

A P. SINGARAVELAN & ORS. ETC. ETC.

v.

THE DISTRICT COLLECTOR, TIRUPPUR
AND DT & ORS. ETC. ETC.

B (Civil Appeal Nos. 9533-9537 of 2019)

DECEMBER 18, 2019

**[MOHAN M. SHANTANAGOUDAR AND
KRISHNA MURARI. JJ.]**

- C *Service Law: Pay-scales – Claim of – Selection Grade and Special Grade of pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively in terms of GOMs 162 – Grant of said pay scales to around 3000 drivers by various decisions rendered by the High Court and this Court – Appellants-drivers in various departments of Government of Tamil Nadu, claiming parity – High Court*
- D *rejected the claim of the appellants – On appeal, held: Person cannot invoke Art. 14 to claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place – Art. 14 embodies the concept of positive equality alone, and not negative equality – On facts, apart from claiming parity with similarly placed individuals, the appellants unable to justify their entitlement to the Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 – However, on perusing the series of revisions made to the pay scales applicable to drivers employed with the State Government, the applicable pay scales for the Selection Grade and Special Grade would be Rs. 4000-6000 and Rs. 4300-6000 respectively – Thus, appellants not lawfully entitled to the claim Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively, solely on the strength of earlier decisions of the High Court – Interference with the order of the High Court not called for – Constitution of India – Art. 14.*
- G *Constitution of India: Art. 14 – Equality – Relief on the strength of Art. 14 – Claim of – Held: A person cannot invoke Art. 14 to claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place – Article 14 embodies the concept of positive equality alone, and not negative*
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equality – Art. 14 cannot be relied upon to perpetuate an illegality or irregularity – Thus, the jurisdiction of a higher court cannot be invoked on the basis of a wrong order passed by a lower forum. A

Judgments/orders: Non-speaking order – Effect of – Held: All the orders passed by this Court were non-speaking orders, inasmuch as they were confined to a mere refusal to grant special leave to appeal to the petitioners therein – Dismissal of an SLP against an order or judgment of a lower forum is not an affirmation of the same – If such an order of this Court is non-speaking, it does not constitute a declaration of law u/Art. 141 of the Constitution, or attract the doctrine of merger. B C

Judicial Discipline: Adjudication of proceedings by the High Court – Parameters to be followed – High Court differed from the view taken previously by a coordinate Bench based on a misreading of the same – Held: In such a situation the High Court should not have proceeded to decide the matter by itself – In the interest of judicial discipline, the High Court should instead have referred the matter to larger Bench for its consideration – Reference to larger Bench. D

Partly allowing Civil Appeals @ SLPs [Diary No. 42301/ 2017] and dismissing all the other appeals, the Court E

HELD: 1.1 It is evident that all the orders passed by this Court were non-speaking orders, inasmuch as they were confined to a mere refusal to grant special leave to appeal to the petitioners therein. It is well-settled that the dismissal of an SLP against an order or judgment of a lower forum is not an affirmation of the same. If such an order of this Court is non-speaking, it does not constitute a declaration of law under Article 141 of the Constitution, or attract the doctrine of merger. [Para 7] [415-H; 416-A-B] F G

1.2 The Single Judge in W.P. No. 4288/2008 and the Division Bench in W.A. Nos. 383-391/2009 both set aside the order dated 01.10.2007 based on the fact that the claimed higher pay scales had already been granted and were still being received by certain other drivers in several government H

- A departments, as per G.O. Ms. No. 162. Further, and more importantly, it was held that the letter dated 31.12.1998 wherein such higher pay scale fixations were deemed to be erroneous, would not have the effect of reducing the entitlement of drivers, as such a letter could not act as a substitute for modification of the G.O. itself. Thus, even though the Court did not give any express direction to grant the higher pay scales as per Serial No. 8 of Schedule II of the 1998 Rules, the same was implicit in the Court's directions for fixing the pay scales in terms of G.O. Ms. No. 162. In other words, it cannot be said that the High Court in W.A. Nos. 383-391/2009 did not affirm the drivers' claim
- B that they were entitled to the higher Selection and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively. However, in the impugned judgment, the High Court only focused on the fact that the conclusion reached by the coordinate Bench in W.A. Nos. 383-391/2009 was for appropriate fixation
- C of pay scales under G.O. Ms. No. 162 only, and there was *no specific direction* for grant of the Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively. On this basis, the High Court proceeded to determine the question of pay scale entitlement and took a view diametrically opposite to that of the coordinate Bench in W.A.
- D Nos. 383-391/2009, finding that the Appellant-drivers were only entitled to the Selection Grade and Special Grade pay scales of Rs. 4000-6000 and Rs. 4300-6000 respectively. Such an approach is based on a narrow reading of the decision of the coordinate Bench in W.A. Nos. 383-391/2009, as it fails to appreciate the
- E implicit direction in this order to grant the higher pay scales to the drivers. Thus, it appears that the High Court differed from the view taken previously by a coordinate Bench based on a misreading of the same. In such a situation, once it was found by the High Court that it was in disagreement with the holding of its coordinate Bench in W.A. Nos. 383-391/2009, it should not have proceeded to decide the matter by itself, and in the interest of judicial discipline, should instead have referred the matter to a larger Bench for its consideration. Be that as it may, in the interest of expeditious disposal of the matter, it is not fit to remand the matter to the High Court for fresh consideration at
- F this stage. [Para 18.1, 18.2, 19] [422-B-H; 423-A-B]

1.3 Apart from claiming parity with similarly placed individuals, the appellants have been unable to justify how and why they are entitled to the Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 as specified in Serial No. 8 of Schedule II to the 1998 Rules, in terms of G.O. Ms. No. 162. On the other hand, on perusing the series of revisions made to the pay scales applicable to drivers employed with the State Government, the applicable pay scales for the Selection Grade and Special Grade would be as per Serial No. 6 of Schedule II to the 1998 Rules, i.e. Rs. 4000-6000 and Rs. 4300-6000 respectively. [Para 20] [423-C-D]

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1.4 The pay scales of the appellants can be traced back to G.O. Ms. No. 666, Finance dated 27.06.1989, by which the State Government issued the Tamil Nadu Revised Scales of Pay Rules, 1989, implementing the recommendations of the Vth Tamil Nadu Pay Commission. Under these rules, the original and revised pay scales of 30 common categories of posts were specified. The scale of pay for drivers was mentioned at Serial No. 11 in the first part of the Schedule to these rules, having been revised from Rs. 610-1075 to Rs. 950-1500. The next revision came through G.O. Ms. No. 818, Finance, dated 09.09.1989, whereby drivers' pay scale was increased to Rs. 975-1660. Later, under G.O. Ms. No. 304, Finance dated 28.03.1990, Special Grade and Selection Grade scales of pay were introduced for persons who had completed 10 years and 20 years of service respectively. For the post of drivers carrying the Ordinary Grade pay scale of Rs. 975-1660, the Selection and Special Grade brackets were set as Rs. 1200-2040 and Rs. 1320-2040 respectively. Finally, when the 1998 Rules were introduced through G.O. Ms. No. 162, the post-wise determination of pay scales was replaced by a pay scale-to-pay scale basis determination. As already seen in Schedule I of the said rules, the pay scale of Rs. 975-1660 applicable to drivers was revised to Rs. 3200-4900. For this, the corresponding Selection and Special Grades specified in Schedule II were Rs. 4000-6000 and Rs. 4300-6000 respectively. [Para 20.1-20.3] [423-D-H; 424-A]

1.5 There is substance in the submission of the respondents that the appellants are not lawfully entitled to the

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- A claimed Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively in terms of G.O. Ms. No. 162. [Para 21] [424-B]

- B 1.6 The High Court in the impugned judgment was correct in concluding that the appellants cannot claim such relief on the strength of Article 14 of the Constitution of India, when once it has been found that they are not lawfully entitled to the same. It is well-settled by now that a person cannot invoke Article 14 to claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place. Article 14 embodies the concept of positive equality alone, and not negative equality, that is to say, it cannot be relied upon to perpetuate an illegality or irregularity. In fact, this Court has opined that this principle extends to orders passed by judicial fora as well. Thus, the jurisdiction of a higher court cannot be invoked on the basis of a wrong order passed by a lower forum. [Para 23] [424-D-E]

- D *Basawaraj v. Land Acquisition Officer (2013) 14 SCC 81 : [2013] 8 SCR 227 ; State of Odisha v. Anup Kumar Senapati (2019) 12 SCALE 386 – referred to.*

- E 1.7 The appellants cannot claim the Selection Grade and Special Grade scales of pay of Rs. 5000-8000 and Rs. 5500-9000 respectively, solely on the strength of earlier decisions of the High Court, without showing how they, themselves, are entitled to such benefit in the first place. In such a situation, the appellants can only be granted the benefit of the Selection Grade and Special Grade scales of pay to which they are lawfully entitled in terms of G.O. Ms. No. 162, i.e. Rs. 4000-6000 and Rs. 4300-6000 respectively. There is no reason to interfere with the impugned judgment. [Para 24, 25] [424-D-F]

- G 2. As regards Civil Appeals @ SLPs [Diary No. 42301/2017], the drivers concerned were not entitled to any promotional avenues. Thus, it is evident that the High Court rightly concluded that the drivers were entitled to the full benefits of the appropriate pay scale under Schedule II of the 1998 Rules. However, in light of the finding that persons employed in the post of drivers in various departments in the H Government of Tamil Nadu are only entitled to Ordinary,

Selection and Special Grade pay scales in terms of Serial No. 6 of Schedule II of the 1998 Rules, i.e. at Rs. 3200-4900, Rs. 4000-6000 and Rs. 4300-6000 respectively, there is no hesitation to hold that the High Court erred in directing fixation of such pay scales to drivers employed at the High Court in terms of Serial No. 8 of the Schedule II, fixing Selection Grade and Special Grade scales of pay of Rs. 5000-8000 and Rs. 5500-9000 respectively. The State Government is directed to fix the pay scale benefits available to the Respondents in the instant appeals in terms of Serial No. 6 of Schedule II of the 1998 Rules under G.O. Ms. No. 162 [Para 5, 6] [426-E-G]

Kunhayammed v. State of Kerala, (2000) 6 SCC 359 ; Khoday Distilleries v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. (2019) 4 SCC 376 – referred to.

CASE LAW REFERENCE

[2000] 1 Suppl. SCR 538	referred to	Para 7	D
[2019] 3 SCR 411	referred to	Para 7	
[2013] 8 SCR 227	referred to	Para 22	
(2019) 12 SCALE 386	referred to	Para 23	E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9533-9537 of 2019.

From the Judgment and Order dated 08.07.2015 of the High Court of Judicature at Madras in W.A. Nos. 2073, 1605, 30359, 33869 and 291 of 2013.

With

Civil Appeal Nos. 9538-9546, 9547-9549, 9551-9559, 9560-9561 of 2019.

Vijay Narayan, Adv. Gen., Balaji Srinivasan, AAG, Basava Prabhu S. Patil, K.N. Basha, Sr. Advs., Ms. Garima Jain, C. Vigneswaran, T. R. B. Sivakumar, M. Ravi, Joseph Aristotle, Ms. Priya Aristotle, Ms. Sneha, Chinmay Deshpande, B. Karunakaran, Nikhil Swami, Ms. A. Jaswanthi, Ms. Purbitaa Mitra, K. V. Vijayakumar, S. Gowthaman, Vinodh Kanna B., Lenin Rajasehar,

- A M. Yogesh Kanna, S. Raja Rajeshwaran, B. Balaji, A. Lakshminarayanan, Gautam Narayan, Ms. Asmita Singh, Adithya Nair, Advs. for the appearing parties.

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J.

- B CIVIL APPEALS @ SLP (CIVIL) NOS. 5395-5399 OF 2016;

- CIVIL APPEALS @ SLP (CIVIL) NOS. 5605-5613 OF 2016;

- C CIVIL APPEALS @ SLP (CIVIL) NOS. 5391-5393 OF 2016, AND

- CIVIL APPEALS @ SLP (CIVIL) NOS. 5367-5375 OF 2016

- D 1. Leave granted.

2. These appeals have been filed against the common final judgment and order dated 08.07.2015 passed by the High Court of Judicature at Madras allowing writ appeals filed by the Respondents herein, being state authorities, and dismissing writ petitions filed by the

- E Appellants herein, being drivers in various departments of the Government of Tamil Nadu, with respect to the Selection Grade and Special Grade scales of pay applicable to them.

3. The Appellants, in a nutshell, are claiming the grant of Selection Grade and Special Grade scales of pay in the bracket of Rs. 5000-8000 and Rs. 5500-9000 respectively in terms of G.O. Ms. No. 162,

- F Finance (Pay Cell) Department dated 13.04.1998 (for short “G.O. Ms. No. 162”), which has been granted to around 3000 similarly placed employees. The Appellants place reliance on various decisions rendered by this Court and the High Court of Madras in several writ petitions and appeals granting similar pay scales to the petitioners therein. Thus,

- G it is argued that the impugned judgment of the High Court has erroneously differed from the consistent view taken in these decisions.

4. On the other hand, the Respondents argue in favour of the impugned judgment, claiming that the initial grant of the claimed pay scale to some drivers (out of which the entire cluster of litigations arose)

- H was merely on account of an error on the part of officials in some

government departments. Thus, it is submitted that the applicable scales of pay are Rs. 4000-6000 and Rs. 4300-6000 respectively for the Selection Grade and Special Grade.

5. It has come to our attention that several Benches of this Court have dismissed SLPs against decisions of the High Court fixing pay scales of the concerned drivers therein at Rs. 5000-8000 for the Selection Grade and Rs. 5500-9000 for the Special Grade in terms of G. O. Ms. No. 162. We deem it fit to refer to the orders passed by this Court in this respect:

WA No. 67 of 2012	SLP (Civil) CC No. 14715 of 2012	Dismissed on 10.09.2012
WA No. 383 of 2009	SLP (Civil) No. 35969 of 2009	Dismissed on 25.02.2015
WA No. 391 of 2009	SLP (Civil) No. 6522 of 2010	Dismissed on 25.02.2015
WA No. 382 to 388 of 2009	SLP (Civil) No. 6523-6530 of 2010	Dismissed on 25.02.2015
WP No. 462 of 2012 WP No. 24912 of 2010 WA No. 383-391 of 2009	SLP (Civil) No. 22491 of 2012	Dismissed on 25.02.2015
WP -29119- 2012	SLP (Civil) No. 33037 of 2013	Dismissed on 25.02.2015
WA No. 791 and 792 of 2013 WP No. 2929 and 2930 of 2012	SLP (Civil) No. 33588 of 2013	Dismissed on 25.02.2015
WA No. 130, 131, 132 of 2011	SLP (Civil) CC No. 12886-12888 of 2013	Dismissed on 19.07.2013
WA No. 2243 of 2012	SLP (Civil) CC No. 6602 of 2013	Dismissed on 27.09.2013
WA No. 526 of 2013	SLP (Civil) CC No. 14007 of 2013	Dismissed on 21.08.2013
WA No. 24899 of 2014	SLP (Civil) No. 34265 of 2014	Dismissed on 06.02.2017

6. Be that as it may, it must be noted that all the above orders of this Court were passed at the stage of admission itself. Even the order dated 25.02.2015, passed by a 3-Judge Bench of this Court while dealing with a batch of appeals having SLP (C) No. 35969/2009 as the lead matter, stated as follows:

“UPON hearing the counsel the Court made the following

ORDER

Dismissed.”

7. It is evident that all the above orders were non-speaking orders, inasmuch as they were confined to a mere refusal to grant

- A special leave to appeal to the petitioners therein. At this juncture, it is useful to recall that it is well-settled that the dismissal of an SLP against an order or judgment of a lower forum is not an affirmation of the same. If such an order of this Court is non-speaking, it does not constitute a declaration of law under Article 141 of the Constitution, or attract the doctrine of merger. The following discussion on this proposition in *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359, is relevant in this regard:
- (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 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. The first stage is upto 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 the special leave petition is converted into an appeal.
- (iii) The 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. A 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 the 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 the Supreme Court has been invoked the order D 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 the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

(emphasis added)

This view has also been adopted in a plethora of decisions of F this Court, including the recent decision in *Khoday Distilleries v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*, (2019) 4 SCC 376.

8. Applying these observations to the present case, it is clear that there has been no pronouncement by this Court constituting the law of G the land as to the interpretation of G.O. Ms. No. 162. In such a situation, it is open for us to proceed to decide the instant appeals uninfluenced by the prior orders of this Court dismissing SLPs against the grant of relief to drivers placed similarly as the Appellants herein.

9. It is evident that the entire controversy in this case hinges on H the interpretation of G.O. Ms. No. 162. Vide this order, the Tamil Nadu

- A Revised Scales of Pay Rules, 1998 (for short “the 1998 Rules”) were notified, revising 25 standard pay scales on a pay scale-to-pay scale basis for State Government employees and teachers. While Schedule I to the 1998 Rules indicated the revised pay scales, Schedule II specified the Selection Grade and Special Grade pay scales applicable for each revised Ordinary Grade. Further, it was stated in paragraph 4 of the G.O. that for posts with no promotional avenues, the Selection Grade and Special Grade scales as indicated in Schedule II would be applicable.
- B 10. It is not in dispute that drivers in various departments of the Government of Tamil Nadu were entitled to revised Ordinary Grade pay scales as per Schedule I. Further, since they did not have any promotional avenues, Selection Grade and Special Grade pay scales under Schedule II would become applicable as and when they completed 10 and 20 years of service respectively. The dispute here lies with respect to the entries under Schedules I and II applicable to the post of drivers. It is the submission of the Respondents that prior to the revision of pay scales under the 1998 Rules, drivers were entitled to the pay scale of Rs. 975-1660 as determined by G.O. No. 818, Finance, dated 09.09.1989. Accordingly, the corresponding revised Ordinary Grade pay scale under Schedule I of the 1998 Rules would be as per
- C Entry No. XX below:

SCHEDULE -I
LIST OF PAY SCALES

	Group (1)	Existing Scale (2)	Revised Scale (3)
		Rs.	Rs.
F	I	5500-200-6500	17400-500-21900
	II	5100-150-5700	16400-450-20000
	III	4500-150-5700	15000-400-18600
G	IV	4100-125-4850-150-5300	14300-400-18300
	V	3950-125-4700-150-5000	12750-375-16500
	VI	3700-125-4700-150-5000	12000-375-16500
	VII	3000-100-3500-125-4500	10000-325-15200
H	VIII	2500-75-2800-100-4200	9100-275-14050
	IX	2200-75-2800-100-4000	8000-275-13500
	X	2000-60-2300-75-3200-100-3500	6500-200-11100
	XI	2000-60-2300-75-3200	6500-200-10500

XII	1820-60-2300-75-3200	5900-200-9900
XIII	1640-60-2600-75-2900	5500-175-9000
XIV	1600-50-2300-60-2660	5300-150-8300
XV	1400-40-1600-50-2300-60-2600	5000-150-8000
XVI	1350-30-1440-40-1800-50-2200	4500-125-7000
XVII	1320-30-1560-40-2040	4300-100-6000
XVIII	1200-30-1560-40-2040	4000-100-6000
XIX	1100-25-1150-30-1660	3625-85-4900
XX	975-25-1150-30-1660	3200-85-4900
XXI	950-20-1150-25-1500	3050-75-3950-80-4590
XXII	825-15-900-20-1200	2750-70-3800-75-4400
XXIII	800-15-1010-20-1150	2650-65-3300-70-4000
XXIV	775-12-835-15-1030	2610-60-3150-65-3540
XXV	750-12-870-15-945	2550-55-2660-60-3200

(emphasis added)

11. Relying on this, the Respondents submit that the drivers are entitled to a revised Ordinary Grade pay scale of Rs. 3200-4900 only. As regards the Selection Grade and Special Grade pay scales applicable, the Respondents claim that the Appellants are entitled to pay scales of Rs. 4000-6000 and Rs. 4300-6000 respectively as per Serial No. 6 of Schedule II, which is corresponding to Entry No. XX of Schedule I. On the other hand, the Appellants claim that they are entitled to the revised Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively as per Serial No. 8 of Schedule II. It would be useful to refer to Schedule II in this regard:

SCHEME - II

REVISED SELECTION GRADE AND SPECIAL GRADE

SCALE OF PAY

Sl. Nos. (1)	Ordinary Grade (2)	Selection Grade (3)	Special Grade (4)
	Rs.	Rs.	Rs.
1	2550-55-2660-60-3200	2650-65-3300-70-4000	2750-70-3800-75-4400
2	2610-60-3150-65-3540	2750-70-3800-75-4400	3050-75-3950-80-4590
3	2650-65-3300-70-4000	3050-75-3950-80-4590	3200-85-4900
4	2750-70-3800-75-4400	3050-75-3950-80-4590	3200-85-4900
5	3050-75-3950-80-4590	4000-100-6000	4300-100-6000
6	3200-85-4900	4000-100-6000	4300-100-6000
7	3625-85-4900	4300-100-6000	4500-125-7000
8	4000-100-6000	5000-150-8000	5500-175-9000

A	9	4300-100-6000	5000-150-8000	5500-175-9000
	10	4500-125-7000	5300-150-8300	5900-200-9900
	11	5000-150-8000	5500-175-9000	6500-200-10500
	12	5300-150-8300	6500-200-10500	8000-275-13500
	13	5500-175-9000	6500-200-10500	8000-275-13500
	14	5900-200-9900	8000-275-13500	9100-275-14050
B	15	6500-200-10500	8000-275-13500	9100-275-14050
	16	6500-200-11100	9100-275-14050	10000-325-15200
	17	8000-275-13500	9100-275-14050	10000-325-15200
	18	9100-275-14050	10000-325-15200	12000-375-16500

(emphasis added)

12. Indeed, the genesis of the entire dispute lies in the fixation C of Selection and Special Grade pay scales of certain drivers by certain local departments as per Serial No. 8 of Schedule II. Pursuant to this, the Joint Secretary to the Government, Finance Department, issued Letter No. 96900/PC/98-2 dated 31.12.1998 to all Secretaries to the Government and Heads of Department, on the basis that such fixations D were erroneous and needed to be reviewed, with a direction to effect recoveries wherever excess payments had been made.

13. In 2006, the Secretary, Personnel and Administrative Reforms (E) Department rejected the representation of the Tamil Nadu Government Department Drivers' Central Association seeking fixation E of Selection Grade and Special Grade pay scales at Rs. 5000-8000 and Rs. 5500-9000 respectively, vide the proceedings in Lr. No. 13921/K/ 2005-1 dated 25.04.2006. This was challenged by the drivers' association before the High Court in W.P. No. 34800 of 2006, which was allowed on the ground that the said proceedings did not refer to G.O. Ms. No. 162. The association was directed to make a fresh F representation before the Finance Department, to be decided in accordance with G.O. Ms. No. 162.

14. Such representation, however, was also rejected by the Finance Department vide letter No. 63685/CMPC/2006-1, dated 01.10.2007, which states as follows:

- G "3. Therefore, the Drivers are entitled for the Selection Grade / Special Grade scales of pay as ordered in Schedule-II of G.O. Ms. No. 162, Finance (PC) Department, dated 13-4-98, based H on the ordinary grade scale of pay granted to the posts of Drivers. As such all categories on par with Drivers in the Ordinary Grade of Rs.3200-4900 are entitled for the Selection Grade of

Rs.4000-6000 and Special Grade of Rs.4300-6000 respectively. A
The above Government Order has been issued based on the recommendations of the Official Committee, 1998 and the Drivers are not denied the benefits ordered in the Government Order cited. Hence, your request has no merit to consider as requested.”

15. A batch of writ petitions challenging the above order was subsequently filed before the High Court. These writ petitions were allowed by the High Court vide judgment dated 30.09.2008 in W.P. No. 4288/2008 and connected matters thereto, with a direction for the fixation of pay scales in accordance with G.O. Ms. No. 162. This was affirmed by the Division Bench of the High Court vide judgment dated 01.09.2009 in W.A. Nos. 383-391/2009. C

16. Subsequently, several other writ petitions were filed by other similarly situated drivers seeking the benefit of the same higher pay scale. These petitions were also allowed on the basis of the previous decisions discussed above, with the notable exceptions of the judgment dated 18.11.2013 passed by the Single Judge of the High Court in W.P. No. 1418/2001 and matters connected thereto, and the impugned judgment herein. D

17. Concluding that the drivers were not entitled to the higher claimed pay scales, these two judgments differed from the consistent view taken in the preceding judgments and orders based on a scrutiny of G.O. Ms. No. 162 and the prior history of pay scales payable to the drivers. They justified differing from the decisions of the Division Benches of the High Court on the premise that there was no specific direction by the learned Single Judge in W.P. No. 4288/2008 (*supra*), or the Division Bench in W.A. Nos. 383-391/2009, granting the Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively. With respect to subsequent writ petitions granting these higher pay scales, it was noted that they had been disposed of at the admission stage itself (in some cases even without notice to the government) and could thus be disregarded. E

18. Given this departure in the impugned judgment from the consistent view taken by prior coordinate Benches of the High Court, it is necessary to ascertain whether the High Court should have instead referred the matter to a larger Bench for consideration. This merits a closer reading of the decisions of the Single Judge in W.P. No. 4288/2008 (*supra*) and of the Division Bench in W.A. Nos. 383-391/2009. F

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- A As discussed above, the principal issue before the Courts in these decisions was the validity of the order dated 01.10.2007 passed by the Finance Department rejecting the claim of the drivers' association for Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively.
- B 18.1 The Single Judge in W.P. No. 4288/2008 (*supra*) and the Division Bench in W.A. Nos. 383-391/2009 both set aside the order dated 01.10.2007 based on the fact that the claimed higher pay scales had already been granted and were still being received by certain other drivers in several government departments, as per G.O. Ms. No. 162. Further, and more importantly, it was held that the letter dated
- C 31.12.1998 wherein such higher pay scale fixations were deemed to be erroneous, would not have the effect of reducing the entitlement of drivers, as such a letter could not act as a substitute for modification of the G.O. itself. Thus, even though the Court did not give any express direction to grant the higher pay scales as per Serial No. 8 of Schedule II of the 1998 Rules, we find that the same was implicit in the Court's directions for fixing the pay scales in terms of G.O. Ms. No. 162. In other words, it cannot be said that the High Court in W.A. Nos. 383-391/2009 did not affirm the drivers' claim that they were entitled to the higher Selection and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively.
- E 18.2 However, in the impugned judgment, the High Court only focused on the fact that the conclusion reached by the coordinate Bench in W.A. Nos. 383-391/2009 was for appropriate fixation of pay scales under G.O. Ms. No. 162 only, and there was *no specific direction* for grant of the Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively. On this basis, the High Court proceeded to determine the question of pay scale entitlement and took a view diametrically opposite to that of the coordinate Bench in W.A. Nos. 383-391/2009, finding that the Appellant-drivers were only entitled to the Selection Grade and Special Grade pay scales of Rs. 4000-6000 and Rs. 4300-6000 respectively. In our considered opinion, such an
- G approach is based on a narrow reading of the decision of the coordinate Bench in W.A. Nos. 383-391/2009, as it fails to appreciate the implicit direction in this order to grant the higher pay scales to the drivers, as mentioned *supra*. Thus, it appears that the High Court differed from the view taken previously by a coordinate Bench based on a misreading of the same. In such a situation, once it was found by the High Court
- H that it was in disagreement with the holding of its coordinate Bench in

W.A. Nos. 383-391/2009, it should not have proceeded to decide the matter by itself, and in the interest of judicial discipline, should instead have referred the matter to a larger Bench for its consideration.

19. Be that as it may, in the interest of expeditious disposal of the matter, we do not deem it fit to remand the matter to the High Court for fresh consideration at this stage. Thus, we shall proceed to decide it on merits accordingly.

20. In our considered opinion, apart from claiming parity with similarly placed individuals, the Appellants have been unable to justify how and why they are entitled to the Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 as specified in Serial No. 8 of Schedule II to the 1998 Rules, in terms of G.O. Ms. No. 162. On the other hand, on perusing the series of revisions made to the pay scales applicable to drivers employed with the State Government, we find that the applicable pay scales for the Selection Grade and Special Grade would be as per Serial No. 6 of Schedule II to the 1998 Rules, i.e. Rs. 4000-6000 and Rs. 4300-6000 respectively.

20.1 As the High Court has also noted in the impugned judgment, the pay scales of the Appellants can be traced back to G.O. Ms. No. 666, Finance dated 27.06.1989, by which the State Government issued the Tamil Nadu Revised Scales of Pay Rules, 1989, implementing the recommendations of the Vth Tamil Nadu Pay Commission. Under these rules, the original and revised pay scales of 30 common categories of posts were specified. The scale of pay for drivers was mentioned at Serial No. 11 in the first part of the Schedule to these rules, having been revised from Rs. 610-1075 to Rs. 950-1500.

20.2 The next revision came through G.O. Ms. No. 818, Finance, dated 09.09.1989, whereby drivers' pay scale was increased to Rs. 975-1660. Later, under G.O. Ms. No. 304, Finance dated 28.03.1990, Special Grade and Selection Grade scales of pay were introduced for persons who had completed 10 years and 20 years of service respectively. For the post of drivers carrying the Ordinary Grade pay scale of Rs. 975-1660, the Selection and Special Grade brackets were set as Rs. 1200-2040 and Rs. 1320-2040 respectively.

20.3 Finally, when the 1998 Rules were introduced through G.O. Ms. No. 162, the post-wise determination of pay scales was replaced by a pay scale-to-pay scale basis determination. As already seen in Schedule I of the said rules, the pay scale of Rs. 975-1660 applicable

- A to drivers was revised to Rs. 3200-4900. For this, the corresponding Selection and Special Grades specified in Schedule II were Rs. 4000-6000 and Rs. 4300-6000 respectively.
21. Against this backdrop, we find substance in the submission of the Respondents that the Appellants are not lawfully entitled to the claimed Selection Grade and Special Grade pay scales of Rs. 5000-8000 and Rs. 5500-9000 respectively in terms of G.O. Ms. No. 162.
- B 22. The only question to be settled, therefore, is whether the Appellants are entitled to claim parity with the drivers who have so far been granted benefits vide the orders of the High Court and this Court, as mentioned supra in paragraph 5.
- C 23. In this respect, we find that the High Court in the impugned judgment was correct in concluding that the Appellants cannot claim such relief on the strength of Article 14 of the Constitution of India, when once it has been found that they are not lawfully entitled to the same. It is well-settled by now that a person cannot invoke Article 14
- D to claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place. Article 14 embodies the concept of positive equality alone, and not negative equality, that is to say, it cannot be relied upon to perpetuate an illegality or irregularity. In fact, this Court has opined that this principle extends to orders passed by judicial fora as well. Thus, the jurisdiction of a higher court cannot be invoked on the basis of a wrong order passed by a lower forum. In this respect, it would be fruitful to refer to the following passage from the decision of this Court in *Basawaraj v. Land Acquisition Officer*, (2013) 14 SCC 81:
- F “8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial
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forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn. v. Jagjit Singh* [(1995) 1 SCC 745 : AIR 1995 SC 705], *Anand Buttons Ltd. v. State of Haryana* [(2005) 9 SCC 164 : AIR 2005 SC 565] , *K.K. Bhalla v. State of M.P.* [(2006) 3 SCC 581 : AIR 2006 SC 898] and *Fuljit Kaur v. State of Punjab* [(2010) 11 SCC 455 : AIR 2010 SC 1937].)"

This proposition was also recently affirmed by a 3-Judge Bench of this Court in *State of Odisha v. Anup Kumar Senapati* (Civil Appeal No. 7295/2019, judgment dated 16.09.2019).

24. Thus, it is evident that the Appellants cannot claim the Selection Grade and Special Grade scales of pay of Rs. 5000-8000 and Rs. 5500-9000 respectively, solely on the strength of earlier decisions of the High Court, without showing how they, themselves, are entitled to such benefit in the first place. In such a situation, we are of the considered view that the Appellants can only be granted the benefit of the Selection Grade and Special Grade scales of pay to which they are lawfully entitled in terms of G.O. Ms. No. 162, i.e. Rs. 4000-6000 and Rs. 4300-6000 respectively.

25. Therefore, in view of the foregoing discussion, we find no reason to interfere with the impugned judgment. The instant appeals are hereby dismissed, and the impugned judgment is confirmed.

CIVIL APPEALS @ SLPs [Diary No. 42301/2017]

1. Delay condoned. Leave granted.

2. These appeals have been filed by the State of Tamil Nadu, represented by its Principal Secretary, Finance (Pay Cell) Department against the judgment and order dated 05.01.2015 of the High Court of Madras in W.P. No. 2363 of 2013, and the final judgment and order dated 11.09.2017 dismissing Review Application No. 153 of 2016 against the same, with respect to the pay scale entitlements of certain drivers employed by the High Court of Madras in terms of G.O. Ms. No. 162.

- A 3. These appeals arise out of virtually the same factual background as those disposed of above. W.P. No. 2363 of 2013 was filed by the concerned drivers employed with the High Court of Madras, seeking quashing of paragraph 5 of Letter No. 63305/Pay Cell/2010-1 dated 08.11.2010 issued by the State Government, on which basis the Government had denied them the benefit of Selection and Special Grade pay scales as per Serial No. 8 of Schedule II of the 1998 Rules under G.O. Ms. No. 162. The petitioners therein also sought a direction to the State Government for appropriate fixation of pay scales in the above terms.
- B 4. The Division Bench allowed the writ petition on the ground that the drivers were not entitled to any promotional avenues, and hence were entitled to the full benefits of the appropriate pay scale under Schedule II of the 1998 Rules. It was further found that the drivers were entitled to benefits under Serial No. 8 of the said schedule, looking to the disposal of similar matters by the High Court and this Court. The review application filed against the same also came to be dismissed by the High Court.
- C 5. As discussed supra, it has not been disputed before us that the drivers concerned were not entitled to any promotional avenues. Thus, it is evident that the High Court rightly concluded that the drivers were entitled to the full benefits of the appropriate pay scale under Schedule II of the 1998 Rules. However, in light of our foregoing finding that persons employed in the post of drivers in various departments in the Government of Tamil Nadu are only entitled to Ordinary, Selection and Special Grade pay scales in terms of Serial No. 6 of Schedule II of the 1998 Rules, i.e. at Rs. 3200-4900, Rs. 4000-6000 and Rs. 4300-6000 respectively, we have no hesitation to hold that the High Court erred in directing fixation of such pay scales to drivers employed at the High Court in terms of Serial No. 8 of the Schedule II, fixing Selection Grade and Special Grade scales of pay of Rs. 5000-8000 and Rs. 5500-9000 respectively.
- D 6. The appeals are therefore allowed partly, to the extent that the State Government is directed to fix the pay scale benefits available to the Respondents in the instant appeals in terms of Serial No. 6 of Schedule II of the 1998 Rules under G.O. Ms. No. 162.