

**Jus In Rem and Jus In Personam – Whose Right Is It Anyway?
A Deeper Dive into the Application of Judicial Precedents to Similarly
Situated Persons in India in the context of the Supreme Court Judgement
in The Director (Admn&HR) vs C.P. Mundinamani**

V. Satya Venkata Rao¹

Abstract

The Supreme Court's decision in Director (Admn & HR), KPTCL v. C.P. Mundinamani has reignited debate around the doctrines of jus in rem and jus in personam, particularly regarding whether judicial precedents should automatically extend benefits to similarly situated individuals. The case involved denial of an earned annual increment to employees who retired a day before the increment's effective date, prompting widespread litigation. While the Supreme Court upheld employees' entitlement, authorities have since treated the judgment as binding only on the litigants, sparking further disputes. This article analyses the historical and jurisprudential foundations of jus in rem and jus in personam, the doctrine of stare decisis, and their interplay in Indian service law. It argues that narrowly categorising judgments as jus in personam undermines constitutional principles of equality, fuels repetitive litigation, and burdens the judiciary. A principled, proactive extension of judgments with broader implications is essential for fairness and administrative efficiency.

Keywords: Jus In Rem, Jus In Personam, Service Law, Judicial Precedents, Supreme Court Of India

Introduction

Modern legal systems across the globe are underpinned by a framework of well-established legal principles and maxims, many of which have endured for centuries. These foundational concepts provide the bedrock upon which legal reasoning and judicial decisions are built. Among these enduring principles are the distinctions between jus in rem and jus in personam, and their corresponding rights, right in rem and right in personam.

The courts in India, on many occasions, have interpreted the scope and extent of these terms, while the science of jurisprudence offers a comprehensive theoretical understanding of their nuances.

This Article aims to delve deeper into these concepts, tracing their historical evolution, analysing their application within the Indian legal system, following the judgement of the SC of India in Civil Appeal No 2471/2023 dated 11th April 2023, examining the practical implications of categorising and applying judicial precedents to individuals in similar situations.

Rights in Personam and Rights in Rem Explained.

At a fundamental level, the distinction between rights in personam and rights in rem lies in the scope of their enforceability. A right in personam is a right that inheres in a specific individual and is available against a specific or defined person or persons. These rights typically arise from contractual obligations, familial relationships, or specific legal interactions between individuals. For instance, the obligations arising from a contract between two parties create rights in personam for each party against the other to perform their respective promises.

¹ Professor of Practice GITAM University and Former Deputy Managing director, SIDBI

Similarly, marital rights and obligations within a family arrangement are classic examples of rights in personam, binding the specific individuals within that relationship.

In contract law, the principle of privity of contract reinforces the notion of rights in personam, limiting the enforceability of contractual rights and obligations to the contracting parties alone.

Conversely, a right in rem is a right that is not confined to one or more specific individuals but is available against the entire world. It is a right pertaining to a particular piece of property or a status that is protected against infringement by any person. A common example often cited is a person's right to his property. The owner of a piece of land, has a right to the peaceful enjoyment of that land that is enforceable against any individual who might trespass or interfere with his possession. Another illustrative example is from the law of torts, is a person's right to reputation. The right not to be defamed is a right in rem, as it is a claim against the world at large, obligating everyone to refrain from making false and defamatory statements. Unlike the confined scope of contractual obligations, rights in rem possess a wider ambit and application, often relating to fundamental aspects of property ownership, status, or public rights.

Jus in Personam and Jus in Rem Explained

Reflecting the distinction between the rights themselves is the categorisation of legal judgments as jus in personam and jus in rem. Jus in personam typically refers to judgments that bind only the parties to the litigation, the lis.

The outcome of such a judgment, whether a decree or an order, enures to the benefit of or operates against those directly involved in the legal dispute and their privies (those who derive their interest from the parties). An example is a suit for specific performance of a contract. A decree passed in such a suit binds the defendant to perform his contractual obligations specifically for the benefit of the plaintiff, and its binding effect is primarily limited to these parties.

Jus in rem on the other hand, signifies a judgment that determines the status of a person or a thing and is conclusive evidence for and against all persons, whether parties, privies, or strangers to the litigation, regarding the matter decided.

Cheshire, a noted Jurist explained as follows “a judgment in rem settles the destiny of the res itself (the thing or the status in question) and binds all persons claiming an interest consistent with the judgment, even if they were not party to the proceedings. This type of judgment looks beyond the individual rights of the litigants and addresses a matter of public or general concern regarding a specific entity or status. Examples of judgments in rem typically include decisions in probate (determining the validity of a will), matrimonial causes (determining marital status), admiralty actions (related to the status of a ship), and insolvency proceedings (declaring a person bankrupt). These judgments establish a legal position that is recognized and binding on the world at large.

Historical Roots and Global Perspectives

The distinction between actions and rights in rem and in personam has deep roots in Roman law, which significantly influenced the development of legal systems in many parts of the world. Roman jurists recognised different forms of actions based on whether they were directed against a specific person or against a thing. This fundamental distinction has been carried forward and adapted in various legal traditions, including common law and civil law systems.

In common law jurisdictions, the concept of judgments in rem is generally confined to the categories mentioned by Cheshire. Other judgments, even those setting significant precedents, are typically considered binding primarily on the parties, with their broader effect stemming from the doctrine of stare decisis. Civil law systems also recognise the distinction, although the

nuances in the application of precedent and the binding nature of judgments on non-parties might differ. A comparative analysis reveals that while the core distinction remains, the extent to which judgments can have a binding effect outside the traditional in rem categories varies across jurisdictions.

The Doctrine of Stare Decisis in India

The Indian legal system, being a common law derivative, heavily relies on the doctrine of stare decisis. Article 141 of the Constitution of India explicitly states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. This principle ensures consistency, predictability, and stability in the application of law. When the Supreme Court delivers a judgment, even in a case that was technically in personam (i.e., the direct relief was granted to the specific parties), the legal principles enunciated in that judgment become binding precedent for all lower courts and authorities dealing with similar issues.

However, the stare decisis effect is different from a judgment being in rem. While a precedent binds future decisions on similar points of law, the original judgment's direct operative part (the relief granted) typically remains binding only on the parties involved. The challenge arises when the principles laid down in a judgment with significant implications for a wider group are narrowly interpreted as applying only to the original litigants.

Service Law in India: How Jus in personam and Jus in Rem evolved

Service law in India, governing the relationship between employers (often the State or its instrumentalities) and employees, often leads to legal complexities warranting a legal redress.

Legal Disputes can range from individual disputes like dismissal, denial of increment, or promotion, demotions to collective issues affecting a large number of employees, such as mass transfers or changes in service conditions.

The distinction between jus in personam and jus in rem becomes particularly relevant when a judgment in a service matter, initiated by a few individuals, establishes a principle that could equally apply to many others.

When a court interprets a fundamental service rule or a constitutional principle in the context of a service matter, the implications can extend far beyond the individual litigants.

Supreme Court's emphasis on the principle of equality for similarly situated groups.

The Supreme Court of India has consistently emphasised the principle that similarly situated persons should be treated alike, drawing from the fundamental right to equality enshrined in Article 14 of the Constitution. Several judgments have underscored the need for authorities to extend the benefits of a judgment to non-litigants who are identically placed. These are discussed below

Amrit Lal Berry Vs CCE²: The Supreme Court of India in this case held that state cannot discriminate between those who approached the court, and those who did not win the same benefit is otherwise advisable

Union of India versus Tarsem Singh³: While not directly a service matter (it pertained to land acquisition), this judgment highlighted the principle against prospective application of financial benefits, suggesting that such selective application could lead to arbitrariness and violate Article 14. The underlying rationale supports treating similarly aggrieved persons equally.

² 1975 (4) SCC 714

³ 2008 (8) SCC 648

Inderpal Yadav & Others Vs Union of India⁴: This case explicitly stated,

"Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similar, similarly situated, they are entitled to similar treatment." This observation directly addresses the concern of non-litigants being unfairly excluded.

K.C. Sharma Vs Union of India⁵: In this case the Supreme Court has held that administrative Circulars cannot override judicial declaration of law

State of Karnataka and others Vs C. Lalitha⁶: The Court emphatically stated,

"Service jurisprudence evolved by this Court from time-to-time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently." This judgment laid down key principles about the extension of benefits of a judgment to similarly situated non-parties, subject to exceptions like laches and acquiescence, but also recognising judgments intended to benefit all similarly situated persons (in rem in effect).

State of U.P. and Ors. Vs. Arvind Kumar Srivastava and Ors⁷.: This judgment reiterated the "normal rule" that when a set of employees has been given relief by the Court, all other identically placed persons need to be treated alike by extending the benefit to them.

The above judgements identify these cases as having been treated as judgments in rem, impacting all government employees within the relevant categories regarding reservation policies. These judgments, while arising from specific cases, addressed policy matters with broad applicability.

The Dilemma of Categorisation: Jus in Rem vs. Jus in Personam in Service Matters

The core of the issue lies in how authorities categorise and apply judgments that, while arising from specific cases, interpret fundamental principles or rules applicable to a wider group. The Article would evaluate the legal position that has arisen from the judgement of the Supreme Court in Civil Appeal No 2471/2023 with the attendant consequences that followed thereafter.

If a judgment clarifies the interpretation of a service rule that applies uniformly to a class of employees, or if it upholds a constitutional principle in the context of a service matter, treating it strictly as jus in personam can lead to the very inefficiencies and inequities that the Supreme Court has sought to avoid. It forces similarly situated individuals to file repetitive petitions, wasting judicial time and public resources, and causing unnecessary hardship to the employees.

Consequences of Treating a Jus in Rem (in Effect) as Jus in Personam

The consequences of narrowly interpreting judgments with broad implications as merely jus in personam are significant:

Proliferation of Litigation: If the Authorities restrict the benefits of a judgment only to the original litigants, it inevitably compels others in identical situations to seek legal redressal. This leads to a surge in similar cases clogging the judicial system.

Increased Costs of Litigation: For individuals, especially those who have retired or are facing financial constraints, the cost of pursuing legal action can be prohibitive, effectively denying

⁴ 1985(2) SCC 648

⁵ 1997(6) SCC 721

⁶ Aironline 2006 SC 209

⁷ 2015(1) SCC 347

them justice despite a settled legal position. The state also incurs substantial expenses in defending these multiple, often identical, cases.

Strain on Judicial Time: The already overburdened judiciary is further burdened by having to repeatedly adjudicate the same legal issue, diverting precious judicial time and resources from more complex or novel matters.

Administrative Inefficiency: Authorities are forced to handle a multitude of individual claims and court orders, creating an unnecessary administrative burden instead of implementing a uniform policy based on the precedent.

Violation of Article 14: Treating similarly situated persons differently without a valid reason can be construed as a violation of the fundamental right to equality under Article 14 of the Constitution.

Claim for payment of Increment and the Litigation thereof: The litigation in The Director KPTCL (Admn & HR) Vs C.P. Mundinamani, began due to the refusal by the Authorities to grant annual increment to employees who retired a day before. In the context of public employment in India an increment is given to an employee on completion of a one-year period. The dates of reckoning the increment due were 1st January and 1st of July every year. The problem arose as the Employer refused increment on the ground that those employees who retired on 31st December and 30th June of a year were not in service to avail the increment. This interpretation and refusal by the concerned led to the filing of cases in Tribunals and courts.

Journey of Litigation to Supreme Court: The journey to the Supreme Court in this legal issue that has been agitated from the year 2013 is depicted in the following table.

Name of the Petitioner	Name of the Respondent	Case Number	Name of the Court	Date of order
C.P. Mundinamani	KPTCL	55117-55121 /2013	Karnataka High Court	24-04-2017
C.P. Mundinamani	KPTCL	4193/2017	Karnataka High Court	23-01-2020
KPTCL	C.P. Mundinamani	2471/2023	Supreme Court of India	11-04-2023
Ministry of Railways	Various respondents	2400/2024	Supreme Court of India	06-09-2024
Union of India	Various respondents a	36418/2024	Supreme Court of India	18-12-2024

While the journey of the court cases stood as above, the stand of different high courts rendering the judgement on the issue of notional increment is shown in the following table

Judgements holding that Notional increment is not permissible

Case Name &	Name of the Court	Date of the Judgement
Union of India and others Vs R. Malakondiah	Andhra Pradesh	13-12-2021

Surjith singh and others Vs State of Himachal Pradesh	Himachal Pradesh	26-11-2024
State of Kerala and others Vs P. Jayachandran	Kerala	09-10-2024

Judgements holding that Notional increment is permissible

Case Name	Name of the Court	Date of the Judgement
P. Ayyaperumal	Chennai	15-09-2017
Gopal Singh Vs Union of India	Delhi	23-01-2020
NandVijay Singh and others versus union of India and others W.A No 13299/2020	Allahabad	29-06-2021
Yogendra Singh Bhadauria & others Vs State of Madhyapradesh	Madhya Pradesh	22-09-2020
AFR Arunkumar Biswal Vs State of Odisha	Odisha	30-07-2021
State of Gujarat Vs Takatsinh Udeshsinh Songara	Gujarat High Court	27-04-2022

Relevant Facts of the Case before the Supreme Court: The facts of the case would show that one day earlier than the retirement and on completion of one year service preceding the date of retirement all the employees earned one annual increment. However, taking into consideration Regulation 40(1) of the Karnataka Electricity Board Employees Service Regulations, 1997 (hereinafter referred to as the Regulations), which provides that an increment accrues from the day following that on which it is earned, the appellants denied the annual increment on the ground that the day on which the increment accrued the respective employees

Legal issue for determination: The Supreme Court was adjudicating on the admissibility of an annual increment to those who have retired a day prior to the grant of increment. The Supreme Court of India has framed the following question for adjudication.

“The short question which is posed for the consideration of this Court is whether an employee who has earned the annual increment is entitled to the same even though he has retired on the very next day of earning the increment?”

Judgement of the Supreme Court and the legal reasoning:

The reasoning behind the final judgement of the Apex court can be drawn from the two important paragraphs i.e. The intent of the SC has been expressed in the following manner

Para 6.4 “Now so far as the submission on behalf of the appellants that the annual increment is in the form of incentive and to encourage an employee to perform well and therefore, once he is not in service, there is no question of grant of annual increment is concerned, the aforesaid has no substance. In a given case, it may happen that the employee earns the increment three days before his date of superannuation and therefore, even according to the Regulation 40(1) increment is accrued on the next day in that case also such an employee would not have one year service thereafter. It is to be noted that increment is earned on one year past service rendered in a time scale. Therefore, the aforesaid submission is not to be accepted.

Para 6.5 “Now, so far as the submission on behalf of the appellants that as the increment has accrued on the next day on which it is earned and therefore, even in a case where an employee has earned the increment one day prior to his retirement but he is not in service the day on which the increment is accrued is concerned, while considering the aforesaid issue, the object and purpose of grant of annual increment is required to be considered. A government servant is granted the annual increment based on his good conduct while rendering one year service. Increments are given annually to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency. Therefore, the increment is earned for rendering service with good conduct in a year/specified period. Therefore, the moment a government servant has rendered service for a specified period with good conduct, in a time scale, he is entitled to the annual increment, and it can be said that he has earned the annual increment for rendering the specified period of service with good conduct. Therefore, as such, he is entitled to the benefit of the annual increment on the eventuality of having served for a specified period (one year) with good conduct efficiently. Merely because, the government servant has retired on the very next day, how can he be denied the annual increment which he has earned and/or is entitled to for rendering the service with good conduct and efficiently in the preceding one year”

The Supreme Court’s judgment upheld the Karnataka High court’s order and dismissed the Civil Appeal filed by The Director (Admin. and HR), KPTCL & Ors. Following this order of the SC, many applications and petitions have been filed by various parties seeking the benefit of a notional increment for pensionary purposes.

Notable Applications and Petitions Filed Post-Judgment

1. Armed Forces Tribunal (AFT) – Principal Bench, New Delhi

In OA No. 1962/2023 with MA 5277/2023, Warrant Officer Madan Mohan Singh (Retd) sought the grant of a notional increment for the period from 1 July 2016 to 30 June 2017, based on the Supreme Court’s decision in Civil Appeal No. 2471/2023. The AFT allowed the application, directing the respondents to grant the notional increment and issue a revised Pension Payment Order (PPO) accordingly.

2. Central Administrative Tribunal (CAT) – Various Benches

Multiple applications have been filed before different benches of the CAT by retired employees of various departments, including the Department of Posts and the Indian Railways, seeking similar reliefs based on the precedent set by the Supreme Court.

3. High Courts and Other Judicial Forums

Several writ petitions and applications were in various High Courts across the country, invoking the Supreme Court’s judgment to claim the benefit of a notional increment for pensionary benefits.

Critical questions that deserve examination: The litigation for claim of notional increment initially did not involve the Central Government. The Central Government came into the

picture only after the judgement was delivered by the Supreme Court in Civil Appeal number 2471/2023. It would be pertinent to state that the claim for increment on a notional basis was legal issue between the employers of public sector undertakings and its employees, either at state level or at the central level. However, the judgement dated 11th April 2023 has seen a spate of claims for payment of Notional increment by many who were similarly situated but were not parties to the litigation.

The Department of Personnel and Training concluded that the judgement of the Supreme Court was a judgement in personam. The instructions given by DOPT stating that the judgement was a judgement in personam was followed by all other central ministries and a universal stand has been followed by stating that the judgement a judgement in personam.

The C.P. Mundinamani judgment addressed a specific, yet likely recurring, issue in service law: the entitlement to an annual increment for employees retiring the day after it was earned. The Supreme Court's ruling that denying the increment in such a scenario was improper, established a principle based on the concept of earned benefit. Given that this issue would likely affect numerous employees across various government and public sector undertakings, the DOPT's decision to treat it as jus in personam is indeed surprising, especially considering the precedents emphasising equal treatment.

The potential motivations behind such a stance, could be to avoid a significant financial burden and to minimise administrative effort. However, these considerations pale in comparison to the principles of fairness, equality, and the efficient administration of justice. Ignoring the broader implications of such a judgment and forcing individuals to litigate the same point can be seen as showing scant regard for the spirit of judicial pronouncements and the constitutional mandate of equality.

A More Principled Approach: Recognising Judgments with In Rem Effects in Service Law

A more principled and efficient approach would involve authorities carefully analysing Supreme Court judgments in service matters to determine if the underlying principles and the ratio decidendi have broad applicability to a class of employees. When a judgment interprets a fundamental rule or establishes a principle that would equally apply to all similarly situated individuals, authorities should proactively extend the benefits of that judgment without requiring each affected person to approach the courts.

This proactive approach aligns with the spirit of the Supreme Court's pronouncements on equality and reducing unnecessary litigation. It would also foster a more responsive and responsible administration that respects judicial precedents and the rights of its employees. Mechanisms for identifying similarly situated individuals and implementing the benefits at an administrative level should be explored and implemented.

Conclusion: Towards a More Equitable and Efficient System

In conclusion, while the technical distinction between jus in rem and jus in personam remains crucial in legal theory, its application in the context of service law judgments with broad implications requires a more nuanced and pragmatic approach. The Supreme Court has consistently emphasised the need to treat similarly situated persons alike, and authorities have a responsibility to uphold this principle.

Treating judgments that interpret fundamental service rules or constitutional principles narrowly as jus in personam leads to a cascade of unnecessary litigation, increased costs, overburdened courts, and administrative inefficiencies. A more enlightened approach involves

recognising the in rem effects of such judgments – their inherent applicability to all who find themselves in the same legal and factual matrix.

By proactively extending the benefits of these judgments, authorities can promote good governance, ensure uniformity and consistency in the application of law, save public resources, and avoid unnecessary hardship to individuals. Embracing this approach would be a significant step towards a more fair and efficient system of justice, where the spirit of judicial pronouncements is honoured, and the rights of all citizens are upheld without the need for repetitive and often arduous legal battles. The imperative lies with the authorities to move beyond a narrow interpretation of jus in personam and embrace a broader understanding of the binding effect of judicial precedents in ensuring fairness and equality for all.