
(2005) 01 GAU CK 0029
In the Gauhati High Court
Case No : WP (C) No. 916 of 2004

Hari Charan Deka and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Constitution of India, 1950 — Article 146(2), 229, 229(2)
Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura) Appointment, Condition of Service and Conduct) Rules, 1967 — Rule 11

Citation : (2005) 2 GLR 486 : (2005) 1 GLT 507

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : T.J. Mahanta and P. Bhattacharya, for the Appellant; K.C. Mahanta, B.C. Das and R.O. Paul, for the Respondent

Judgement

B.P. Katakey, J.—The present case relates to the extent of control of High Court, under Article 229 of the Constitution of India, insofar as it relates to the condition of service of its officers and other staff including the Jamadars and revision of the scale of pay of such officers and the other staff of the High Court.

2. The writ petitioners who are serving as Jamadar of this court have filed the present application seeking a writ of mandamus directing the State of Assam, respondent No. 1, to remove the anomalies regarding pay scale with effect from their date of joining as Jamadars.

3. The brief facts leading to the filing of the present writ application is that the petitioners were appointed as Jamadar of this Court. Prior to the appointment of the petitioners, the pay scale attached to the post of Jamadar and Duftry was higher than that of the Barkandaj (driver). "After the revision of pay in the year 1983, the pay scale of the Jamadar and Duftry was enhanced to Rs. 390/- as basic pay and that of the Barkandaj (driver) were enhanced to Rs. 420/- as basic pay. The pay scale of the Jamadar and Duftry as well as Barkandaj (driver) of this court continued to be different, thereafter in the revision of pay in the year

1989 as well as in the year 1996. The writ petitioners by claiming at least similar pay scale which is given to the Barkandaj (driver) of this Court, filed a representation on 4.6.2001 before the Registrar General of this Court claiming that the duties and responsibilities of the Jamadars of the High Court in no way lesser than that of the Barkandaj (driver) and according to them the Jamadars are discharging more onerous duties than the Barkandaj (driver) but they were given lower pay scale. The Registrar General of this High Court in pursuant to the said representation submitted by the writ petitioners wrote to the Secretary to the Government of Assam, Judicial Deptt. on 12.9.2004 for re-examination of the matter regarding the pay scale given to the Jamadar and for taking necessary steps for removal of the anomalies by upgrading the scale of pay of the Jamadars of the High Court. The Registrar General vide the said communication has informed the Secretary/Judicial Department, Govt. of Assam that the pay scale of the Jamadar and duftry was higher than that of the Barkandaj in the year 1974 but after revision of pay in the year 1983, the pay scale of Barkandaj become higher than that of the Jamadar and Duftries. Since the Jamadar and Duftries are to perform duties with the judges of this Court, they have expressed their resentment for their less pay than that of the Drivers. By another communication dated 3.2.2003 the Registrar General informed the Secretary, Judicial Department, that the duties of the Jamadar and Duftries in the High Court are a bit different from the other staff and they are attached to the Judges and also accompanied the Judges of this Court even on tour. The Jamadars are also required to perform duties at odd hours and on holidays also as directed by the Judges of this Court and therefore, the Registrar General has requested the Government to re-examine the matter and to take necessary action regarding the pay scale. Since nothing was received from the Government of Assam, the Deputy Registrar (Admn.) again on 29.4.2003 requested the Judicial Department, Govt. of Assam to expedite the process regarding removal of anomalies in the pay scale of the Jamadar of the High Court and in spite of that, according to the writ petitioners , no action was taken by the Government of Assam for removal of the anomalies and for giving pay scale to the writ petitioners at least similar to the Barkandaj (driver) of this Court. Therefore, the writ petitioners have approached this Court by the present writ application seeking a writ of mandamus directing the State Government to remove the anomalies regarding the pay scale.

4. I have heard Mr. T.J. Mahanta, learned counsel for the petitioners, Mr. K.C. Mahanta learned State counsel for respondent Nos. 1 and 3 and also Mr. B.C. Das, learned senior counsel assisted by Mr. R.C. Paul, learned counsel for respondent No. 2, Gauhati High Court.

5. The case of the writ petitioners in the writ petition is that though the Jamadars and Duftries of the high Court were given higher pay scale than the Barkandaj (driver) in the year 1974, but after revision of pay in the year 1983, pay scale given to them were made lower than the Barkandaj (driver) though they have been discharging more onerous duties than the Barkandaj (driver) of this Court.

The further case of the writ petitioners is that the duties and responsibilities of the Jamadars of this Court, who are attached to the Judges, are different from that of the Barkandaj (driver) of this Court and in fact they discharge more onerous duties than the drivers and therefore, they should atleast be given similar pay scale if not higher than that of the Barkandaj (driver). Mr. T.J. Mahanta, learned counsel for the petitioners has submitted that the Government of Assam, in spite of the recommendation of this Court vide communication dated 12.9.2002 as well as 3.2.2003 issued by the Registrar General, has not taken any steps for removing the anomalies and for giving the pay scale to the Jamadars which is given to the Barkandaj (driver) of this Court. According to Mr. Mahanta, as the High Court considering the duties and responsibilities attached to the post of Jamadars of this Court, has decided that atleast the pay scale attached to the post of Barkandaj (driver) should be given to the petitioners, the Government should accept the views as under Article 229(2) of the Constitution of India, the High Court is the supreme authority in the matter of fixation of condition of the service of the officers and servants of the High Court, which includes the salary payable to its officer and servants. Mr. Mahanta further submits that the High Court having decided that the Jamadar are to be given the salary in the pay scale in which the Barkandaj are being paid, the Government is bound to honour the recommendation of the High Court and to approve the said proposal of the High Court by virtue of the proviso to Clause 2 of Article 229 of the Constitution of India. The further submission of Mr. Mahanta is that the stand of the Government as reflected in the affidavit-in-opposition dated 16.6.2004 and 17.9.2004 cannot be accepted in view of the fact that there is no post of Jamadar under the Government of Assam, who are doing the similar duties as that of the Jamadar of this Court. Mr. Mahanta has drawn my attention to the order dated 19.7.2004 passed by this Court, wherein, the Government of Assam was directed to file elaborate and detailed affidavit showing the nature of duties and work performed by the Jamadars under the Govt. of Assam and also indicating conditions of service etc. of such Jamadars under the Govt. of Assam. Mr. Mahanta, in support of his contention relied upon the decision of Hon''ble Supreme Court in the case of Union of India (UOI) and Another Vs. S.B. Vohra and Others, as well the decision of the Single Bench of this Court in Gitashree Baishya v. State of Assam and Ors. reported in (2004) 1 GLT 87. Relying on the said decision, Mr. Mahanta has submitted that the question as regards the fixation of pay scale of the employees of the High Court is within the exclusive domain of the Chief Justice of the High Court subject to the approval by the Governor of the State. The State Government in the instant case ought to have accepted the recommendation of the High Court which was indicated by the Registrar General vide Annexures dated 11.9.2002 and 3.2.2003. Mr. Mahanta has further contended that the recommendation of the High Court should ordinarily be approved by the State and refusal thereof, must be for strong and adequate reasons and in the instant case, the reason as reflected in the affidavit-in-opposition filed by the State Government are not strong and adequate and therefore, necessary directions may be issued to the State Government to

remove the anomaly in the scale of pay of the Jamadars of this Court.

6. Mr. K.C. Mahanta, the learned State counsel appearing for the respondents 1 and 3, relying on the affidavits-in-opposition dated 16.6.2004 and 17.9.2004 filed by the respondents No. 1 and 3, has submitted that the matter of fixation of pay scale being a matter to be examined by the expert body like the Pay Commission and the Commission having considered all the relevant materials decided to give a particular pay scale to the Jamadar and Dauftries of the High Court, as per recommendation of the High Court, this Court cannot go into this aspect of the matter. Mr. K.C. Mahanta, learned State counsel has further submitted that the Jamadars of the High Court enjoy the same pay scale as admissible to the Jamadars of the State Governments' department and therefore, there is no anomalies in the pay scale. Further submission of Mr. Mahanta is that the pay scale of the Jamadars and Dauftries are fixed as per recommendation of the High Court, the High Court being the appointing authority and having absolute control over the officers and other staff by virtue of provision of Article 229 of the Constitution of India. Further contention of Mr. K.C. Mahanta is that the Jamadar and Dauftries cannot claim the pay scale which is given to the Barkandajs as duties and responsibilities of the both the categories of the employee are not same. Mr. Mahanta relying on the provisions of Article 229(2) Constitution of India has submitted that the High Court is to first decide about the duties and responsibilities of the Jamadar and Dauftries of this Court and if they are found to be entitled to any particular scale of pay. High Court is to recommend to the Government and in case such recommendation is made, the Government of Assam will definitely consider about the pay scale of the Jamadars and Dauftries of the High Court. But the High Court till date has not submitted any formal proposal with the recommendation of the Chief Justice, for giving the same pay scale to the Jamadar & Dauftries, which is presently given to the Barkandaj (driver), for the purpose of the consideration by the Government of Assam as required under Clause 2 of Article 229 of the Constitution of India, and, therefore, the Government is not in a position to reconsider the matter. According to Mr. Mahanta the learned State counsel, the Annexures dated 12.9.2003 and 3.2.2003 issued by the Registrar General do not reflect the recommendation of the Hon'ble Chief Justice and also any reason as to why the pay scale, which is attached to the Barkandaj should be given to the Jamadar and Dauftries of the High Court.

7. Mr. B.C. Das, learned senior Standing counsel appearing for the High Court, has submitted that it is evident that the communication dated 12.9.2002 and 3.9.2003 were issued by the Registrar General, pursuant to the direction of the High Court, as both the letters have clearly indicated that the said communications were issued as directed. According to Mr. Das sufficient reasons for removing the anomalies as well as for giving the pay scale of the Barkandaj (driver) to the Jamadar and Dauftries have been recorded in the said communications. Mr. Das referring to Article 229(2) of the Constitution of India has submitted that the High Court has the exclusive power to determine the

service conditions of the officers and servants of the High Court for which Rules are framed by hon"ble Chief Justice as required. However, so far as it relates to salary, allowance, pension, etc., the approval of the Governor of the State is required to be taken before giving any pay scale or pension to the employees and other staff of the High Court. Mr. Das has further contented that the High Court in exercise of the power conferred by Article 229 of the Constitution has in fact, framed "Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura and Mizoram) Services (Appointment, Condition of Service and Conduct) Rules, 1967" ("the 1967 Rules") laying down the conditions of the service of the officers and other staff and also pay scale admissible to those officers and staff of the High Court as reflected in the schedule to the said Rules. Mr. Das learned senior counsel has fairly contended that unless the High Court makes necessary amendment in the said service rules giving Higher scale of pay to the Jamadar and Dautries than reflected in the Schedule 1 to the said Rule, the writ petitioners cannot be given the benefit of the higher pay scale and in the event of any amendment for giving higher scale of pay to the Jamadars, approval of the Governor of Assam is required to be taken in terms of the provisions contained in the proviso to Clause 2 of Article 229 of the Constitution of India. Relying upon the decision of the Hon"ble Supreme Court in the case of Union of India and Anr. v. S.B. Vohra (supra), Mr. Das has submitted that once the Chief Justice or other Hon"ble Judges or officers of the Court, as authorised by the Hon"ble Chief Justice, recommends for the higher scale of pay to any officers or staff including the Jamadars, that recommendation should ordinarily be approved by the State Government and refusal thereof must be for strong and adequate reasons.

8. In the instant case, the writ petitioners who are Jamadars of this Court have prayed for extending the same scale of pay as admissible to the Barkandaj (driver) of this Court on the ground that they are discharging more onerous duties than that of the Barkandaj. The further case of the writ petitioners is that, even though the duties and responsibilities of the Jamadar and Barkandaj of the High Court are not similar, the Jamadars of this Court are entitled to higher pay scale than the pay scale, which is given to Barkandaj, considering the nature and volume of work they have to perform. From the statements made in the writ petition, it is evident that though the writ petitioners are claiming the pay scale, which is given to the Barkandaj, they in fact did not claim that pay scale on the ground that they are discharging similar nature of work as that of the Barkandaj. The writ petitioners' case is that they should be given atleast the same pay scale which is given to the Barkandaj since they are discharging special nature of work, and in fact the pay scale attached to the post of Jamadar was higher than the pay scale attached to the Barkandaj of High Court, prior to revision of pay in the year 1983. Clause 2 of Article 229 of Constitution of India provides that the condition of the service of the officers and servants of the High Court shall be such as may be prescribed by Rules made by the Chief Justice of the Court or by some other Judge or officer of the Court, authorized by the Chief Justice to make

Rules for the purpose. Proviso to Clause 2 of Article 229 of the Constitution of India stipulates that the Rules made under the said provision shall, in so far as it relates to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

9. For better appreciation, Article 229 of the Constitution of India is quoted below, in its entirety :

"229. Officers and servants and the expenses of High Courts - (1) Appointments of officers and servants to 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.

(2) Subject to the provisions of any law made by the Legislature of the State, the 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 of the Court or by some other Judge or officer of the court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries allowances, leave or pensions, require the approval of the Governor of the State.

(3) 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."

10. The apex Court in *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, while considering the provisions of Article 229 of the Constitution has held that the unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointment of officers and servants of a High Court, it is the Chief Justice or 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, which is essentially to secure and maintain the independence of the High Courts. The Apex court has further held that Clause 1, read with Clause 2 of Article 229 conferred exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and subject to any legislation by the State Legislature but only in respect of conditions of service.

11. In *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, the Hon"ble Supreme Court while interpreting proviso to Clause 2 of Article 229 of the Constitution of India has held that the High Court has the power to frame rules regarding the conditions of the service of its employees.

When any rule is made relating to the salaries, allowances or pension of its employee then it is to be approved by the Governor, since it involves the question of finance of the State. The Apex Court in the said judgment has also observed that one should expect in the fitness of things and in view of the spirit of Article 229 that ordinarily and generally the approval should be accorded. But it is wrong to say that the approval is a mere formality and in no case it is open to the Government to refuse to accord their approval. The Chief Justice of the High Court or any other Judges or officers authorised by the Chief Justice has the power to frame rules regarding the salaries, allowance, leave and pension of the employees of the High Court and the same requires the approval of the Governor of the State.

12. The Hon'ble Supreme Court, in *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, has held that Article 146(2) of the Constitution of India, empowers the Hon'ble Chief Justice of India and other Hon'ble Judge authorised by him to make Rule regarding the condition of service of the officers and servants of the Hon'ble Supreme Court and in case any Rule as made in so far it relates to salary and allowance, it requires the approval of President of India, which is subject to the provision of any law laid down by the parliament. The Apex Court in the said case has also held that in absence of any law made by the parliament regarding service of the employees of the High Court, the Chief Justice or some other Judges and officers authorised by him, can make Rules for that purpose.

13. In *Union of India and others Vs. Pratibha Bonnerjea and another*, the Apex Court has held that Constitution makers were evidently keen to ensure that the Judiciary was independent of the Executive and the Legislature and an independent, impartial and fearless judiciary is constitutional creed. The Apex Court has further held that Article 229 clearly 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 as he may direct. Even the conditions of service of officers and servants shall be such as may be prescribed by the Chief Justice or his nominee authorised by him to make Rules and the approval of the Governor is necessary only if the Rules relate to salaries, allowances, leave or pension.

14. The Hon'ble Supreme Court in *High Court of Judicature for High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another*, while considering the powers under Article 229 of the Constitution has held that the High Court can prescribe the scale of pay to its employees and in the event any changes is proposed in scale of pay, it requires the approval of Governor of the State concerned. It is further held that the State should not raise any objection on the recommendation of the Chief Justice about the changes of service conditions of its employees and that should ordinarily be accepted by the State Government unless there is some cogent and sufficient reason for refusing the approval. The Apex Court in the said case has held that it is obvious from Article

229(2) of the Constitution that the Chief Justice has the power to prescribe the scale of pay payable to particular post, which power includes the power to revised pay scale. Since such Rule prescribing the pay scale or revision of pay scale payable to particular post would involve finance, it requires approval of the Governor, which in other words means the State Government.

15. The matter of fixation of pay scale of the officers of the High Court came to be considered by the Hon"ble Supreme Court in *Union of India v. S.B. Vohra* (supra). In the said case, the petitioners prayed for issuance of writ in the nature of mandamus directing the Union of India to pay salary to the officers of the High Court in particular scale of pay. The facts in the said case was that a particular pay scale was fixed and recommended by the Chief Justice of the High Court of Delhi to the Asstt. Registrar of the Delhi High Court on the basis of the recommendation of the committee constituted by the Chief Justice of the High Court for that purpose and as no action was taken by the Union of India in spite of such recommendation, the writ petition was filed for issuing writ in the nature of mandamus directing the Union of India to give the said pay scale as recommended by the Chief Justice. The Delhi High Court allowed the writ petition, which resulted in approaching the Hon"ble Supreme Court by the Union of India. The Apex Court while dealing with the power under Article 229 of the Constitution vis-a-vis the jurisdiction of the Chief Justice of the High Court under the said Article, has held that Clause 2 of Article 229 empowers the High Court to prescribe by Rules, the condition of the service of officers and servants of the High Court. Such Rule shall, however, be subject to the provision of any law made by the Legislature of the State and the approval of the President/Governor of the State so far as it relates to salary, allowances, leave or pensions. The Hon"ble Supreme Court has further held that 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. It is further held 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 and proviso appended thereto and it is trite that such approval of the Government is as required under proviso to Clause 2 of Article 229 of the Constitution. The Apex Court has further held that the matter as regards the fixation of scale of pay of the officers working in the different High Court must either be examined by an expert body like the 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. It has further been held by the Hon"ble Supreme Court that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons and the matter of approval should not be treated lightly. The question as regards the fixation of a revision of pay of the

staff of the High Court being within the exclusive domain of the Chief Justice of the High Court subject to the approval, the State is expected to accept the said recommendations save and except for good and cogent reasons. It is further held by the Apex Court that the High Court should not issue a writ in nature of mandamus and ought to have refer the matter back to the Central/State Government with suitable directions pointing out the relevant factors which are required to be considered, therefore.

16. The object of Article 229 of the Constitution of India is to secure the independence of the High Court, which is essential in making of the democratic form of Government in this country, by giving High Court absolute control over its staff, subject only to the limitations imposed by the Article itself, and free from interference by the Government. Such independence of High Court shall not be possible unless authority to appoint supporting staff with complete control over them and prescribing conditions of service of the officer and other staff, subject to any legislation by the State Legislature in respect of conditions of service. However, in the matter of framing of any Rule or revising the same in respect of salaries, allowances or pension of the employees by the Chief Justice or other Judges or officers as may be empowered by him, the same requires approval from the Governor, as it involves finance of the State. The recommendation of the Chief Justice, in regard to changes of service conditions of its employees, which includes power to prescribe a particular pay scale to a particular part, should ordinarily be accepted by the Governor unless there is some cogent and sufficient reason for refusing the approval.

17. In the present case, it is required to be seen whether there is any recommendation of the Hon"ble Chief Justice or any other Judge or officers of the Court recommending the higher scale of pay to the Jamadars of this Court in terms of the proviso to Clause 2 of Article 229 of the Constitution. The Chief Justice of the Gauhati High Court in exercise of power conferred under Article 229 and with the approval of the Government, so far as it relates to the salary, allowance leave and pension, has framed the 1967 Rules to regulate the appointments of persons in the establishment of the High Court.

18. Rule 11 of the said Rules provides for cadre and pay as set out in Schedule 1 thereto. Schedule 1 of the Rules has classified the different categories of post as well as the scale of pay attached to such post. The post of Jamadar is a class IV post with the pay scale of Rs. 930-15-1005-20-1145-EB-20-1225-30-1435-40-1635-50-1735 per month. Similarly, Barkandaj of the High Court also belongs to Class IV post and their pay scale is of Rs. 975-135 per month, which is higher than the pay scale attached to the post of Jamadars and Dauftries.

19. Clause 2 of Article 229 of Constitution of India has specifically empowered the Chief Justice of the High Court to prescribe the service conditions of the officers and servants of the High Court, by framing Rules and also the salary, allowance, leave or pension attached to any post under the High Court, which is

subject to the provisions of the any law made by the State Legislature. Proviso to Clause 2 of Article 229 of the Constitution further requires the approval of the Government of the State in respect of the Rules relating to the salary, allowances, leave or pension.

20. The Apex Court in *Union of India v. Pratiba Bonerjee* (supra) ; High Court of Judicature of Rajasthan (supra); *Union of India v. S.B. Vohra and Supreme Court employees Welfare Association* (supra) has clearly held that the Chief Justice or any other Judges or officers authorised by him can make Rules relating to the service condition of the employees of the High Court including the pay, allowance, leave or pension, with the approval of the Governor of the State in so far it relates to the pay, etc.

21. In the present case except the communication dated 11.9.2002 and 3.2.2003 issued by the Registrar General of the High Court, nothing could be placed by the Registrar General before this Court reflecting the decision of the Chief Justice or any other Judges or officers empowered by him for granting higher scale of pay to the Jamadars of the High Court than the pay scale which they are presently enjoying. The Registry has not been able to place before this Court any reasons or material for the purpose of enhancement of pay scale of the Jamadars of this Court. Article 229(2) of the Constitution of India having only empowered the Chief Justice or the Judge or the officers authorised by him to take a decision and frame Rules giving a Higher pay scale or revising pay scale, that can only be done either by the Chief Justice or any other Judges or officers authorised by him, as required under Clause 2 of Article 229 of the Constitution of India and not otherwise. In the event of framing of any Rules by the Chief Justice in terms of the power conferred by Article 229 of the Constitution, revising the pay scale of the Jamadar of the High Court, the same is required to be approved by the Governor, i.e., the State Government, before the Rule is made effective.

22. A Single Bench of this Court in *Gitashree Baishya* (supra) while discussing the power under Article 229 of the Constitution and relying upon the various decisions of the Hon"ble Supreme Court has held that unless the Rules are framed or amended by the Chief Justice or the Judges or other officers empowered by him, there cannot be any revision of pay scale. The Single Bench by the said judgment disposed of the above case with a direction to the Registry to obtain, on the administrative side the views of the Chief Justice on the question of upgradation of pay scale of the Asstt. Librarian and if the Chief Justice accedes to the proposal or the Registry, to prepare draft Rules and lay before the Chief Justice for consideration. In case the Chief Justice approves such draft Rules, the same to be forwarded to the Governor of the State for approval.

23. In the present case, since the Registry has failed to produce any record, reflecting recommendation of the Chief Justice or of any Judge or any other officers empowered by him, for revision of the pay scale of the Jamadar of the High Court by proposing amendment of the existing 1967 Rules, the communication issued by the Registrar General dated 11.9.2002 and 3.2.2003

have absolutely no effect in the eye of law, there being no such recommendation for revision of the said Rules framed, for the purpose of revising the pay scale of the Jamadars in terms of the Clause 2 of Article 229 of the Constitution of India. Therefore non-consideration or non-passing of any order by the State, Government, in pursuant to the aforesaid communications issued by the Registrar General of the High Court, has no legal effect at all.

24. It appears from the communications dated 11.9.2002 and 3.2.2003 issued by the Registrar General, that he was of the view that as the duty and responsibility of the Jamadars is special in nature and they, perform more onerous duty than the Barkandaj, so, at least the pay scale which is being given to the Barkandaj should also be given to the Jamadars of the High Court. As observed above, the Registrar General being not the authority to recommend the revision of pay scale, issuance of the said letters will not give rise to any enforceable legal right to the writ petitioners for issuance of any writ in the nature of mandamus directing the State Government to give higher pay scale. Power of revision of pay scale having vests with the Chief Justice or Judges or any officers authorised by him by virtue of Article 229 of Constitution, unless 1967 Rules is proposed to be amended by giving a higher pay scale to the Jamadar, no fault can be found in not passing any order by the State Government on the basis of the aforesaid communications issued by the Registrar General of this High Court,

25. In view of the above, if the registry is of the opinion that the Jamadars are entitled to the higher scale of pay than to which they are presently entitled to, the 1967 Rules is to be suitably amended, which power is vested only on the Chief Justice or Judges or Officers authorised by him by virtue of Article 229 of the Constitution of India. It is also required under Article 229 of the Constitution of India that such proposed amendment giving higher scale of pay has to be sent to the Governor for his approval and the Governor should ordinarily accord approval unless there are some strong and adequate reasons in not according approval. Since the Registry of this court has already issued the communications dated 11.9.2002 and 3.2.2003 to the Government of Assam recommending higher pay scale, which is presently being enjoyed by the Barkandaj (driver) of the High Court without there being a proposal for amendment of 1967 Rules, I hope and trust that the Registry will definitely place the entire matter before the Hon"ble Chief Justice for his Lordship"s consideration.

26. With the above observations, the writ petition is disposed or. No costs.