orders which obviously were sent to the respondents through various channels by no stretch of imagination can be said to be a *bona fide* and then offering an apology in a routine manner cannot be said to be compatible. The justification and apology can hardly go hand in hand.

(16) In view of the above discussion, I have no hesitation in holding that respondent No. 2 is guilty of contempt of Court. There is wilful and intentional disobedience of the order of the Court dated 7th July, 1995. Such violation has even interferred with the administration of justice. The respondent No. 2 as such is liable to be punished. However, keeping in view the facts and circumstances of this case, I feel that it would serve ends of justice if the respondent No. 2 is directly only to pay a fine of Rs. 2,000 in this petition. Ordered accordingly. This contempt petition is accordingly allowed with costs which are assessed at Rs. 1,500. These costs would be paid initially by the Department but would be ultimately recovered from the erring officer/official and enquiry in this regard shall be completed within six months from the date of this order.

J.S.T.

Before G. S. Singhvi & M. L. Singhal, JJ.

RAJ PAL & OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 3080 of 1996.

18th October, 1996.

Constitution of India, 1950—Arts. 14 & 16—Haryana State Minor Irrigation and Tubewell Corporation Limited employees Service Bye-laws, 1980—Part V, para 5.1—Grant of benefit of revised pay scales—Board of Directors of HMITC resolving to implement revised pay scales with effect from 1st May, 1990—Resolution confirmed by Board on 17th March, 1992—Board, however, referring its decision to Standing Committee of Bureau of Public Enterprises for formal approval before implementation—Bureau granting formal

approval on 7th October, 1992—Government directing Corporation to revise scales not from 1st May, 1990 but from 7th October, 1992—Employees of various Corporations granted pay scales with effect from 1st May, 1990—Plea of discrimination set up in writ petition filed to challenge cut off date—Defence offered for fixation of date was date of approval of revised pay scales by the Bureau in its meeting held on 7th October, 1992—Fixation of date 7th October, 1992 is arbitrary and unreasonable being wide of the reasonable mark, therefore, violative of fundamental right to equality—Court declaring date as arbitrary and substituting it for 1st May, 1990.

Held, that the only reason put forward by the respondents to justify the fixation of 7th October, 1992 as the date for giving benefit of revised pay scales to the holders of technical posts in the service of the Corporation is that this is the day on which the Standing Committee on Public Enterprises decided to approve the proposal made by the Board of Directors of the respondent-Corporation to extend the benefit of revised pay scales to the employees of the Corporation. No other reason has been disclosed by the respondents for fixing the date as 7th October, 1992 for grant of revised pay scale to the petitioners. The respondents have also not offered any explanation as to how 7th October, 1992 has got any bearing to the object of grant of revised pay scale to the holders of technical posts in the service of the Corporation. In the absence of such explanation and the fact that employees holding similar posts in other Corporations have been given the benefit of revised pay scales from 1st May, 1990 apart from the employees of the State Government, we find substantial merit in the contention of the learned counsel for the petitioners that the date 7th October, 1992 is not only arbitrary but wholly irrational.

(Para 8)

Further held, that what is to be seen in the present case is whether the petitioners have been able to show that the fixation of the date as 7th October, 1992 for giving them the benefit of revised pay scales is arbitrary or wide of the reasonable mark. At the cost of repetition we may mention that the petitioners have claimed the benefit of revised pay scale with effect from 1st May, 1990 on the ground that in the past their pay scales have been revised at par with Haryana Government employees and also on the ground that benefit of revised pay scales have been extended to the employees of other public corporations with effect from 1st May, 1990. The only reason put forward by the respondents for fixing the date as 7th October, 1992 is that the Standing Committee on Public Enterprises met on 7th October, 1992 to consider the resolution passed by the Board of Directors of the respondent-Corporation giving the benefit of revised pay scales to the employees holding technical posts. It has not been stated by the respondents that the Corporation is unable to pay revised pay scales to the employees like petitioners with effect from 1st May, 1990 due to financial stringency or any other plausible reason. In view of this factual position, we are of the opinion that the fixation of the date as 7th October. 1992 for

grant of revised pay scales to the petitioners is clearly wide of the margin and is wholly arbitrary and unreasonable. The explanation offered by the respondents cannot be accepted in view of the fact that the employees of other Corporations have been given the benefit of revised pay scales with effect from 1st May, 1990 and on all previous occasions employees of the respondent-Corporation have been given the revised pay scales on the pattern of the State Government employees. Meeting of the committee on a particular date was clearly a fortuitous factor which could not be made basis for deciding the date from which revised pay scales would be admissible to the petitioners. Meeting of the committee depended on the sweet will of the Chairman and the availability of the members on a particular date. Fixing the date of applicability of revised pay scale as the date of meeting is almost synonymous with picking a date from the hat and the same has no relation whatsoever with the object of giving revised pay scales to the petitioners. We, therefore, hold that by fixing the date as 7th October, 1992 for grant of benefit of revised pay scales to the petitioners the respondents have violated the fundamental right to equality guaranteed to the petitioners by Articles 14 and 16 of the Constitution. We allow the writ petition and declare that the date 7th October, 1992 is arbitrary, irrational and discriminatory and violative of Articles 14 and 16 of the Constitution. Accordingly that date is struck down and substituted by 1st May, 1990 because that is the date enumerated in the resolution Annexure P-3 and that is the date from which similarly situated employees of other Public Enterprises have been given the benefit of revised pay scales.

(Paras 23 & 24)

P. S. Patwalia, Advocate, *for the Petitioner.*

Ritu Bahri, AAG, Haryana for respondent No. 1 to 3.

Nipun Mittal, Counsel for respondent No. 4.

JUDGMENT

G. S. Singhvi, J.

(1) The main question which arises for determination in this petition is whether the respondents can fix different dates for grant of the benefit of revised pay scales to the employees working under the same employer/similar employers.

(2) Petitioners Raj Pal and others, who are Diploma holders, are working as Turner, Fitter, Welder, Electrician and Moulder in the services of Haryana State Minor Irrigation and Tubewell Corporation Limited (hereinafter-referred to as 'the Corporation'). The

respondent-Corporation is a Government of Haryana Undertaking. The Board of Directors of the respondent-Corporation has framed the Haryana State Minor Irrigation and Tubewell Corporation Limited Employees Service Bye-laws, 1980 (hereinafter referred to as 'Bye-laws') to regulate appointment and conditions of services of the employees appointed in the service of the Corporation. Part-V of these Bye-laws relate to pay grades, perquisites, honorarium, leave rules, joining time and travelling allowance etc. of various categories of employees. Para 5.1 of the Bye-laws, which relates to pay grade, reads as under :—

"5.1 *Pay Grade* :

1. Each post in the Corporation will carry a time scale of pay.

2. The pay scale is subject to revision by the Board which will, however, generally follow the pattern adopted by the Government of Haryana from time to time."

(3) Keeping in view the notification dated 26th July, 1991, issued by the Financial Commissioner and Secretary to the Government, Haryana, Finance Department regarding revision of pay scales of technical posts the Board of Directors of the respondent-Corporation passed a resolution in its 104th meeting held on 17th December, 1991 and approved the implementation of revised pay scales in respect of the various categories of technical posts specified in that resolution. The benefit of this revision was to be given from 1st May, 1990. This resolution was confirmed by the Board of Directors in its 105th meeting held on 17th March, 1992. But at the same time it was decided that pay scales approved by the Board should be referred to the Standing Committee of Haryana Bureau of Public Enterprises for formal approval before they were implemented by the Corporation. In its meeting held on 7th December, 1992, the Standing Committee on Public Enterprises decided to approve the revised pay scales of various technical posts in the service of the corporation but made these scales effective from 7th October, 1992. In pursuance of the decision of the Standing Committee, the Financial Commissioner and Secretary to the Government, Haryana, Irrigation and Power Department wrote letter Annexure P.6 dated 5th February, 1993 to the Managing Director of the respondent-Corporation to give revised pay scales to the various categories of employees with effect from 7th October, 1992. The petitioners made representations to the respondent-Corporation but having failed to elicit any response from the Management of the Corporation, they

have sought intervention of this Court for striking down the date of enforcement of revised pay scales as 7th October, 1992 and substitution thereof by 1st May, 1990. This claim of the petitioners is founded on the following grounds :—

(i) The benefit of revised pay scales prescribed for the holders of technical posts possessing the qualifications of Matric with I.T.I. certificate/Diploma from Polytechnic has been given to the employees of various other Corporations in the State of Haryana with effect from 1st May, 1990 and, therefore, there can be no rhyme or reason to fix the date as 7th October, 1992 for giving similar benefit to the petitioners.

(ii) Junior Engineers of the respondent-Corporation, who were earlier given revised pay scales with effect from 1st January, 1993, have now been given the revised pay scales with effect from 1st January, 1992, in view of the decision of this Court dated 1st September 1994 rendered in Civil Writ Petition No. 6756 of 1994 *Ajmer Singh* v. *State of Haryana and others*. Reference has also been made to another decision of this Court dated 26th July, 1994 in Civil Writ Petition No. 6788 of 1993, *Bhagirath Ram and others* v. *State of Haryana and others*.

(iii) That the Board of Directors of the respondent-Corporation was not required to seek approval of the Standing Committee on Public Enterprises and, therefore, on the basis of an unwarranted reference to the Standing Committee on Public Enterprises, the benefit of revised pay scales cannot be denied to the petitioners with effect from 1st May, 1990.

(4) Defence put forward by respondent Nos. 1 to 3 is that the Standing Committee on Public Enterprises constituted by the Government examines and decides the proposal for creation and upgradation of posts, their pay scales, mode of recruitment, terms and conditions of service and cases involving exemption from the existing instructions for effecting economy in the expenditure concerning the State Public Enterprises and therefore, it was obligatory for the Board of Directors of the respondent-Corporation to seek approval of their resolution to grant revised pay scales to the employees belonging to the categories specified in the resolution

dated 17th December, 1991. These respondents have pleaded that the Standing Committee took a decision to approve the resolution passed by the Board of Directors of the respondent-Corporation on 7th October, 1992 and, therefore, benefit of revised pay scales has been extended to the employees of the respondent-Corporation with effect from 7th October, 1992. It has also been pleaded that the employees of Public Enterprises and State Government are not similarly situated and. therefore, on the basis of grant of revised pay scales to the Government employees with effect from 1st May, 1990, the petitioners cannot claim similar benefit.

(5) In a separate reply filed by it, the respondent-Corporation has pleaded that benefit of revised pay scales has been allowed to the petitioner with effect from 7th October, 1992 keeping in view the decision of the Standing Committee on Public Enterprises. The respondent-Corporation has also pleaded that the petitioners are not entitled to the benefit which has been given to the Junior Engineers,—*vide* order dated 19th April, 1995 in complaince of the judgment of the High Court dated 1st September, 1994.

(6) Before considering the rival contentions, we consider it necessary to take cognizance of the averments made in paragraph 11 of the writ petition which read as under :—

> "11. That the revision of the pay scale of the technical posts with effect from 7th October, 1992 is totally arbitrary and illegal and is totally discriminatory and violative of Articles 14 of the Constitution of India. After the notification, Annexure P.1, persons working in various other Corporations in the State of Haryana, who had the qualification of Matric with ITI certificate/Diploma certificates were given the pay scales of Rs. 1200—2040 with effect from 1st May, 1990 as per notification, annexure P/2.
>
> The petitioners who are similarly situated as those persons, have been discriminated while granting the pay scales. The pay scales of the petitioners have only been revised with effect from 7th October, 1992 whereas other similarly situated employees of other Corporations as well as State of Haryana were given the same benefit with effect from 1st May. 1990. It is well settled law, settled by Hon'ble the Supreme Court of India as also by this Hon'ble Court t th: effect that the similarly situated persons cannot be discriminated in the matter of revision of pay scales. The

revision of the pay scale has to be made effective with effect from a particular date and it cannot be said that one set of employees will be granted pay scales from one date and the other similarly situated employees will get the same scales from a further date. Hence the respondents are liable to be directed to grant the pay scales of Rs. 1200—2040 with effect from 1st May, 1990 instead of 7th October, 1992, with all consequential benefits alongwith interest."

(7) In their reply, respondent Nos. 1 to 3 have not denied the above quoted averments. They have simply stated that action of the Standing Committee is not arbitrary, illegal, discriminatory and violative of Articles 14 and 16 of the Constitution of India. In its separate reply, the respondent-Corporation has also not contested the averments made by the petitioners. It has merely stated that benefit of revised pay scales has been given to the petitioners keeping in view the approval granted by respondent No. 3.

From the pleadings of the parties, it is clearly established that:--

(i) The Government of Haryana revised the pay scale of its employees holding technical posts and gave the benefit of revision with effrct from 1st May, 1990.

(ii) The holders of technical posts in other Corporations have also been given the benefit of revised pay scales with effrct from 1st May, 1990.

(iii) Junior Engineers of the respondent-Corpoartion have also been given the benefit of revised pay scales with retrosprctive effect on the basis of decision of this Court dated 1st September, 1994 in Civil Writ Petition No. 6756 of 1994.

(8) In the light of the above, we shall consider whether the petitioners have been discriminated by denial of benefit of revised pay scales with effect from 1st May, 1990. The only reason put forward by the respondents to justify the fixation of 7th October, 1992 as the date for giving benefit of revised pay scales to the holders of technical posts in the service of the Corporation is that this is the day on which the Standing Committee on Public Enterprises decided to approve the proposal made by the Board of Directors of the respondrnt-Corporation to extend the benefit of revised pay scales

to the employees of the Corporation. No other reason has been disclosed by the respondents for fixing the date as 7th October, 1992 for grant of revised pay scales to the petitioners. The respondents have also not offered any explanation as to how 7th October, 1992 has got any bearing to the object of grant of revised pay scales to the holders of technical posts in the service of the Corporation. In the absence of such explanation and the fact that employees holding similar posts in other Corporations have been given the benefit of revised pay scales from 1st May, 1990 apart from the employees of the State Government, we find substantial merit in the contention of the learned counsel for the petitioners that the date 7th October, 1992 is not only arbitrary but wholly irrational. By fixing such a date similarly situated employees have been divided into artificial groups for the purpose of grant of benefit of revised pay scales. Article 14 of the Constitution guarantees equal protection of law and equality before law. It prohibits the State from treating similarly placed persons differently. Article 16, which is one of the species of Article 14, guarantees equality in the matter of employment. The term 'employment' used in Article 16 has received liberal construction. It takes within its fold matters relating to appointment, the conditions of service and post-retirement issues. The ambit and reach of these two Articles has been examined in various decisions and while giving wider content and meaning to the doctrine of equality embodied in Articles 14 and 16 and other sister provisions contained in Part-III, the Supreme Court has also evolved the theory of reasonable classification. In re *Special Courts Bill*, 1978 (1), the Apex Court recaptulated the propositions which emerge out of the previous judgments of the Supreme Court. Some of these propositions are :—

> "3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.
>
> 4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all

(1) A.I.R. 1979 S.C. 478.

persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even a degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

(9) In *E. P. Royappa* v. *State of Tamil Nadu* (2), their Lordships gave new dimensions to the concept of equality and observed as under :—

"From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Art. 14

(2) A.I.R. 1974 S.C. 555.

and if it affects any matter relating to public employment, it is also violative of Art. 16 Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

(10) In *Mohammad Shujat Ali and others* v. *Union of India and others* (3), their Lordships explained the doctrine of classification in the following words :—

"Article 14 ensures to every person equality before law and equal protection of the laws and Article 16 lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16 is only an instance or incident of the guarantee of equality enshrined in Article 14; it gives effect to the doctrine of equality in the sphere of public employment. The concept of equal opportunity to be found in Article 16 permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension and gives expression to the ideal of equality of opportunity which is one of the great socio-economic objectives set out in the Preamble of the Constitution. The constitutional code of equality and equal opportunity, however, does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." .....

.....

We thus arrive at the point at which the demand for equality confronts the right to classify. For it is the classification which determines the range of persons affected by the special burden or benefit of a law which does not apply to all persons. This brings out a paradox. The equal protection of the laws is a "pledge of the protection of equal laws." But laws may classify. And, as pointed out by Justice Brewer, "the very idea of classification is that of inequality". The court has tackled this

(3) A.I.R. 1974 S.C. 1631.

paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated.....

A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike.....

The test which has been evolved for this purpose is and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution—that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation.....

But we have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society

and it should not be allowed to submerge and drawn the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J. in State of *Jammu & Kashmir* v. *Triloki Nath Khosa* (4), "the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments."

(11) In *D. S. Nakara and others* v. *Union of India* (5), the principle has been stated thus :—

"Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved ? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of state affirmative action. In the absence of the doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the

(4) 1974 (1) S.C.C. 19=A.I.R. 1974 S.C. 1=1974 Lab. I.C. 1.
(5) A.I.R. 1983 S.C. 130.

guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCR 1014 at p. 1034 : (AIR 1979 SC 1628 at pp. 1637-38) when at page 1034, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

(12) Specific cases involving challenge to the fixation of cut off date may now be referred.

(13) In *D. R. Nim* v. *Union of India* (6), fixation of seniority was challenged by the appellant on the ground that his period of officiation was excluded for the purpose of fixation of seniority by fixing an arbitrary date for counting that period. Their Lordships considered the reason given in the counter-affidavit for fixing 19th May, 1951 as a cut off date and observed :

"The above statement of the case of the Government further shows that the date, May 19, 1951 was an artificial and arbitrary date having nothing to do with the application of the first and the second provisos to Rule 3(3). It appears to us that under the second proviso to Rule 3(3) the period of officiation of a particular officer has to be considered and approved of disapproved by the Central Government in consultation with the Commission considering all the relevant facts. *The Central Government*

(6) A.I.R. 1967 S.C. 1301.

cannot pick out a date from a hat—and that is what seems to have done in this case—and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso."

(14) In *Jagdish Pandey* v. *The Chancellor, University of Bihar and others* (7), vires of Section 4 of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) (Amendment) Act, 1962 was challenged. Even while upholding the fixation of the cut off date the provisions of Section 4 which was made applicable to a particular class of teachers who were appointed before 27th November, 1961, the Apex Court observed :—

"We shall first consider whether Section 4 is *ultra vires* of Article 14 of the Constitution. The first ground in that behalf is that the dates mentioned in Section 4 were completely arbitrary and, therefore, there was no valid classification to upheld the validity of the Section. *There is no doubt that if the dates are arbitrary, Section 4 would be violative of Article 14, for then there would be no justification for singling out a class of teachers who were appointed or dismissed etc. between these dates and applying Section 4 to them while the rest would be out of the purview of that Section.*"

(15) In *Jaila Singh and another* v. *State of Rajasthan and others* (8), validity of condition No. 3 of the Rajasthan Colonisation (Rajasthan Canal Project Pre-1955 Temporary Tenants Government Land Allotment) Conditions, 1971 and Rule 3 (2) of the Rajasthan Colonisation (Allotment of Government Land to Post-1955 Temporary Cultivation Lease Holders and Other Landless Persons in the Rajasthan Canal Project Area) Rules, 1971 was challenged. While striking down the rules, their Lordships held :—

"There is no nexus between the pre-1955 Conditions and post-1955 Rules and the Rajasthan Tenancy Act which came into force on 15th October 1955. The reference to Sections 15 and 15A of the Rajasthan Tenancy Act in deciding the questions about validity of the conditions and the rules is wholly irrelevant. The length of occupation of the lands does not provide any proper criterion for the

(7) A.I.R. 1968 S.C. 353.
(8) A.I.R. 1975 S.C. 1436.

distinction between pre-1955 and post-1955 tenants.

The difference in the period of occupation between the pre-1955 and post-1955 tenants is not of such an extent as to justify allotment of larger extent of land to the pre-1955 tenants than to the post-1955 tenants nor for the discrimination even among pre-1955 tenants between those holding more than 25 bighas and those holding less than 25 bighas.

As the rules stand there seems to be some discrimination in the matter of price between pre-1955 and post-1955 tenants, in that pre-1955 tenants, who hold land exceeding 25 bighas, have to pay nothing for land upto 25 bighas, while post-1955 tenants, who hold land less than 15 bighas, have to pay price for land which may be allotted to them so as to make up 22 bighas."

(16) In *Government of India and others* v. *M/s Dhanalakshmi Paper and Board Mills, Trichirupali* (9), fixation of 9th November, 1963 as the date of eligibility for grant of concessional rate of duty was challenged on the ground of violation of Article 14 of the Constitution. The High Court upheld the claim of the assessee and struck down the date fixed for grant of concessional rate. On behalf of the appellant reliance was placed on the decision of the Supreme Court in *Union of India* v. *M/s Parameswaran Match Works etc.* (10), *Jagdish Pandey* v. *The Chancellor, University of Bihar* (supra) and *U.P. Mahavidyalaya Tadarth Shikshak Niyamitikaran Abhiyan Samiti, Varanasi* v. *State of U.P. and others* (11), to support the fixation of date. After taking note of the proposition of law laid down in various judgments, their Lordships held :—

"In the present case also benefit of concessional rate was bestowed upon the entire group of assessees referred therein and by clause (a) of proviso (3) the group was divided into two classes without adopting any differentia having irrational relation to the object of the notification. and the benefit to one class was withdrawn while retaining it in favour of the other. It must, therefore, be held that the impugned clause (a) of tht proviso (3) of the notification in question is available to the entire group including the respondents."

(9) A.I.R. 1989 S.C. 665.
(10) A.I.R. 1974 S.C. 2349.
(11) A.I.R. 1987 S.C. 1772.

(17) We may also refer to some decisions in which fixation of a date has been upheld by the Supreme Court. In *Union of India* v. *M/s Parameswaran Match Works etc.* (supra) the Supreme Court dealt with the challenge to the validity of notification dated 4th September, 1967 by which benefit of concessional rate of duty was limited to the small manufacturers whose total clearance was not estimated to be in excess of 75 million matches. The respondent applied for a licence for manufacturing matches on 5th September, 1967. It filed a writ petition in the High Court challenging the classification made between the manufacturers of matches by fixing of cut off date as 4th September, 1967. The High Court accepted the plea of discrimination. While reversing the decision of the High Court, the Apex Court observed as under :—

> "The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point, there must be and there is no mathematical or logical way or fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark."

(18) A careful reading of this decision shows that the Apex Court took into consideration the object of granting the concessional rate of duty which was to protect smaller units in the industry from the competition by the larger ones and thought that this object may be frustrated if by adopting a device of fragmentation the larger units could become the ultimate beneficiaries of the concession.

(19) In *D. C. Gouse and Co. (Agents) Pvt. Limited* v. *State of Kerala and others* (12), the fixation of date as 1st April, 1973 for imposition of building tax was upheld by the Apex Court by holding that the petitioner has failed to show as to how the choice of the date was wide of the reasonable mark. In taking this view, their Lordships were influenced by the fact that on an earlier occasion imposition of tax was struck down by the highest Court. Subsequently a fresh bill for levy of tax was introduced in June, 1973 and it was made clear that the Act would be brought into force from April 1, 1970 but when the Act was passed by the legislature, date was fixed as 1st April, 1973.

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(12) A.I.R. 1980 S.C. 271.

(20) In *State of Rajasthan and another* v. *Gopaldas* (13), grant of different pay scales to the Upper Division Clerks of Secretariat on the other hand was upheld. The revised pay scales were introduced in the State of Rajasthan with effect from 1st September, 1981. The pay scale of Upper Division Clerks of the Secretariat was revised from Rs. 440—775 to Rs. 610—1090 and that of the Upper Division Clerks of Subordinate offices was revised from Rs. 385—650 to Rs. 520—925. The UDCs of Subordinate offices represented before the Government that there was no justification to deny them higher pay scale at par with the UDCs of Secretariat. This demand was accepted by the Government and,—*vide* notification dated 23rd January, 1985 higher revised pay scale was granted to the UDCs of Subordinate offices with effect from 1st February, 1985. The High Court allowed the writ petition and declared that grant of higher pay scale to the UDCs of Subordinate offices only with effect from 1st February, 1985 was arbitrary and unconstitutional. Their Lordships held that the reasons given by the High Court for giving benefit of revised pay scale to the UDCs of Subordinate offices with effect from 1st September, 1981 were untenable because there was a pre-existing differernce in the pay scales of UDCs of the Subordinate offices and the Secretariat and the Government did not accept the representation of the UDCs of Subordinate offices with the object of removal of anomaly and the High Court failed to appreciate that the factual basis for issuing the notification dated 23rd January, 1985 was entirely different than the 14 notifications issued for removing the anomalies in the pay scales of other posts.

(21) In *Dr. P. N. Puri and others* v. *State of U.P. and others* (14), their Lordships upheld the grant of revised pay scale with effect from 7th November, 1994 on the recommendations of the committee appointed by the Government.

(22) From the last two decisions it is clearly revealed that the Apex Court felt satisfied with the decision of the Government to give benefit of revised pay scales to the employees from particular date and, therefore, upheld it.

(23) Therefore, what is to be seen in the present case is whether the petitioners have been able to show that the fixation of the date as 7th October, 1992 for giving them the benefit of revised pay scale

(13) 1995 (1) S.L.R. 600.
(14) J.T. 1996 (2) S.C. 472.

is arbitrary or wide of the reasonable mark. At the cost of repetition we may mention that the petitioners have claimed the benefit of revised pay scale with effect from 1st May, 1990 on the ground that in the past their pay scales have been revised at par with Haryana Goernment employee and also on the ground that benefit of revised pay scales have been extended to the employees of other public corporations with effect from 1st May, 1990. The only reason put forward by the respondents for fixing the date as 7th October, 1992 is that the Standing Committee on Public Enterprises met on 7th October, 1992 to consider the resolution passed by the Board of Directors of the respondent-Corporation giving the benefit of revised pay scales to the employees holding technical posts. It has not been stated by the respondents that the Corporation is unable to pay revised pay scales to the employees like petitioners with effect from 1st May, 1990 due to financial stringency or any other plausible reason. In view of this actual position, we are of the opinion that the fixation of the date as 7th October, 1992 for grant of revised pay scales to the petitioners is clearly wide of the margin and is wholly arbitrary and unreasonable. The explanation offered by the respondents cannot be accepted in view of the fact that the employees of other Corporations have been given the benefit of revised pay scales with effect from 1st May, 1990 and on all previous occasions employees of the respondent-Corporation have been given the revised pay scales on the pattern of the State Government employees. Meeting of the committee on a particular date was clearly a fortuitous factor which could not be made basis for deciding the date from which revised pay scales would be admissible to the petitioners Meeting of the committee depended on the sweet will of the Chairman and the availability of the members on a particular date. Fixing the date of applicability of revised pay scales as the date of meeting is almost synonymous with picking a date from the hat and the same has no relation whatsoever with the object of giving revised pay scales to the petitioners. We, therefore, hold that by fixing the date as 7th October, 1992 for grant of benefit of revised pay scales to the petitioners the respondents have violated the fundamental right to equality guaranteed to the petitioners by Articles 14 and 16 of the Constitution.

(24) On the basis of the above discussion, we allow the writ petition and declare that the date 7th October, 1992 indicated in Annexure P-5 and P-6 is arbitrary, irrational and discriminatory and violative of Articles 14 and 16 of the Constitution. Accordinlgy that date is struck down and substituted by 1st May, 1990 because that is the date enumerated in the resolution Annexure P-3 and that is the date from which similarly situated employees of other Public

Enterprises have been given the benefit of revised pay scales. The respondent-Corporation is directed to issue appropriate order within three months of the submission of copy of this order, granting the benefit of revissed pay scales to the petitioners and other similarly situated persons with effect from 1st May, 1990. Arrears payable to the petitioners on the basis of such revised pay fixation shall be so paid to them within the next four months. Costs made easy.

R.N.R.

Before P. K. Jain, J.

VED PAL.—*Petitioner.*

versus

THE STATE OF HARYANA & OTHERS.—*Respondents.*

Crl. M. No. 16532-*M of* 96

14th Februray, 97

Constitution of India, 1950—*Arts.* 72 & 161—*Code of Criminal Procedure*, 1973—*S.* 433-*A*—*Instructions issued by the Governor under Art.* 161 *of the Constitution*—*Such instructions whether controlled under Section* 433-*A of Cr.P.C.*—*Held, no.*
(*Crl. M. No.* 578-*M of* 96 *Jai Singh* v. *State of Haryana and others' decided on* 9*th August*, 1996 *dissented*)

Held, that not withstanding the provisions of Section 433-A, the President and the Governor continue to exercise the powers of commutation, remissions and release under Articles 72 and 161 of the Constitution of India. The constitutional power is 'untouchable' and 'unapproachable' and cannot suffer the vicissitudes of simple legislative processes. Therefore, the observations made by the learned Single Judge of this Court in *Jai Singh* v. *State of Haryana and others*' do not hold good in view of the law enunciated by the apex Court in '*Maru Ram* v. *Union of India*'.

(Paras 9 & 10)

P. C. Chaudhary, Advocate, *for the Petitioner.*

Sailender Singh, D.A.G. Haryana, for the Respondent.

JUDGMENT

P. K. Jain, J.

(1) This petition has been filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal