public Service Commission, 10% of the posts are to be filled up through selection from amongst the Headmasters of Junior High Schools and the remaining 10% of the posts are filled through the promotion of Extension Teachers and Craft Teachers working in the CT

Grade, who were appointed before 21.04.1996 under the Redeployment Scheme. On the other hand, mode of appointment to the post of Headmasters is by way of promotion from among the Assistant Teachers of Junior High Schools. Furthermore, it seems that at one point of time, the SDI/ABSA and DBSA used to exercise supervisory and administrative control over Headmasters and Teachers of Junior High Schools.

13. That being said, in order to fully comprehend the origin of this strife and the parallel, as well as the subsequent legal proceedings leading to the current appeal, it would be beneficial to examine the entire set of events hereafter from the vantage point of two rounds of litigation.

THE FIRST ROUND OF LITIGATION

14. The Uttar Pradesh Vidhyalay Nirikshak Sangh **(hereinafter, 'Caveator')**, along with the Respondents, filed WP No. 675/2002 before the High Court, alleging discrepancies and seeking the grant of pay scale of 7500-12000 to SDI/ABSA and corresponding higher pay scale to DBSA, on identical terms as per the 2001 Order. A Division Bench of the High Court, through its judgment dated 06.05.2002, allowed the writ petition after observing that the SDI/ABSA and DBSA were supervising the work of Headmasters and were previously receiving higher pay scales before further the revision w.e.f. 01.07.2001. The High

Court viewed that when the pay scale of Headmasters was revised on 20.07.2001, the pay scales of SDI/ABSA and DBSA also ought to have been simultaneously revised. Consequently, the High Court directed the State to grant the pay scale of 7500-12000 with effect from 01.07.2001 to SDI/ABSA and corresponding higher pay scale (8000-13500) with effect from 01.07.2001 to the DBSA. The High Court further directed the State to consider granting the writ-petitioners therein pay scales higher than that of Headmasters on the premise that they had been enjoying a better pay scale prior to 20.07.2001.

15. The aggrieved State challenged the High Court's order through Civil Appeal No. 8869/2003 (arising out of SLP(C) No. 900/2003) before this Court. During the pendency of that Appeal, the State held discussions with the Caveator and referred the matter to the Chief Secretary's Committee **(hereinafter, 'Rizvi Committee')**. The Rizvi Committee made a proposal dated 12.01.2010 **(hereinafter, 'Proposed Policy')**, to grant the pay scale of 7500-12000 for the post of Assistant Basic Education Block Officer, which was essentially created by merging the posts of SDI/ABSA and DBSA, thereby creating a singular cadre of 1031 posts. As per the Proposed Policy, the pay scale of 7500-12000 to the newly designated post of Block Education Officer would be notionally effective from 01.01.2006, with actual monetary benefits being given with effect from 01.12.2008. The restructuring, as

proposed, would make available one Officer at the Tahsil / Block level to assist Basic Education Officers and District Inspector of Schools in carrying out their administrative and supervisory duties. Further, the Proposed Policy was made subject to the filing of an application and affidavit based on mutual consent of the parties. The High Court's order dated 06.05.2002 was to be accordingly modified to the above extent pursuant to a joint application of the parties in the pending appeal.

16. This Court, after noticing the cause of pay anomaly that occurred in the year 2001, referred to and relied upon the proposed Policy dated 12.01.2010 and eventually found no reason to interfere with the High Court's judgement dated 06.05.2002 and dismissed the appeals *vide* the order dated 08.12.2010, on the ground that the State itself had taken an appropriate decision to rectify the pay discrepancies and hence, no further cause as such survived requiring any further adjudication. This Court also noted the fact that no joint application based on mutual consent of the parties had been filed. This Court, in no uncertain terms, further directed that…. "the Government having taken appropriate decision cannot go back from implementing the same". The operative part of the order dated 08.12.2010 reads as follows:-

> *"We do not find any error to have been committed by the High Court in issuing the impugned directions. However, there is no need to further dilate on this issue* ***since the Government itself appears to have realised the anomaly in fixation of the pay scales as***

is evident from the proceedings dated 12th May, 2010 emanating from Secretary, Finance Department, Govt. of Uttar Pradesh and addressed to the Secretary, Basic Education Department, Govt. of Uttar Pradesh. The proceedings disclose that an appropriate decision has been taken to rectify the pay discrepancies in respect of the post of Deputy Inspector of Schools/Deputy Basic Education Officer of the Department of Education on the recommendations of the Pay Committee (2008)*. The operative portion of the said proceedings reads as under:-*

> *"According to the above as a result of cadre constitution getting sanctioned imaginary the pay scale of Rs. 7500-12000/- from 01.01.2006 for the post of Block Education Officer, the real benefit be given from 01.12.2008."*

By the same proceedings, a decision was taken to file the same into this Court together with application supported by an affidavit in as much as such decision was taken with mutual consent of the parties. But for whatever reason, the same has not been filed into the Court.

Since the Government itself has taken appropriate decision in the matter as is evident from the proceedings referred to hereinabove, no further cause as such survives requiring any further adjudication of this appeal and the Government having taken appropriate decision cannot go back from implementing the same*.*

In the circumstances, the Civil Appeals are accordingly dismissed."

[Emphasis supplied]

17. Subsequently, an application seeking clarification of the above order was also filed before this Court, which was dismissed as withdrawn for being not maintainable *vide* order dated 08.07.2011. We may, however, clarify that the details of such an application are neither part of the record of this appeal nor a copy of it was tendered by learned counsel for the parties.

18. Nevertheless, and in compliance to this Court's order dated 08.12.2010, the Appellant-State issued Government Order dated 14.07.2011 (modified on 15.07.2011) **(hereinafter, '2011 Order')**, whereby 1031 posts of 'Block Education Officer' were created by merging 1360 posts of SDI/ABSA and 157 posts of DBSA, with the sanctioned pay scale of 7500-12000, to be given with effect from 01.01.2006 notionally, with actual benefits accruing from 01.12.2008.

THE SECOND ROUND OF LITIGATION

19. It is pertinent at this stage to provide some insight into the background in which the Respondents instituted parallel proceedings before the High Court during the pendency of the First Round of Litigation. In order to avoid repetition and for the purposes of the present proceedings, we propose to refer the factual matrix pertaining to Respondent No. 1 only since Respondent Nos. 2 and 3 are similarly placed.

20. Respondent No. 1 was initially appointed to the post of Assistant Teacher in a Primary School on 16.11.1971. He was subsequently promoted to Assistant Teacher, Junior High School on 12.01.1977 and thereafter as Headmaster, Junior High School on 05.07.1982. Subsequently, Respondent No. 1 was appointed as the Sub-Deputy Inspector of Schools within the aforementioned 10% promotion quota through selection from the post of Headmaster in accordance with the

1992 Rules, *vide* the order dated 19.03.1997. Consequently, he was placed in the pay scale of 4800-7650 and was receiving a monthly salary of Rs. 6000/-. However, with the revision of the pay scale of Headmasters to 7500-12000 with effect from 01.07.2001, Respondent No. 1 was inadvertently placed in the revised higher pay scale instead of what he was entitled to for the post of SDI/ABSA. Respondent No.1 eventually retired as a Sub-Deputy Inspector on 31.07.2004 upon reaching the age of superannuation.

21. Though Respondent No. 1, after his retirement, was paid his provident fund dues, his pension and gratuity amounts were withheld on the premise that while working as a Sub-Deputy Inspector, he was erroneously paid salary in a higher pay scale sanctioned for the post of Headmaster of Junior High School. This was followed by recovery orders dated 07.12.2005 and 26.06.2007, directing to adjust the excess amount paid to Respondent No. 1 from his retiral dues. He was further directed to deposit the excess amount within one week, failing which the same would be adjusted from his retiral dues. Respondent No. 1 preferred Writ-A No. 35611/2007 (**hereinafter, '2007 Writ'**) before the High Court, seeking quashing of the abovementioned recovery orders and further sought a direction to the State to pay the entire pension along with arrears calculated at the last pay drawn by him along with 24% interest on the delayed payment, and also to release the remaining

10% of the gratuity amount along with interest from the date it became due.

22. The High Court, *vide* an interim order dated 03.08.2007, directed the State to pay forthwith the retiral dues admissible to Respondent No. 1, excepting the amount which was paid in excess to him. It is the specific case of the State that this order was duly complied with.

23. The High Court kept the above stated 2007 writ petition pending so as to await the outcome of the first round of litigation. Meanwhile, when the State issued the 2011 Order, the Respondents once again approached the High Court *vide* Writ A No. 44344/2011 (**hereinafter, '2011 Writ'**), challenging the 2011 Order while also seeking directions for the grant of pay scale of 7500-12000 with effect from 01.01.1996 and consequential payment of arrears. The High Court then clubbed together the Writ Petitions of 2007 and 2011.

24. A Learned Single Judge of the High Court *vide* judgement dated 02.02.2018 allowed both the writ petitions, quashed the 2011 Order and directed the State to pass appropriate orders within a period of three months (**hereinafter, 'Single Judge Judgement'**). The Learned Single Judge was of the view that the State had wrongfully made misrepresentations to this Court with an intent to nullify the benefits otherwise accrued in favour of the Respondents.

25. The State Government, who until then was so vigorously pursuing the *lis,* for reasons which are still unbeknownst to us, went into a state of slumber. Neither did the State challenge the Single Judge's dictum through an intra-court appeal within a reasonable time, nor did it take any conscious decision to honour and implement the said Judgement.

26. The State authorities, therefore, invited the initiation of contempt proceedings, which the Respondents filed alleging willful disobedience of the Single Judge Judgement, referred to above. Thereafter, on 23.05.2019, the State authorities woke up and filed an inordinately delayed Special Appeal Defective No. 532/2019 before the Division Bench of the High Court, challenging the Single Judge Judgement.

27. The High Court, first in its order dated 10.01.2023 in Contempt proceedings directed the compliance of the Single Judge's Judgement within 15 days. The Principal Secretary, Department of Basic Education was further show caused to file an affidavit disclosing as to how many contempt proceedings had been initiated against him for non-compliance of the orders passed by the High Court and their outcome, the number of pending contempt proceedings and as to why cost of pending litigation be not recovered from him. After such requisite affidavit having been filed, the High Court passed an order on 07.02.2023 initiating proceedings for criminal contempt against the Principal Secretary, Department of Basic Education and further

directed the personal presence of the Chief Secretary and the Additional Chief Secretary (Finance), on the next date of hearing – 14.02.2023.

28. The State then approached this Court against the High Court's orders dated 10.01.2023 and 07.02.2023. This Court, *vide* the order dated 13.02.2023, stayed the effect of the abovementioned orders, keeping in abeyance the contempt proceedings until further orders. It was, however, clarified that the pendency of Special Leave Petitions would not pose an impediment to the Division Bench of the High Court in deciding the State's intra-court appeal expeditiously.

29. In the midst of all of these proceedings and in light of this Court's order dated 13.02.2023, the High Court passed the Impugned Order dated 06.04.2023 dismissing the application for condonation of delay of 428 days filed by the Appellant-State. Consequently, the State's intra-court appeal stood rejected, giving rise to the instant proceedings.

30. The sole issue that arises for our consideration, thus, is whether the SDI/ABSA and DBSA are entitled to the higher pay scale of 7500-12000 with effect from 01.07.2001 or whether it has been appropriately granted to them from 01.12.2008 onwards?

CONTENTIONS OF THE PARTIES

31. Learned Additional Solicitor General of India and Learned Additional Advocate General, while arguing for the State of Uttar

Pradesh, urged that the consequence of the directions issued by the Learned Single Judge is that the earlier Division Bench judgement of the HC dated 06.05.2002 stands restored even though the said judgement was no longer in existence as it stood merged in the self-speaking order dated 08.12.2010 passed by this Court in Civil Appeal No. 8869/2003, which was directed against the said judgement of the High Court. They pointed out that the financial implications of the directions issued by the Single Judge of the High Court are enormous, as an additional burden of approximately Rupees 1500 Crores shall be fastened on the state exchequer.

32. They fervently submitted that regardless of the negligence of some officers who failed to file the intra-court appeal promptly and did not render any satisfactory explanation for the inordinate delay, the Division Bench of the HC ought to have appreciated the impersonal character of the State and condoned the delay so that the intra court appeal could be heard on merits. It was emphasized that in deference to the order dated 08.12.2010 of this Court, which explicitly approved the proposed settlement between the parties, the State Government issued the 2011 Order whereby substantial relief with actual arrears of pay with effect from 01.12.2008 had been already granted to the Respondents and other similarly placed employees of their cadre. The

2011 Order, it was urged on behalf of the Appellant State, was in conformity with the final order passed by this Court.

33. The Learned ASG relied upon the often quoted three-judge bench decision of this Court in ***Kunhayammed v. State of Kerala***[1] to reiterate that once this Court had granted leave against the High Court judgement dated 06.05.2002, the doctrine of merger would apply and it stood merged with the reasoned order dated 08.12.2010, which was eventually passed by this Court. The Appellant-State was thus obligated to give effect to the order passed by this Court. According to Learned ASG, this Court *vide* the order dated 08.12.2010 dismissed the appeals after noticing the subsequent events that unfolded and held that '*no further cause as such survives requiring any further adjudication of this appeal*'. Further, this Court also pointed out that no application based on mutual consent of the parties was moved. In other words, the Learned ASG urged, that this Court rendered the matter infructuous, leaving nothing to be adjudicated even though no formal application based on mutual consent was moved. It was then contended that the 2011 Order was issued in a *bona fide* manner to give effect to the directions mandating that the State would not go back from implementing the proposal approved by this Court.

[1] (2000) 6 SCC 359.

34. *Per contra*, Mr. Dushyant Dave, Learned Senior Counsel representing the Respondents and learned counsel for the Caveator, Ms. Shubhangi Tuli, vehemently opposed the claim put forth on behalf of the State. They argued that the Respondents, who are retired senior citizens, have been dragged by the State in avoidable litigation for the last twenty-two years, despite this being a *simpliciter* case of acknowledgement and removal of the pay anomaly. They contended that the Appellants have consistently defied the Court's orders and, being in contempt, are making flimsy and false excuses to overreach the judicial system. They urged that firstly, the State's plea regarding the financial burden of approximately Rupees 1500 Crores is unsubstantiated and has no factual foundation. Secondly, the mere consequence of financial burden is not a valid ground to denounce a judicial dictum.

ANALYSIS

35. We have considered the rival submissions in the backdrop of the protracted litigation between the parties, which has led to the passing of multiple orders by this Court and the High Court, a brief reference to which has already been made. The relevant records have also been perused.

36. It may be seen that the instant round of litigation is triggered by the Single Judge's Judgement against which the highly belated intra-court appeal has been summarily dismissed by the Division Bench of

the High Court. We are thus required to scrutinize the Single Judge's Judgement to determine whether the consequential directions issued therein are justified and in tune with the previous rounds of litigation.

37. We are constrained to observe at the outset that the judgment of the Learned Single Judge appears to be wholly misconceived, on several parameters, in light of the bizarre observations made with reference to the decision of this Court dated 08.12.2010. Learned Single Judge seems to have been swayed by a hypothetical reason that the intricacies of the Hindi language employed in the proposed Policy were beyond the comprehension of the Hon'ble Judges of the Supreme Court, who were misled to believe as if it was more than just a mere proposal. The Learned Single Judge observed that the State capitalized on this misrepresentation before this Court and, consequently, issued the 2011 Order. It has been further observed that on the basis of such distortion and in blatant contravention of the High Court's previous judgment dated 06.05.2022, the State finagled to release a higher pay scale to SDI/ABSA, aligning it with that of Headmasters, on a notional basis from 01.01.2006 thereby restricting the actual monetary benefits from 01.12.2008 only.

38. In our considered opinion there is nothing in the order dated 08.12.2010 of this Court on the basis of which the Learned Single Judge of the High Court could draw such sweeping inferences. All that this

Court unequivocally said was that in light of the Proposed Policy decision taken by the State Government to rectify the pay discrepancies and to grant certain reliefs to the Respondents or their cadre mates, no issue survived for adjudication. To elucidate more simply, this Court was satisfied that the Proposed Policy was fair enough to close the pending *lis*. As a follow up, the State was obligated to formalize and give effect to the said proposal, which the Appellants eventually did through the 2011 Order.

39. However, the Learned Single Judge, while relying on this Court's decision in ***Supreme Court Employees' Welfare Association v. Union of India and another***,[2] made two pertinent observations, which we propose to analyse in the present context, i.e. — (*i*) since the Supreme Court in its order dated 08.12.2010 *dismissed* Civil Appeal No. 8869/2003 and did not discern any error of fact or law in the decision of the High Court dated 06.05.2022, the latter would consequently operate as *res judicata inter se* the parties; and (*ii*) it is impermissible for the State Government to overreach and render nugatory a judgement of the High Court, once it has attained finality.

40. In this regard, it seems to us that the High Court has construed narrowly the ratio of the decision of this Court in ***Supreme Court Employees' (supra)*** which encapsulated that when a Special Leave

[2] 1989 (4) SCC 187.

Petition is dismissed *in limine*, there is no law laid down under the aegis of Article 141 of the Constitution. Hence, the judgement against which such petition was preferred becomes final and conclusive so as to operate as *res judicata* between the parties thereto. In stark contrast, the dismissal of Civil Appeal No. 8869/2003 by this Court *vide* order dated 08.12.2010 was not a dismissal *simpliciter* or *in limine*. Instead, the appeal was dismissed after taking into consideration the root-cause and consequential steps taken by the State towards rectifying the anomaly in the grant of revised pay scales. To say it differently, the Civil Appeal was not dismissed on the premise that the judgement of the High Court dated 06.05.2002 was a correct statement of law. This Court in fact found that no issue survived for adjudication, for the obvious reason that the State Government had volunteered to redress the grievance of the Respondents and other similarly placed employees through the proposed Policy. It is true that the Proposed Policy did not enure a decision binding on both sides for want of mutual consent. However, leaving aside a microscopic evaluation, this Court expressly approved the said Proposed Policy. The observation that nothing survived in the appeal for adjudication leaves no room to doubt that not only was this Court satisfied with the proposal mooted before it, it also bound down the State and commanded it to implement the same.

41. Equally pertinent to note here is that this Court had granted leave and thereafter dismissed the Civil Appeal by way of a brief reasoned order. Consequently, the High Court Judgment dated 06.05.2002 stood merged with the order dated 08.12.2010 of this Court. In legal parlance, the High Court Judgment lost its entity and was subsumed in the order passed by this Court.

42. The doctrine of merger although has its roots in common law principles, but has been deeply interspersed in Indian jurisprudence, through a series of decisions. This Court in ***Kunhayammed (supra)*** elucidated this doctrine which has been further affirmed and reiterated in ***Khoday Distilleries Ltd. (now known as Khoday India Ltd.) & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal (Under Liquidation) represented by the Liquidator***.[3] In ***Kunhayammed (supra)***, this Court has expressly laid down as follows:

> " **42.** *"To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-68.)*
>
> **44.** *To sum up our conclusions are:*
> *(i)* ***Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior***

[3] (2019) 4 SCC 376

forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. ***Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.***

(iv) An order refusing special leave to appeal may be a non- speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) ***Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation***.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost

thereafter as provided by sub-rule (1) of Rule (1) of Order 47 of the C.P.C."

[Emphasis supplied]

43. These decisions indubitably hold that if Special Leave was not granted and the petition was dismissed by a reasoned or unreasoned order, the order against which such Special Leave Petition is filed would not merge with the order of dismissal. However, once leave has been granted in a Special Leave Petition, regardless of whether such appeal is subsequently dismissed with or without reasons, the doctrine of merger comes into play resulting in merger of the order under challenge with that of the appellate forum, and only the latter would hold the field. Consequently, it is the decision of the superior court which remains effective, enforceable, and binding in the eyes of the law, whether the appeal is dismissed by a speaking order or not.[4]

44. The High Court therefore fell in error on assuming that its previous decision dated 06.05.2002 was intact and enforceable, independent of the order passed by this Court in the Civil Appeal arising therefrom. On the same analogy, the High Court's holding that its previous decision dated 06.05.2002 would operate as *res-judicata,* also cannot sustain being erroneous in law. We say so for the reason that

[4] Pernod Ricard India Private Limited v. Commissioner of Customs, 2010 (8) SCC 313.

the final and binding order between the parties is the one dated 08.12.2010, passed by this Court.

45. We may now advert to the observations made by the High Court regarding the State allegedly rendering its order dated 06.05.2002 nugatory through its executive actions. The High Court, as a matter of principle, has rightly held that the State has no authority whatsoever to annul a Court decision through its administrative fiat. Even legislative power cannot be resorted to, to overrule a binding judicial dictum, except that the legislature can remove the basis on which such judgment is founded upon. However, these settled principles may not be attracted to the facts and circumstances of the instant case.

46. It goes without saying that the 2011 Order was issued by the State after this Court's acknowledgement of the Proposed Policy initiated to rectify the pay scale anomaly. This Court, upon review, did not find fault with the proposed measures and instead, deemed them appropriate for addressing the prevailing pay discrepancy. Thus, the measures taken by the State were in deference to and not in defiance of this Court's orders. To the extent above, the view taken by the High Court is legally and factually incorrect.

47. Regardless to what has been held above, we are in agreement with the Learned Single Judge that the pay benefits which had been released to the writ petitioners arrayed before it, and who had meanwhile retired

from service, ought not to have been withdrawn and that too with the added measure of recovery orders being fastened upon them. Such a recourse to effect recovery initiated by the State is contrary to the principles evolved by this Court in ***State of Punjab v Rafique Masih (White Washer) and others***,[5] wherein recovery from retired employees or employees who are due to retire within one year of the order of such recovery, did not get the seal of approval. Thus, to this limited context, the Single Judge's direction deserves to be upheld. Ordered accordingly.

48. Turning to the impugned order passed by the Division Bench of the High Court and as already recounted in the facts, the State's intra-court appeal has been dismissed on account of the inordinate delay of 428 days in filing. The Division Bench observed that the plea taken by the State regarding movement of the file from one desk to another, particularly in the backdrop of the undertaking provided during the contempt proceedings, did not constitute sufficient ground(s) to condone the delay. The Division Bench accordingly rejected the application for condonation of delay and consequently dismissed the appeal.

49. It is an admitted fact that the State authorities failed to avail their remedy of intra-court appeal within a reasonable time. It was only when contempt proceedings were slapped on them that the authorities woke

[5] 2015 (4) SCC 334.

up and filed the appeal, which, by that time, was highly belated. This Court has in a catena of decisions elaborated the parameters and carved out such exceptional circumstances which may constitute a valid ground to condone the delay in the interest of justice. These principles include the recent approach that no undue leverage can be extended to the State or its entities in condonation of delay and that no special privilege can be extended to the State or its instrumentalities.[6]

50. Nevertheless, the Courts have been cognizant of the fact that as a custodian of public interest, the affairs of the State are run and controlled by human beings. Various factors, including the bona fide formation of erroneous opinion, negligence, lack of initiative, lack of fortitude, collusion or connivance, red tapism, blurred legal advice etc., sway the action or inaction of these functionaries. While waiving the public interest *vis-à-vis* an individual's interest who claims to have meanwhile acquired a vested right on the expiry of the limitation period, the courts invariably tilt towards the public interest, keeping in view the irreversible loss likely to be suffered by the public at large.[7] Even in the case of private litigants, where the appellate court finds that the opposite party can be suitably compensated with cost measures, a

[6] State of Madhya Pradesh & Ors v. Bherulal (2020) 10 SCC 654.
[7] State of Nagaland v. Lipok AO, (2005) 3 SCC 752; Executive Officer, Antiyur Town Panchayat v. G. Arumugam (Dead) by Legal Representatives, (2015) 3 SCC 569.

lenient and liberal approach is followed in terms of condonation of delay.

51. We may, however, hasten to add that whether a just and valid ground for condonation of delay is made out or not, largely depends on the facts and circumstances of each case and no one size fits all formula can be applied in this regard. It is, however, not necessary for us to further delve into this issue and/or determine whether the Appellant-State has made out a case for condonation of delay in filing their intra-court appeal before the High Court. We rather proceed on the premise that even if it was a fit case for condonation of delay, will it serve the cause of justice to set aside the impugned order of the Division Bench and remit the intra-court appeal for a fresh adjudication on merits?

52. We cannot be oblivious of the fact that the parties started litigating in the year 2002. The dispute had engendered out of a perceived pay anomaly. The State itself acknowledged that there was some disparity in the pay scales that needed to be rectified. Hence, it constituted the Rizvi Committee. That Committee made recommendations, which were broadly fair and just, as various means and measures were recommended to redress the grievances of employees like the Respondents. These measures included the merger of cadres, redesignation and upgradation of posts, the introduction of new pay scales, with an assurance that the redesignated posts would be on a

pay scale higher than that of the feeder cadre. Even if these measures were not to the entire satisfaction of the Respondents, the fact remains that the anomalies stood removed.

53. It needs no emphasis that prescription of pay scale for a post entails Policy decision based upon the recommendations of an expert body like Pay Commission. All that the State is obligated to ensure is that the pay structure of a promotional or higher post is not lower than the feeder cadre. Similarly, pay parity cannot be claimed as an indefeasible enforceable right save and except where the Competent Authority has taken a conscious decision to equate two posts notwithstanding their different nomenclature or distinct qualifications. Incidental grant of same pay scale to two or more posts, without any express equation amongst such posts, cannot be termed as an anomaly in a pay scale of a nature which can be said to have infringed the right to equality under Article 16 of our Constitution.

54. Equally well settled is that the creation, merger, de-merger or amalgamation of cadres within a service to bring efficacy or in the administrative exigencies, is the State's prerogative. The Court in exercise of its power of judicial review would sparingly interfere in such a policy decision, unless it is found to have brazenly offended Articles 14 and 16 of the Constitution.

55. There was no pay parity in the instant case between Headmasters on one hand or the SDI/ABSA etc. on the other. It was a mere co-incidence that the group of these posts carried the same pay scale for a long time, till the State Government decided to grant a higher revised pay scale to the Headmasters. This led to an anomalous situation as the Headmasters were amongst the feeder cadre categories for appointment by selection against 10% posts of SDI/ABSA. Such an incongruent situation could be averted by amending the Rules and deleting Headmasters from the zone of consideration from 10% posts. In that case, the State would have faced no financial burden which has fallen upon it as a consequence to the implementation of the Rizvi Committee recommendations. In other words, the aforesaid disparity could be removed without legitimizing the claim of the Respondents for grant of a pay scale higher or equal to that of Headmasters.

56. Be that as it may, the Appellant-State on being directed by the High Court, agreed to recalibrate and recompense the employees like Respondents and put up a proposal before this Court in the previous round of litigation. That proposal was indeed approved by this Court. The State in furtherance thereto issued the necessary orders granting restructured benefits to the employees like the Respondents. Still further, the Respondents also got monetary benefits over and above the State's proposal, in furtherance of the High Court decisions dated

06.05.2002 and dated 02.02.2018. Most of them have retired from service long back and are now senior citizens. The monetary benefits have already been utilised by them on their personal needs.

57. That being the state of affairs, it seems to us that remittance of the case to the High Court is not likely to bring quietus to the endless litigation. The party who gets aggrieved by the judgement of the Division Bench owing to the previous record will most likely approach this Court again. The litigation has taken its toll on the financial and health conditions of the private Respondents, in their old age. We are, therefore, of the considered view that as long as the Respondents can be suitably compensated without subjecting them to any recovery and in such a manner that the relief so granted does not become a precedent for one and all to open a Pandora's box and drag the State into a flood of litigation, it would be in the interests of one and all that such like litigation which has the potentiality of multiplying in the future, should be brought to an end without any delay.

58. We, therefore, find it a fit case to invoke the extraordinary powers held by this Court under Article 142 of the Constitution. It is well settled that Article 142 empowers this Court to pass orders in the 'larger interest of the administration of justice' and 'preventing manifest injustice'.[8] This is more so in cases involving protracted litigation and

[8] Nidhi Kaim v. State of Madhya Pradesh, (2017) 4 SCC 1.

delay,[9] such as in the present case. It is a matter of common knowledge that the cases entailing discord over pay parity, are frequently subjected to prolonged litigation. These squabbles often lead to parties enduring significant challenges and hardships over extended periods as they await adjudication. Regrettably, the delay in resolving such matters usually renders them infructuous by the time a decision is reached.

59. Thus, in light of the long pending litigation between the parties, the rights of the parties involved, and to give quietus to the issue, we deem it appropriate to pass orders towards doing substantial justice.

CONCLUSION AND DIRECTIONS

60. We, therefore, allow this appeal in part and issue the following directions and conclusions by invoking our powers under Article 142 of the Constitution, for the removal of discrepancy in the pay scales prescribed for the posts of SDI/ ABSA and DBSA:

i. The appeal is allowed in part. The Impugned Judgement of the Division Bench in its entirety and that of the Single Judge of the High Court in part, are set aside.

ii. The 2011 Order is approved in its entirety.

iii. The private Respondents and their colleagues in the same cadre (before and after the redesignation of their posts) are held entitled to the pay scale, strictly in accordance with the 2011 Order. The

[9] Abbobaker v. Mahalakshmi Trading Co., (1998) 2 SCC 753.

Respondents and other members of their cadre and all members of the Caveator-organization shall be entitled to the pay scale granted by the said Government Order, notionally from 01.01.2006 and actually from 01.12.2008.

iv. However, any payment made to the Respondents more than what they are entitled to with effect from 01.12.2008, towards pay or retiral benefits shall not be recovered from them. The judgement of the Single Judge dated 02.02.2018, which set aside such recovery, is accordingly affirmed.

v. The arrears of pay or pension, if not already paid, shall be paid to the Respondents or their colleagues in the same cadres within a period of four months along with interest @ 7% per annum.

vi. Those who have retired from service, their pension and other retiral benefits shall be re-fixed accordingly, along with arrears with effect from 01.12.2008, to be paid within four months along with interest @ 7% per annum.

vii. The 2011 Order is meant only for the officials belonging to the State's Education Department, namely the Respondents and their colleagues of the same cadre. Employees of other Government Departments shall not be entitled to take benefit thereof as a matter of right. The benefits flowing from this order are also restricted to the employees like Respondents of the State Education Department

and only to those who fall in the category of the posts that were the subject matter of consideration before the Rizvi Committee.

viii. This order shall not be taken as a precedent by employees of other departments to claim revised or higher pay scales.

61. The present appeal is disposed of in the above terms. Accordingly, pending applications are also disposed of.

.....J.
(Surya Kant)

.....J.
(K.V. Viswanathan)

New Delhi
15.07.2024