

A BIJAY KUMAR SHARMA & ORS.

v.

RANCHI UNIVERSITY & ORS.

(Civil Appeal No. 2822 of 2012)

B MARCH 17, 2021

[SANJAY KISHAN KAUL AND R. SUBHASH REDDY, JJ.]

Service Law – Merger of pay scales – Permissibility – D.O. letter dated 28.07.1981 of the State Government provided for merger of pay scales only of Lower Division and Upper Division Assistants/ Clerks in the Patna University – The merger was further extended to other Universities of the erstwhile State of Bihar by a letter dated 27.01.1982 – Thereafter, a communication was issued on 05.10.1989 by which the State decided to implement the above-mentioned integrated pay scale to all the class III employees of the colleges affiliated to various Universities of the State – Pursuant thereto, Vice-Chancellor of Ranchi University issued a circular to all the affiliated colleges – Consequently, Principal of a college affiliated to Ranchi University, granted such merger to the appellants subject to approval of the University by order dated 03.08.1990 – The order of the principal was reversed by University on 08.03.1995 – Writ petition challenging order dated 08.03.1995 allowed by the Single Judge of the High Court – The order of Single Judge of High Court was set aside by Division Bench of the High Court – On appeal, held: As per D.O. letter dated 28.07.1981, the category of posts sought to be merged were only those which had two or more scales of senior and junior incumbents – In the post in question, there is no categorisation of lower division and senior division and the appellants were appointed to sanctioned posts – They were neither promoted nor appointed or regularized against the post of Lower Division and Upper Division Assistants/Clerks – In absence of such categories, the letter dated 28.07.1981 would not apply and there cannot be a mandamus to merge pay scales – However, as regards, the benefit to appellants from 1990 to 1995, the same is not liable to be recovered.

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Dismissing the appeal, the Court

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Held: 1. The cause arose from D.O. letter No. 373 dated 28.07.1981. In matters which have financial implication so far as the State or the employees are concerned, there must be a right for it to be enforced for the employees. This Court is concerned with merger of scales and if qua the appointments and qua the post held by the appellants, a merger was not to take place, there cannot be a mandamus to merge the pay scales. The D.O. itself stated that only such of the category of posts as of two or more scales of the senior and junior incumbents were sought to be merged. In the absence of any such categories, there would be no application of this D.O. This is apart from the fact that the pay scales were also different from the post held by the appellants which are of Typist, Counter Clerk, Routine clerk and Store Keeper. [Para 17][261-F-H]

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2. The denial of the claim by the University is predicated on the plea that the appellants do not belong to the category of LD Clerks/Assistants to the UD Clerks/Assistants in the given pay scales. Last three posts in the colleges are of different designation such as Headclerk, Accountant, Correspondent Clerk, Accounts Clerk, Counter Clerk, Store Keeper etc. which in turn is based on the number of students in an institution. It is a matter of the staffing pattern for such appointments. In the post in question there is no categorization of the post of Lower Division and Upper Division and these appellants were appointed to sanctioned posts. They were neither promoted nor appointed or regularized against the post of Lower Division and Upper Division Assistants/Clerks. [Para 18][262-A-C]

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3. The principle of merger of pay scales is to bring uniformity of pattern in grant of pay in pay scales. However, there can be uniformity in respect of the posts for which such uniformity is sought to be implemented and not in respect of any other post which exists in category III. [Para 19][262-C-D]

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4. The communication of the Registrar of the university vide letter dated 25.04.1990 only sought w.e.f. to the Govt. letter dated 11.07.1989 by communicating it to the constituent colleges. It is in the wisdom of the Principal of the Ranchi Women's College

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A that she issued letter dated 03.08.1990 but cautiously worded it by stating that if University does not approve the designation in pay scale, they may be reverted in the existing pay scale. The appellants were paid salaries according to the provisional fixation of pay by the Principal of the College and it is this which did not find approval from University vide letter dated 09.03.1995 being
B contrary to the Government letter dated 11.07.1989. [Para 20][262-D-F]

5. Unless a re-designation of the post takes place, the benefit cannot be available under the G.Os. Such redesignation could not have taken place without a specific sanction of the Vice-Chancellor
C of the University and thus the rationale which permeated the order of the Single Judge of the High Court that no such permission will require in view of Section 10(6) of the Bihar Universities Act would not hold water. [Para 21][262-F-G]

6. Lastly turning to the aspect of benefit which is already
D accrued to the appellants from 1990 to 1995, this Court is of the view that persons like the appellants working in category III cannot be made now to re-pay their benefits after so many years, specially and when two of them have even already retired. There was no misrepresentation on part of the Appellants as to make them refund the amount but a conditional order passed by the Principal remained
E in force on account of a large delay on part of the concerned authorities. Thus, it is made clear that any amounts paid to the appellants under the order of the Principal dated 03.08.1990 or even under the order of the Single Judge (if any) will not be sought to be recovered from the appellants. [Para 23][262-G-H; 263-A-C]

F *Shyam Babu Verma and Ors. v. Union of India and Ors.* (1994) 2 SCC 521: [1994] 1 SCR 700; *Sahib Ram v. State of Haryana and Ors.* (1995) Supp (1) SCC 18: [1994] Suppl. (3) SCR 674; *State of Punjab and Ors. v. Rafiq Masih* (2014) 8 SCC 883: [2014] 8 SCR 228 – referred to.

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Case Law Reference

[1994] 1 SCR 700	referred to	Para 23
[1994] Suppl. (3) SCR 674	referred to	Para 23
[2014] 8 SCR 228	referred to	Para 23

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2822 of 2012. A

From the Judgment and Order dated 26.11.2010 of the High Court of Judicature at Ranchi in L.P.A. No.576 of 2003.

Ashwarya Sinha, Ambhoj Kumar Sinha, Advs. for the Appellants. B

Gopal Prasad, Shalya Agarwal, Advs. for the Respondents.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. An endeavour made by the Respondent-State to give uniform pay scales to Upper Division and Lower Division Assistants/Clerks working in the University in the then State of Bihar has given rise to this prolonged litigation which began in the year, 1998. C

2. The Government issued a letter No. 373 dated 28.07.1981 providing for a merger of pay scales only of Lower Division Assistants/Clerks with the pay scale of Upper Division Assistants/Clerks staff of Patna University. Since this is the basic document from which the dispute arises, it would be appropriate to reproduce this letter as under: D

“Sri K.N Aradhanareeswaran

Education Commissioner

Bihar, Patna E

Dated 28th July, 1981

D.O Letter No. 373©

Kindly refer to your letter dated 27 July 1981 in connection with the sanction of merger scale to lower division and upper division assistants in your University and sanction of senior scale (Rs. 348–570) to all the categories of posts in the scale of Rs.260–408/–, 296–460/– and Rs.340–490/– with effect from 1.3.1977 along with pay fixation benefits in accordance with F.D. letter No. 4144 dated 16.3.1977. F

You are aware that Government have sanctioned merger scale to only such categories of post as have two or more scales for the senior and junior incumbents. It is not that any category of Post which has a particular scales that has been merged with a higher scale got upgraded to the same even if the higher scale is not G
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A there for that category of post.

As such, in conformity with the Government policy in this regard, only such category of posts assistants as have a junior scale of Rs.260–408/– and senior scale of Rs. 348–570/–or a junior scale of Rs. 296 –460/ – or Rs. 340–490/– and senior scale of Rs. 348/

B – 570/– can alone be merged with the scale of Rs. 348–570/–. The scale of Rs. 348–570/– cannot be given to any other category of post which is in the scale of Rs. 260–408/–, Rs.296–460/–, Rs. 340–490/– without there being a senior scale of Rs. 348–570/– for such post from before.

C I may further point out that Government have merged L.D (Rs. 260–408/–) and U.D. (Rs.348–570/–) scales only four Secretariat and attached offices. This kind of merger has not been allowed for employees of the field offices. In line with the same, this kind, merger cannot be made applicable to the assistants in the constituent colleges. Any revision in their scales shall be possible only after the

D publication of the Fourth Pay Revision Committee report and in its acceptance by the Government.

The merger scale to the various categories of assistants may be granted subject to the condition of aforesaid with effect from 1st July 1989. Their pay fixation may be made in pursuance of F.D. letter No. 4144 dated 16.3.1977 subject to the condition that no arrear shall be paid until the Finance Department have concurred in the proposal.

Sd/– K.N. Aradhanareeswaran

28.7.81”

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3. A bare reading of the aforesaid letter would show that some clarifications were sought in respect of this merger issue and the letter dated 28.07.1981 gave absolute and clear elucidation to the effect that the sanction was only for :

G a) Such categories of posts as have two or more scales for senior and junior incumbents;

b) It is not that any category of post which has similar scales that have been merged with the higher scale but upgraded to the same even if the higher scale is not there for that category of post;

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c) It is applicable only to such category of posts assistants as having a junior scale of Rs. 260-408/- and senior scale of Rs. 348-570/- or junior scale of Rs. 296-460/- or Rs. 340-490/- and senior scale of Rs. 348-570/- can alone be merged with the scale of Rs. 348-570/-. The scale of Rs. 348-570/- cannot be given to any other category of post which is in the scale of Rs. 206-408/-, Rs. 296-460/-, Rs. 340-490/- without there being a senior scale of Rs. 348-570/- for such post from before;

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d) The merger of the Lower Division and Upper Division scales is only for four Secretariats and attached offices. It has not been allowed for employees of the field offices and thus cannot be made applicable to the assistants in the constituent colleges,

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e) Any revision in the scales would be possible only after publication of the Fourth Pay Revision Committee report and in its acceptance by the Government.

4. On the basis of these clarifications, the mergers to various categories of Assistants were granted w.e.f. 01.07.1989 with their pay fixation being made in pursuance to F.D. letter No. 4144 dated 16.03.1977, subject to the condition that no arrear shall be paid until the Finance Department concurred with the proposal.

D

5. On 27.01.1982, the Joint Secretary to the State of Bihar issued a communication to all the Registrars of the Universities qua the issue of integration of granted pay scales corresponding to lower category and higher category ministerial employees of those universities. The communication reads as under:

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“Under directions given to me, in continuation of the facts of Letter No. 1217 of the Department of Education dated 29.9.1980, this is to hereby inform you that already an order vide Letter No. 373 (C) dated 26.7.1981 which is a semi government letter of the Director of Education corresponding to the integration of pay scales of the lower cadre and higher cadre employees of the university of Patna, has now through this order has been made applicable to employees of the those categories employed in other universities within the State of Bihar.

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Bihar acknowledge the receipt of this letter.

Yours faithfully,

Sd/- (illegible)

Ramachandra Prasad Varma

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A Joint Secretary to the State Govt.
Bihar

O/W No. 91 Patna dated 27th January 1982. Copy to the Commissioner of Finance, Bihar, Patna in continuation of Memo No. 373 (C) dated 28.7.1981 of the Department of Education for due information.

B Sd/-(illegible)
Ramachandra Prasad Varma
Joint Secretary to the State Govt.

C Bihar

O/W No. 91 dated 27th January 1982

D Copy order copy No. 373 dated 28.7.1981 sent to the Director of Higher Education, Bihar, Patna/Financial Advisor, Directors of Higher Education of all Universities (Higher Education Bihar/Accounts officer in charge, education Department/Section-officer-in-charge: 14x15's all assisted for necessary proceedings.

E Sd/-(illegible)
Ramachandra Prasad Varma
Joint Secretary to the State Govt.
Bihar"

F 6. The aforesaid communication shows that it is in the context of the communication dated 28.07.1981, extracted aforesaid.

G 7. It is the case of the appellants that thereafter a communication was issued on 05.10.1989 by the Principal Secretary-cum-Commissioner, Department of Human Resources Development, Government of Bihar to the Registrars of all Universities regarding the same subject matter, which reads as under:

H "I am hereby directed to inform you regarding the aforesaid matter that according to the agreement reached on 26.4.1989 with the Bihar State University and College Employees Union, that on the basis of approvals made in State Govt's letter No. 942 dated

17.8.1985 and Letter No. 156 dated 19.8.1985 respectively, a Government order will be released/issued shortly. A

2. After due introspection of the decisions taken on the basis of the said G.Os regarding paragraph 1(c) of the said G.O. 156 dated 19.8.1985, whose particulars are given below, no G.O. could be issued on the said issue matter: B

“In the demand No. 3 among the various demands put up by the union, it has been requested that the merger pay scales in the case of all III Grade employees of the universities be made applicable from the year 1977 itself as it has already been existing and effected in the case of the Secretariat Employees and lower grade and upper grade assets/clerks of the Zonal Officers. It has also been decided in this regard that under any circumstances, no arrear payments will be made or will be admissible.” C

3. It's remarkable here that all the assistants belonging to higher grade and lower grad employed in all the universities of the state has been integrated for the purpose of deciding their revised unified pay scales and in this case the pay scales of ministerial employees of third grade will be made as applicable to them too as mentioned in Departmental letter No. 91 dated 27.1.1982 and has been made applicable with effect from 01.07.1981 and thereafter vide Departmental Letter No. 562 dated 15.4.1985, the unified pay scales have also been implemented in the case of colleges affiliated to University of Patna too. D E

4. Thus all the aspects related to this matter were duly taken into consideration and only thereafter the State Government has decided to implement the aforesaid integrated pay scale to all Class-III, Upper Grade and Lower graded Assts/clerks working in the colleges affiliated to various universities within the state except the said class employees of University of Patna, but as a result of the above, no arrear will be liable to be paid. F

5. Information and directions in this regard has already been issued to the Director (higher Education), Bihar.

Yours faithfully, G

Sd/-(illegible)

B.B. Sahai

Principal Secretary-cum-Commissioner H

A Department of Human Resources
Development, Bihar, Patna”

B 8. It is this letter which has been forcefully relied upon by the appellants on the ground that para 3 specifies that all Assistants belonging to higher and lower grade employee in the University to the State had been integrated for the purpose of deciding their revised unified pay scales.

9. In pursuance of the aforesaid communication dated 05.10.1989, the Vice Chancellor of Ranchi University issued a circular to all the affiliated colleges in terms as under :

C “In the perspective of Letter No. 14/M/1-0-0228/791/Sec/1173 dated 5.10.1989 of the Department of Human Resources Development (HRD), Government of Bihar, the integrated pay scale of RS. 785-1210/- applicable to all lower category and Higher Category Assistant/Clerks of University of Ranchi and all its affiliated colleges will be effective from date 01.07.1981, but still the actual payment of salary on said basis will be made on 1st February 1990. But at this time arrear amount will not be paid.

Hence the concerned Principles are hereby directed requestfully to send their payment fixation proforma accordingly within 15-5-90 for due approval.

E By the order of the respected
Vice Chancellor
Sd/- of M.Uraon
(Registrar)
F University of Ranchi, Ranchi

Memo: RU./BC. 4120-21”

G 10. It is the say of the appellants that the Principal, Ranchi Women’s College, Ranchi consequently issued an order dated 03.08.1990 in the following terms in which the names of the appellants were included :

H “The following person are designated Office Assistant and placed in the pay scale..... against.....subject to approval of the Ranchi University. If the University does not approve their designation and pay scale, they may be reverted in the existing pay

scale. These entire seniority will be also accepted as per decision A of the Ranchi University.

Name	w.e.f.	Pay Scale	
1. Sri Bhola Paswan	1.7.81	Rs.785-1210	
2. Sri Chunu Mahto	1.7.81	-do-	B
3. Sri Rajendra Mahto	1.7.81	-do-	
4. Sri Lalan Pd.Singh	1.7.81	-do-	
5. Sri Surajdeo Singh	1.7.81	-do-	
6. Sri Shrutidhar Pandey	1.7.81	-do-	C
7. Sri Ramsudra Sahu	1.7.81	-do-	
8. Sri Ashok Kr. Pandey	1.7.81	-do-	
9. Sri Kamla Kant Jha	1.7.81	-do-	
10. Sri Laloo Lakra	1.7.81	-do-	D
11. Sri Rajendra Oraon	1.7.81	-do-	
12. Sri Kanhai Sahu	1.7.81	-do-	
13. Sri Ramakant Sharma	1.7.81	-do-	
14. Sri P.S. Bakla	1.7.81	-do-	E
15. Sri Chandradeo Pd. Rai	1.7.81	-do-	
16. Sri Devi Ram Toppo	1.7.81	-do-	
17. Miss Laxmi Lakra		785-1210	
18. Sri Prabhat Kr. Lal		-do-	F
19. Sri Uma Shankar Singh		730-1080	
20. Sri Rameshwar Singh		-do-	
21. Sri Nanku Sahu		-do-	
22. Sri M.R. Kalindi		-do-	G
23. Sri Vijay Kr. Sharma		785-1210	
24. Sri Budhram Toppo		730-1080	
25. Sri Naresh Kr. Singh		785-1210	H

- A 26. Sri Rammohan Singh 785-1210
 27. Sri Vivek Chandra 785-1210

No arrear shall be paid prior to the date of this notification. Payment to Sl.No. 17 to 27 on.....will be made w.e.f. the salary of July 90, will be as per Rule dt.1.1.86.”

- B 11. It appears that the appellants continued to enjoy the benefit of these revised pay scales till the aforesaid decision dated 03.08.1990 was reversed on 08.03.1995. In this context, we may note that the appellants before us fell in the category of typist, counter clerk, routine clerk and store keeper.
- C 12. It is the aforesaid decision dated 08.03.1995 which was assailed by the appellants by filing a writ petition bearing No. 1266 of 1998 before the Patna High Court. The writ petition was allowed by the learned Single Judge vide judgment dated 10.07.2003. The reasoning of the learned Single Judge was predicated on the fact that though the order issued by the Principal of the College was a provisional order of reservation subject to the approval of Ranchi University, and even though the power vested with the Vice Chancellor to make appointment to post in view of Section 10(6) of the Bihar State Universities Act, the Principal had authority to issue the communication dated 03.08.1990 as the appointments or creation of any uniform cadre was not a suo moto action but arose out of the directives of the University dated 25.04.1990. The learned Judge also noticed that another learned Single judge of that Court had passed an order in Writ Petition No. 3585 of 1995 dated 02.07.1996 which had not been assailed and had been implemented and thus the acceptance of that order would give rise to a plea of parity by the appellants.
- D 13. The judgment of the learned Single Judge was assailed before the Division Bench by the Ranchi University vide LPA No. 576 of 2003, which was allowed on 26.11.2010. The reasoning contained in the said order which has been impugned before us is that the State Government had only allowed merger of pay scales of Upper Division Assistants and Lower Division Assistants/Clerks in the manner as set out in DO letter
- E No. 373 dated 28.07.1981 and the Principal was not competent to re-designate or grant pay scales on new posts under the Universities Act, though the Vice Chancellor was competent to do so. The posts to which the appellants were appointed was noted by the court; to opine that even the pay scales of these appellants were different from the scales of
- F Upper Division and Lower Division Assistants/Clerks. The University
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was competent not to approve the re-designation and fixation of pay made and the order issued by the Principal itself made it subject to approval of the University. A

14. The Division Bench rejected the plea of any vested rights in favour of the appellants as the re-designation was subject to approval of the competent authority which would be the Vice Chancellor. Insofar as the aspect of the other writ petitions was concerned, it was noted that the plea of the University was that they were working as cashiers equivalent to the Accountants and had been given the benefit of the said pay scale and in any case if any mistake had been committed, that cannot give a right of parity. The plea of principle of natural justice was also rejected as the grant of the scale itself was subject to the orders of the competent authority which had not been forthcoming. B C

15. We have heard learned counsel for the appellants and learned counsel appearing for respondent Nos. 1 to 4 who have taken us to the pleadings. Learned counsel for respondent Nos. 1 to 4 submits that though he had filed counter affidavit on behalf of respondents No 5 the State of Jharkhand and respondent No. 6 but no one represents them. We may only note that it was for the State to have made arrangements to put forth its position which they have failed to do. Be that as it may, we have had the benefit of the stand of the State Government as reflected in the counter affidavit. D E

16. We are of the view that the impugned judgment cannot be faulted.

17. The rationale for saying so is that the cause arose from DO letter No. 373 dated 28.07.1981. We have already extracted the terms on which it was made applicable which are expressive in its turn. In matters which have financial implication so far as the State or the employees are concerned, there must be a right for it to be enforced for the employees. We are concerned with merger of scales and if qua the appointments and qua the post held by the appellants, a merger was not to take place, there cannot be a mandamus to merge the pay scales. We may also notice the important aspect that the DO itself stated that only such of the category of posts as of two or more scales of the senior and junior incumbents were sought to be merged. In the absence of any such categories, there would be no application of this DO. This is apart from the fact that the pay scales were also different from the post held by the appellants which are of Typist, Counter Clerk, Routine clerk and Store Keeper. F G H

A 18. The denial of the claim by the University is predicated on the plea that the appellants do not belong to the category of LD Clerks/ Assistants to the UD Clerks/ Assistants in the given pay scales. Last three posts in the colleges are of different designation such as Headclerk, Accountant, Correspondent Clerk, Accounts Clerk, Counter Clerk, Store Keeper etc. which in turn is based on the number of students in an institution. It is a matter of the staffing pattern for such appointments. In the post in question there is no categorization of the post of Lower Division and Upper Division and these appellants were appointed to sanctioned posts. They were neither promoted nor appointed or regularized against the post of Lower Division and Upper Division Assistants/Clerks.

C 19. The principle of merger of pay scales is to bring uniformity of pattern in grant of pay in pay scales. However, there can be uniformity in respect of the posts for which such uniformity is sought to be implemented and not in respect of any other post which exists in category III.

D 20. The communication of the Registrar of the university vide letter dated 25.04.1990 only sought w.e.f. to the Govt. letter dated 11.07.1989 by communicating it to the constituent colleges. It is in the wisdom of the Principal of the Ranchi Women's College that she issued letter dated 03.08.1990 but cautiously worded it by stating that if University does not approve the designation in pay scale, they may be reverted in the existing pay scale. The appellants were paid salaries according to the provisional fixation of pay by the Principal of the College and it is this which did not find approval from University vide letter dated 09.03.1995 being contrary to the Government letter dated 11.07.1989.

F 21. On our query learned counsel for the appellants fairly stated that unless a re-designation of the post takes place, the benefit cannot be available under the GOs. Such re-designation could not have taken place without a specific sanction of the Vice Chancellor of the University and thus the rationale which permeated the order of the learned Single Judge that no such permission will require in view of Section 10(6) of the Bihar Universities Act would not hold water.

G 22. We are thus of the view that the impugned order cannot be faulted with for the aforesaid reasons.

H 23. Lastly turning to the aspect of benefit which is already accrued to the appellants from 1990 to 1995, we are of the view that if the concerned authorities take 5 years to decide the issue, persons like the appellants

working in category III cannot be made now to re-pay their benefits after so many years, specially and when two of them have even already retired. There was no misrepresentation on part of the Appellants as to make them refund the amount but a conditional order passed by the Principal remained in force on account of a large delay on part of the concerned authorities. We thus make it clear that any amounts paid to the appellants under the order of the Principal dated 03.08.1990 or even under the order of the learned Single Judge (if any) will not be sought to be recovered from the appellants. We are following the course of action as adopted in **Shyam Babu Verma and Ors. v. Union of India and Ors.** (1994) 2 SCC 521 (para 11) and **Sahib Ram v. State of Haryana and Ors.** (1995) Supp (1) SCC 18 (para 5); and as clarified in **State of Punjab and Ors. v. Rafiq Masih** (2014) 8 SCC 883 (para 8), in exercise of the jurisdiction of this Court under Article 142 of the Constitution.

24. The appeal is dismissed in aforesaid terms leaving the parties to bear their own costs.

Ankit Gyan

Appeal dismissed.