

(2011) 03 AHC CK 0118

In the Allahabad High Court

Case No : Civil Miscellaneous Review Application No. 258275 of 2010 in Civil Miscellaneous Writ Petition No. 19454 of 2007

Class IV, Employees Association, High Court and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Constitution of India, 1950 — Article 166, 166(2), 166(3), 229, 229(2)

Citation : (2011) 03 AHC CK 0118

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—This review application has been filed on behalf of the State of Uttar Pradesh through the Principal Secretary (Nyaya), Secretariat, Lucknow and on behalf of Principal Secretary, Finance, Government of U.P., Lucknow.

2. The cause title of the review application wrongly records that the application is being filed on behalf of the High Court of Judicature at Allahabad through its Registrar General also. Sri Yashwant Verma, learned Counsel for the High Court has made a categorical statement that the High Court has not instructed Sri M.C. Tripathi, learned Additional Standing Counsel to file any review application on its behalf nor the High Court seeks review of the judgment and order of the Single Judge dated 27th May, 2009 passed in the present writ petition. He clarifies that the High Court did not file any special appeal against the said judgment nor it approached the Hon''ble Supreme Court of India.

3. Before advertng to the merits of the review application, it would be necessary to refer to the facts leading to the present review application in short.

4. Present writ petition was filed by the Class IV Employees' Association, High Court of Judicature at Allahabad for quashing the order dated 28th February, 2007 passed by the Principal Secretary (Nyaya), Secretariat, Lucknow

(Annexure-12 to the writ petition) as well as the decision taken in the meeting dated 29th July, 2006 brought on record as Annexure-13 to the writ petition. A mandamus was also prayed for commanding the Respondents to forthwith implement the recommendations of the High Court regarding fixation of pay-scale qua class IV employees working in the establishment of the High Court.

5. After exchange of affidavits, the writ petition came up for consideration before a Hon"ble Single Judge of this Court, who, by means of the judgment and order dated 27th May, 2009, held that the order of the State Government dated 28th February, 2007 was unsustainable. It was accordingly quashed. The writ petition was allowed and a mandamus was issued to the State Government to place the draft rules framed by The Chief Justice of the High Court under Article 229 of the Constitution of India for approval before the Governor of the State. The exercise in that regard be carried out as early as possible.

6. Not being satisfied with the judgment so passed by the Hon"ble Single Judge, the State of Uttar Pradesh through its Principal Secretary (Law) and the Principal Secretary (Finance), U.P. Government at Lucknow filed Special Appeal No. 1487 of 2009. The Division Bench of this Court disposed of the said special appeal on 18th May, 2010 by means of following judgment:

Learned Additional Advocate General submits that the decision has already been taken by the State Government, which was brought on record and has not been considered by the learned Single Judge. This is a ground of review and not ground of special appeal.

Therefore, the special appeal is dismissed with liberty to file review application before the learned Single Judge.

7. The State of Uttar Pradesh was not satisfied even thereafter and therefore, it filed special leave to appeal before the Hon"ble Supreme Court of India being Special Leave to Appeal (Civil) CC 11965 of 2010 (State of U.P. and Anr. v. Class-IV Empl. Ass. H.C. At Allahabad and Ors.). The special leave to appeal was also disposed of by the Hon"ble Supreme Court of India vide judgment and order dated 16th August, 2010, by providing that it did not intend to entertain the SLP at this stage as the issues, which had already been raised therein, could be effectively taken up in the review application before the Hon"ble Single Judge for which liberty was already granted by the Division Bench of the High Court. It is worthwhile to reproduce the order of the Hon"ble Supreme Court which reads as follows:

Delay condoned.

Having heard the learned Counsel appearing for the Petitioner, we do not intend to entertain this SLP at this stage, as according to us, the issues which are raised herein could also be effectively taken up in a review application before the learned Single Judge for which the liberty is also granted by the Division Bench of the High Court. On going through the records, we find that one of the grounds

for interference by the learned Single Judge was that the matter was never placed before the Council of Ministers/Hon''ble Chief Minister and also not before the Governor. It is also held by the Single Judge that the State Government rejected the recommendation only on its own accord. It is the submission of the counsel that the aforesaid position is belied and contrary to the original records and affidavits filed. Let all these pleas be taken up by the Petitioner herein by filing an appropriate review application for which liberty was also granted by the Division Bench of the Allahabad High Court. Such a review application, if any, could be filed within a period of two weeks and as and when such application is filed, the application shall be considered on its own merits and shall be disposed of as expeditiously as possible. Proceedings on the contempt petition shall be kept at abeyance, if and when a review is filed.

The SLP is disposed of in terms of the aforesaid order.

8. Hence the present review application.

9. I have heard Sri Jafar Naiyyer, learned Additional Advocate General assisted by Sri M.C. Tripathi, learned Additional Chief Standing Counsel for the State-applicants, Sri Yashwant Verma, learned Counsel for High Court of Judicature at Allahabad and Sri Sashi Nandan, learned Senior Advocate assisted by Sri Namit Srivastava, Advocate for Class IV Employees Association, High Court of Judicature at Allahabad.

10. At the very outset, it may be recorded that from the judgment of the Single Judge, deciding the present writ petition, as per judgment and order dated 27th May, 2009 following facts emerge:

(a) Class IV Employees' Association High Court of Judicature at Allahabad filed Civil Misc. Writ Petition No. 15211 of 1997 seeking a writ of mandamus commanding the State Government to grant the pay-scale of Rs. 975-1600 to Class-IV employees working in the pay-scale of Rs. 750-940/- and the scale of Rs. 1000-1750 to employees working in the pay-scale of Rs. 975-1630/-w.e.f. 1st January, 1986. The relief was based on a plea of parity with the Class-IV employees working in the Delhi High Court. The writ petition was allowed vide judgment and order dated 6th February, 1998 and the pay-scale prayed for was granted, w.e.f. 1st July, 1994 alongwith arrears. Feeling aggrieved by the said judgment, the State of Uttar Pradesh filed an intra Court appeal being Special Appeal No. 200 of 1998, which was allowed vide judgment and order dated 5th November, 2003 on the ground that it was for the Hon''ble The Chief Justice to take a decision with regard to grant of a higher pay-scale. Against the judgment dated 5th November, 2003, Class-IV Employees filed SLP No. 887 of 2004 before the Hon''ble Supreme Court of India. The special leave to appeal was disposed of by following judgment:

Heard learned Counsel for the parties.

Leave granted.

The principle laid down by this Court in State of Uttar Pradesh Vs. Section Officer Brotherhood and Another, shall apply to this case. The appeal is accordingly disposed of.

(b) It was noticed that in respect of employees working as Section Officers, Private Secretaries and Bench Secretaries in the establishment of High Court, similar writ petitions were filed for grant of higher pay-scales, which were allowed vide various judgments of the High Court. The State filed SLP before the Supreme Court of India being Civil Appeal No. 1980 of 2000 (State of U.P. v. Section Officers" Brotherhood and Anr.). The Supreme Court of India set aside the judgment and order of the High Court on the ground that no mandamus can be issued to the State Government to increase the pay-scale of employees of the High Court as such determination of the pay-scale could be done on recommendation of the Expert Body by The Chief Justice by framing Rules under Article 229 of the Constitution of India.

(c) The Chief Justice, in accordance with the aforesaid judgment, vide order dated 28th November, 2004 constituted a Committee of 4 Hon'ble Judges of the High Court to examine and to recommend the pay-scale and other service condition qua the employees working in the establishment of the High Court. The Committee submitted its report on 23rd December, 2004 and recommended that the Class-IV employees working on the posts of Jamadar, Daftari, Bundle Lifter and Head Mali, which required technical qualifications or are to be filled by way of promotion, be provided the pay-scale of Rs. 3200-4900/-, while all other be placed in the scale of 3050-4590/.

(d) The Chief Justice accepted the recommendation of the four Judges" Committee vide order dated 24th December, 2004 and, accordingly, approved the draft Rule known as "Allahabad High Court Officers and Staff (Conditions of Service and Conduct) (Amendment) Rules, 2005" (herein after referred to as the "Rules, 2005").

(e) The draft Rules were forwarded by the Registrar General of the High Court to the State Government for necessary approval in view of the financial implication involved therein in the matter of fixation of salary. Some deliberation took place and ultimate a High Power Committee involving Officers of the High Court and the State Government met on 21st May, 2005 and took a decision that the High Court should review its recommendation, as the Finance Department of the State of Uttar Pradesh was of the opinion that grant of pay-scale as recommended by the High Court to its Class-IV employees was on the higher side vis-a-vis the Class-IV employees working in the State Government. This will create financial problems for the State Government.

(f) The report of the High Power Committee was placed before the Chief Justice, who vide order dated 1st August, 2005 required the same to be placed before the Four Judges Committee. The Four Judges Committee reconsidered the matter and opined that the note put up on the recommendation by the High Power

Committee was wholly misconceived. The pay-scale, as recommended should be enforced.

(g) Further deliberation took place between the officials of the State Government and the High Court. Suffice is to refer to the letter of the Registrar General of the High Court 26th December, 2004, requiring the State Government to take an appropriate decision on the recommendation made by the Four Judges Committee, which did not require any clarification/ justification.

(h) At this stage of the proceedings, writ petition was filed by the Employees' Association being Civil Misc. Writ Petition No. 27201 of 2006, which was disposed of vide judgment and order dated 17th May, 2006 requiring the State Government to process the recommendation of The Chief Justice within the time specified. Since no effective decision was taken in the matter, contempt petition was filed by the association being Contempt Petition No. 5387 of 2006.

(i) The State Government then took a decision on 28th February, 2007 recording therein that it was not possible for the State Government to pay salary as recommended under the Draft Rules, 2005 by The Chief Justice. It is against this decision that the present writ petition has been filed.

(j) The Single Judge after taking into consideration the judgments of the Hon'ble Supreme Court of India in the case of State of Himachal Pradesh Vs. Shri. P.D. Attri and Others, as well as the powers of the Chief Justice under Article 229 of the Constitution of India as interpreted by the Hon'ble Supreme Court of India in the case of M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others, State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others, Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, High Court Employees' Welfare Association, Calcutta and Others Vs. State of West Bengal and Others, Union of India (UOI) and Another Vs. S.B. Vohra and Others, High Court of Judicature for High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another, State of Maharashtra Vs. Association of Court Stenos., P.A., P.S. and Another, held that the recommendations made by The Chief Justice of the High Court under Article 229 of the Constitution of India have to be honoured. The Chief Justice is the sole authority for determining the salary of the employees of the High Court and except for compelling reasons, such recommendations of The Chief Justice, have to be accepted. It has been held that the power exercised by the Chief Justice was legislative in nature and the objections raised by the State Government are without jurisdiction, as they encroach upon the legislative function of The Chief Justice. The Single Judge went to hold that for independence of the judiciary, it is but necessary that the High Court should not be asked to approach the State Government with begging bowls in its hand. Such was never the intention of the framers of the Constitution. The State Government cannot insist that the salary which is being paid by the State Government to its own Class-IV employees should be at par with the Class-IV employees working in the establishment of the High Court. It was recorded that from the recommendation of the Four Judges

Committee it was apparent that the Class-IV employees working in the establishment of High Court are required to perform important duties and jobs, which were entrusted to them, for maintaining the dignity and standard of the High Court. It was apparent that they are contributing to the smooth functioning of the Court and performing important public duties without any complaint and keeping longer hours without any special allowances as paid to the employees of the State Secretariat. They perform different nature of duties and are required to work for longer hours not only in the High Court but also at the residence of the Hon'ble Judges. Therefore, it was not fair to equate the Class-IV employees of the High Court with that of the State Government. The Single Judge held that in the said factual background, the Four Judges' Committee has rightly held that the employees of the High Court are performing no less onerous and arduous duties as their counter parts in the Delhi High Court.

11. After arriving at the aforesaid conclusion, the Hon'ble Single Judge went to examine another aspect of the matter, namely, the decision as communicated under the impugned order dated 28th February, 2007, had in fact not been taken by the Chief Minister or the Council of the Ministers, but such decision had been arrived at by the Principal Secretary to the Chief Minister only.

12. Sri Jafar Naiyyer, learned Additional Advocate General on behalf of the State of Uttar Pradesh in support of the present review application, has pressed only two points:

(a) decision in fact had been taken by the Chief Minister and there has been misreading of the affidavits and the original records of the State Government, which were produced before the Single Judge. It has wrongly been recorded that the decision has been taken by the Principal Secretary to the Chief Minister. The decision in fact has been taken by the Chief Minister.

(b) grant of higher pay-scale to the Class-IV employees working in the establishment of the High Court would create a situation where similar demands could be raised by the Class-IV employees of the State Secretariat and other departments of the State causing undue financial burden upon the State Government. He explains that earlier employees of the High Court had all along been claiming parity with the employees of the State Secretariat. The State Government is maintaining such parity. Class-IV employees working in the establishment of the High Court cannot be provided pay-scale at par with the employees working in the Delhi High Court. The employees working in the Delhi High Court work in different conditions as applicable to the State of Delhi. The living conditions etc. are different in the State of Uttar Pradesh specifically at Allahabad and Lucknow vis-a-vis at New Delhi, therefore, no parity exists. In support of the aforesaid plea, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of State of Uttar Pradesh Vs. Section Officer Brotherhood and Another, .

13. This Court may first notice the facts, as have been pleaded in support of

point (a). According to the learned Additional Advocate General, from the original records, which are before this Court, it is apparent that at page 36, the report of the Special Secretary (Law) dated 15th February, 2007 was put up for approval of the Chief Minister. He submits that although the Chief Minister has not put her signatures thereto, but the note appended at page-36 of the original records, which reads as follows:

Anil Kumar, Principal Secretary to Chief Minister, Uttar Pradesh dated 26.2.2007

it has to be accepted that the Chief Minister had taken a decision approving the note put up by the Special Secretary (Law). He also refers to the note dated 10th July, 2009 prepared by the Principal Secretary (Law) which bears the following endorsement:

Arun Kumar Sinha, Principal Secretary to Chief Minister, Uttar Pradesh

14. He contends that the said records was before the Single Judge, who failed to take note of the said facts, resulting in an error on the face of the record, qua the decision dated 26th February, 2007 having being taken by the Principal Secretary to the Chief Minister and not by the Chief Minister himself.

15. The learned Additional Advocate General with reference to the judgment of the Constitution Bench of the Supreme Court of India in the case of *Samsher Singh Vs. State of Punjab* and Another, submits that the decisions on behalf of the State Government are taken in the name of the Governor of the State and the Governor in exercise of powers under Article 166(3) of the Constitution of India, while framing the Rules of Business, can allocate various subjects amongst the various Ministers, he may go further and designate a particular official to discharge any particular function, on the advice of the Council of Ministers. Such discharge of function by the official concerned has to be treated as the decision of the Minister concerned on behalf of the Government. He explains that such decision of the officer/official is not because of any delegation, but constitutionally, it is the act or decision of the Minister. He therefore, submits that in the facts of the present case, the note of the Principal Secretary dated 28th February, 2007 should have been taken as a decision of the Chief Minister.

16. In the alternative it is at least an authentication of the decision taken by the Chief Minister. He clarifies that it is the Chief Minister, who had taken the decision, as recorded on 26th February, 2007, whereby the High Court was informed that it is not possible for the State to accept the pay-scale recommended for financial constrains and the consequences, which will follow because of grant of higher pay-scale to the Class-IV employees working in the establishment of High Court.

17. So far as the first point raised in support of the review application is concerned, it would be worthwhile to reproduce paragraph-35 of the constitution Bench judgment of the Supreme Court of India in the case of *Samsher Singh* (Supra), which reads as follows:

35. The Scheme was upheld for these reasons. The Governor makes rules under Article 166(3) for the more convenient transaction of business the Government of the State. The Governor cannot only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But that could be done on the, advice of the Council of Ministers. The essence of Cabinet System of Government responsible to the Legislature is that an individual Minister is responsible for every action taken or omitted to be taken in his Ministry. In every administration, decisions are taken by the civil servants. The Minister lays down the policies. The Council of Ministers settle the, major policies. When a Civil Servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. The officers are the limbs of the Government and not its delegates. Where functions are entrusted to a Minister and these are performed by an official employed in the Ministry's department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister.

18. From the simple reading of the aforesaid paragraph of the judgment it will be apparently clear that the Governor has been given a power under Article 166(3) of the Constitution of India to make the rules for transaction of business of the State Government. The Governor can allocate various subjects amongst the Ministers. He may further go on to allocate any particular function by designating a particular official to discharge the same. It is with reference to such Rules of Business framed by the Governor that the Hon"ble Supreme Court of India has gone on to hold that where the designated official takes a decision in the matter, it is to be treated to be a decision of the Minister constitutionally and not as a delegatee.

19. Before this Court learned Additional Advocate General has hopelessly failed to refer to any Rule of Business made in exercise of powers under Article 166 (3) of the Constitution of India by the Governor of Uttar Pradesh authorising the Principal Secretary to the Chief Minister to take a decision in the matter pertaining to the fixation of salary etc. of the employees of the High Court or on the recommendation received from the Chief Justice with reference to his powers under Article 229 of the Constitution of India.

20. This Court may also refer to the Division Bench judgment of this Court in the case of Luxmi Kant Shukla S/o Late Indra Prasad Shukla v. State of U.P. Through Principal Secretary, Appointment and Ors.) passed in Writ Petition No. 5 of 2010 decided on 16th September, 2010. The Division Bench, after noticing the provisions of the Business Rules framed by the Governor of Uttar Pradesh under Article 166 (3) of the Constitution of India, in paragraph- 94 has held as follows:

94.

(iii) Business Rule framed under Article 166 specify the jurisdiction conferred on various authorities of the State like Chief Minister, Minister, Secretaries on behalf of the Governor. Jurisdiction exercised under Rules of Business is not a delegated

power but it is the decision of Government made by authority conferred with power to adjudicate a dispute.

(iv) Unless an order or decision is authenticated by the competent authority in accordance to Rule of Business and keeping in view the letter and spirit of Article 166(2) of the Constitution, decision so taken shall suffer from infirmity and illegality. It shall be necessary for the authority empowered under the Rules of Business while adjudicating a dispute or taking a decision or passing an order, to authenticate such order or decision by making an endorsement or putting his or her signature.

(v) Oral instruction issued by a person authorized under the Rules of Business affecting citizen(s) fundamental right or public interest or financial matters it is an incident of non-application of mind hence not amount to authentication under Article 166 (2) of the Constitution. It shall be obligatory for the person authorized under Rules of Business to make endorsement by putting his or her signature over the order or decision taken with regard to subject matter involved.

(vi) Signature by the competent-authority is the part and parcel of authentication of a document, order or decision taken under the Rules of Business. However, decision so taken may be communicated by an officer or authority subordinate to Chief Minister or Minister of the Department.

21. In view of the aforesaid Division Bench judgment of the Lucknow Bench of this Court, there being no endorsement of the Chief Minister or his/her signature on the decision recorded on 26th February, 2007, it has to be held such decision has not been taken by the Chief Minister.

22. Having arrived at the aforesaid conclusion, this Court may further proceed to record that even if it is accepted for the sake of argument that such decision is that of the Chief Minister, the Court has to examine as to whether the decision so taken would stand the test of judicial review, as is permissible and has been recognised by the Hon"ble Supreme Court of India in its judgments, which is the real issue of debate and as has been pressed as point No. 2 by the learned Additional Advocate General.

23. The Hon"ble Supreme Court of India in the case of State of Maharashtra v. Association of Court SteNos. P.A., PS. (Supra) in paragraph-5 has held as follows:

5. Under the Constitution of India, appointment of officers and servants of a High Court is required to be made by the Chief Justice of the High Court or such other judge or officer of the Court as the Chief Justice directs. The conditions of service of such officers and servants of the High Court could be governed by a set of rules made by the Chief Justice of the High Court and even the salaries and allowances, leave or pension of such officers could be determined by a set of rules to be framed by the Chief Justice, but so far as it relates to salary and allowances etc, it requires approval of the Governor of the state. This is apparent from the art 229 of the Constitution. On a plain reading of art 229(2), it is

apparent that the Chief Justice is the sole authority for fixing the salaries etc of the employees of the High Court, subject to the rules made under the said article. Needless to mention, rules made by the Chief Justice will be subject to the provisions of any law made by the legislature of the state. In view of proviso to Sub-article (2) of Article 229, any rule relating to the salaries, allowances, leave or pension of the employees of the High Court would require the approval of the governor, before the same can be enforced. The approval of the governor, therefore, is a condition precedent to the validity of the rules made by the Chief Justice and the so-called approval of the governor is not on his discretion, but being advised by the Government. It would, therefore, be logical to hold that apart from any power conferred by the Rules framed under art 229, the Government cannot fix the salary or authorise any particular pay scale of an employees of the High Court. It is not the case of the employees that the Chief Justice made any rules, providing a particular pay scale for the employees of the Court, in accordance with the constitutional provisions and that has not been accepted by the governor. In the aforesaid premises, it requires consideration as to whether the High Court in this discretionary jurisdiction under art 226 of the Constitution, can itself examine the nature of work discharged by its employees and issue a mandamus, directing a particular pay scale to be given to such employees. In the judgment under challenge, the Court appears to have applied the principle of equal pay for equal work" and on an evaluation of the nature of duties discharged by the Court stenographers, personal assistants and personal secretaries, has issued the impugned directions. In the Supreme Court Employees" Welfare Association and Others Vs. Union of India (UOI) and Another, this Court has considered the powers of the Chief Justice of India in relation to the employees of the Supreme Court in the matter of laying down the service conditions of the employees of the Court, including the grant of pay scale and observed that the Chief Justice of India should frame rules after taking into consideration all relevant factors including the recommendation of the pay commission and submit the same to the president of India for its approval. What has been stated in the aforesaid judgment in relation to the Chief Justice of India vis-a-vis the employees of the Supreme Court, should equally apply to the Chief Justice of the High Court vis-a-vis the employees of the High Court. Needless to mention, notwithstanding the constitutional provision that the rules framed by the Chief Justice of a High Court, so far as it relates to salaries and other emoluments are concerned, require the prior approval of the Governor. It is always expected that when the Chief Justice of a High Court makes a rule, providing a particular pay scale for its employees, the same should be ordinarily approved by the Governor, unless there is any justifiable reason, not to approve the same. The aforesaid assumption is on the basis that a high functionary like the Chief Justice, before framing any rules in relation to the service conditions of the employees of the Court and granting any pay scale for them is expected to consider all relevant factors and fixation is made, not on any arbitrary basis. It is important to notice that in the aforesaid judgment, the observation has been made:

It is not the business of this Court to fix the pay scales of the employees of any institution in exercise of its jurisdiction under art 32 of the Constitution. If there be violation of any fundamental right by virtue of any order or judgment, this Court can strike down the same but, surely, it is not within the province of this Court to fix the scale of pay of any employee in exercise of its jurisdiction under Article 32 of the Constitution.

The Court also expressed the view in the aforesaid case that the Chief Justice of India is the appropriate authority to consider the question as to the distinctive nature and personality of the employees of the Supreme Court and before laying down the pay scales of the employees, it may be necessary to ascertain the job contents of various categories of employees and nature of duties which are performed by them. Further at the time of preparing the rules for prescribing the Conditions of Service, including the fixation of the pay scales, the Chief Justice of India will consider the representations and suggestions of the different categories of employees of the Supreme Court, also keeping in view the financial liability of the Government. In view of the aforesaid decision of this Court, it is difficult for us to sustain the impugned judgment, whereunder the High Court in exercise of its jurisdiction under art 226, has issued the mandamus, directing a particular pay scale to be given to the Court stenographers, personal assistants and personal secretaries attached to the Hon''ble judges of the Court. In the All India Judges'' Association Vs. Union of India and others, after a thorough analysis of arts 233 to 235 of the Constitution, this Court no doubt has issued certain directions, ameliorating the service conditions of the presiding officers of the subordinate Courts and also dealt with the appropriate pay scales for such presiding officers, but ultimately did not propose to finally examine the propriety of the pay scale nor directed that any particular pay scale should be fixed. It is no doubt true that the doctrine of equal pay for equal work'' is an equitable principle but it would not be appropriate for the High Court in exercise of its discretionary jurisdiction under art 226 to examine the nature of work discharged by the staff attached to the Hon''ble judges of the Court and direct grant of any particular pay scale to such employees, as that would be a matter for the learned Chief Justice within his jurisdiction under art 229(2) of the Constitution. We however hasten to add that this may not be construed as total ouster of jurisdiction of the High Court under art 226 to examine the nature of duties of an employee and apply the principle of equal pay for equal work'' in an appropriate case.

24. It is no doubt true that the Hon''ble Supreme Court of India has held that the judicial interference in such matters has to be only in exception cases.

25. Only ground mentioned in the affidavit and contended before this Court by the State Government for denying the pay-scale as recommended by the Hon''ble The Chief Justice is that it will cause undue financial burden upon the State Government and may unsettle the parity, which is existing between the employees working under the State Government and those who are working in

the establishment of the High Court.

26. The issue with regard to refusal to grant a particular pay-scale to the employees of the High Court on the ground that it will cause financial hardship and shall have adverse affect on other employees of the State, has been specifically dealt with by the Hon"ble Supreme Court of India in the case of Union of India v. S.B. Vohra (Supra), wherein in paragraphs 46, 48, 49, 51, and 53, it has been held as follows:

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 concerned State 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.

48. It has to be further borne in mind that it is not always helpful to raise the question of financial implications vis--vis the effect of grant of a particular scale of pay to the officers of the High Court on the ground that the same would have adverse effect on the other employees of the State. Scale of pay is fixed on certain norms; one of them being the quantum of work undertaken by the officers concerned as well as the extent of efficiency, integrity, etc. required to be maintained by the holder of such office. This aspect of the matter has been highlighted by this Court in the case of the judicial officers in All India Judges' Association Vs. Union of India and others, and All India Judges Association and Others Vs. Union of India (UOI) and Others, as well as the report of the Shetty Commission.

CONCLUSION

49. The matter as regard fixation of scale of pay of the officers working in the different High Courts must either be examined by an expert body like Pay Commission or any other body but in absence of constitution of any such expert body the High Court itself is to undertake the task keeping in view the special constitutional provisions existing in this behalf in terms of Article 229 of the Constitution of India.

51. Having regard to the aforementioned authoritative pronouncements of this Court there cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. In this case the Appellants even addressed itself on the recommendations made by the High Court. They could not have treated the matter lightly. It is unfortunate that the recommendations made by a high functionary like the Chief Justice were not promptly attended to and the private Respondents had to file a writ petition. The question as regard fixation of a revision of the scale of pay of the High Court being within exclusive domain of

the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons.

53. We are further of the opinion that only in exceptional cases the High Court may interfere on the judicial side, but ordinarily it would not do so. Even if an occasion arises for the High Court to interfere on its judicial side, the jurisdiction of the High Court should be exercised with care and circumspection.

27. Reference may also be had to the judgment of the Apex Court in the case of Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, wherein after noticing the judgment of the Hon'ble Supreme Court of India in the case of Union of India v. S.B. Vohra (Supra), in paragraph-57 it has been held as follows:

So far as the Supreme Court and the High Courts are concerned, the Chief Justice of India and the Chief Justice of the concerned High Court, are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor, as the case may be, is required. It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the President of India and the Chief Justice of India.

28. Two further facts may be highlighted by this Court, namely, (a) The Hon'ble Supreme Court of India in the case of State of U.P. v. Section Officer Brotherhood (Supra) had specifically recorded that the matter pertaining to the fixation of salary must be left to the Expert Body. However, it has been clarified that where such expert body has not been constituted, the matter can be examined by the High Court itself, keeping in view the special constitutional provision existing in this behalf in terms of Article 229 of the Constitution of India. Reference may be had to the paragraphs 31 and 34, which read as follows:

31. In this case, the Chief Justice merely forwarded the representation of the Respondents dated 15th March, 1994 for grant of a higher scale of pay with effect from 1.1.1986 directing the Registry to forward the same to the State Government with recommendations to consider the same on the ground of parity. Such forwarding of recommendations to the State Government did not

involve any application of mind on the part of the Chief Justice as was required under Article 229 of the Constitution of India. The Chief Justice on his own did not arrive at any decision that the jobs performed by the concerned officers were comparable to their counterparts in the Central Secretariat or Delhi High Court. No rule was framed fixing the terms and conditions of service or the scale of pay for different categories of the employees of the High Court. Only because in the forwarding letter, the State Government was asked to consider the demand of the concerned officers favourably, the same by itself would not mean that the requirements of Article 229 of the Constitution stood complied with.

34. We, therefore, are of the opinion that the impugned judgments cannot be sustained which are set aside accordingly. However, this order shall be subject to the rules framed by the Chief Justice in the case of the Private Secretaries of the High Court. It will, however be open to the Chief Justice of the Allahabad High Court to frame appropriate rules as has been done in the case of the Private Secretaries or constitute an appropriate committee for the said purpose. We have no doubt in our mind that if such committee is constituted and any recommendation is made for enhancement of the scale of pay for the concerned officers by the Chief Justice, the same would be considered by the State Government in its proper perspective and in the light of the observations made hereinbefore expeditiously.

29. In the said judgment the Hon''ble Supreme Court of India has specifically permitted the Chief Justice to constitute an appropriate Committee for the purpose of framing of the rules under Article 229 of the Constitution of India including the fixation of pay. It was further clarified that if the committee so constituted makes a recommendation for enhancement of the pay-scale, the same would be considered by the State Government in its proper perspective and in the light of the observations made.

30. It is with reference to the said direction of the Hon''ble Supreme Court of India that the Four Judges Committee was constituted by the Chief Justice of Allahabad High Court. The Four Judges Committee recommended for grant of higher pay-scale to Class-IV employees working in the establishment of the High Court. In its recommendation, the Committee has taken into consideration relevant factors for arriving at the conclusion that the Class-IV employees working in the establishment of the High Court were entitled to higher pay-scale having regard to larger number of working hours, different nature of duties, performance of no less onerous and arduous duties, as permitted by their counter parts working in the Delhi High Court, as also performance of important public duties of dispensation of justice, contribution to the smooth functioning of the Court, dignity and discipline and confidentiality being maintained. Such consideration by the Four Judges Committee, proposing grant of higher pay-scale to the Class-IV employees working in the establishment of the High Court cannot be brushed aside by the State Government only on a plea that the grant of higher pay-scale would create an anomaly between its Class-IV employee and

the Class-IV employees of the High Court and may cause uncalled for financial implications.

31. I am of the considered opinion that the reason so disclosed in the decision of the State Government impugned in the writ petition, on the face of it, is unsustainable. Therefore, irrespective of the fact as to whether the decision had been taken by the Chief Minister or by the Principal Secretary only, said decision cannot be legally sustained. Accordingly the decision as communicated under the order of the State Government dated 28th February, 2007 is hereby quashed.

32. Sri Yashwant Verma, learned Counsel for the High Court has explained that the resolution passed in the meeting of the Administrative Committee of the High Court of Allahabad on 7th September, 2007 (referred to in paragraph-10 of the Supplementary Rejoinder Affidavit filed by the High Court dated 9th September, 2008) i.e. for consideration of the representation of the Class-IV employees by Five Judges committee has nothing to do with the Draft Rules, 2005 framed under Article 229 of the Constitution of India by the Chief Justice. The representation, which was subject matter of consideration in the meeting of the Administrative Committee was with regard to grant of higher pay-scale by the Chief Justice himself on the ground that they were earlier getting higher pay-scale. He clarifies that the draft Rules of 2005 have not been diluted in any manner nor have been referred to the Five Judges Committee.

33. Consequently, this review application filed on behalf to the State is rejected. Let the State Government take appropriate action in light of the judgment of the Single Judge dated 27th May, 2009, forthwith.