

(2011) 02 KL CK 0048

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27855 of 2009

Asokan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 146, 202, 203, 204
General Clauses Act, 1897 — Section 16
Kerala High Court Service Rules, 1970 — Rule 35
Kerala High Court Service Rules, 2007 — Rule 4

Citation : (2011) 2 KLJ 89 : (2011) 1 KLT 931

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : K. Jaju Babu, M.U. Vijayalakshmi, Brijesh Mohan, T.R. Sadeesan and A. Haroon Rasheed, for the Appellant; O.V. Radhakrishnan K. Radhamani Amma and K. Sandesh Raja, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—In this Writ Petition the Petitioner are aggrieved by the conditions imposed in Ext.P1 order passed by the Government while sanctioning 90 additional posts in the High Court of Kerala. The sanction was ordered subject to the condition that "out of the sanctioned and existing posts, only so many shall be operated (i.e. filled up) as are commensurate with the number of Judges actually in position. This reduced strength should alone be taken not only for recruitment in the entry cadre posts, but also for filling up posts by promotion."

2. The Petitioners are now working in the cadre of Private Secretary to Judge in the High Court service. Their service conditions are governed by the Kerala High Court Service Rules, 2007 (for short "the Rules"). As per the said rules the post of Private Secretary is in Category 1, Sub Division (6) of Division 1 under Rule 4 of the Rules. The next promotion is to the post of Private Secretary to Judge (Higher Grade) in Category 1, Sub Division (6) of Division 1. It is stated that

they are the seniormost persons in the category of Private Secretary to Judge, eligible and entitled for promotion as Private Secretary to Judge (Higher Grade) in the next arising vacancies. The promotion to the post of P.S. to Judge and P.S. to Judge (Higher Grade) is made in the ratio 1:2.

3. In Ext.P1 Order 9 posts of P.S. to Judge have been sanctioned. Therefore, the promotion to the above posts are normally to be effected in the ratio 1:2 as mentioned above. When they claimed promotion by filing a representation, they came to know about the condition in Ext.P1 mentioned above.

4. The Petitioners further point out that at the same time the Government passed Ext.P2 order whereby 18 new additional posts of Law Officers (9 Senior Govt. Pleaders and 9 Govt. Pleaders) have been created specifically in the light of the creation of 9 additional posts of Judges in the High Court. "Actually, the creation of new posts in Ext.P1 is because of the creation of 9 additional posts of Judges. It is therefore submitted that there cannot be any different yardsticks in respect of the same situation. It is also submitted that the High Court even though requested the Government to delete the said condition in Ext.P1 as per Exts.P3 and P4 communications, the same have not been positively considered. The Petitioner also rely upon the legal position discernible from Ext.P6 judgment of this Court in W.P. (C) No. 24940/2004. Therein, this Court held that the recommendations made by the Hon'ble Chief Justice have to be looked upon with respect and regard and ought not be kept away for consideration unless there are very good reasons.

5. The Government as well as the High Court have filed separate counter affidavits.

6. Heard learned Counsel for the Petitioners Shri K. Jaju Babu, Shri O.V. Radhakrishnan, learned Senior Counsel appearing for the High Court and Shri Sandesh Raja, learned Govt. Pleader.

7. Learned Counsel for the Petitioners submitted that the creation of new posts is in tune with the sanctioning of 9 additional posts of Judges in the High Court. It is pointed out that the restriction in Ext.P1 cannot be sustained for more reasons than one. Firstly, it is against the Constitutional scheme of Article 229(1) of the Constitution of India. The power of appointment of the Chief Justice under Article 229(1) of the Constitution cannot be curtailed by the Government in any manner. The action is therefore without any legal sanction. It is also pointed out that while creating 18 posts of Government Pleaders taking into consideration the creation of 9 new posts of Judges in the High Court, the Government has not imposed any such condition. Therefore, it is submitted that with regard to the High Court service alone, the Government has treated the matter in a discriminatory manner which cannot be justified in the light of Article 14 of the Constitution of India.

8. The first Respondent has filed a counter affidavit supporting the order. Mainly, it is contended that the condition was insisted by the Government in order to

check the tendency of engaging surplus staff even when there are no required number of Judges. This "decision was approved by the Council of Ministers also. With regard to Ext.P2 order, it is stated that the Law Officers are posted for three years on a consolidated pay and the nature of their work is also not comparable to that of the Petitioners or any of the posts mentioned in Ext.P1 Govt. Order.

9. In the counter affidavit filed by the Registrar General of the High Court, the illegality in the condition imposed in Ext.P1, has been explained.

10. The fact that 9 posts of Judges have been created, is the requirement to sanction the posts. The total number of posts sanctioned is 90, as per Ext.P1, The further question is after sanctioning the posts, can there be a restriction on the power of the Chief Justice to fill up the posts?

11. The relevant article under the Constitution is Article 229(1) which reads as follows:

229. Officers and servants and the expenses of High Courts. - (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

Clauses (2) and (3) are not relevant for the purpose of this case, since Clause (2) relates to prescription of conditions of service of officers of the High Court by making rules by the Chief Justice of the Court and the proviso states that such rule relating to salaries, allowances, leave or pension, require the approval of the Governor of the State and Clause (3) states that the administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

12. Shri O.V. Radhakrishnan, learned Senior Counsel appearing for the High Court submitted that in the light of the decisions of the Apex Court by two different Constitution Benches, the issue is no longer *res Integra*. It is therefore, pointed out that there cannot be any restriction with regard to the power conferred on the Chief Justice to make appointment of officers under Article 229(1) of the Constitution.

13. The first of those decisions is *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, . The facts of the case show that therein, the Government by letter dated 6.8.1958 agreed to the proposed re-organisation of the Stenographers Service in the High Court with effect from 21.5.1955 "subject to the condition that the procedure of recruitment, promotion, etc. should be in the same or similar manner as laid down in the Government resolution dated

October 2, 1955." The legality of the same was the subject matter of consideration by the Apex Court. The Apex Court considered the question in detail in paragraph 7 which is extracted below:

7. We may now refer to the constitutional provisions for determining the power and authority of the Chief Justice of a High Court in the matter of appointments of officers and servants of that court. Clause (1) of Article 229 provides that appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the court as he may direct i.e. his nominee. The proviso empowers the Governor of the State to require by Rule in certain cases to make appointments after consultation with the State Public Service Commission. Clause (2) of the Article contains two important provisions. The first is conditions of service of officers and servants of a High Court shall be such as may be prescribed by Rules made by the Chief Justice or his nominee. This is, however, subject to the provisions of any law made by the legislature of the State. The second is that the Rules so far as they relate to salaries, allowances and pensions require the approval of the Governor. Clause (3) declares that the administrative expenses of a High Court including all salaries, allowances etc. in respect of officers and servants of the court shall be charges upon the Consolidated Fund of the State. Under Article 202 the Governor shall, in respect of every financial year, cause to be laid before the House or House of the legislature of the State a statement of the estimated receipts and expenditure for that year. Under Clause (2) the estimates of expenditure shall show separately (a) the sums required to meet expenditure described by the Constitution as expenditure charged upon the Consolidated Fund of the State and (b) the sums required to meet other expenditure. Clause (3) gives the expenditure which shall be charged on the Consolidated Fund of each State. Clause (f) reads "any other expenditure declared by this Constitution or by the legislature of the State by law to be so charged." Under Article 203 the estimates which relate to expenditure charged upon the Consolidated Fund of the State shall not be submitted to the vote of the legislative assembly. Article 204 relates to Appropriation Bills. The bill to provide for appropriation out of the Consolidated Fund of the State must include the expenditure charged on mat Fund. Clause (2) prevents any amendment being proposed to an Appropriation Bill which will have the effect, inter alia, of varying the amount or altering the destination of any grant or varying the amount of expenditure charged on the Consolidated Fund of the State. Article 146 contains provisions relating to officers and servants of the Supreme Court in terms analogous to Article 229 the other provisions being also similar.

Paragraph 8 is also important which delineates the Constitutional scheme and laid down that Chief Justice is the Supreme Authority. The principle relevant have been laid down thus:

8. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter or appointments of

officers and servants of a High Court it is the Chief Justice of his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited, extent that is provided in the Article. This is essentially to secure and maintain the independence of the High Courts. The anxiety of the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judge of the High Court nor can the amount of any expenditure so charged be varied even by the legislature. Clause (1) read with Clause (2) of Article 229 confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments even the legislature cannot abridge or modify the powers conferred on the Chief Justice under Clause (1). The approval of the Governor, as noticed in the matter of Rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval.

14. It is evident from the above dictum that in the matter of appointments, even the legislature cannot abridge or modify the powers conferred on the Chief Justice under Clause (1) of Article 229 of the Constitution. The approval of the Governor is confined only to such rules as relates to salaries, allowances, leave or pension. It is clear from the principles stated by the Apex Court that it is the Chief Justice who is the supreme authority and there can be no interference by the executive authority in the matter of appointment of officers. The same has to be maintained to secure the independence of the High Courts. Thus, there cannot be any interference of such powers by any authorities, evidently. Ultimately, in para. 13 their Lordships held, while considering the conditions stipulated by the Government, as follows:

It may be stated at once that any restrictions imposed by the Government of the above nature while communicating the sanction could not bind the Chief Justice in view of Article 229 of the Constitution.

15. A similar question was considered by another Constitution Bench in Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, . Therein, after referring to the decision in M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others, , it was held thus in para. 27:

In the context of Article 229, read as a whole, the power of appointment vested in the Chief Justice of High Court is of wide amplitude. The word "appointment" in Article 229(1) is to be construed according to the axiom that the greater includes the less. The cardinal canon of interpretation underlies S.16 of the General Clauses Act which has been made applicable by Article 317(1). Construed in the light of the juristic principle the power of "appointment"

conferred by Article 229(1) includes the power to suspend, dismiss, remove or compulsorily retire from service. In short, in regard to the servants and officers of the High Court, Article 229 makes the power of appointment, dismissal, removal, suspension, reduction in rank, compulsory retirement, etc, including the power to prescribe their conditions of service, the sole preserve of the Chief Justice, and no extraneous executive authority can interfere with the exercise of that power by the Chief Justice or his nominee, except to a very limited extent indicated in the Provisions, In conferring such exclusive and supreme powers on the Chief Justice, the object which the Founding Fathers had in view, was to ensure independence of the High Court.

16. The next important decision relied upon by the learned Counsel for the Petitioners and learned Senior Counsel appearing for the High Court is that of the Apex Court in Union of India (UOI) and Another Vs. S.B. Vohra and Others, Therein, a three Judges Bench of the Apex Court was considering the scope of Article 229(2) and the proviso. The principle that independence of the High Court and that the power vested in the High Court should be free from interference by the Government was specified therein. In para. 11 it was held thus:

11. Independence of the High Court is an essential feature for working of the democratic form of government in the country. An absolute control, therefore, has been vested in the High Court over its staff which would be free from interference from the Government subject of course to the limitations imposed by the said provision. There cannot be, however, any doubt whatsoever that while exercising such a power the Chief Justice of the High Court would only be bound by the limitation contained in Clause (2) of Article 229 of the Constitution of India and the proviso appended thereto Approval of the President/Governor of the State is, thus, required to be obtained in relation to the rules containing provisions as regards salary, allowances, leave or promotion. It is trite that such approval should ordinarily be granted as a matter of course.

Hence, for the purpose of Article 229(2) the approval of the Governor is required in respect of the rules concerning salary, allowances, leave or promotion. Obviously, the power conferred under Article 229(1) is not subject to any limitations.

17. This Court in High Court Non-Graduate Staff Association v. State of Kerala (1997 (2) KLT 665) elaborately considered various aspects and the Constitutional scheme was examined in detail. That was a case where the benefits granted to certain categories of posts in the Secretariat were not extended to similar categories of posts in the High Court. The posts in question were the posts of Typist Grade II, Typist Grade I, Senior Grade Typist, etc. etc. Paras. 15 and 16 of the judgment are relevant for the purpose of this case which are extracted below:

The object of Article 229 of the Constitution of India is to secure independence of the High Court, which is essential for the working of the democratic form of Government in this country by giving the High Court the absolute control over its

staff, subject only to the limitations imposed by the Article itself and free from interference by the Government. Object of the Article is to secure independence of the High Court which is not possible, unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice. However, in the matter of salaries, allowances, leave or pensions, approval has to be obtained from the Governor of the State. Article 229 is a Code by itself for making rules for appointment of members of staff of the High Court as well as for prescribing conditions of service. The Chief Justice of Kerala in exercise of the powers conferred by Article 229 of the Constitution of India, also framed the Kerala High Court Service Rules, 1970 with regard to conditions of service of Officers and servants of the High Court. R. 35 of the Rules also emphasises that except with regard to salaries, allowances, leave and pension, the Chief Justice shall exercise the powers vested in the Governor or the Government under the Rules. However, Chief Justice can specifically issue orders sanctioning the grant of the scales of pay and allowances to the members of the service in accordance with those sanctioned by the Government. As per Article 229 read with R.35 of the Kerala High Court Service Rules, 1970, Chief Justice is to get approval of the Governor of the State with regard to salaries, allowances, leave or pensions.

Therefore, it is evident from the above dictum also that the power of the Chief Justice with regard to the appointment, cannot be interfered with by the executive. The limited power under Clause (2) of Article 229 is with regard to the approval for rules governing salaries, allowances, leave or pension. It was held further in para 18 that "it is true that the Chief Justice of the State has been placed at a higher level in regard to the framing of rules containing the conditions of service." After referring to the decisions of the Apex Court, finally it was held that as per Article 229 read with Rule 35 of the Kerala High Court Service Rules, 1970, Chief Justice is to get approval of the Governor of the State with regard to salaries, allowances, leave or pension. Hence, the scheme under Article 229(1) is quite different.

18. I may also refer to some other decisions cited at the Bar with regard to the various aspects of the power conferred under Article 229 and the scheme thereof.

19. In *State of U.P. and another Vs. C.L. Agrawal and another, etc.*, another Constitution Bench considered the question whether the Governor's prior approval is required with regard to the sanction of advance/premature increments to the staff of the High Court by the Chief Justice. It was held that the same is not required. Therein also, the Constitutional scheme was examined in detail.

20. In *High Court Employees' Welfare Association, Calcutta and Others Vs. State of West Bengal and Others*, the Apex Court was considering the scheme under Article 229(2) alone and not Article 229(1).

21. In fact, learned Govt. Pleader relied upon the same to contend that the restriction imposed by Bxt.P1 can be justified. Evidently, the said judgment was

concerning the scope of Article 229(2) alone. Therein various decisions of the Apex Court have been considered in detail.

22. This Court had occasion to consider the scheme of Article 229(2) of the Constitution, in *Valsalakumari v. State of Kerala* 2007 (3) KLT 805. The same was one concerning enhancement of retirement age. The entire scheme was analysed in the light of various decisions of the Apex Court referred to above and other decisions. It was held in para. 13 that "Independence of Judiciary is one of the basic features of our Constitution. Various provisions are included in the Constitution to guarantee the independence of the judiciary and to insulate it from the influence of the Executive. Article 229(2) is one among them But the founding fathers have taken care to ensure that at least in relation to four main matters involving financial commitment, the approval of the Governor is necessary. But in relation to other matters not covered by the four enumerated items, which may involve financial commitment, the approval of the Governor is not necessary." The scheme was further analysed in *Valsalakumari v. State of Kerala* (2008 (1) KLT 672). Therein, the challenge was in respect of the Ordinance, viz. High Court Services (Determination of Retirement Age) Ordinance, 2007. The learned Judge after referring to various aspects, held thus in para 21, with respect to Article 229(1):

21. Insofar as Article 229(1) is concerned, as observed by the Hon"ble Supreme Court in *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, , the power conferred on the Hon"ble Chief Justice is absolute and clear. It is a power conferred under the Constitution on a high constitutional functionary and it is not open even for the legislature to pass any law, which has the effect of interfering with or diluting the exercise of such power by the Hon"ble Chief Justice. The said position of law does not admit of any equivocation as such.

Therein, the scope of the power under Article, 229(2) was examined further. But in the course of discussion, it was held thus in para 30:

30. But, having said this, it must be made clear beyond any controversy or doubt that the power exercised under Article 229(1) of the Constitution is absolute and plenary. It is constitutionally conferred and it is not subject to any legislative power either by the competent legislature or by the Governor in exercise of the power by the Governor under Article 213 of the Constitution. The conferment of such power on the Hon"ble Chief Justice under Article 229(1) of the Constitution is to secure the independence of the judiciary and obviously to insulate the officers and servants of the High Court also from the influence of the executive in any manner. Having said so, it also requires to be asserted and affirmed that any law made by the State legislature relatable to the conditions of service of officers and servants of the High Court as comprehended by Article 229(2) shall not, in any manner, operate in such a manner as to interfere with the exercise of the plenary power by the Chief Justice under Article 229(1) of the Constitution.

Therefore, the legal position admits of no doubt that as far as the power or appointment of the Chief Justice under Article 229(1) is concerned, the said power is absolute and plenary. It cannot be abridged by the competent legislature or by the Governor. Evidently, as held by this Court, conferment of such power on the Chief Justice in Article 229 is to secure the independence of the judiciary and obviously to insulate the officers and servants of the High Court also from the influence of the executive in any manner.

23. In this context, learned Government Pleader tried to explain that what is involved is only a policy decision by the Government. It is further argued that financial implications are matters which the Government can consider and therefore in the absence of filling up of all the nine posts of Judges, if promotions are effected, the Government may have to pay the salary unnecessarily. In fact, this aspect is highlighted in the counter affidavit also by stating that there will be surplus staff when there are no required number of Judges.

24. In fact, the said contention has been answered by the Petitioners by filing a reply affidavit stating that the same is raised without considering the role and duties of the Private Secretaries and Personal Assistants to Judges. It is pointed out that with the present rate of cases being filed and disposed of, the present strength of Private Secretaries and Personal Assistants are not at all sufficient to cater to the needs of the office. It is explained that there is heavy workload because of shortage of staff and the sanction of staff strength is not commensurate with the extent of work. The work of Private Secretaries and Personal Assistants would involve taking down the dictation, typing Out the judgment, getting it corrected by the Hon"ble Judge, preparing fair copy and getting it signed, taking carbon copies of the same, preparing head notes, including exhibits, etc. etc. It is pointed out that the right of the Petitioners cannot thus be denied.

25. The decisions relied upon by the learned Government Pleader are : Rajendra and Others Vs. State of Rajasthan and Others, , Dilip Kumar Garg and Another Vs. State of U.P. and Others, and State of Uttar Pradesh Vs. Section Officer Brotherhood and Another, . Reliance is also placed on State of U.P. and another Vs. C.L. Agrawal and another, etc., , especially para. 18. There, the importance of exchange between the Constitutional functionaries was reiterated. In fact Rajendra and Others Vs. State of Rajasthan and Others, is one concerning the challenge against the abolition of posts and the consequential termination. There, the posts were created for a particular project and the challenge was repelled and it is stated thus in para 13:

When the posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end on account of the need for the project itself having come to an end either because the project was fulfilled or had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for

creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose.

In fact, the situation herein is not similar or identical. Therefore, the said dictum will not apply here.

26. The decision of the Apex Court in Dilip Kumar Garg and Another Vs. State of U.P. and Others, was considering the Scope of interference by exercise of power of judicial review in policy matters. It was held in paragraphs 15 and 16 that "the Courts should not readily interfere with administrative decisions and the Court should not ordinarily interfere in policy decisions unless there is a clear violation of some constitutional provisions or the statute." Actually, the situation herein is not identical. The decision in State of Uttar Pradesh Vs. Section Officer Brotherhood and Another, considered the scheme under Article 229(2) of the Constitution and not Article 229(1). Further, herein, clearly there is a violation of the Constitutional scheme under Article 229(1) in prescribing the conditions by the executive and therefore even if It is a policy decision, if it is violative of the Constitutional scheme, the same can be gone into by this Court. Therefore, the said dictum also will not help the arguments raised by the learned Government Pleader.

27. Learned Senior Counsel for the High Court submitted that there cannot be a situation wherein the cadre strength is left indefinite. By relying upon R.5 of K.S. & S.S.R., it is submitted that when ratio promotions have to be made, the conditions like those fixed in Ext.P1 will become unworkable. Note 3 to Rule 5 of K.S. & S.S.R. reads thus:

(3) Whenever a ratio or percentage is fixed for different methods of recruitment/ appointment to a post the number of vacancies to be filled up by candidates from each method shall be decided by applying the fixed ratio or percentage to the cadre strength of the post to which the recruitment /transfer is made and not to the vacancies existing at that time.

Evidently, the said argument is of much force.

28. It is evident mat the conditions prescribed in Ext.P1 interferes with the power of the Chief Justice to make appointment. The executive power cannot thus be invoked to override the powers conferred on the Chief Justice under the Constitution. There is exclusive power as far as the Chief Justice is concerned, in the matter of appointment of staff in the High Court. This is prescribed to maintain the independence of judiciary and the external interference of other authorities have to be checked also. It is in that manner the issue has to be understood. The restrictions, if any, under Article 229(2) for approval by Governor can only be of specified matters, that also with regard to the rules framed. Therefore, as held by the Apex Court in M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others, , any such restrictions imposed while communicating the sanction for the post cannot bind. the Chief Justice.

29. Learned Govt. Pleader, by relying upon the decision in State of Uttar Pradesh Vs. Section Officer Brotherhood and Another, submitted that the matter may be left for the discussion between the Government and the High Court and this Court need not go into the various aspects. This plea was opposed by the learned Counsel for the Petitioners and learned Senior Counsel appearing for the High Court by pointing out that even though several times the matter was brought to the notice of the Government, they refused to consider the same. In fact in para 46 of the decision in Union of India (UOI) and Another Vs. S.B. Vohra and Others, the Apex Court clearly expressed the anxiety in the matter when difference of opinion persists between the Central Government or the State Government and the Chief Justice and they will have to settle it by discussion. It was held thus in para. 46:

Decisions of this Court, as discussed hereinbefore, in no unmistakable terms suggest that it is the primary duty of the Union of India or the State concerned normally to accept the suggestion made by a holder of a high office like a Chief Justice of a High Court and differ with his recommendations only in exceptional cases. The reason for differing with the opinion of the holder, of such high office must be cogent and sufficient. Even in case of such difference of opinion, the authorities must discuss amongst themselves and try to iron out the differences. The Appellant unfortunately did not perform its own duties.

30. Herein, one aspect is evident that the matter was under correspondence by the Registrar General of High Court repeatedly as evident from Exts.P3 and P4 communications. In Ext.P3, the Registrar General of the High Court, as directed by the Chief Justice, took up the matter with the Government again for deleting the rider contained in Ext.P1, as it is causing administrative inconvenience to the High Court establishment. The same is dated 11.6.2009. Thereafter, on 10.8.2009 also the matter was taken up with the Government as per Ext.P4.

31. The counter affidavit filed by the High Court explains the position further. It is stated in para 9 that the restraining rider in Ext.P1 disables the filling up of the remaining four posts of P.S. to Judge and also ratio based promotion to the two posts of P.S to Judge (Hr. Grade). Filling up of the post in accordance with the number of Judges will create a lot of administrative difficulties. If the conditions in Ext.P1 order are followed, appointments to the 90 posts can be made only after the Judges are appointed, which will adversely affect the functioning of the Court. Filling up of the post against varying working strength in the categories creates a lot of hardship to the establishment. So long as the restraining conditions in Ext.P1 is operative, the staff newly appointed will have to be reverted/discharged from service when a Judge retires from service. It is pointed out that the Government while declining the request of the High Court, as per Ext.R2(i), has only pointed out that the Government sticks to its earlier decision and regrets its inability to agree to the request of the High Court. These aspects have been stated in the counter affidavit filed by the first Respondent also. What is mentioned in Ext.R1(a) by the Government is that the order Ext.P1 was

approved by the Council or Ministers. Hence, the Government regrets its inability to delete the conditions stipulated in the said order. It is further stated that however, in case of any reversion occurs, it may take up with the Government. Therefore, the Government has stuck to its stand. Evidently, as rightly pointed out by the learned Counsel for the Petitioners, as per the conditions in Ext P1, every time the matter will have to be taken up with the Government, even in case of reversion. Thus, the same will result in interference with the plenary power conferred on the Chief Justice under Article 229(1) of the Constitution of India. Such executive fiat cannot be recognised in the light of the Constitutional scheme and in the light of the principles stated in the various decisions referred to above. In that view of the matter, the rider put in Ext.PI cannot be sustained.

32. Therefore, the Writ Petition is allowed. The condition in Ext.PI that "out of the sanctioned and existing posts, only so many shall be operated (i.e. filled up) as are commensurate with the number of Judges actually in position and that the reduced strength should alone be taken not only for recruitment in the entry cadre posts, but also for filling up posts by promotion", is quashed as it is violative of Article 229(1) of the Constitution. There will be a direction to consider the claim of promotion of the Petitioners as Private Secretary to Judge (Hr. Grade) depending upon the number of vacancies and the dates of occurrence of vacancies and appropriate orders will be passed expeditiously. No costs.