(25) For the reasons recorded above, this appeal fails and is dismissed. There will be no order as to costs.

NARULA, J.—I agree.

PATTAR, J.—I agree.

K. S. K.

FULL BENCH

Before R. S. Narula, A. D. Koshal and S. S. Sandhawalia, JJ,

JAGJIT MOHAN SINGH BHALLA, ETC.—*Appellants.*

versus

UNION OF INDIA ETC.,—*Respondents.*

Letters Patent Appeal No. 255 of 1972

May 6, 1974.

Constitution of India (1950)—*Articles* 14 *and* 16—*Competent authority sanctioning revised scale of pay of a class of Government officers from a particular date—Rider attached depriving the officers the benefit of the revised scale from the date of sanction—Such rider—Whether hit by Articles* 14 *and* 16 *of the Constitution—Invalid part of the order severable—Whether can be struck down keeping the valid part intact.*

Held, that once an order fixing higher salary or a higher scale of pay is passed by the competent authority, it confers on the person covered by the order a legal right to claim and recover such salary. Where a competent authority sanctions a revised scale of higher pay to a class of government officers with effect from a particular date, but attaches a rider, without any justification, depriving those officers only, of the benefits of recovering the arrears of pay at that higher rate from the date from which the revised scale is enforced, such a rider suffers from invidous discrimination and is hit by Articles 14 and 16 of Constitution of India. The question of either accepting the offer of revised scale as a whole or rejecting it out of hand does not arise in a case where statutory sanction is granted by a competent constitutional authority. If an attack is made against the constitutionality of any part of the sanctioning order, it has to be adjudicated upon and struck down when found unconstitutional. In case the part

of the order which is annulled is severable, the remaining order shall hold the field. If, however, the void part of the order forms its very nucleus and nothing survives after its annulment, the whole of the order goes.

Case referred by a Division Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh and Hon'ble Mr. Justice Prem Chand Jain, vide order dated 21st. January, 1974 to a larger bench for decision of an important question of law involved in the case and the Full Bench consisting of Hon'ble Mr. Justice R. S. Narula, Hon'ble Mr. Justice A. D. Koshal and Hon'ble Mr. Justice S. S. Sandhawalia, finally decided the case on 6th May, 1974.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 28th April, 1972, delivered by Hon'ble Mr. Justice Bal Raj Tuli, in C.W. No. 880 of 1971.

J. N. Kaushal, Senior Advocate, M. R. Agnihotri, and Ashok Bhan, Advocates with him, *for the appellants.*

J. S. Wasu, Advocate-General, Punjab, S. K. Sayal, Advocate with him, *for the respondents.*

JUDGMENT

Judgment of this Court was delivered by Narula, J.—The only argument canvassed before us by Mr. Jagan Nath Kaushal, the learned Senior Advocate for the appellants, in this appeal under clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court dismissing their writ petition (Civil Writ 880 of 1971) is that the stipulation in the Government of India's order, dated April 23, 1970 (Annexure 'C' to the writ petition) depriving the appellants of the benefits of the higher revised scale of pay from February 1, 1968 to April 22, 1970, in spite of expressly sanctioning such higher scale of pay for the appellants with effect from February 1, 1968, is hit by Articles 14 and 16 of the Constitution, inasmuch as no such rider has been added in the case of any other member of the High Court establishment all of whom have been allowed to draw arrears of pay in their respective finally revised scales of pay with effect from February 1, 1968. The circumstances which have given rise to this question are these.

(2) By notification, dated July 11, 1967, the Governor of Punjab constituted a single-man Pay Commission consisting of Mr. Justide Harbans Singh, who was at that time a Judge of this Court. The terms of reference of that Commission were:—

> "(a) to undertake a comprehensive review of the present structure of the different scales of pay, dearness allowance, other compensatory concessions and benefits of all categories of employees under the rule-making control of the State Government and recommend such changes or rationalisation in the structure of the pay-scales of such employees as are necessary and feasible;
>
> (b) in making its recommendations the Commission will take into consideration the social and economic obligations of the State by way of planned economic development."

Though all categories of the employees of the Punjab Government fell within the scope of the reference, the establishment of the High Court was not covered by the terms of reference of the Commission as the said establishment is not subject to the rule-making power of the Punjab State, on account of its being the common High Court for the States of Punjab and Haryana, and for the Union Territory of Chandigarh. The then Chief Justice of the High Court, however, asked the Commission to consider informally the pay structure of the persons serving on the establishment of the High Court and, suggest revision of their pay-scales keeping in view the recommendations with regard to their counterparts in the Punjab Civil Secretariat. A separate report in that behalf was submitted by the Pay Commission to the Chief Justice (paragraphs 17.1 and 17.2 on page 107 of the report of the Punjab Pay Commission 1967-68). Since the scales of pay of the employees of the High Court and of the employees of the State of Punjab holding equivalent posts before the reorganisation of the State in 1966 used to be the same, the Chief Justice recommended for the adoption of the same scales of pay for the High Court establishment as had been revised by the Punjab Government for the common categories of posts which existed in the Secretariat. For the uncommon categories (counterparts of which did not exist in the Secretariat), the Chief Justice recommended revised scales of comparable posts existing in the Secretariat, for the approval of the President of

India as required under Article 229(2) read with proviso to Article 231(2) of the Constitution. So far as the Private Secretaries and Readers were concerned, the recommendation of the Chief Justice was that their posts should be equated to the posts of Private Secretaries in the Punjab Civil Secretariat, and their scale of pay should be revised with effect from February 1, 1968, as was the case of the employees of the reorganised State of Punjab.

(3) By order, dated December 19, 1969 (Annexure 'A' to the writ petition), sanction of the President of India to the equation of the existing scale of Rs. 250—450 for the posts of Private Secretaries/Readers of the High Court with the corresponding revised scale of Rs. 300—25—600 existing in the Punjab Civil Secretariat, was conveyed by the Central Government to the Chandigarh Administration. A copy of that communication was endorsed to the Registrar of the High Court on January 7, 1970 The Chief Justice was, however, not satisfied with the above-mentioned order as the scale of pay of the Private Secretaries in the Punjab Civil Secretariat had been raised to Rs. 450—25—500—30—650/30—800. He, therefore, pressed the claim for the equation of the posts in question with those of the Private Secretaries in the Secretariat and for the benefit of the revised scale of Rs. 450—800 being given to the appellants. It was while accepting the said recommendation of the Chief Justice that the order in question was passed by the President of India in pursuance of which letter, dated April 23, 1970 (Annexure 'C'), was issued by the Government of India in the Ministry of Home Affairs to the Home Secretary, Chandigarh Administration, Chandigarh, and a copy thereof endorsed to the Registrar of this Court. The heading of the letter was:—

> "Revision of pay-scale of Private Secretaries/Readers to Chief Justice and Judges of the High Court Punjab and Haryana."

In the body of the letter it was stated as below :—

> "With reference to your letter No. 360—IH(S)--70/3610, dated 27th February, 1970 on the above subject, I am directed to convey the sanction of the President to the equation of

the posts of Private Secretaries/Readers to Chief Justice and Judges of the High Court of Punjab and Haryana at Chandigarh with the posts of Private Secretaries in the Punjab Civil Secretariat and to the prescription of scale of Rs. 450—25—500—30—650—/30—800 for these posts. This sanction will take effect from 1st February, 1968, *but no arrears will be payable for past periods.*

2 This letter issues with the concurrence of the Ministry of Finance *vide* their U. O. No. 3272-E. III/A/70, dated 23rd April, 1970."

I have underlined (Italics in this report) that portion of the above-mentioned communication which is, according to the appellants, unconstitutional. Subsequently, by letter, dated September 5, 1970 (Annexure 'B'), the Government of India directed that the time-scale of pay of Rs. 350—25—500/30—650 should be substituted for the scale of Rs. 300—25—600 sanctioned in December, 1969, *vide* Annexure 'A'. That letter has, however, no direct impact on the proposition with which we are faced as it is the common case of both sides that all the appellants have already been paid the amount of arrears due to them on account of the difference in their respective salaries which they were drawing in the original scale of Rs. 250—450 on the one hand, and the scale of Rs. 350—650 on the other. Similarly, it is the common case of both sides that all the appellants have been paid their salaries in the revised scale of Rs. 450—800 with effect from April 23, 1970. The only period to which the dispute relates is from February 1, 1968 to April 22, 1970. The different amounts to which the appellants would be entitled would represent the difference between their respective salaries in the scale of Rs. 350—650 on the one hand and Rs. 450—800 on the other, the exact amount depending on the amount of salary which any particular incumbent was drawing in the lower scale at that time. Aggrieved by the deprivation of the arrears at the enhanced rate, the appellants submitted their representation, dated October 21, 1970, to the Chief Justice and Judges of the Court (Annexure 'D'). The said representation was rejected by the Chandigarh Administration *vide* its memorandum, dated December 21, 1970 (Annexure 'D/1'). This led to the writ petition being filed by the appellants.

(4) The facts stated above were not disputed either in the written statement filed on behalf of the Union of India or in the return filed

by the Home Secretary, Chandigarh Administration. The principal defence to the claim of the appellants was stated in the following words in paragraph 15 of the Central Government's return:—

> "The averments made in paragraph 15 of the petition are admitted to the extent that *vide* his D.O. No. 202-E/HCJ, dated 10th February, 1970, addressed to the Chief Commissioner, Chandigarh, Hon'ble the Chief Justice desired that the scale of pay of the posts of Private Secretaries/ Readers to the Hon'ble Judges in High Court should be equated with the scale of pay permissible to Private Secretaries to Hon'ble Ministers in Punjab. It was thus suggested that Private Secretaries/Readers to Hon'ble Judges in the High Court should be allowed the pay-scale of Rs. 450—800. It is incorrect that this equation of scale asked for by the Hon'ble Chief Justice had anything to do with the revision of pay-scales in pursuance of the recommendations of the Pay Commission. It is incorrect that the scales were recommended to be made effective with effect from 1st February, 1968."

(5) The learned Single Judge also noticed the defence of the respondents to the effect that the revision of pay-scale of the appellants was a matter of "concession" and that the said concession was granted on the condition that the arrears would not be paid to them. No definite finding about the revision of pay having actually been allowed as a matter of concession was, however, recorded by the learned Single Judge, and, in my opinion, rightly so, as it was not necessary to do so. Whether the pay-scales were revised as a matter of concession or as a matter of policy or under some kind of compulsion or otherwise is not relevant to the question which we are called upon to answer. It is correct that the appellants had no legal right to claim that their salaries should be enhanced. It is also correct that the emoluments of a Government servant and his terms of service are governed by the rules which may unilaterally be altered by the Government without the consent of the employee. It has not been contested before us that the scale of pay in which the appellants had to be given their salaries was a condition of their service. The learned Single Judge held that the order communicated on April 23, 1970 (Annexure 'C'), had to be accepted or rejected as a whole, and it was not open to the appellants to accept a part of it so as to maintain the increase in their pay, and to ask for the condition depriving

them of the arrears being quashed. It is no doubt true that it is not for this Court to direct how and to what extent and even with effect from which date an increase in the salaries of the Government servants may be made. No exception to the observations of the learned Judge to the effect that it looked to him to be very unjust to deprive the appellants of the arrears of their pay in accordance with the higher scale fixed for them when that benefit had been allowed to every other employee of the High Court, was taken before us by the learned Advocate-General for the State of Punjab who defended this appeal on behalf of the Government. He, however, persisted that the learned Judge was correct in observing that though the appellants had a genuine grievance in the matter of their being deprived of the arrears of pay though the same had been granted to every other employee of the High Court, it was for the Government to redress that grievance. Though no justification at all had been given in the written statement of either of the respondents about any special reason for treating the appellants differently from the entire remaining High Court establishment in the matter of the date with effect from which they would draw arrears of the revised scales of pay, the learned Single Judge observed in his judgment under appeal that it may be that the Government while allowing a very substantial increase in the pay-scale thought that for the period in dispute the pay-scale of Rs. 350—650 was sufficient, and, therefore, no further amount on account of the increase in the pay-scale should be allowed to the appellants. The learned Advocate-General frankly conceded that there was no material on the record before us on the basis of which he could advance or press that argument into service. He, however, adopted and pressed the argument that it was for the Government to allow the increase on its own terms and it is not for this Court to direct the Central Government to allow the increase in a particular manner or from a particular date.

(6) In this appeal against the judgment of the learned Single Judge, dated April 28, 1972, dismissing the writ petition, Mr. Kaushal, the learned counsel for the appellants, withdrew the concession made by him before the learned Single Judge on a question of law by submitting that he no more subscribes to the proposition that if the Central Government had directed that the revised scale of pay would come into force with effect from April 23, 1970, the appellants would have had no right to claim arrears with effect from February 1, 1968. He submitted that the learned Single Judge had correctly incorporated his concession to the above effect in the judgment under

appeal, but argued that the concession had been made in ignorance of the law on the subject as settled by the Supreme Court.

(7) The submissions of Mr. Kaushal on the merits of the controversy were neither long nor complicated. He submitted on the authority of the judgment of their Lordships of the Supreme Court in *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar and others* (1), that the appellants having been patently discriminated in the matter of the date with effect from which they are entitled to draw the arrears of their salary in the finally revised scale, the State can successfully meet the challenge under Article 14 of the Constitution in that respect only if it is able to satisfy the Court that:—

(i) the Private Secretaries and Readers of this Court can be classified into a separate category on the basis of some intelligible differentia which distinguishes the Private Secretaries and Readers from the rest of the High Court establishment; and

(ii) such differentia has a rational relation with the object sought to be achieved by fixing a different date with effect from which they have to draw the arrears of their salary as compared to the rest of the establishment of this Court.

Counsel submitted that though from the point of view of fixing the scale of pay different from various other categories of the High Court establishment, the Private Secretaries and Readers may indeed stand out and be treated as a separate class, the differentia between this particular class and the other classes of the High Court establishment in the matter of scales of pay has by itself no reasonable relation to the object sought to be achieved by not giving retrospective effect to the scales of pay to one uniform extent for all the employees. There is nothing on the face of the order Annexure 'C' justifying the addition of the impugned rider contained therein which was not added for any other category of the High Court establishment including higher officers in the establishment such as the Assistant Registrars and the Deputy Registrars, etc. It is significant that even in the written statements of the respondents, no such rational connection between the differentia and the object to be achieved thereby has been disclosed. As observed by their Lordships of the

(1) A.I.R, (1958), S: C: 538.

Supreme Court in *Shri Ram Krishna Dalmia's case* (1) (supra), the presumption of constitutionality cannot be carried to the extent of holding that there must be some undisclosed and unknown reasons for subjecting certain individuals to discriminatory treatment. Again in *Satwant Singh Sawhney* v. *D. Ramarathnam, Assistant Passport Officer, New Delhi, and others* (2), while holding that the doctrine of equality before the law is a necessary corollary to the high concept of the rule of law accepted by the Constitution of India, it was clearly held that one of the aspects of the rule of law is that any executive action, if it is to operate to the prejudice of any person should not be discriminatory as the Executive cannot obviously do what the Legislature cannot do.

(8) Assistance for the proposition canvassed by him was also sought by Mr. Kaushal from a Division Bench judgment of the Delhi High Court in *Union of India* v. *Shanti Swarup Ticket Collector, Northern Railway, Delhi* (3). While allowing revised scales of pay to the Number Takers of all the Railways with effect from January 1, 1947, including the Number Takers of the East Punjab Railway, in accordance with the recommendations of the Central Pay Commission, the Number Takers in the Delhi Division of the last mentioned Railway were deprived of the benefit of the revised scale of pay with effect from the aforesaid date. The revised scale of pay had been allowed to all the comparable and identical categories in the Railway establishment, namely, Train Clerks, Ticket Collectors, Junior Clerks and other Number Takers except the Number Takers employed in the Delhi Division. A learned Single Judge of the Delhi High Court, who heard the writ petitions of ten Number Takers, held that the persons belonging to his category in the Delhi Division had been illegally discriminated against. The Division Bench of the Delhi High Court which heard the appeal of the Union of India against the judgment of the learned Single Judge held that the Number Takers of the Delhi Division formed the same class with their comparables in other Indian Railways and since they alone had been treated differently from others, a case of violation of Article 14 of the Constitution had been clearly made out.

(9) In the case covered by a recent judgment of the Supreme Court in *Bishan Chand Khanna and others* v. *Municipal Corporation of Delhi and others* (4), a complaint was made by eleven employees

(2) A.I.R. 1967 S.C. 1836.

(3) 1969 S.L.R. 210.

(4) Writ Petition No. 42 of 1967 decided by Supreme Court on 12th March, 1968.

of the Municipal Corporation of Delhi against the graduate allowance not having been paid to them by the Corporation though the same was being paid to all other graduate employees. While allowing the writ petition of Bishan Chand Khanna and others under Article 32 of the Constitution, their Lordships of the Supreme Court held that it was a clear case of discrimination because there was nothing to show that the case of the eleven petitioners before them could be distinguished from the case of those who were in the receipt of the graduate allowance. After giving due consideration to all the circumstances of the case, the Supreme Court ordered the Municipal Corporation of Delhi to allow the writ-petitioners the benefit of the graduate allowance of Rs. 20 per month with effect from September 25, 1964, in the same manner *and for the same periods*, and on the same conditions as it had been allowed to those who had become entitled to the allowance as Lower Division Clerks. A report of the case has been printed in (1935—1973) 1 Supreme Court Service Laws Judgments 316.

(10) In *Purshottam Lal and others* v. *Union of India and another* (5), it was held that the Central Government having accepted the recommendations of the Pay Commission in respect of all Government employees covered by the reference, its refusal to implement the report regarding only some of the employees amounted to a breach of Articles 14 and 16 of the Constitution. On behalf of the Union of India it was contended before the Supreme Court that it was for the Government to accept the recommendations of the Pay Commission, and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. Their Lordships repelled that submission and held that if the Government had made reference in respect of all Government employees, and it had accepted the recommendations, it was bound to implement the same in respect of all its employees. The recommendation of the Chief Justice under Article 229(2) in connection with the proposed increase in salaries of the High Court establishment stands at a higher pedestal than the report of a Pay Commission. The recommendation of the Chief Justice having been accepted *in toto*, the addition of the rider in the implementation thereof does appear to discriminate against the appellants. The designation of the appellants was entirely in the hands of the Chief Justice. The sanction of the Governor (the President of India in the instant case because of the proviso to Article 231(2) of the Constitution) was

(5) 1973 (1) S.L.R. 633.

necessary only because of the requirement of the proviso to clause (2) of Article 229 of the Constitution. That sanction was duly accorded by the President of India.

(11) The question whether a writ lies to enforce even an administrative order or to claim relief on the basis that such an order or any part thereof infringes any of the fundamental rights, has also been settled by the Supreme Court. In *Union of India* v. *K. P. Joseph and others* (6), it was held that there are administrative orders which confer rights and impose duties, and that is why the Courts have imported the principle of natural justice even into this area. In *Laljee Dubey and others* v. *Union of India and others* (7), it was held by their Lordships that the appellants before the Supreme Court who were performing duties similar to those of other checkers who had been granted the benefit of the order designating them as Lower Division Clerks, had been arbitrarily denied the benefit of the said order, and had, therefore, been discriminated against.

(12) Mr. Joginder Singh Wasu, the learned Advocate-General for the State of Punjab, who appeared for the respondents, argued that the appellants had no legal right to claim arrears of salary at the revised scale as the revision of the scale was a mere bounty of the State, and that in any case there has been no violation of Articles 14 and 16 of the Constitution so far as the appellants are concerned. Since after the decision of the Supreme Court in the *State of Bihar* v. *Abdul Majid* (8), I have heard for the first time that it is being advocated on behalf of the Government that the salary of a Government servant is a matter of bounty. The Government may fix any salary, may increase it or even reduce it unilaterally by appropriate service rules, but once a competent authority fixes the scale of pay of a Government servant or of a category of Government servants, the question of its being a bounty or a concession or a matter of grace pales into insignificance. There is no force in the argument of Mr. Wasu based on my judgment in *S. Rajinder Pal Singh and others* v. *Union of India, and another* (9), that since compensatory allowance has been held to be not recoverable as a matter of right, salary should also be so held. Similarly the case of dearness allowance [*The State of Madhya Pradesh* v. *G. C. Mandawar* (10)] does not

(6) A.I.R. 1973 S.C. 303.
(7) 1974 (1) S.L.R. 416.
(8) A.I.R. 1954 S.C. 245.
(9) A.I.R. 1968 Pb. & Hr. 19.
(10) A.I.R. 1954 S.C. 493.

bear any analogy to the matter in issue before us where the question is of the right to claim arrears of salary at a scale fixed by the Government with effect from the date from which the new scale has been enforced. Similarly, the judgment of the Supreme Court in *K. V. Rajalakshmiah Setty and another* v. *State of Mysore and another* (11), laying down that a concession cannot be claimed as a matter of right, and a writ of *mandamus* cannot issue commanding an authority to show indulgence, is not relevant to the instant case as the right of a Government servant to recover salary at a rate fixed by the Government with effect from the date from which such rate is fixed cannot by any stretch of imagination be called a concession. For the same reason, the observations of their Lordships of the Supreme Court in *Messrs Ramchand Jagdish Chand* v. *Union of India and others* (12) are also of no avail to the respondents.

(13) Once an order fixing higher salary or a higher scale is passed by the competent authority, it confers on the persons covered by the order a legal right to claim and recover such salary. It is possible that if the Government had refused to revise the scale of pay of the Private Secretaries and Readers either initially to Rs. 300—600, or subsequently to Rs. 450—800, the appellants before us might have had no grievance. The fact, however, remains that in the instant case, the competent Government has revised the scale. By Annexure 'C' the appellants were not only equated to the Private Secretaries in the Punjab Civil Secretariat for the purpose of fixing them in a particular grade of pay, but were also expressly allowed the revised scale with effect from February 1, 1968. The question of either accepting the offer made by the Government as a whole or rejecting it out of hand does not arise in a case where a statutory sanction is granted by a competent constitutional authority. If an attack is made against the constitutionality of any part of such an order, it has to be adjudicated upon. If any part of the order is found to be unconstitutional, that has to be struck down. If the part of the order which is annulled is severable, the remaining order shall hold the field. If, however, the void part of the order forms its very nucleus and nothing survives after its annulment, the whole of the order goes. In the instant case, it appears to me that in spite of sanctioning the revised scale with effect from February 1, 1968, the rider depriving the appellants of the benefits of recover-

(11) A.I.R. 1967 S.C. 993.

(12) A.I.R. 1963 S.C. 563.

ing the arrears of salary at that rate with effect from the date from which the revised scale has been enforced suffers from invidious discrimination and is hit by Articles 14 and 16 of the Constitution, and is, therefore, liable to be quashed. The discriminatory part of the order is severable from the earlier sanction of the President contained in Annexure 'C'. I have already observed that no justification at all has been offered in the affidavits filed on behalf of the respondents for expressly depriving the appellants of the right to recover salary at the revised rates with effect from the date from which the said scale has been sanctioned. It is admitted that no other employee of the High Court has been deprived of the right to recover arrears of salary in the revised scale with effect from February 1, 1968.

(17) For the foregoing reasons we allow this appeal, set aside the judgment of the learned Single Judge, and while granting the writ petition hold that the underlined rider in Annexure 'C' (underlined by me) depriving the Private Secretaries and Readers of this Court from getting payment of the difference between their respective salaries in accordance with the finally revised scale of pay (Rs. 450—800) and the scale in which they actually drew their salaries (Rs. 350—650) for the period commencing from February 1, 1968, to April 22, 1970, is void and ineffective, and the appellants are entitled to the payment of the said arrears. In the circumstances of the case the parties are left to bear their own costs.

K.S.K.

15740 ILR—Govt. Press, Chd.