

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 12216 of 2015****[On note for speaking to minutes of order dated 14/06/2018 in  
R/SCA/12216/2015 ]**

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TULSIBHAI KASHIRAM PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR ATIT D THAKORE(5290) for the PETITIONER(s) No. 1,2,3  
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the  
RESPONDENT(s) No. 1MR MP PRAJAPATI(677) for the RESPONDENT(s) No. 2  
NOTICE SERVED BY DS(5) for the RESPONDENT(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE K.M.THAKER****Date : 02/07/2018****ORAL ORDER**

The original petitioner in SCA No.12216 of 2015 has taken out Speaking to Minutes dated 22.6.2018 with a request that in lat line of Para-40 after the date of of the order (12.4.2018) the number of Special Civil Application in which the said Order dated 12.4.2018 came to be mentioned, may be mentioned for the purpose of further clarity. Therefore at the request of learned advocate for original petitioner and with consent of learned advocate

for original respondent it is clarified and directed that in last line of Para-40 of the decision dated 14.6.2018 in SCA No.12216 of 2015, after the words "the Court vide order dated 12.4.2018", the following words shall be added:

"Passed by this Court (Coram: Hon'ble Mr. Justice A.S. Supehia) in SCA No.12021/2001 with SCA No.9349 of 2008".

With the said direction the Note is disposed of.

saj

(K.M.THAKER, J)

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THE HIGH COURT  
OF GUJARAT

WEB COPY

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 12216 of 2015**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE K.M.THAKER**

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>YES</b>
2	To be referred to the Reporter or not ?	<b>NO</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>NO</b>

TULSIBHAI KASHIRAM PATEL  
Versus  
STATE OF GUJARAT

**Appearance:**

MR ATIT D THAKORE(5290) for the PETITIONER(s) No. 1,2,3  
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the  
RESPONDENT(s) No. 1  
MR MP PRAJAPATI(677) for the RESPONDENT(s) No. 2  
NOTICE SERVED BY DS(5) for the RESPONDENT(s) No. 1

**CORAM: HONOURABLE MR.JUSTICE K.M.THAKER**

**Date : 14/06/2018**

**ORAL JUDGMENT**

1. Heard learned advocate for the petitioners,  
learned advocate for respondent No.2 and learned  
AGP for the respondent No.1.

2. In present petition, the petitioners have prayed, *inter alia*, that:

"32(A) The Hon'ble Court may be pleased to issue a writ of mandamus and/or any other writ, direction or order in the nature of mandamus quashing and setting aside the 15.10.2014 and further be pleased to hold that the petitioners are entitled to benefits of Government Resolution dated 5.7.1991 impugned order dated 5.7.1991.

(B) The Hon'ble Court may be pleased to direct the respondents to pay to the petitioners arrears interest as per the benefits accrued out of Government Resolution dated 5.7.1991."

3. By impugned order dated 15.10.2014, respondent No.2 rejected the petitioner's claim for higher pay scale. The said authority rejected the claim on single and solitary ground viz. that the said benefit cannot be granted to the petitioner because he retired from service after 1.8.1994, whereas the said benefit of higher pay scale would be available to those employees who retired from service before 1.8.1994. Feeling aggrieved by the said rejection, the petitioners have taken out this petition and so as to support his claim, the petitioners have averred and stated that:

"4. The petitioners were working as primary teachers in the schools run by the respondent no.2 prior to the coming into force of the Gujarat Panchayat Acts, 1961 The petitioner no.1 retired on 31.3.1995. The petitioner no.2

retired on 31.03.96 and petitioner no.3 retired on 31.05.95. The pay scales were prescribed by the Government in view of statutory powers conferred on it. Insofar as primary teachers were concerned, there was no provision or possibility of getting a promotion from the said post i.e. to say a person who has joined as primary teacher will retire as a primary teacher. The petitioner respectfully submits that a person who is the senior most in the primary school at the given point of time would be said to be Head Master and will get a nominal allowance only besides the pay scale of a primary teacher.

5. The petitioner respectfully submits that in view of the aforesaid situation, the Government of Gujarat by a resolution dated 6.5.1992 prescribed higher pay scales which were popularly known as 9-18-27 pay scales. It was stated in the said Government Resolution that a person who has completed his service of 9-18 or 27 years as on June 1, 1987, would be entitled to 1st, 2nd and 3rd higher pay scales prescribed under the Government circular. It was specified that a person who has not completed the aforesaid years of service, will get the higher salary as and when they complete the prescribed number of years.

6. The petitioner respectfully submits that the Government of Gujarat by resolution dated 16.8.1994 had varied the pay scales of the primary teacher to their disadvantage by prescribing the conditions which are discriminatory as being violative of Articles 14 and 16 of the Constitution. It is by way of a package deal. It has been stated that only those employees who have got the advantage of the 2nd and 3rd higher pay scales, the salary which has been fixed therein, shall be taken into consideration for getting the dearness allowance. The basis of the entitlement of the higher pay scales prescribed on the basis of 9-18-27 years has been given a go-bye and it has been stated that 1st, 2nd and 3rd pay-scales prescribed could be given to a teacher only on completion of 9-2 and 31 years of service. It has been stated that the orders regarding the fixation of salary already made pursuant to the earlier resolution are being recommended with effect from June 1, 1987. It was further stated that a teacher who has retired prior to 1.8.1994, no amount shall be recovered back and they will not be affected by the present resolution. The petitioners submit that prescribing the date of 1.8.1994 is patently arbitrary and without any rationale. It was further provided that a teacher who on June 1, 1987 or thereafter has completed 9-20 or 31 years of service in one cadre and in one scale only will be entitled to the 1st higher pay scale and would further after eleven years be entitled to get 2nd higher pay scale and thereafter after the completion of eleven years would be entitled to the 3rd higher pay scale. Annexed hereto and marked as Annexure-A is copy of circular dated 16.8.1994.

7. The petitioner being aggrieved and dissatisfied with above format of pay scale of State Government preferred Special Civil Application No.13010/1994 on



29.11.1994 with a prayer to issue writ of mandamus or any other appropriate writ, direction or order quashing the resolution dated 16.8.1994.

8. The petitioner respectfully submits that this Hon'ble Court had allowed Special Civil Application No.13010/1994 vide order dated 18.9.1997 filed by the petitioners. This Hon'ble Court had in the said order observed that so far the validity of the resolution is concerned, it is the subject matter of the challenge in Special Civil Application no. 10599/1994. But the fact remains that the petitioners are the persons whose pay has been reduced and further orders have been passed for recovery of the excess payment, said to have been made to them. These consequential orders have admittedly been passed without notice and affording opportunity of hearing to the petitioners. So on this short question, the petition was accepted. The interim relief granted earlier was continued. Annexed hereto and marked as Annexure-B is copy of order dated 18.9.1997.

9. The petitioner respectfully submits that on Finance 26.2.1998, Deputy department wrote a letter to District Primary Education Officer regarding the benefits to be given to the petitioners herein. The Deputy Secretary had in the said letter indicated about pendency of Special Civil Application no.13010/1994 before the Hon'ble High Court and further stated that the petitioner no.1 here and others were to be given post retirement benefits as per the new conditions as directed by the Hon'ble High Court and to be paid to the petitioners. Annexed hereto and marked as Annexure-c is copy of letter dated 26.2.1998.

10. The petitioner respectfully submits Special Civil Application No.10599/1994 was filed by another set of petitioners with a prayer to be pleased to issue writ of mandamus or any other appropriate writ order or direction in the nature of mandamus by quashing and setting aside the Government Resolution dated 16.8.1994 and further be pleased to direct the respondents therein to dated implement the Government Resolution 5.7.1991. The petitioner respectfully submits that the Hon'ble Court had been pleased to allow the said petition vide order dated 6.5.2010 observing that looking to the facts of the case and in view of the settled principle of law, no recovery shall be made by the respondents from the petitioners. The petitioners therefore, will be governed by on the basis of re-fixation of their pay scale. Annexed hereto and marked as Annexure-D is copy of order dated 6.5.2010 11. The petitioner respectfully submits that on 2.11.2010, the petitioner had addressed a letter to District Primary Education Officer, Mehsana District Education Committee intimating the State Government to give benefits of Government Resolution dated 5.17.1991 as per the direction of the Hon'ble High Court. The petitioner herein had requested the State Government to pay the benefits of Government Resolution dated 5.7.1991 as per order passed in Special Civil Application No.10599/1994 for those who retired till 31.7.1994.

Annexed hereto and marked as Annexure-E is copy of letter dated 2.11.2010.

12. The petitioner respectfully submits that on 4.4.2011, the District Education Committee, Mehsana addressed a letter to Taluka Development Officer, Taluka letter to Panchayat Visnagar regarding higher pay scales to the petitioner herein. It was stated in the said letter that after verification of the service record of the petitioner no.1 herein, necessary formalities for giving the benefit to the petitioner may be completed and forwarded to District Education Committee, Mehsana. Annexed hereto and marked as Annexure-F is copy of letter dated 4.4.2011.

13. The petitioner respectfully submits that on 29.9.2011 District Education Committee, Mehsana communication to Primary Education Director, regarding the application of the petitioners received by them. It was stated in the said application that the petitioner herein had preferred No.13010/1994 before the Hon'ble High Court and had obtained interim stay against Government Resolution dated 16.8.1994. It was further stated that due to interim order of stay passed in favour of the petitioners, no recovery pursuant to said Government Resolution dated 16.8.1994 be made. Annexed hereto and marked as Annexure-G is copy of addressed Special Civil Application letter dated 29.9.2011."

4. Learned advocate for the petitioners submitted that petitioner No.1 retired in March 1995, whereas petitioner No.2 retired in March 1996 and petitioner No.3 retired in May 1995. He further submitted that three petitioners are similarly placed as the petitioner in Special Civil Application No.10142 of 2009 and other cognate petitions which came to be decided by this Court vide order dated 30.1.2013 as well as the petitioners in Special Civil Application No.12021 of 2001 and Special Civil Application

No.9349 of 2008 which came to be decided vide order dated 12.4.2008. Learned advocate for the petitioners submitted that all that the petitioners in present petition claim, is that they may be granted benefit in light of and on the basis of and as per the directions issued by this Court vide judgment dated 12.4.2008 in Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008 as well as the decision dated 30.1.2013 in Special Civil Application No.10142 of 2009 and other cognate matters. Any other submission is not made.

5. Respondent No.2 has opposed the petition. Reply affidavit dated 22.1.2018 is filed by respondent No.2 whereby it is asserted that:

"6. That the Petitioner No. 1 has retired from service on 31/3/1995, the Petitioner No. 2 has retired on 31/3/1996 and the Petitioner No. 3 has retired on 31/5/1995. Therefore, as they have retired from service after 1/8/1994 and therefore they are not entitled for obtaining benefit in view of Judgment of this Hon'ble Court in SCA No. 10142/2009 dated 30/1/2013. Therefore, in this behalf, the Office of this Respondent has passed an order on 15/10/2014 at Annexure S (Page 70). The Deponent will refer and rely upon the contents of the order at the time of hearing.

7. The Deponent submits that the Petitioners have made reference of the SCA No. 10599/1994. This Hon'ble Court was pleased to dispose off the said Special Civil Application by passing order (Annexure E), wherein at the



time of hearing, the Petitioners stated that they are pressing prayer qua recovery only and no other prayers. Thus, looking to the facts of the case and in view of settled principle of law, this Hon'ble Court was pleased to pass an order and observe that no recovery shall be made by the Respondents from the Petitioner. The Deponent will refer and rely on the contents of the said order in SCA No.10599/1994 at the time of hearing (Annexure D, Page 51-52).

8. The Deponent submits that the petitioners have prayed to hold that the petitioners are entitled to the benefit of Government Resolution dated 5/7/1991. In this behalf, the Deponent humbly submits that in view of Judgement of this Hon ble Court in SCA 10142/2009, the Petitioners who have retired prior to 1/8/1994 and they were working as primary teachers were entitled to the benefit of three higher grade pay scale pursuant to the GR dated 5/7/1991. The said policy of Higher Grade Pay Scale was effective from 1/6/1987 to 31/7/1994. Therefore the Petitioners are not entitled for the relief as prayed for in the Petition as they have retired after 1/8/1994 i.e. on 31/3/1995, 31/3/1996 and 31/5/1995.

9. The Deponent submits that even the order passed by this Respondent dated 15/10/2014 is also clear wherein also it is specifically stated that the Petitioners are not entitled for Higher Grade Pay Scale as they have retired after 1/8/1994 and therefore the Judgement in SCA No. 10142/2009 dated 30/1/2013 is applicable only to the teachers who have retired before 1/8/1994."

6. Learned advocate for the respondent reiterated the said details and she submitted that the petitioner is not entitled for the benefit of the said judgment and/or the higher pay scale in view of the fact that the petitioner retired from service after 1.8.1994 and the benefits of higher pay scale which the petitioner claims, are available only to those employees who retired before 1.8.1994. Besides the said submission, any other submission is not made.

7. I have considered rival submissions and material available on record.

8. At the outset, it is relevant and necessary to mention that undisputedly, the claim raised by the petitioners in present petition is already considered and decided by this Court in Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008 and in Special Civil Application No.10142 of 2009 and other cognate matters.

9. In view of the fact that the petitioners claim that present three petitioners are similarly placed as the petitioners in the said group of petitions is not disputed by present respondents. Of course, the petitioners' case is sought to be distinguished by the respondents on the ground that the petitioners in present case retired after 1.8.1994 and the petitioners did not complete 20 years of service.

10. So far as the second ground of objection is

concerned, it is relevant to note that learned advocate for the petitioners mentioned specific and exact date when the petitioners retired from service viz. 31.3.1995, 31.3.1996 and 31.5.1995, respectively for petitioner Nos.1, 2 and 3. The respondents have failed to mention any other date so far as the retirement of the petitioners is concerned.

11. However, on verification of the record, learned AGP submitted the details with regard to the dates when the petitioners joined service with the respondents. According to the learned AGP, petitioner No.1 joined service on and from 18.12.1957, wherein petitioner No.2 joined service on 3.9.1956 and petitioner No.3 joined service on 18.12.1957.

12. From the details with regard to the dates when the petitioner joined service and the dates when they retired from service on superannuation, it becomes clear that each petitioner rendered service for about 30 years. Therefore, the

respondents' submission and attempt to distinguish the petitioners' case from the case of the petitioners which came to be decided vide decision dated 12.4.2018 in Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008, is neither justified nor sustainable.

13. While there is no dispute with regard to the fact that present petitioners retired from service after 1.8.1994, it is also not in dispute that the respondents' decision viz. to deny the benefit of higher pay scale to the employees, despite the resolutions dated 16.8.1994 and 5.7.1991 (read conjointly), has not found favour with the Court and this Court has in the decision dated 31.1.2013 in Special Civil Application No.10142 of 2009 and other cognate matters and subsequently vide decision dated 12.4.2018 in Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008 struck down the said decision.

14. The fact that the claim by present petitioners for higher pay scale have been denied or rejected on singular and solitary ground viz. that they are not entitled for the benefit of higher pay scale and above mentioned resolution dated 16.8.1994 because they retired after August 1994, is not in dispute. The claim of the petitioners for the said benefit is not rejected, even in present case on any other ground. The said ground is the only ground on which the claim is rejected.

15. Therefore, it would be appropriate to make a re-treat and take into account above mentioned two decisions by the Court, wherein the said contention, i.e. the employees who retired from service after August 1984 are not entitled for the benefit of higher pay scale under the resolution dated 16.8.1994 and 5.7.1991, is considered, analysed and decided by the Court.

16. In light of the fact that the said contention



is already considered and decided by this Court, not once but twice, i.e. vide decisions dated 30.1.2013 and 12.4.2018, there is neither need to re-consider the said contention once more and/or any justification to consume Court's time to again take the same journey and again decide the very same contention in backdrop of similar facts.

17. Nonetheless, it would not be out of place to take into account the aspects which have been taken into account and the process of determination of the said contention by this Court vide above mentioned two decisions.

18. Certain similarly placed employees had taken out Special Civil Application No.10142 of 2009 and other cognate matters. The petitioners in the said group of petitions retired as Teachers. Of course, the employees concerned in Special Civil Application No.10142 of 2009 and other cognate matters had retired from service prior to 1.8.1994. The grievance with which the

petitioners filed the said group of petitions, is summarised by the Court in following terms:

"the grievance voiced in these petitions is to the effect that, the higher grade scale to which the petitioners were entitled as per the policy of the Government, is not given to the petitioners and consequently their retirement dues are also paid in the lower pay-scale and the monthly pension which they have received in last two decades and which they receive every month, is also less than their entitlement. It is further, vehemently stated that the petitioners are more aggrieved by the fact that the entitlement of the petitioners is not to be adjudicated afresh, since this Court has gone into that aspect more than once and the petitioners and similarly situated teachers are held to be entitled to what is claimed in these petitions, the authorities of the Government had even agreed to make the payment to the petitioners, the time limit given by this Court to make that payment has also lapsed before years, some of the petitioners who had approached this Court earlier and who had succeeded also, died without getting the fruits of their victory and all aged persons are again dragged into avoidable litigation by the respondent authorities, more particularly, because of the absolutely illegal, arbitrary and contemptuous stand of the officers of Directorate of Primary Education, Gujarat State, and the petitioners who are senior citizen, are not only not treated with dignity, but are humiliated.

3.1 Learned advocates for the petitioners submitted that all the petitioners have retired prior to 1.8.1994 and they were working as primary teachers. The petitioners were entitled to the benefit of three higher grade scales pursuant to the Government Resolution dated 5.7.1991. The said policy of the higher grade scale was effective from 1.6.1987 but prior thereto there was policy of the Government to grant selection grade/ senior scale to the teachers, on completion of certain number of years of service and all the petitioners were granted the said scale as well, at the relevant time. It is indicated by learned advocates for the petitioners, by referring to various orders of this Court as well as Government instructions, which are on record, reference to which is made in the subsequent part of this judgment, that what is claimed in these petitions is already ordered to be paid, with interest by this Court and that entitlement is not required to be gone into by this Court again. Learned counsel for the petitioners submitted that the amount of selection grade which was recovered from primary teachers is already refunded to them with interest, pursuant to the order of this Court and as per the instructions of the Government dated 25.01.2008. Therefore, what remains to be done is grant of higher grade scale which is not done by the authorities and which is the subject matter of the grievance voiced in these petitions."

19. From the said decision, it also emerges that some of the petitioners amongst those petitioners, more particularly the petitioners in Special Civil Application Nos.10878/2008, 11380/2008 and 11160/2008 were actually promoted to the post of Education Inspector and such employees. It was prayed that:

"the directions that may be issued by this Court in this judgment may be implemented accordingly. It is also indicated that petitioners of Special Civil Application No.15829 of 2008 were petitioners in Special Civil Application No.9975 of 2007."

20. The said claim of the petitioners in said petitions was opposed by the respondents. The ground on which the respondents opposed the claim, is recorded by the Court in the said decision in following terms:

"it is not in dispute that all the petitioners are entitled to three higher grade scales pursuant to Government Resolution dated 5.7.1991. It is submitted that the employees, on completion of 9, 18 and 27 years of service, were entitled to first, second and third higher pay scale respectively. It is however contended that, he has instructions to contend that, since the petitioners had received selection grade, prior to coming into force of the present higher grade scale scheme dated 05.07.1991, the said selection grade has to be treated as one promotion or at least the first higher grade scale and therefore, now the petitioners would be entitled to only remaining two higher grade scales. It is submitted that, the normal pay scale of the cadre of teacher to which the petitioners originally belonged at the relevant time was Rs.1200-2040 (effective from 1.1.1986) and corresponding next higher grade scale was Rs. 1400-2600, next higher to it was Rs. 1640-2900, next to it was Rs. 2000-3500 and next to it was Rs. 2200-4000. Therefore, it is contended that the maximum pay scale which could have

been conferred to a teacher could be of Rs. 2000-3500 and could not be Rs. 2200-4000 which is claimed by the petitioners."

21. In this context, following observations by the Court are relevant:

"7. The above contention of learned AGP needs to be appreciated in the back ground of various orders of this Court, reference to which is made hereafter and the fact that as on 1.1.1986, though the pay-scale of the cadre of Primary Teacher, to which the petitioners belonged, was Rs. 1200-2040, as a matter of fact, all were drawing the pay in the pay scale of Rs. 1400-2600 since that was the corresponding revised pay scale of the selection grade which the petitioners had got prior to 31.12.1985. Thus, in effect, it is to be seen as to whether, the grant of selection grade should be treated as availing the first higher grade scale or, over and above it, the petitioners are entitled to three higher grade scales. If the grant of selection grade was to be treated as availing the first higher grade scale, the petitioners were entitled to only remaining two next higher grade scales which would take them to the maximum of the pay scale of Rs. 2000-3500. If on the other hand, the grant of selection grade was not to be treated as conferring the first of the three higher grade scales, the petitioners would be entitled to three more higher grade scales which would take them to the pay scale of Rs. 2200-4000. Thus, the only point to be answered is, as to whether the grant of selection grade to the primary teachers should be treated as availing first higher grade scale.

8. At the out set, it needs to be recorded that, above point is already gone into and concluded by this Court. There are more than one orders of this Court in this regard, which are on record, however, for the sake of convenience and brevity, the details of only relevant judgments and orders are recorded in this judgement, which are as under :

8.1 This Court in Special Civil Application No. 8871/1999 and cognate matters, after taking into consideration various orders passed by this Court, recorded judgment dated 19.12.2001 and gave directions to the respondents to give benefit of three higher grade scales to the petitioners therein and consequential benefit with 12% interest. The present petitioners are similarly situated to the petitioners of Special Civil Application No. 8871/1999 and cognate matters.

8.2 The above judgment dated 19.12.2001 was sought to be reviewed by the authorities of the Government, and for that purpose, number of applications being Misc. Civil Application No. 2147 of 2003 and cognate applications were filed, *inter alia*, taking contention to the effect that, in view of the clarification issued by the Government on 16.10.1993, the selection grade granted to



a teacher, should be treated as if the first higher grade scale is already availed by him, and therefore, only remaining two higher grade scales will be granted to the teachers. While rejecting that contention and consequently the said review applications, this Court, on 24.11.2003 held that Government did not have any authority to issue such clarificatory instruction as contained in resolution dated 16.10.1993.

8.3 The above judgment of learned Single Judge dated 19.12.2001 and order dated 24.11.2003 i.e. the original judgment in the petitions, as well as the order rejecting the review applications of the Government, both were challenged by the authorities of the Government, by way of Letters Patent Appeal No. 1073 of 2004 and cognate matters, wherein, the Division Bench of this Court vide judgment dated 14.10.2004 held that, Government did have powers to issue clarification as was done on 16.10.1993, however, true interpretation of the Government circulars pertaining to selection grade prevailing at the relevant time, read with Government Resolution dated 5.7.1991 adopting the higher grade scale scheme, read with the clarification dated 16.10.1993, would still entitle the primary teachers to avail three higher grade scales, over and above the selection grade which they would have availed at the relevant time.

8.4 The said decision of the Division Bench of this Court was challenged by the authorities of the Government before Hon'ble the Supreme Court of India by filing SLPs, being Special Leave to Appeal (Civil) No. 18489/2005 and cognate matters and the same came to be dismissed on 16.9.2005. Reference to this fact is also made by the Government in its letter dated 25.1.2008 which is referred hereinafter.

8.5 Thus, whether a teacher who had availed selection grade as per policy of the Government in Education Department, was still entitled to get three higher grade scales flowing from the Government Resolution issued by the Finance Department on 5.7.1991, is an issue which has attained finality, as recorded above. "

22. In the decision dated 30.1.2013, this Court has traced the history of previous proceedings, wherein same or similar issue was considered and certain orders were passed. Relevant discussion is found in paragraph Nos.8 to 8.4 and in paragraph No.8.5 of the decision, this Court recorded the position with regard to the



employees who had already availed the selection grade. In paragraph No.9 of the decision, the Court has observed that:

"9. In above factual back ground, the only contention raised by the State authorities through learned AGP Mr. Rindani without filing any affidavit-in-reply, that grant of selection grade should be treated to have been conferred one of the three higher grade scales, can not be accepted. In fact, this contention of learned AGP is rejected by this Court time and again, even after the dismissal of SLP referred above. Reference in this regard may be made to the following further litigation."

23. The observations in paragraph Nos.9.2, 9.3 and 10 are also relevant. The said observations read thus:

"9.2 In spite of above directions, primary teachers were made to approach this Court time and again. Few of such litigations were Special Civil Application No. 950/2007 and cognate matters decided on 11.1.2007, and Special Civil Application No. 23579 of 2007 and cognate matters decided on 13.9.2007. In those matters, this Court by referring to the above referred judgment dated 4.8.2006, again gave directions to the authorities.

9.3 Even thereafter, the authorities did not grant benefits to those petitioners, leave aside similarly situated teachers whose cases were directed to be examined by this Court in judgment dated 4.8.2006. Under these circumstances, petitioners of Special Civil Application No. 950/2007 and cognate matters moved this Court under the Contempt of Courts Act by filing Miscellaneous Civil Application No.1955/2007 and cognate applications. Authorities of the Government, including the Director of Primary Education, appeared before this Court, where, the stand of the authorities of the Government and consequential directions issued by this Court, as reflected in the order dated 17.9.2007, reads as under:

*Stand of the Authorities of the Government: Mr Sunit Shah, learned Government Pleader states, under instructions of Mr. R.C.Raval Director of Primary Education and Mr. Sutaria Officer on Special Duty, Education Department, that the respondent-authorities have taken the decision in principle to accept the petitioners' representation, but in view of the fact that implementation of such decision will be required to*

be done in case of as many as 9000 to 10,000 teachers and this will involve examination of old service records of such a large number of individuals and the computation of the amounts will also require interpretation of certain rules, the entire process will take about five months' time for the purposes of actual implementation and payment.

Directions issued by this Court : It is, therefore, clear that the respondents will make the payments pursuant to the decision on the petitioners' representation in all such cases by 31<sup>st</sup> January 2008 as per the statement made by Mr Sunit Shah, learned Government Pleader.

We accordingly dispose of these applications with a direction to the respondents to carry out the statements made above within the time-limit indicated hereinabove.

Subject to the above direction, notice is discharged.

10. Thereafter, authorities of the Government in Education Department, issued written instructions to the Director of Primary Education on 25.1.2008 and 29.1.2008 to do needful. These written instructions were, on the basis of and after referring to all the above referred judgments and orders of this Court, including the judgment dated 4.8.2006 as well as the contempt proceedings dropped by this Court on 17.9.2007 in view of the statement made by competent and responsible officer, through responsible Law Officer."

24. In this backdrop, the Court observed and held that:

"12. Reverting back to the grievance of the petitioners, viz-a-viz the contest put forward by the Directorate of Primary Education, I find that this court at this stage, has nothing to adjudicate as to whether the petitioners are right in their claim or not. More than once, the stand of the authorities which is taken now, is rejected by this Court. It has attained finality right up to the Apex Court. Under these circumstances, to say that the stand of the authorities of the Government is rejected would mean that, it was at least open to them to do so at this stage. In my view, respondents are not justified even to that extent. It is to be noted that the stand which is taken now could not have been written on oath by any officer by filing reply, since that would be in straight conflict with the judicial pronouncement of this Court. Therefore, inspite of the direction of this Court, the authorities have chosen not to file reply. But at the same time, have asked learned AGP to reiterate the said stand. This is required to be viewed seriously and keeping this aspect in mind, in the final directions which are issued by this Court in this judgment, cost is also being imposed against the authorities. While awarding cost, this Court has also kept in mind the

principles annunciated by Hon'ble the Supreme Court of India in this regard in the judgment in the case of Salem Advocate Bar Association versus Union of India reported in (2005) 6 SCC 344, more particularly, para 37 and 39 thereof.

13. Before parting it also needs to be observed that, in the judgment recorded by this Court dated 4.8.2006 in Special Civil Application No. 8828/1995 and Special Civil Application No. 8829 of 1995, which were filed by the Pensioners' Association, it was directed that the case of each individual employee shall be looked into by the authorities and appropriate decision shall be taken and communicated to the concerned teachers or their heirs. The same is not done. Even in the contempt proceedings referred above, time was prayed for by the State authorities mainly on the ground that there are about 9000 to 10000 such cases and therefore some time is required, which was stipulated to be 31.1.2008 and inspite of that, not only nothing, in consonance with the above orders, is done by the authorities, on the contrary, fresh round of avoidable litigation is thrust upon senior citizens and the same is sought to be contested without filing affidavit-in-reply, inspite of directions of this Court. Therefore, it is directed that, no similarly situated employees should be made to approach this Court and Principal Secretary, Education Department shall do needful in that regard."

25. The Court thereafter issued following directions:

"15. For the reasons recorded above, this court arrives at the judgment and passes the order, as under :

i) Inspite of more than one judgments of this Court against the respondent authorities, the denial of benefit of higher grade scale to the petitioners as claimed by them and similarly situated persons, is held to be illegal, arbitrary and lacking bonafide on the part of respondent authorities, more particularly, Director of Primary Education, Gujarat State.

ii) The petitioners shall be paid all the three higher grade scales as per Government Resolution dated 5.7.1991, over and above selection grade availed by them which was prior to 26.12.1985, as held by this Court in Letters Patent Appeal No. 1073/2004 and cognate matters vide judgment dated 14.10.2004.

iii) The retirement dues of the petitioners shall also be recalculated accordingly.

iv) Arrears of difference of pay as well as retirement dues shall be calculated and paid within a period of four months from today.

v) The petitioners shall also be entitled to interest from 1.1.1995 till 31.1.2013 on the above amount, at the rate of 10% per annum, which shall also be paid along with arrears, as directed above.

vi) While implementing these directions, it shall also be

kept in view that the petitioners of Special Civil Applications No.10878 of 2008, 11380 of 2008 and 11160 of 2008, had availed one promotion on the post of Education Inspector and therefore, they will be entitled to only remaining two higher grade scales and qua them, the directions shall be implemented accordingly.

vii) For the reasons recorded in paras-8.5, 9.2, 9.3 and 10 to 14, more particularly para 12 of this judgment, each petitioners shall be paid cost of Rs. 5000/- by the Director of Primary Education, Gujarat State, which shall be paid within a period of three months from today. It would be open to the State authorities to recover this amount from erring officer(s), in accordance with law.

viii) The Principal Secretary, Education Department is further directed to carry out the directions contained in para 13 of this judgment within a period of three months from today."

26. After the Court rendered the said decision, the persons who retired from service after 1.8.1994 preferred Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008. The said petitions were initially considered and decided by this Court vide order dated 13.7.2016. In the said decision, the Court took into account the decision dated 30.1.2013 in Special Civil Application No.10142 of 2009 and other cognate matters and disposed of the said two petitions, i.e. Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008 vide order dated 13.7.2016 on the basis of the directions issued by the Court vide order dated 30.1.2013 with the



observations and directions that:

"In the result, both the Writ Applications succeed and are hereby allowed. The impugned order is hereby ordered to be quashed. The authorities concerned are directed to re-fix the salary and consequential benefits including the pensionary benefits keeping in mind that the petitioners are entitled to 2000-3500 as the 2<sup>nd</sup> higher pay scale and Rs.2200-4000 as 3<sup>rd</sup> higher pay scale. The difference in the salary in accordance with 2<sup>nd</sup> higher pay scale and 3<sup>rd</sup> higher pay scale as declared shall also be calculated and paid to the petitioners."

27. However, the said decision came to be set aside by Division Bench vide order dated 23.1.2018 in Letters Patent Appeal No.127 of 2018 and Letters Patent Appeal No.128 of 2018. The Division Bench remanded Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008 for fresh decision. In the said order, the Division Bench observed, *inter alia*, that:

"[6.1] Having heard learned Advocates appearing for respective parties and considering the controversy now which is in the narrow compass i.e. whether all those who have retired after 01.08.1994 shall be entitled to the pay scales of Rs.2000 Rs.3500 as 2<sup>nd</sup> Higher Pay Scale and Rs.2200 Rs.4000 as 3<sup>rd</sup> Higher Pay Scale and there is a broad consensus between the learned Advocates to remand the matters to the learned Single Judge to consider the aforesaid issue which has not been specifically dealt with by the learned Single Judge while passing the impugned judgment and order, without expressing anything on merits with respect to the aforesaid issue, we set aside the impugned judgment and order passed by the learned Single Judge and remand the matters to the learned Single Judge to consider the aforesaid issue viz. whether all those who have retired after 01.08.1994 shall be entitled to the pay scales of Rs.2000 Rs.3500 as 2<sup>nd</sup> Higher Pay Scale and Rs.2200 Rs.4000 as 3<sup>rd</sup> Higher Pay Scale or not?



At this stage it is required to be noted that with respect to those who have retired prior to 01.08.1994, the issue need not be re-opened and as such as stated by Shri Dhawan Jayswal, learned Assistant Government Pleader appearing on behalf of the appellants, with respect to those who have retired prior to 01.08.1994, the aforesaid benefit of pay scales of Rs.2000 Rs.3500 as 2<sup>nd</sup> Higher Pay Scale and Rs.2200 Rs.4000 as 3<sup>rd</sup> Higher Pay Scale has already been granted to them.

[7.0] In view of the above and for the reasons stated above, all these Letters Patent Appeals are allowed in part. Impugned common judgment and order dated 15.07.2016 passed by the learned Single Judge in Special Civil Application Nos.9349/2008 and 12021/2001 is hereby quashed and set aside and the Special Civil Applications are remanded to the learned Single Judge to consider the issue whether all those who have retired after 01.08.1994 shall be entitled to the pay scales of Rs.2000 Rs.3500 as 2<sup>nd</sup> Higher Pay Scale and Rs.2200 Rs.4000 as 3<sup>rd</sup> Higher Pay Scale or not. It is made clear that we have not expressed anything on merits in favour of either parties and it is ultimately for the learned Single Judge to consider the same and pass appropriate order in accordance with law and on its own merit without in anyway being influenced by the present order more particularly as we have not entered into the aforesaid issue on merits at all. Present Letters Patent Appeals are partly allowed to the aforesaid extent. No costs."

28. From the observed by Division Bench in paragraph No.7.0 of the said decision, it comes out that the Court mentioned the issue which was to be considered in remand proceedings viz. whether all those who retired after 1.8.1994 shall be entitled to the pay scale of Rs.2000 – Rs.3500 and Rs.2200 – Rs.4000 as third higher pay scale or not.

29. After the Division Bench passed the said order dated 23.1.2018, this Court passed above

mentioned decision dated 12.4.2018 whereby the Court considered and decided issue mentioned by the Division Bench in paragraph No.7.0 of the order dated 23.1.2018 as well as the claim for second and third higher pay scale, i.e. pay scale of Rs.2000 – Rs.3500 and Rs.2200 – Rs.4000 by the employees who retired from service after 1.8.1994.

30. Before turning to the said decision dated 12.4.2018, it would be appropriate to take into account certain observations by the Court in the decision dated 8.12.2000 rendered in Special Civil Application No..1319 of 2000 and Special Civil Application Nos.3402 to 2421 of 2000, wherein the Court considered the resolution dated 16.8.1994. In the said decision dated 8.12.2000, the Court observed that:

“It is the case of the petitioners that they were primary school teachers in the municipal school board and district school boards and they have retired. Some of them have retired prior to 16.8.1994 and some of them have retired in the year 1995 and 1996 respectively. It is the grievance of the petitioners that they were retired as primary teachers and are entitled to the higher grade to the post of Education Inspector which has been denied to them and this has adversely affected their right to get pension and, therefore, considering the submissions of the learned advocates for the parties and

also after considering the representation made by the petitioners which is at page 125, annexure "K", and also after considering the reply dated 16th March, 1999 from the Examiner, Local Funds Accounts, Ahmedabad which is at page 133, Annexure "L", it is not clear as to whether the petitioners are entitled to the higher grade in the post of Education Inspector or not. No doubt, learned AGP Ms. Manisha Lavkumar has submitted that in between the post of primary teacher and the Education Inspector, there is one post of Assistant Education Inspector but even that post is also not clear in the reply dated 16th March, 1999 of the Examiner, Local Funds, Accounts Ahmedabad (page 133 annexure "L"). In view of these complications of the factual aspects between the parties, as per my view, it would be better and also in the interest of justice to direct the petitioners to approach the Director of Primary Education by some suitable representation as all the petitioners are retired employees and receiving pension and it is directly affecting their right of pension and, therefore, considering all these facts and circumstances of the case, it is directed to the petitioners to make detailed representation to the Director of Primary Education, respondent No. 2 herein within fifteen days from today in the subject matter of this petition. As and when such representation is received by the Director of Primary Education from the petitioners, it is directed to the Director of Primary Education to consider and examine the grievance of the petitioners in accordance with law after affording opportunity of personal hearing to the two representatives of the petitioners and to pass appropriate orders while keeping in mind the fact that the petitioners who were working as trained primary teachers are not receiving higher grade on the post of education inspector and to decide as to whether they are entitled to the second higher grade as per their grievances or not and to pass speaking order after giving opportunity of personal hearing to the two representatives of the petitioner in accordance with the rules, regulations and circulars of the State Government, within two months from the date of receipt of representation from the petitioners. Subject to the aforesaid observations, all these petitions shall stand disposed of, with a liberty to the petitioners to challenge the orders that may be passed by respondent No.2 after considering their representation before appropriate forum in accordance with law if such orders are adverse to the petitioners. Notice in each of these petitions shall stand discharged with no order as to costs."

31. Since the issue mentioned by Division Bench in paragraph No.7.0 of the order dated 23.1.2018 is already considered and decided by this Court,

vide order dated 12.4.2018, it would be profitable to take into account the decision and the reasons recorded by the Court in the said decision dated 12.4.2018.

32. After having recorded submissions by learned advocate for the petitioners in Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008 to the effect that:

“so far as the grievance qua grant of the higher payscale to the teachers who have retired prior to 01.08.1994, has been considered in detail in various writ petitions, which are incorporated in the judgment dated 30.01.2013 passed in Special Civil Application No.10142 of 2009. He has submitted that the petitioners who have retired prior to 01.08.1994, have already been conferred the benefits of 2nd higher pay scale Rs.2000-3500 as well as 3rd higher pay scale Rs.2200-4000. He has submitted that the State Government has accordingly granted the benefits of 2nd higher payscale after completion of 18 years of service of Rs.2000-3500 instead of Rs.1640-2900. He has submitted that some of the teachers who have completed 27 years of service, have been granted the benefit of 3rd higher payscale i.e. Rs.2200-4000 instead of Rs.2000-3500 as per the directions issued by this court in number of petitions. He has thus submitted that the issue involved in the present writ petition is now confined to grant of higher payscale to those teachers, who have retired after 01.08.1994.

3. Learned advocate for the petitioners has asserted that the petitioners, those who have completed 20 years of service would be entitled to the higher payscale of Rs.2000-3500 instead of Rs.1640-2900 and further entitled to the higher payscale of Rs.2200-4000 on completion of 31 years of service. Learned advocate Mr.Asthavadi has submitted that pursuant to the judgment dated 30.01.2013 passed in Special Civil Application No.10142 of 2009, the petitioners who have retired prior to 01.08.1994 have already granted 2nd higher payscale of Rs.2000-3500 after completion of 20 years of service. Learned advocate for the petitioners has invited attention of this court to the Circular dated 16.03.1999, wherein it is specifically held that those teachers who are given benefits of revision of payscale 1998 of Rs.4000-6000 i.e. Higher Pay



Scale of Kelavni Nirishak Rs.5000-8000.

4. He has submitted that it is undisputed fact that the promotional post of teacher is Kelavani Nirikshak and hence, they are entitled to the benefits of higher payscale of that post. Learned advocate for the petitioners has submitted that no discrimination can be made to such petitioners who have retired prior to 01.08.1994 and after 01.08.1994 in granting the higher payscale of promotional post i.e. Kelavni Nirikshak."

33. The Court took note of above mentioned order dated 23.1.2018 in Letters Patent Appeal No.127 of 2018 and Letters Patent Appeal No.128 of 2018 and proceeded to decide the claim of the petitioners, the said issue and the contentions raised by the respondents. The contention which learned AGP for the respondents raised, is recorded by the Court in following terms:

"the petitioners are not entitled to the aforesaid higher payscales as claimed by them. They have submitted that for the grant of higher payscale, it is necessary that they have to be in continuous service/permanent teachers and on completion of 09, 20 and 30 years of continuous service in one category. It is submitted that Kelavni Nirikshak is totally different post and they are not entitled to the higher payscale after completion of requisite number of years of service."

34. Having regard to the resolutions dated 16.8.1994 and 5.7.1991, the Court had called upon learned AGP to point out the basis of their contention and objection which was raised before Division Bench in Letters Patent Appeal No.127 of 2018 and Letters Patent Appeal No.128 of 2018.



The response by the learned AGP is recorded by the Court in following terms:

"Both the learned Assistant Government Pleaders have taken pains to go through the entire resolution dated 16.08.1994 for finding the support of such contention which was raised before the Division Bench. After reading each and every clause of Resolution dated 16.09.1994, they are unable to point out any contention in the aforesaid resolution which mandates that primary teachers who are retired after 01.08.1994 are not entitled to 2nd higher payscale of Rs.2000-3500 and 3rd higher payscale of Rs.2200-4000. Learned Assistant Government Pleader, Mr. Rindani has submitted that Clause 3 of the Resolution dated 16.08.1994 specifically mentions about the cutoff date i.e. 01.08.1994, wherein it is stated that those petitioners who have retired prior to 01.08.1994 in their cases, no recovery has to be made and those who have retired prior to July, 1994 and are not granted the higher payscale due to any administrative reason, then such teachers would be entitled to the higher payscale and their pension is required to be fixed accordingly. Except this clause nothing is pointed out suggesting that the teachers who have retired after 01.08.1994 are not entitled to the higher payscale of Rs.2000-3500."

35. In the aforesaid background, the Court has taken into account the relevant clause and the resolution dated 16.8.1994 i.e. clause 3.1 and observed that:

"13. Clause 3(1) of the Resolution dated 16.08.1994 states that under the scheme the highest higher payscale would be Rs.25004200 and this higher payscale would be granted to those post who are having payscale of Rs.20003500. It also specifies that the post which are having payscale of Rs.2000-3500, in those cases, if there is no scope of further promotion then, they would be entitled to the higher payscale of Rs.2200-4000. Thus, the aforesaid Paragraph No.3(8) runs contrary to the contention made before the Division Bench that the scheme does not envisage "grant of Higher PayScale Rs.2000-3500 or Rs.2200-4000 in the Resolution dated 16.08.1994".

14. The impugned order dated 06.10.2001 refers to resolution dated 05.07.1991 as well as resolution dated 16.08.1994. It is stated in the impugned order that the second higher payscale means the higher payscale of promotional post and if there is no promotional post, the same is to be given as per appendix attached. The reason

assigned for the grant of 3rd higher payscale is also similarly worded. It is further mentioned that the petitioners are not entitled to higher payscale of Rs.2000-3500 to the post of Kelavni Nirikshak as per the provisions of Resolutions dated 05.07.1994 and 16.08.1994 since the cadre of Kelavni Nirikshak and teachers is different.

15. The Resolution dated 31.07.1982 passed by the Educational Department whereby it was resolved that 75% posts of Kelavni Nirikshak are to be filled from the primary teachers by way of promotion and rest of 25% posts are to be filled by direct recruitment. Learned Assistant Government Pleader did not dispute that the next promotional post of primary teacher is Kelavni Nirikshak. It is also not in dispute that the Kelavni Nirikshak are getting the payscale of Rs.2000-3500. It is also not in dispute that the primary teachers who have retired prior to 01.08.1994 have been conferred the benefits of higher payscale of Rs.2000-3500 of the promotional post i.e. Kelavni Nirikshak. Thus, the petitioners who have retired after 01.08.1994 are entitled to the similar treatment to those who have retired prior to 01.08.1994 as far as fixation of payscale of Rs.2000-3500 of the post of Kelavni Nirikshak is concerned.

16. Paragraph No.3 of the resolution dated 16.08.1994 signifies that the earlier scheme of the higher payscale of 09,18 and 27 years of service is modified to 09, 20 and 31 years. Thus, the teachers who were entitled to the first, second and third higher payscales after completion of 09, 18 and 27 years of service will be entitled to three higher payscales after completion of 09, 20 and 31 years of service. It is also clarified that the orders granting the second and third higher payscales are modified ab initio w.e.f. 01.06.1987. Paragraph No.3 also prescribes the cutoff date of 01.08.1994, wherein it is mentioned that those teachers who have retired prior to 01.08.1994, no recovery shall be made from them and their pay shall not be refixed as per the present resolution, and if such teachers are not granted the higher payscale due to administrative reasons, then they shall be granted the same accordingly, and their pension is also required to be refixed. Paragraph No.3(33) of the resolution dated 16.08.1994 connotes that the resolution has been given effect from 01.06.1987. Thus, the teachers who have retired after 01.08.1994 and have completed requisite number of years of service as envisaged in the aforesaid resolution i.e. 09, 20 and 31 years of service are to be granted the higher payscale accordingly."

36. It is pertinent that after taking into account each and every clause, terms and conditions and other provisions in the resolution

dated 16.8.1994, the Court recorded following observations with regard to the resolution dated 16.8.1994:

"Paragraph No.3(33) of the resolution dated 16.08.1994 connotes that the resolution has been given effect from 01.06.1987. Thus, the teachers who have retired after 01.08.1994 and have completed requisite number of years of service as envisaged in the aforesaid resolution i.e. 09, 20 and 31 years of service are to be granted the higher payscale accordingly."

37. Thereafter the Court proceeded to observe that:

"17. The only issue which requires consideration is that whether the petitioners who have retired after 01.08.1994 will be entitled to the higher payscale of Rs.2000-3500 for the post of Kelavni Nirikshak or will they be entitled to the payscale of Rs.1640-2900. The teachers who have retired before 01.08.1994 and prior there to form a homogeneous class. Both have the same promotional post of Kelavni Nirikshak. The cut-off date of 01.08.1994, as envisaged in the resolution dated 16.08.1994, does not differentiate the payscale of Kelavani Nirikshak. Once it is held that the teachers are entitled to the payscale of Rs.2000-3500 of the post of Kelavni Nirikshak instead of Rs. 1640-2900 after completion of 18 years of service, the petitioners who belong to the same class and have completed 20 years of service will also be entitled to the second higher payscale of Rs.2000-3500 of the post of Kelavani Nirikshak. The State Government has only to examine the cases of such teachers for grant of the higher payscale as per the resolution dated 16.09.1994 w.e.f. 01.06.1987 i.e. the cut-off date from which the resolution is made effective."

18. The reliance placed on the judgment dated 30.11.2007 passed in Special Civil Application No.8535 of 1996 by the learned Assistant Government Pleader, Mr.Dabhi cannot come to his rescue since the same deals with the scheme of the higher payscale for the post of Head Master and of the next promotional post of Educational Service Class II post having the payscale of Rs.2000-3500, which is prescribed under the relevant recruitment rules. In the present case, as noted hereinabove, there is no dispute that the next promotional post of primary teachers is Kelavni Nirikshak having the payscale of Rs.2000-3500. The petitioners who have retired prior to 01.08.1994 have already been conferred such benefits pursuant to the judgment of this

court. This court has also examined the papers of Letters Patent Appeal No.127 of 2018. The State Government has specifically averred that the next promotional post of the present petitioners i.e Teachers is Kelvani Nirikshak."

38. In the decision dated 12.4.2018, the Court has taken into account the decision dated 30.1.2013 passed in Special Civil Application No.10142 of 2009 and other cognate matters. The finding and conclusion with regard to the decision, which emerges from the resolution dated 16.8.1994 with regard to the pay scale of Rs.2000-3500 and Rs.2200-4000 is summarised by the Court in paragraph No.20 of the order dated 12.4.2018. The said paragraph No.20 reads thus:

"20. The foregoing observations are summarized as under:

- a) In the judgement dated 30.01.2003, the Teachers who have retired prior to 01.08.1994, are held to be entitled to the second higher payscale of Rs.2000-3500 after completion of 18 years of service. The said judgment is implemented and such teachers are already granted the benefit of the second higher payscale of Rs.2000-3500 and the third higher payscale of Rs.2200-4000 after completion of 27 years of service;
- b) The respondents have not denied that the next promotional post of primary teacher is Kelavani Nirikshak having the payscale of Rs.2000-3500.
- c) The respondents have failed to justify that the cutoff date 01.08.1994 provided in the resolution dated 16.08.1994 has any bearing on the promotional payscale of Rs.2000-3500 of Kelvani Nirikshak. Thus, the primary teachers who have retired after 01.08.1994 are held to be entitled to the second higher payscale of Rs.2000-3500 after completion of 20 years of service.
- d) The respondents are required to examine the case of those primary teachers for grant of the second higher payscale, who have retired after 01.08.1994 keeping in mind the cut-off date of 01.06.1987, i.e, the date from which the Resolution dated 16.08.1994 is made applicable.
- e) If any teacher who is found to have become entitled to



the third higher payscale of Rs.2200-4000 after completion of 31 years of service, then he/she shall be granted the same as per the appendix attached to the Resolution dated 16.8.1994, as fairly conceded by the learned advocate for the petitioners."

39. Thus, the Court has clarified that for deciding the claim of the petitioners the respondents are required to take into account the cut-off mentioned in the resolution dated 16.8.1994. It also emerges that in the decision dated 12.4.2018, the Court has not accepted the respondents' objection that the employees who retired after August 1994 are not entitled for the benefit of higher pay scale in consonance with the resolution dated 16.8.1994. Of course, the Court has, while rejecting said contention of the respondent, issued certain clarifications, guidelines and directions.

40. In this backdrop, learned advocate for the petitioner submitted that present petitioners claim same benefit and treatment as is granted by the Court vide order dated 12.4.2018.

41. Learned advocate for the respondent Board,

however, submitted that in the decision dated 12.4.2018, the Court has acknowledged the petitioners' claim for the benefit of higher pay scale on completion of 9 years, 20 years and 30 years of continuous service and not 9 years, 18 years and 27 years. In this context, it is necessary and relevant to clarify that since learned advocate for the petitioners in present case claim that the petitioners should be granted benefit on the same lines as decided by the Court vide decision dated 12.4.2018, it goes without saying that the petitioners would get benefit strictly as per the decision and if the petitioners do not fall within the criteria identified and accepted by the Court in the judgment dated 12.4.2018, then the petitioners would not be eligible for the benefit. The petitioners would be eligible for the benefit claimed by them only if they fall within purview of criteria identified and accepted by the Court in the decision dated 12.4.2018 and strictly in accordance with said decision as well as

subsequent decision in appeal, if filed by any party to the said petitions.

42. Learned AGP for the respondents has failed to distinguish the case of present petitioners from the case decided by the Court vide judgment dated 12.4.2018 in Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008. Therefore, following order is passed:

(a) The impugned decision dated 15.10.2014 passed by the respondents rejecting the petitioners' claim for higher pay scale in accordance with the resolution dated 16.8.1994 is set aside;

(b) The case of the petitioners is remanded to the competent authority of the respondents for fresh consideration and decision in light of the observations and directions by the Court in the order dated 12.4.2018 in Special Civil Application No.12021 of 2001 and Special Civil

Application No.9349 of 2008;

(c) The competent authority shall examine the case of the petitioner and find out as to whether the petitioners fall within purview of the criteria identified and determined by the Court in the decision dated 12.4.2018 and whether present petitioners comply and fulfill the conditions mentioned by the Court in the said decision;

(d) If the competent authority finds that the petitioners fall within purview of the criteria and guidelines mentioned by the Court in the decision dated 12.4.2018, then the competent authority shall pass necessary and appropriate order as may be required in light of and in accordance with the decision issued by the Court vide judgment dated 12.4.2018;

(e) If at all the competent authority, after



examining the petitioners' case in light of the observations, clarifications, criteria, guidelines and directions mentioned by the Court in the judgment dated 12.4.2018, finds that the petitioners' case does not qualify for the said benefit and the facts of their case do not meet with the criteria mentioned by the Court in the decision dated 12.4.2018, then the competent authority will record its decision as well as reasons in support of its conclusions and findings;

(f) The concerned authority shall endeavour to decide the petitioners' case as expeditiously as possible and preferably within four months.

With the aforesaid directions, clarifications and observations, the petition is disposed of. The petitioners' case is remanded to the competent authority for re-consideration and fresh decision after examining the case of the petitioners in light of the decision dated

12.4.2018 in Special Civil Application No.12021 of 2001 and Special Civil Application No.9349 of 2008. Orders accordingly. Direct service is permitted.

BHARAT

Sd/-

(K.M.THAKER, J)

