DAYARAM ASANAND GURSAHANI

v.

STATE OF MAHARASHTRA AND OTHERS

February 22, 1984

[O. CHINNAPPA REDDY, E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

Bombay Judicial Service Recruitment Rules 1956, Sub clause (b) of clause (i) of Sub rule (2) of Rule 5, scope of—Seniority—For the purposes of seniority in the cadre of District Judges, whether the period during which one had worked as an Assistant Judge could be reckoned—Right to be posted as an Inspecting Judge and Entitlement to the salary and allowances in the selection grade—Selection Grade, whether a separate grade.

The judicial service of the State of Maharashtra consists of two branches—namely, (i) the Junior Branch and (ii) the Senior Branch. The Junior Branch consists of the following Class I Officers—(i) Judges of the Small Causes Courts at places other than Bombay, (ii) Civil Judges (Senior Division), (iii) Judges of the Small Causes Courts at Bombay and Metropolitan Magistrates and (iv) Civil Judges (Junior Division) and Judicial Magistrates of the First Class. The Senior Branch consists of (i) District Judges, (ii) the Principal Judge and Judges of Bombay City Civil Court, (iii) the Chief Judge and the Addl. Chief Judge of the Small Causes Court, Bombay (iv) the Chief Presidency Magistrate and the Additional Chief Presidency Magistrate, Bombay, and (v) the Assistant Judges. There is no separate cadre of selection grade District Judges or of Inspecting District Judges referred to in the Rules which are framed under the proviso to Article 309 of the Constitution. The scale of pay of District Judges prior to July 1, 1962 was Rs. 900-50-1000-60-1600-50-1800.

On the recommendation of the High Court, the State Government passed two resolutions one on 21-10-1963 and another on July 20, 1974 sanctioning one post under the former with effect from 1-7-62 and five posts under the latter with effect from 1st August 1974 of District Judges in the Selection Grade of Rs. 1800-100-2000, which is specifically stated to be a part of the pay scale of Rs. 900-1800 applicable to the cadre of District Judges. Consequent upon the revision of Pay scales

of officers of the cadre of the Indian Administrative Service the State Government modified the pay scale of the selection grade District Judges with effect from January, 1, 1973 by the resolution dated August 21, 1975 revising the Selection Grade Pay scale to one of 2000-125-2250. By its earlier Resolution dated 23-9-1969, the Government also sanctioned five temporary posts of District Judges in the same scale of Rs. 900-1800 for inspection of subordinate Courts and tackling the problem of corruption. The High Court had laid down certain guidelines for posting a District Judge as an Inspecting District Judge and they are (i) that the District Judge should have put in at least three years as District Judge and should have worked as such in any of the districts, (ii) that his administrative capacity should be relatively high and (iii) that he should have a reasonable length of service ahead of him as a District Judge till his retirment.

The appellant was enrolled as an Advocate on December 14, 1951. In response to the Notification inviting applications for the purpose of recruiting member of the Bar directly as District Judges under Rule 5(2) (1) (b) of the Rules, the appellant applied for one of the posts and was also successful in getting selected and appoined as an Assistant Judge by notification issued on 2-1-1967. On February 19, 1973, the appellant was appointed to officiate in the cadre of District Judges and later confirmed as a District Judge with effect from August, 1, 1975. The seniority of the appellant was fixed on the basis of his actual appointment as District Judge in April 1973.

The appellant filed a writ petition under Article 226 of the constitution contending: (1) that he was entitled to reckon for purposes of his seniority in the cadre of District Judges the period during which he worked as an Assistant Judge in accordance with the proviso to sub clasuse (b) of clause (i) of sub rule (2) of Rule 5 of the Bombay Judicial Recruitment Rules, 1956, and (ii) that he was entitled to get the salary and allowances in the Selection grade scale or to be posted as an Inspecting Judge. Both the contentions were negatived by the High Court and hence the appeal by special leave of the Court.

Allowing the appeal in part, the Court.

HELD 1. Due to laches and absence of satisfactory explanation for the delay of nearly nine years, the question of the correctness of the seniority assigned to the petitioner appellant in the year 1973 cannot be looked into. [708 F]

2.1. The appellant is entitled to the pay in the selection grade pay scale from the date on which the immediate Junior (seniority being counted on the length of

continuous officiation in the cadre of District Judges) commenced to draw salary in the selection grade pay scale. He is also entitled to all other consequential relief flowing therefrom. [718 C-D]

2.2. The two Resolutions of the Government sanctioning six posts of selection grade District Judges did not indicate that there was any process of promotion by selection or otherwise from the cadre of District Judges to the cadre of selection grade District Judges involved while sanctioning the selection grade pay scale. There was no question of even crossing the efficiency bar. The said selection grade scale was sanctioned only to mitigate the hardship caused by stagnation at the highest level of the original pay scale i.e. Rs. 1800. It was just a time scale and an extension or projection of the pay-scale of Rs. 900-1800 applicable to the cadre of District Judges but confined to six persons in all. The sanctioning of selection grade pay scale for District Judges has nothing to do with the creation of the posts of Inspecting District Judges either. The true legal position is that the first six persons in the seniority list of judges based on the length of continuous officiation in the cadre of District Judges can only be recipients of salary in the selection grade pay scale, there being only six such selection grade sanctioned. [710 G-H, 711 A-B]

2.3. When it is held that the selection grade District Judges do not constitute a separate cadre, the High Court cannot in exercise of its general powers of control under Article 235 of the Constitution withhold the increment beyond Rs. 1800 in the selection grade pay scale unless there is a rule or an executive instruction which authorises it to do so. The selection grade post is not a post to which promotion has to be made nor is there any efficiency bar rule attached to it. Further it is not shown that the Governor had issued any executive instructions, enabling the High Court to withheld increments in the extended pay scale which is in this case called as selection grade pay scale. The pay scale to which a judicial officer is entitled is a condition of service which can be regulated by a statute or rules made under the proviso to Article 309 or by executive instructions issued under Article 162 of the Constitution. It cannot come within the range of the expression 'control' in Article 235 of the Constitution. It is only where there is such a law, rule or executive instruction, the High Court may act under Article 235 of the Constitution to sanction it or to refuse to sanction it. [717 C-F]

In the present case the mere nomenclature given to the extended pay scale as the selection grade pay scale does not lead to the inference that there is an element of selection involved in sanctioning it. In the circumstances it should be treated as just an extended pay scale which forms *part of the pay scale of Rs.* 900-1800 as clarified in the two Government orders sanctioning the selection grade posts. The refusal on the part of the High Court to Sanction the selection grade pay scale to the

A appellant when it became due automatically on the ground that he was not found fit to be sanctioned that scale of pay is erroneous. [717 G-H 718 A]

Sant Ram Sharma v. *State of Rajasthan & Anr.* [1968] 1 S.C.R. 111; *Lalit Mohan Deb & others* v. *Union of India & Others* AIR 1972 SC 951 *B.S. Yadav & Others etc.* v. *State of Haryana & others etc.* [1981] I S.C.R. 1024 referred to.

B

3.1. The High Court had not created any new cadre of Inspecting District Judges and that it was only for the purpose of facilitating a brief and easy reference to such officers as were doing inspection work under a scheme evolved by the High Court for maintaining the efficiency of the Judicial Service that they were being referred to in common parlance as Inspecting District Judges. No rule was evolved by the High Court to the effect that either the senior most Judges or those promoted by selection to that cadre should be posted as Inspecting District Judges. Taking the these guidelines together, it is possible to post any District Judge who satisfies the three conditions as an Inspecting District Judge even though there may be many District Judges who are senior to him and who also satisfy the above conditions. Since admittedly the posts of Inspecting District Judges do not constitute a separate cadre superior to the cadre of District Judges, no person posted as an Inspecting District Judge can claim seniority over a District Judge who is not holding such a post on that ground alone. [712 E-H]

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3.2. The High Court in the Judgment under appeal has committed an error in virtually treating the Inspecting District Judge as equivalant to selection grade District Judges. The creation of the posts of five Inspecting District Judges had nothing to do with the sanctioning of selection grade pay scale for District Judges. While the selection grade pay scale was sanctioned for six posts of District Judges by the two Government Resolutions dated October 21, 1963 and July 20, 1974, the five posts of Inspecting District Judges were created by the Government Resolution dated September 23, 1969. These five posts were not posts with the selection grade pay scale which had already been brought into force by the Government Resolution of October 21, 1963. It could not also have been the intention of the High Court as well as of the Government at the time of the creation of these posts of Inspecting District Judges that the five senior-most District and sessions Judges in the State should instead of disposing of important judicial work be engaged in inspecting a minimum of 35 courts during a year, in writing reports and in carrying out other administrative work which would leave very little time to engage themselves in judicial work. That is also clear from the guidelines laid down for the posting of an officer as an Inspecting Judge which could be easily satisfied by younger and active members working in the cadre of District Judges. [714 F, 715 H, 716 C-D]

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3.3. The High Court also overlooked that the specific case of the High Court being that no separate cadre of Inspecting District Judges had been created, there

could be no occasion to consider the case of the appellant or any other District Judge for such promotion. The selection grade District Judges are only those who draw pay in pay scale of Rs. 1800-100-2000 for which no promotion is contemplated and that mere posting as an Inspecting District Judge by itself does not make an officer so posted superior to other District Judges. The true legal position is that while the first six persons in the seniority list of District Judges based on the length of continuous officiation in the cadre of District Judges can be recipients of salary in the selection grade pay scale, the posts of Inspecting District Judges and of the Registrar need not necessarily be held by them. Therefore, the question whether the appeallant can be posted as an Inspecting District Judge is within the discretion of the High Court only. [716 F-H, 717 A-B, H]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 435 of 1983.

Appeal by Special leave from the Judgment and Order dated the 30th July, 1982 of the Bombay High Court in writ petition No. 63 of 1982.

Dayaram Asanand Gursahani, Appellant in person.

A. V. Sawant, M. N. Shroff, S. M. Shah and *P. Sankara Narayana* for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The two questions urged in this appeal filed against the judgment of the High Court of Bombay are whether the appellant is entitled to reckon for purposes of his seniority in the cadre of District Judges the period during which he had worked as an Assistant Judge in accordance with the proviso to sub-clause (b) of clause (i) of sub-Rule (2) of Rule 5 of the Bombay Judicial Service Recruitment Rules, 1956 (hereinafter referred to as 'the Rules') and whether the appellant is entitled to get the salary and allowances in

A the selection grade scale or to be posted as an Inspecting Judge. Both the contentions were negatived by the High Court in a writ petition filed under Article 226 of the Constitution. This appeal by special leave is preferred against the judgment of the High Court.

B The appellant was enrolled as an advocate on December 14, 1951. In response to a notification inviting applications for the purpose of recruiting members of the Bar directly as District Judges under Rule 5 (2) (i) (b) of the Rules, the appellant made an application for considering his case also for recruitment as a District Judge. Ultimately five persons were selected and appointed as Assistant C Judges by notification issued on January 2, 1967 and the appellant was one of them. All of them were first posted as Assistant Judges as per the proviso to Rule 5 (2) (i) (b) of the Rules. On February 19, 1973, the appellant was appointed to officiate in the cadre of District Judges. He was confirmed as a District Judge with effect from August 1, 1975 as per notification No. A 1274/75 dated December D 9,1975. The seniority of the appelleant in the cadre of District Judges was fixed on the basis of his actual appointment as District Judge in April, 1973. The first contention of the appellant is that on a true construction of Rule 5 (2) (i) (b) of the Rules, he should be deemed to have entered the cadre of District Judges when he was initially recruited as a District Judge and posted as an Assistant Judge under E the proviso to Rule 5 (2) (i) (b) of the Rules. This claim of the appellant has been rejected by the High Court. We do not propose to consider this contention on the ground of laches as we do not find any satisfactory explanation for the delay of nearly nine years on the part of the appellant in questioning the correctness of the seniority assigned to him in the year 1973. F

We shall, however, confine this appeal to the second question namely, whether the appellant is entitled to the salary and allowances said to be payable to District Judges in the selection grade. In order G to decide the above question, it is necessary to deal with the constitution of the Judicial Service in the State of Maharashtra. The Judicial Service of the State of Maharashtra consists of two branches-namely, (i) the Junior Branch and (ii) the Senior Branch. The Junior Branch consists of the following Class I Officers-(i) Judges of the H Small Causes Courts at places other than Bombay, (ii) Civil Judges (Senior Division), (iii) Judges of the Small Causes Court at Bombay

and Metropolitan Magistrates and (iv) Civil Judges (Junior Division) and Judicial Magistrates of the First Class. The Senior Branch consists of (i) District Judges, (ii) the Principal Judge and Judges of the Bombay City Civil Court, (iii) the Chief Judge and the Addl. Chief Judge of the Small Causes Court, Bombay, (iv) the Chief Presidency Magistrate and the Additional Chief Presidency Magistrate, Bombay and (v) the Assistant Judges. The Metropolitan Magistrate, Juvenile Court, Bombay is also a member of the Maharashtra Judicial Service. Rule 4 of the Rules provides for the method of appointment to the post in the Junior Branch including Metropolitan Magistrates, Juvenile Court, Bombay, Rule 5 of the Rules deals with the method of recruitment to the Senior Branch.

Sub-rule (2) of Rule 5 of the Rules relates to the recruitment to the cadre of District Judges and Judges of the Bombay City Civil Court. It reads :

"5. (2) District Judges and Judges of the Bombay City Civil Court.

(i) District Judges.—Appointments to the posts of District Judges shall be made by the Governor-

(a) in consultation with the High Court by promotion from the members of the Junior Branch who have ordinarily served as Assistant Judges, and

(b) on the recommendation of the High Court from members of the Bar who have practised as Advocates or Pleaders for not less than seven years in the High Court, or Courts subordinate thereto :

Provided that persons recruited at the age of not more than forty-five years, fifty years in the case of a person belonging to a community recognised as backward by Government for the purposes of recruitment shall first be appointed to

work as Assistant Judge for such period as may be decided by Government on the merits of his case on the recommendations of the High Court before he is appointed as a District Judge:

Provided further that ordinarily the proportion of posts filled in by promotion, underc lause (a) and those by appointment from members of the Bar under clause (b) shall be 50: 50."

It may be noted here that there is no separate cadre of selection grade District Judges or of Inspecting District Judges referred to in the Rules which are framed under the proviso to Article 309 of the Constitution. The scale of pay of District Judges prior to July 1, 1962 was Rs. 900-50-1000-60-1600-50-1800.

On October 21, 1963 on the recommendation of the High Court, the State Government passed a resolution, the relevant part of which reads as follows:

"Resolution: Government is pleased to sanction one post of District Judge in the Selection Grade of Rs. 1800-100-2000 in the cadre of District Judges with effect from the Ist July, 1962. *As the Selection Grade is the part of the pay scale of Rs.* 900-50-1000-60-1600-50-1800, *applicable to the cadre of District Judges,* an officer drawing pay in this grade shall also be entitled to the special pay, if any, attached to the post held by him, subject to the condition that pay plus special pay does not exceed Rs. 2000/-." (emphasis added)

The resolution set out above only stated that one District Judge in the selection grade will draw salary in the scale of Rs. 1800-100-2000 with effect from July 1, 1962. It also stated that this scale was a part of the pay scale of Rs. 900-50-1000-60-1600-50-1800 applicable to the cadre of District Judges. It did not indicate that there was any process of promotion by selection or otherwise from the cadre of District Judges to the cadre of selection grade District Judges

involved while sanctioning the selection grade pay scale. There was no question of even crossing the efficiency bar. It appears that the said selection grade scale was sanctioned only to mitigate the hardship caused by stagnation at the highest level of the original pay scale i.e. at Rs. 1800. It was just a time-scale and an extension or projection of the pay scale of Rs. 900-1800 applicable to the cadre of District Judges but confined to one person. The above resolution was followed by another resolution of the State Government dated July 20, 1974, the material part of which read as follows:

> "Resolution: Government is pleased to sanction five additional posts of District Judges in the selection grade of Rs. 1800-100-2000 in the cadre of District Judges with effect from the Ist August, 1974. *As the Selection Grade is the part of the pay scale of Rs. 900-50-1000-60-1600-50-1800, applicable to the cadre of District Judges,* an officer drawing pay in this grade shall also be entitled to the special pay, if any, attached to the post held by him, subject to the condition, that pay plus special pay does not exceed Rs. 2000." (Emphasis added)

This resolution was worded in the same manner as the earlier one but the number of selection grade posts was increased by five. Thus there were in all six posts of selection grade District Judges who could draw salary at the pay scale attached to it.

Consequent upon the revision of pay scales of officers of the cadre of the Indian Administrative Service the State Government modified the pay scale of the selection grade District Judges with effect from January 1, 1973 by the resolution dated August 21, 1975, the relevant part of which reads thus:

> "Resolution: Government is pleased to direct that the revised Selection Grade I. A. S. pay scale of Rs. 2000-125/2-2250 should be made applicable to the Selection Grade District Judges with effect from 1-1-1973.

A 2. Government is also pleased to direct that District Judges in the Selection Grade posts, should be allowed to draw special pay, if any, attached to the post held by them, subject to the condition that pay plus special pay does not exceed Rs. 2450/-."

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There was, however, no other alteration in the conditions of service relevant to the subject of selection grade District Judges.

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In so far as the Inspecting District Judges are concerned, it is seen that the specific case of the High Court as set out in the affidavit of Shri Makarend Shankar Vaidya, Additional Registrar (Inspection). High Court of Bombay is that the High Court had not created any new cadre of Inspecting District Judges and that it D was only for the purpose of facilitating a brief and easy reference to such officers as were doing inspection work under a scheme evolved by the High Court for maintaining the efficiency of the Judicial service that they were being referred to in common parlance as Inspecting District Judges. No rule was evolved by the High Court to the effect that either the senior most Judges or those promoted by E selection to that cadre should be posted as Inspecting District Judges. It is, however, stated by the deponent of this affidavit that the High Court had laid down certain guidelines for posting a District Judge as an Inspecting District Judge and they are (i) that the District Judge should have put in at least three years as District Judge and should have worked as such in any of the districts, (ii) that his F adminstrative capacity should be relatively high and (iii) that he should have a reasonable length of service ahead of him as a District Judge till his retirement. Taking all these guidelines together, it is possible to post any District Judge who satisfies the three conditions as an Inspecting District Judge even though there may be many District Judges who are senior to him and who also satisfy the G above conditions. Since admittedly the posts of Inspecting District the Judegs do not constitute a separate cadre superior to the cadre of District Judgse, no person posted as an Inspecting District Judge can claim seniority over a District Judge who is not holding such a post on that ground alone. This is also manifest from the statement in H paragraph 52 of the counter affidavit filed on behalf of the High Court (respondent No. 2) which reads thus:

"I say that it is false to say that the respondent No. 2 has created an erroneous impression in the cadres of the judiciary, public and litigants that District Judges appointed under the scheme of inspection of courts are superior to other District Judges and this has caused insecurity in the minds of District Judges."

On the above question, the High Court has observed in its judgment under appeal thus:

"Government of Maharashtra, in law and Judiciary Department Resolution dated 23rd September, 1969 and the earlier the Resolution dated 21st October, 1963 had sanctioned the posts of District Judges in the Selection Grade. By the same Resolution additional posts of Joint Judges were also sanctioned. It appears from the affidavit filed by the respondents that scheme for conducting the surprise inspection of the courts in the State outside the Greater Bombay was introduced in the year 1969 with the following objects:

"1. Prevention, detection and rooting out the corruption from courts and their administrative offices.

2. Enforcement of discipline and punctuality among Judges and staff and generally ensuring that the allocated work both judicial and administrative is efficiently done and delay in disposal is eliminated.

3. Ensuring strict observance of civil and criminal manuals.

4. Checking of registers and accounts and ensuring that they are properly and punctually maintained, and

5. Ensuring the welfare of Judges and the staff including the provision of suitable healthy and sanitary conditions in courts, adequate housing accommodation for the Judges and the staff, and generally towards providing conditions of service within our limitations."

As part of this scheme Judicial officers posted as District Judges at Pune, Thane, Aurangabad, Akola and Nagpur are entrusted with the work of surprise inspection of courts. Each of these District Judges is expected to carry out surprise inspection work in 5 districts. He is expected to carry out the surprise inspection of at least 35 courts in a year and submit his inspection notes to the High Court. These inspection notes are scrutinised by the High Court and decisions on these inspection notes are also taken by the High Court. Regular inspection work is carried out by the District Judge concerned. From the affidavit filed by the Additional Registrar (Inspection) of the High Court, it is further clear that no new cadre or posts of Inspecting District Judge are created. Though in a common paralance they are called Inspecting District Judges they are merely District Judges doing the work of surprise Inspection."

Having held thus, the High Court committed an error in virtually treating the Inspecting District Judges as equivalent to selection grades District Judges by the following observations made by it in paragraph 11 of its judgment:

"As to how the District udges are selected for doing this inspection work is also explained by the respondents in their affidavits. From the submission made in the affidavits it is quite clear that guidelines have been laid down for selecting the District Judges working under the scheme of Inspection of the Courts. While selecting a person guidelines kept in view are (i) that the District Judges should have put in at least

3 years as District Judge, and should have worked as such in any of the districts, (2) that his administrative capacity should be relatively high and (3) that he should have reasonably long service ahead as Judge till his retirement. It is also clarified in the affidavit that these guidelines necessarily imply his competence in judicial work and also his general performance. The assessment of relatively high administrative capacity in particular implies in the context his aptitude for inspection work, his attitudes towards the bar, litigants, judicial officers and staff working in the inspecting courts. It is also submitted that while assessing the eligibility of a person with reference to these guidelines, the cases of judicial officers have been considered all along in the order of seniority of the person in the cadre of District Judges. Since no separate cadre is created of judicial officers who are asked to do the work of inspection under the scheme, no separate rules are framed, but guidelines are laid down by the High Court. Similarly guidelines are laid down for awarding the selection grade to the District Judge and normally all the 5 Inspecting District Judges and the Registrar are placed in the cadre of Selection Grade District Judges unless there are compelling reasons to the contrary. It is then stated in the affidavit of the respondents that the petitioner's case was considered on four occasions between 1979 to 1981 for being assigned this inspection work and for being placed in the selection grade but he has not been found suitable."

The infirmities noticeable in the above passage are these: The High Court has failed to notice that the creation of the posts of five Inspecting District Judges had nothing to do with the sanctioning of selection grade pay scale for District Judges. While the selection grade pay scale was sanctioned for six posts of District Judges by the two Government Resolutions dated October 21, 1963 and July 20, 1974, the five posts of Inspecting District Judges were created by the Government resolution dated September 23. 1969. the relevant part of which read thus:

"Resolution: Government is pleased to direct that

five temporary posts of District Judges in the scale of Rs. 900-50-1000-60-1600-50-1800 should be created for a period of upto the 28th February, 1970 for inspection of subordinate courts and tackling the problem of corruption."

These five posts were not posts with the selection grade pay scale which had already been brought into force by the Government Resolution of October 21, 1963. It could not also have been the intention of the High Court as well as of the Government at the time of the creation or these posts of Inspecting District Judges that the five senior most District and Sessions Judges in the State should instead of disposing of important judicial work be engaged in inspecting a minimum of 35 courts during a year, in writing reports and in carrying out other administrative work which would leave very little time to engage themselves in judicial work. That is also clear from the guidelines laid down for the posting of an officers as an Inspecting Judge which could be easily satisfied by younger and active members working in the cadre of District Judges.

The High Court also overlooked that the specific case of the High Court being that no separate cadre of Inspecting District Judges had been created, there could be no occasion to consider the case of the appellant or any other District Judge for such promotion. The observations that "since no separate cadre is created of judicial officers who are asked to do the work of inspection under the scheme, no separate rules are framed but guidelines, are laid down by the High Court. Similarly guidelines are laid down for awarding the selection grade to the District Judge and normally all the 5 Inspecting District Judges and the Registrar are placed in the cadre of selection grade District Judges unless there are compelling reasons to the contrary" in the above passage are again out of place. The above conclusion would have been possible only on proof of the following facts viz. (1) that the selection grade District Judges and the Inspecting District Judges belong to the same cadre and (2) that they belonged to a cadre higher than the cadre of District Judges or that there was a need for going through the process of selection to sanction selection grade pay scale. We have already shown that the selection grade District Judges are only those who draw pay in pay scale of Rs. 1800-100-2000 for which no promotion

is contemplated and that mere posting as an Inspecting District Judge by itself does not make an officer so posted superior to other District Judges. The true legal position is that while the first six persons in the seniority list of District Judges based on the length of continous officiation in the cadre of District Judges can be recipients of salary in the selection grade pay scale, the posts of Inspecting District Judges and of the Registrar need not necessarily be held by them.

When it is held that the selection grade District Judges do not constitute a separate cadre, the High Court cannot in exercise of its general powers of control under Article 235 of the Constitution withhold the increment beyond Rs. 1800 in the selection grade pay scale unless there is a rule or an executive instruction which authorises it to do so. As mentioned earlier, the selection grade post is not a post to which promotion has to be made nor is there any efficiency bar rule attached to it. Further it is not shown that the Governor had issued any executive instructions as it had been done in *Sant Ram Sharma* v. *State of Rajasthan & Anr.*[1] and in *Lalit Mohan Deb & Ors.* v. *Union of India & Ors.*[2] enabling the High Court to withhold increments in the extended pay scale which is in this case called as selection grade pay scale. The pay scale to which a judicial officer is entitled is a condition of service which can be regulated by a statute or rules made under the proviso to Article 309 or by executive instructions issued under Article 162 of the Constitution. It cannot come within the range of the expression 'control' in Article 235 of the Constitution. (See *B.S. Yadav & Ors. etc.* v. *State of Haryana & Ors, etc,*[3]) It is only where there is such a law, rule or executive instruction, the High Court may act under Article 235 of the Constitution to sanction it or to refuse to sanction it. We are of the view that in the present case the mere nomenclature given to the extended pay scale as the selection grade pay scale does not lead to the inference that there is an element of selection involved in sanctioning it. In the circumstances it should be treated as just an extended pay scale which forms *part of the pay scale of Rs.* 900-1800 as clarified in two Government orders sanctioning the selection grade posts. In view of the foregoing while the question whether the appellant can be posted as an Inspecting District Judge is within the discretion of the High Court, the refusal on the

(1) [1968] 1 S.C.R. 111
(2) A.I.R 1972 S.C. 995)
(3) [1981] 1 S.C.R. 1024

A part of the High Court to sanction the selection grade pay scale to the appellant when it become due automatically on the ground that he was not found fit to be sanctioned that scale of pay is erroneous. In view of what has been stated above, we need not go into the other points raised by the appellant regarding the above question.

B

In the result the judgment of the High Court is set aside in so far as the question of sanctioning of the selection grade pay scale to the appellant is concerned. It is hereby declared that the appellant is entitled to the pay in the selection grade pay scale from the

C date on which his immediate junior (seniority being counted on the length of continuous officiation in the cadre of District Judges) commenced to draw salary in the selection grade pay scale. He is also entitled to all other consequential reliefs flowing therefrom. A writ shall issue in the above terms.

The appeal is accordingly allowed in part. No costs.

S.R. *Appeal partly allowed.*