

(1994) 12 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 22 of 1993

Himachal Pradesh Non Gazetted Judicial Employees Welfare Association APPELLANT

Vs

Himachal Pradesh High Court and Others RESPONDENT

Date of Decision : 30-12-1994

Acts Referred:

Constitution of India, 1950 — Article 112, 113, 114, 115, 116

Citation : (1995) 1 ILR HP 254

Hon'ble Judges : Gulab C. Gupta, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Ajay Sharma, for the Appellant; D.D. Sood, for Respondent No. I and Inder Singh, General, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, C.J.—The Petitioner is a recognised association of employees of subordinate Courts in the State of Himachal Pradesh and has preferred this writ Petition alleging that the Respondent-State of Himachal Pradesh is not sanctioning staff for subordinate Courts, as a result of which working, of these Courts has been stalled. An appropriate writ is, therefore, prayed for directing the Respondent State to create posts mentioned in Annexure P-1, so that the subordinate Courts could effectively deliver justice to the common man.

2. According to the Petitioners, 69 Courts of District and Sessions Judges, Senior Sub Judges and Subordinate Judges are working in various places in the State and are handling about one lakh cases per year. The work in these Courts has increased considerably and, therefore, there is a demand by the general public for quick disposal of cases and giving speedy justice, which is a part of fundamental rights under Article 21 of the Constitution. Demand for speedy justice has also been raised from time to time by the members of the Legislative Assembly, wherein promises are being made to do everything for handling cases speedily and disposing them of without delay. The Petitioner association had also

submitted a charter of demands in this regard to the Respondent State Government. In reply to the aforesaid charter and with a view to achieve the aforesaid object, Respondent High Court had recommended, as early as on 16th August, 1989, to the Respondent State Government to create various posts in the subordinate judiciary so as to make it capable of disposing of cases quickly and delivering justice without delay. The letter of the Respondent High Court dated 16th August, 1989, Annexure R-I, submitted detailed justification for creation of 892 posts all over the State. A perusal of item 4 of this letter would also indicate that the Respondent High Court had asked for creation of 327 additional posts of various categories during 1988-89 but the Respondent State Government had sanctioned only 24 posts. It may also be noticed that though the Judiciary had been separated from the Executive all over the country, the separation is not fully effected in this State. Copying facility is not available in the Courts of Senior Sub Judges and Sub Judges and these Courts are required to use the available facility in the office of Deputy Commissioner for, this purpose. Files of cases have to be sent to the office of Deputy Commissioner for copying and when copies are prepared, the files are returned to the Courts. This process is very cumbersome and also delay oriented. The experience of the Judiciary in sending the files for copying purposes has not been very encouraging and, therefore, there had been a demand for providing copying facility in all Courts. It appears that after the receipt of the aforesaid justification from the Respondent-High Court, dated 16th August, 1989, there was further correspondence between the Respondents and eventually the High Court by its letter dated 27th/29th November, 1990 (Annexure R-II), submitted that creation of 119 posts in the subordinate Courts is very very essential and, therefore, these posts deserve to be created immediately. A perusal of this letter (Annexure R-II), would indicate that this request included demand for 41 posts of Copyist to provide copying facilities in the existing 41 Courts, where this facility is not available. The letter would further indicate that Courts of Additional District and Sessions Judges and Senior Sub Judges and Sub Judges are working without any Superintendent and, therefore, 50 posts of Superintendent Grade-II were also demanded. Then the District and Sessions Judges are not provided with a Stenographer and hence they are finding it difficult to write judgments and otherwise deal with the cases. The request, therefore, included creation of 7 posts of Stenographers for District and Sessions Judges. Para 3 of this letter would indicate that the High Court had also requested that Record Room and Copying Agency be separated from the Executive and necessary infra-structure for the purpose be provided. This, therefore, would indicate that the High Court had been making these requests since 1989. It is unfortunate, the Petitioners submit, that inspite of detailed justification shown by the High Court for these posts, these posts were not created. Only few posts here and there have been created. Because of the attitude of the Respondent-State Government, the Petitioners submit, the Record Room and Copying facility are still not available with the subordinate Courts. Since more than four years have passed and in the meantime the number of pending cases have grown, the Petitioner, filed this writ petition on 22nd

December, 1992, seeking appropriate relief from this Court, in accordance with law.

3. The Respondent-State has, in its" reply, submitted that the Petitioner-Association has no locus-standi in the matter and hence the petition deserves to be dismissed. It is further submitted that the Petitioner-Association has not moved this Court for any public benefit but is motivated by personal interest of its members, who are excepting promotions. The Respondent-State has also submitted that it is committed to providing speedy justice to the litigants and has been making efforts in that behalf. According to the Respondent-State, the State is passing through a grave financial crisis and does not have money even to meet committed liabilities of pay and pension etc. and for this reason is not able to create any post. It is also submitted that the Respondent-State Government has taken a conscious decision to abolish 10% posts in Class-I and Class-II grades all over the State and, therefore, it is not possible for it to agree to the creation of 119 posts as demanded by the Petitioner-Association. The jurisdiction, and authority of this Court to direct creation of posts is also challenged and it is submitted that it is an administrative exercise requiring consideration of several factors in the context of running of the State Government. The Court therefore, would not be justified in issuing writ in this behalf.

4. During the course of oral submissions in the Court on 22nd December, 1994, it was submitted that the Respondent-State is charging Court-fee from the litigant public and is, therefore, bound to provide all necessary and requisite facilities for deciding cases within a reasonable time-frame. Court-fee is not a tax and cannot, according to the Petitioners, be used as a part of general budget of the Respondent-State. It is also submitted that independence of Judiciary is now a part of the basic structure of our Constitution and hence the said independence cannot be made dependent on the whims or caprice of the Respondent-State. Since the refusal of the State Government to create even necessary posts for effectively running the judicial administration concerns independence of Judiciary, the inaction on the part of the Respondent-State is said to be unconstitutional and an attempt to cripple the working of independent Judiciary. The learned Advocate General, appearing for the Respondent-State, has particularly referred to para 9 of the reply-affidavit and submitted that economy measures are necessary because of a perceptible gap "between income and expenditure and as long as the financial problem subsists, the Respondent-state would not be able to agree for creation of any post.

5. This Court has in its own way, persuaded the Respondent-State Government to consider the matter in proper constitutional perspective and see if anything can be done in the matter. This Court, by an order dated 22nd March, 1994, requested the Home Department of the Respondent-State Government to take up the matter at the highest level as early as possible and see that necessary sanction is accorded for creation of these posts. Pursuance to the aforesaid request, the Respondent-State Government considered the matter at the highest

level and" decided that the creation of 93 posts may be deferred for three months or till the announcement of the award of the 10th Finance Commission, The figure 93 seems to have reached by deducting the, number of posts sanctioned after the High Court communication dated 27th/29th November, 1990 (Annexure R-II). This Court, by its order dated 26th July, 1994, decided to await the re-action of the Respondent-State Government and adjourned the hearing by four months. The matter again came up for consideration on 28th November, 1994, when this Court was informed by the learned Advocate General that the Finance Department of the State Government has accorded approval to creation of 93 posts and the matter will be placed before the Cabinet for final approval, in the first week of December, 1994. Since this Court thought that it was a step in fight direction, it further adjourned the hearing. Of 12th December, 1994, the Court was informed that the Council of Ministers, in their meeting dated 5th December 1994, has decided in principle, to create 93 posts but due to resource constraints it has also been decided that these posts would be filled up in phased manner spread over a period of four years. This did not satisfy either this Court or the Petitioners and certain clarifications were sought. The Court was on 22nd December", 1994 informed that the State Government cannot agree to creation of more than 24. posts during 1994-95 and will further create 23 posts each in the next three years. Since, this is not satisfying to anyone, the matter has been heard on merits and is being decided by this judgment. Narration of these facts would clarify that though the demand for creation of posts was made as early as on 16th August, 1989, only 24 posts are being made available during 1994-95.

6. The aforesaid narration of events would also clarify that though this Court has demanded separation of Copying and Record Room Sections of Subordinate Courts from the Executive and needed at least 41 posts for Copying Sections and certain other posts for Record Rooms, the same is not being accorded. As a result of this, the full and, effective separation of Judiciary, as contemplated under Article 50 of the Constitutoion, cannot be achieved. As regards locus-standi of the Petitioner, it is sufficient to recall the decision of the Supreme Court, in All India Judges" Association Vs. Union of India and others, which was a writ petition filed in the Supreme Court claiming a writ against the Union of India for setting up of an All India Judicial Service and for bringing about uniform conditions of service for members of the subordinate judiciary through out the country. Though, there is no discussion about the locus-standi of the Association, in the said case, the point seems to have become unarguable by then. The locus-standi of Supreme Court and the High Courts Advocates, in the matter-of appointment, transfers etc. of High Court Judges, was considered by the Supreme Court in S.P. Gupta Vs. President of India and Others, , and it was held that they have direct interest in the working of the Judiciary and were, therefore, entitled to file writ petitions. Similarly, in Peoples" People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, and Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, , associations in the lis of the case were held to be having locus-standi in the matter. That appears to be the reason

why though the point of locus-standi was raised in the reply-affidavit, nothing whatsoever was submitted orally in support thereof. We, however, find no justification for objection to the locus-standi.

7. As regards independence of Judiciary, though the matter has received detailed consideration of the Supreme Court in S.P. Gupta's case (supra), it has been given a place of far more, importance in the decision of the Supreme Court in Supreme Court Advocates-on-Record Association and another Vs. Union of India, . The Supreme Court, in this case, considered the concept of independence of Judiciary, its nature and position in the Constitution and held that it forms the basic structure of the Constitution necessary to secure the rule of law and essential for preservation of the democratic system. The Court also considered the need for separation of; Judiciary from the Executive and held that it was a mandate under Article 50 of the Constitution. The decision of Hon"ble shri Pandian, J. (as he then was), considering the question in detail, in the context of eafdier decided cases, holds that the instant decision was an exercise towards "Ensuring a palladium to protect the independence of Judiciary from being violated or impaired or damaged. Otherwise we apprehended that strikingly disastrous and calamitous results would follow in the proper functioning of the judiciary and that the system Itself would become dysfunctional". (para 29). The conclusion of the learned Judge in this behalf is that "it is the cardinal principle of the Constitution that an independent judiciary is the most essential characteristic of a free society like ours". (para 53). The ultimate decision of the learned Judge in this behalf is given in para 63 of the judgment, which is as under:

"There is a plethora of judicial pronouncement on this concept, but we think that it is not necessary to recapitulate all those decisions and swell this judgment, except saying that to have an independent judiciary to meet all challanges, unbending before all authorities and to uphold the imperative of the Constitution at all times, thereby preserving the judicial integrity, the person to be elevated to the judiciary must be possessed with the highest reputation for independence, uncommitted , to any prior interest, loyalty and obligation and prepared under all circumstances or eventuality to pay any price, bear any burden and to meet any hardship and always wedded only to the principles of the Constitution and "Rule of Law". If the selectee bears a particular stamp for the purpose of changing the cause of decisions bowing to the dictat of his appointing authority, then the independence of judiciary cannot be secured notwithstanding the guaranteed tenure of office, rights and privileges, safeguards, conditions of service and immunity. Though it is illogical to spin out a new principle that the keynote is not the judge but the judiciary especially when it is accepted in the same breath that an erroneous appointment of an unsuitable person is bound to produce irreparable damage to the faith of the community in the administration of justice and to inflict serious injury to the public interest and that the necessity for. maintaining independence of judiciary is to ensure a fair and effective administration of justice. Further, if this prized concept is injured or maimed even

from inside by self-infliction, the invaluable judicial independence will be devalued and debased.

Justice Pandian also dealt with the need for separation of Judiciary from the Executive, as, according to him, it was a part of the scheme to secure independence of Judiciary. According to him, "the expression the State used in Article 50 has to be construed in the distributive sense as including, the Government and Parliament of India and the Government and the legislature of each State and all local or other authorities within the territory of India or under the control of the Government of India". In ultimate analysis, according to the learned Judge, basic principles and values underlying Article 50 are necessary for safeguarding the independence of Judiciary. Even Justice Ahmadi (Now the Chief Justice of India), who gave his dissenting judgment in this case, accepted the importance of judicial independence "and held that "the concept of judicial independence is deeply ingrained ,in our constitutional scheme and Article 50 illuminates it. The degree of independence is near total after a person is appointed and inducted in the judicial family". (Para 313). Justice Kuldip Singh, who wrote his separate opinion, preferred a broader vision of the concept of independence of Judiciary, as according to him "it is the sine qua non of democracy. So long as the judiciary remains truly distinct from both the legislature and the executive, the general power of the people can never be endangered from any quarters". (Para 331). According to the learned Judge, with the expanded horizon of judicial review in the recent judgments the concept of judicial independence has received new heights. It is not only security of tenure provided to a individual judge, which alone is. the source of independent judiciary but there has to " be independent judiciary as the institution.(Para 332). Majority decision of Verma, J. considers the question of primacy to the opinion of the Chief Justice of India, in the matters of appointments and transfers and their justiciability in the context of independence of Judiciary, which is a basic structure of the Constitution. The broad scheme of separation of powers adopted in the Constitution, together with the directive principle of separation of judiciary from executive, even at the lowest starta, provides, according to the learned Judge, insight to the true meaning of the relevant provisions in the Constitution relating to the composition of the judiciary. The construction of these provisions must accord with these fundamental concepts in the constitutional scheme to preserve the vitality and promote the growth essential for retaining the Constitution as a vibrant organism. (Para 421). These opinions, in our opinion, leave no manner of doubt that not only the independence of Judiciary has to be preserved but the concept has to be considered as a background material for ascertaining true meaning of the provisions of the Constitution and laws. Interpretation of any provision of Constitution or laws must, therefore, result in securing independence of Judiciary. There should therefore, be no doubt in the mind of anyone that independence of Judiciary under our Constitutional scheme is fundamental to the democracy and one of the ways of promoting judicial independence is to secure its complete, separation

from the Executive.

8. As regards subordinate judicial service, two decisions of the Supreme Court are considered enough to clarify its importance. All India Judges Association's case (supra), was a case where the Supreme Court considered the necessity of establishing an All India Judicial Service and in the said context held that it is necessary to give full effect to Article 235 of the Constitution. While so holding, the Supreme Court also noticed the Provisions of Article 50 of the Constitution and held that it puts the Judiciary as a class separate from the Executive based on Articles 234, 235 and 50 of the Constitution: The Supreme Court therefore gave directions not only for creation of All India Judicial Service but also for improving service conditions of Judges manning the subordinate judiciary. The other judgment of the Supreme Court is as a result of review of the aforesaid judgment and is reported in All India Judges' Association and Others Vs. Union of India and Others, It is well known that the Union of India and various State Governments felt difficulties in implementing the earlier judgment and sought review thereof. They, also brought to the notice of the Court the decision of the Supreme Court in S.L. Sachdev v. Union of India AIR 1981 S.C. 411, and submitted that Court cannot interfere with or change the administrative policy of the Government unless it violates some provisions of the Constitution such as Article 14. Considering the objections, the Supreme Court observed. "We cannot (sic) observing that the failure to realise the distinction between the judicial service and the other services is at the bottom of the hostility displayed by the review, Petitioners to the directions given in the judgment. The judicial service is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of, the State and each one of them in turn represents the authority of the State". The Court, therefore, held that the members of other services cannot be placed on a par with the members of the judiciary, either constitutionally or functionally. In this connection, the Court also observed as under:

Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it. To keep the Judges in want of essential accoutrements and thus to impede them in the proper discharge of their duties, is to impair and whittle away justice itself.

9. There should, therefore, be no doubt in the mind of anyone, including the Respondent-State Government that independence of Judiciary includes its

separation from the Executive and the concept is wide enough to prevent anyone to do anything that may either impede proper discharge of duties by subordinate Judges or impair or whittle away justice itself. It is in the background of this law that the decision of various questions raised for our consideration will require to be given.

10. It should not need any statement or anyone to establish that justice at any level cannot be done by Judges, unless they have the necessary facilities for the said purpose. Staff is as important part of administration of justice, as the Judge himself. For without the staff the Judge can really not function. In spite of it, it must be conceded that a Judge is not entitled to ask for as many posts as he likes at his whims and caprice and the need for staff must have rational connection with the work of the Court. Since, subordinate judiciary functions under direct control and supervision of the High Court, it is reasonable to hold that the estimate of staff requirement by the High Court should be respected by all including the Respondent-State. Though the demand of the High Court for 892 posts, for which justification has been submitted would also require consideration in the aforesaid background of judicial independence and necessity for doing justice, we do not propose to deal with the said demand, as it is not really in issue in this writ petition. The High Court has itself limited its demand to 119 posts, which are very very essential, as stated in Annexure R-II. These posts relate to the posts of Stenographers, which, as is well known, are necessary for prompt disposal of cases. It also includes 41 posts of Copyists, which according to the Court, are necessary for effecting separation of Judiciary from the Executive. It also includes posts of Superintendents, which, according to the High Court, are necessary for proper Court management. It is not the submission of the Respondent-State that the High Court has unnecessarily or unjustifiably treated these posts as very very essential. Under the circumstances, our decision relates to posts, which are essential for effective working of subordinate judiciary in this State, as also for effecting complete separation of Judiciary from the Executive. The aforesaid request of the High Court considered in the context of judicial independence and separation of Judiciary must inevitably lead to the conclusion that there is no justification whatsoever for the Respondent-State to refuse to create these posts. Indeed, their refusal violates the concept of independence of Judiciary and amounts to disobeying the mandate of Article 50 of the Constitution.

11. The submission of the learned Advocate General that the decision being administrative in nature requires to be taken up in the context of priorities of the State should also receive our attention. The said argument is based on the decision of the Supreme Court in *State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others*. In the said case, the Respondent Umed Ram and others had filed a writ petition in the High Court claiming that their fundamental right under Article 21 of the Constitution was being violated because of the inaction of the State Government in not making provision for a road to provide access to other parts of the State. The cost of the road was assessed at Rs.

90,000/- only and the State Government had provided only a sum of Rs. 50,000/-. The High Court agreed with the submission that construction of the road was necessary and, therefore, directed the State Government to make a provision of Rs. 40,000/-. The matter was taken to the Supreme Court where it was submitted that the matter relates to budgeting and hence the direction of the High Court was illegal. The Supreme Court, in the said context, held that the right to life under Article 21 of the Constitution obliges the State Government to provide roads to the residents of hilly areas and hence the decision of the High Court was held to be correct. The Court thereafter examined the provisions of Articles 112 - 117 and 202 - 207 of the Constitution and held that the budgeting is the responsibility of the executive and "the Court cannot impinge upon, the judgment of the executive as to the priorities" . (Para 21). The Court, however, found no illegality in the order of the High Court and held that the power of judicial review vested in the High Court permitted giving such directions. The direction, in the said case, was to the State Government to favourably consider the demand of the additional funds and the same was considered enough to provide the necessary money. This judgment, in our opinion, cannot help the Respondent-State in the present controversy. The demand here is the demand of independence of Judiciary, which is a constitutional obligation and the power of the Respondent-State Government to control the budget of the Judiciary cannot be carried to the extent as to effect the independence of Judiciary itself. Indeed, it is our view that the power of the State Government to control finances can be used only as long as it does not adversely effect the working or the independence of the Judiciary. The Respondent State Government is, in our opinion, under constitutional obligation to provide funds necessary to keep not only the judiciary working but also keep it working at the required level of independence. Under the circumstances, the power of the Respondent-State, in relation to construction of road would not be relevant in the instant case.

12. Some of the subsequent decisions of the Supreme Court unmistakably point to the expanding horizon of judicial review which should have been not iced by the Respondent-State Government. In *Dr. Kashinath G. Jalmi and another Vs. The Speaker and others*, , the Court exercised its power of judicial review to determine whether the action of the Speaker of Goa Assembly in reviewing his decision under the Tenth Schedule of the Constitution was legal and held that the Speaker acting under the aforesaid authority had no power of review and, therefore, an order made by him in purported exercise of power of review was a nullity. The Court in the aforesaid case referred to its earlier decision in *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, and held that provisions excluding jurisdiction "of Courts should be strictly construed. A finality clause in the statute, according to the Supreme Court, does not excide judicial review limited to the question of jurisdictional error based on unconstitutional mala-fides, ultra-vires, violation of natural justice and perversity. The Supreme Court in this case observed that the Speaker's office is undoubtedly high and has considerable aura with attribute to impartiality. Inspite of it, the rule of law being firmly

entrenched in our constitutional set up, has to be protected and preserved, the Court clarified that "we have no hesitation in adding further that while we have no desire to clutch at jurisdiction, at the same time we would not be deterred in the performance of this constitutional duty whenever the need arises".(Para 138). The decision in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., is the attempt to bring within the fold of judicial review many more authorities and institutions discharging public functions and make the law serve the social "purpose." The decision in Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, lays down the limits to which the decision making process in the State Government could go. It clarified that the judicial process will intervene when the decision making process has exceeded its permissible constitutional limits. In N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, the Supreme Court even went to the extent of observing as under:

... No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The, concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity, of State as a juristic person, propounded in nineteenth century as sound sociological basics for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place a Welfare State is not shaken.

With a view to translate the aforesaid thought into action, the Supreme Court noticed several of its past decisions and held that "the ever increasing abuse of power by public authorities S.R. Bommai and others Vs. Union of India and others etc. etc., should dispel whatever doubt may have remained in any-body mind about the pervasiveness of judicial review. A proclamation issued by the President on the advice of his Council of Ministers, in consultation of Prime Minister, is now, because of this judgment, amenable to to judicial review.

13. Then, what is not realised by the Respondent-State is the fact that the Judiciary is a self-financing institution. The Court-fee charged by the Respondent-State Government from the litigant public imposes obligation on them to provide speedy justice. May be that the words "speedy justice" have no fixed connotation and its meaning would depend on situation prevalent in the particular State. Situation in, the State of Himachal Pradesh is, however, much better than other States. Pendency of the cases at the level 4 of subordinate judiciary is only about one lakh and hence it is possible to provide justice within a period of about 1-1/2 or 2 years, at the most. Under the circumstances, it is .reasonable for the litigants in Himachal Pradesh, to expect that cases will be decided within a period of two years. The Respondent-state having charged Court-fee from litigants is

not entitled to say that it does not have funds to establish necessary infra-structures for the purpose. In this connection, observations in paras 50 and 51 in All India Judges' Association Vs. Union of India and others, are relevant and may be looked into. The Court in those paragraphs dealt with the demand for abolition of Court-fee, which demand was given up by the States in the absence of any compensation from the Centre. The Court held that the Court-fee was not a tax and referred to its decision in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., to reiterate that it was a fee and hence held that a *cuid pro QUO* for the services rendered was necessary. The Court in that connection observed that "what is collected as Court-fee at least be spent on the administration of Justice instead of being utilised as a source of general revenue of the States". The Court was of the opinion that "the income from the Court-fee is more than the expenditure on the administration of Justice". This was noticeable from the figures available in the publication of the ministry of Law and Justice. This decision was rendered in November, 1991 and hence it is reasonable to hold that the position upto 1990 was that the realisation of Court-fee was more than the amount spent in the administration of justice. Since, the Respondent-State Government has not placed on record anything to the contrary, it is reasonable to hold that the position has not changed since then in the State of Himachal Pradesh. There is, therefore, no justification whatsoever for the submission that the financial difficulty faced by the State Government does not permit it to provide additional posts, as demanded by the Respondent-High Court. The aid question does not, in our opinion, arise in the instant case. Then, it is also difficult to accept the view that the Respondent-State is facing financial crisis since 1990 and, therefore, is not able even to provide the minimum requirements of the Judiciary. We can take judicial notice of the fact that the State is carrying on its all other functions, without much financial difficulty. It is also getting regular assistance from the Centre Government. In such a situation, allotment of priorities is the only material aspect of the matter. If the Respondent-State had realised the constitutional importance of the subordinate judiciary, it would have surely understood its obligation to separate Copying and Record Room Sections of the Judiciary from the Executive and provided necessary infra-structure for the same. Administrative priorities cannot over-ride constitutional obligations, which must be performed. There is, no justification whatsoever, in our opinion, for the stand taken by the Respondent-state Government.

14. In view of the discussion aforesaid, the writ petition succeeds and is allowed. The Respondent-State Government is directed to re-consider the matter of creation and sanction of 93 posts immediately. If in spite of it, the Respondent-State refuses or fails to consider the matter and accord sanction to 93 posts, within a period of four weeks from today, the posts would be deemed to have been sanctioned and the Respondent-High Court entitled to take further action in the matter, in accordance with law.

15. No costs.

16. The learned Advocate General requested that the period of four weeks granted for consideration of the matter be extended to six weeks. The said request is accepted and the words four weeks in the last paragraph of the judgment will be read as six weeks".

17. Petition allowed.