

(2013) 08 KL CK 0032

In the High Court Of Kerala

Case No : Writ Petition (C) No. 4325 of 2012

K.G. Rajamohan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 3 KHC 559 : (2013) 3 KLT 803

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : K. Jaju Babu, M.U. Vijayalakshmi, Brijesh Mohan, Dhanya Chandran, T.S. Shyam Prasanth and T.R. Sadeesan, for the Appellant; O.V. Radhakrishnan Sr. Advocate, P.J. Elvin Peter, K. Radhamani Amma, Antony Mukkath, K. Ramakrishnan (Thykoodam), K. Muraleedharan Nair, Government Pleader (Noushad Thottathil) and K.R. Ganesh, for the Respondent

Judgement

A.M. Shaffique, J.—In W.P.(C) No. 4325 of 2012, the petitioners seek for a declaration that they are entitled for the pay and allowances on par with Librarians of Legislature Secretariat. 1st petitioner was working as Chief Librarian and the 2nd and 3rd petitioners were Librarians in the Kerala High Court Service. Subsequent to the filing of the Writ Petition, the Government issued Ext. P6 order confirming the recommendations made by the 9th Pay Revision Commission and hence the Writ Petition is amended challenging Ext. P6 and further seeks for a direction to the 1st respondent to issue appropriate orders revising their scale of pay as claimed. The 9th Pay Revision Commission recommended scale of pay for Chief Librarian at Rs. 32,110-44,640 and for the Librarian at Rs. 24040-38840. According to the petitioners as per Ext. P1, G.O.(Ms) No. 214/97/Home dated 27.8.1997, it is indicated that a decision has been taken in the meeting between the Chief Minister and the Chief Justice on 4.11.1995 whereby sanction was given to extend the effect of Government orders issued for the benefit of Government Secretariat staff to the corresponding categories of employees in the High Court of Kerala. The petitioners rely upon the scale of pay of the Chief Librarian and the Librarian of the Legislative Secretariat which was fixed at Rs.

36,140-46,640 and Rs. 32,110-44,640 respectively in the 9th Pay Revision Commission and claims parity of scale of pay. Petitioners further rely upon the recommendation made by the Chief Justice requesting the Governor to revise the scale of pay and allowances of the employees of the High Court in terms with the recommendations made by the Chief Justice. Ext. P3 is the said letter dated 13.4.2011. This letter was issued by the Chief Justice based on the recommendation of a committee of High Court Judges constituted by the Chief Justice explaining the disparity in the scale of pay of High Court employees in terms with the 9th Pay Revision Commission recommendation.

2. This Writ Petition was filed at a time when no orders were passed by the Government and complaining that changes were effected in the scale of pay of various categories of employees in the Secretariat General Administration, Finance Secretariat, the Law Secretariat, Legislative Secretariat, Kerala Raj Bhavan, Advocate General's Office and Kerala Public Service Commission in terms of Ext. PS. It is after the Writ Petition is filed that Ext. P6 order was passed by the Government declining the request made by the Chief Justice.

3. Counter affidavit is filed by the 1st respondent inter alia contending that the Government has accepted the recommendation of the Pay Revision Commission without making any changes. The Government while examining the report for revision of pay and allowances of the High Court employees has considered the report of the Judges Committee and Pay Revision Commission and has accepted the recommendation of the Pay Revision Commission in toto and pay scale was recommended as stated by the Pay Revision Commission. It is also contended that the Pay Revision Commission headed by former Justice Rajendra Babu has considered various aspects after discussions with Service organisations, representatives of employees and persons in similar posts. It is also indicated that the pre-revised scale of Chief Librarian and Librarian of Kerala Legislative Assembly was Rs. 16,650-23,200 and Rs. 13,610-20,700 respectively and that of the High Court were Rs. 12,930-20,250 and Rs. 11,070-18,450 respectively. When the Commission proposed a revised scale of pay for the post of Chief Librarian and Librarian of Kerala Legislative Assembly they were given two stage hike from corresponding revised scale of pay whereas while proposing the revised scale of pay of the Chief Librarian and Librarian of Kerala High Court they were given three stage hike from corresponding revised scale of pay. It is therefore contended that the pre-revised scale of pay of Chief Librarian of Kerala Legislative Assembly is higher than the similar post in the High Court. It is also pointed out that the scale of pay of Assistant Registrar and Chief Librarian in High Court service had a pre-revised scale of Rs. 12,930-20,250. The revised scale of pay of Assistant Registrar is only Rs. 24,040-38,840, whereas that of Chief Librarian is Rs. 32,110-44,640. It is also pointed out that in respect of the scale of pay of Private Secretary to Judges, the pre-revised scale was Rs. 11,090-19,350 and that of Librarian was Rs. 11,070-18,450. After the revision of scale of pay, the Private Secretary to Judges will get Rs. 21,240-37,040 and the scale of pay of Librarian is Rs. 24,040-38,840. It is therefore contended that any

further enhancement of scale of pay of Chief Librarian and Librarian will widen the disparity among the staff of the High Court. It would cause discontent among similarly placed posts and categories. With reference to the contentions regarding the recommendations made by the Chief Justice of the High Court it is pointed out that the Government has a constitutional right to examine the proposal of the Chief Justice relating to the salary of the staff of the High Court and to either grant approval or withhold it. If the Government decides to decline the proposal, the High Court cannot exercise the jurisdiction to issue a writ of mandamus to the Government to accept the suggestions made by the Chief Justice. It is contended that there could be genuine differences in perception and honest difference of opinion between the Chief Justice and the Governor/State on the question of payment of salary, allowances etc., of High Court staff and cannot be treated as infraction on Article 229 of the Constitution. It is further submitted that Government has examined the proposal in detail and declined the proposal with the approval of Council of Ministers. Hence the 1st respondent sought for dismissal of the Writ Petition.

4. Counter affidavit is filed by the 2nd respondent, the High Court inter alia indicating that the 1st petitioner entered High Court service on 5.10.1987 as Librarian and the second petitioner as a Reference Librarian on 18.9.1985. The 2nd petitioner has retired from service on 30.6.2012 while holding the post of Librarian. The 3rd petitioner entered service on 1.16.1991 as reference librarian and is presently working as librarian. It is contended that the service conditions of members of the High Court Service are governed by Kerala High Court Service Rules, 2007 which came into force on 1.1.2007 as per which there are four categories of Librarians namely Chief Librarian, Librarian, Reference Librarian and Assistant Librarian. When the 9th Pay Revision Commission appointed by the State Government submitted its recommendations in respect of the revision of pay and allowances of the officers and staff of the High Court to the Chief Justice, the Committee of the Judges constituted by the Chief Justice after conducting a study of the recommendations of the Pay Revision Commission submitted a report to the Chief Justice taking into consideration the nature of service and other factors in relation to various categories of posts in the High Court including that of Chief Librarian and Librarian. Committee also considered the nature of work carried out by the Chief Librarian and Librarian in the High Court and recommended a higher scale of pay to that of the Chief Librarian and Librarian in the Legislative Secretariat. In fact the Government issued orders revising the scale of pay and allowances of officers and staff of High Court as per G.O.(Ms). 257/2011/Home dated 18.11.2011. No changes have been made with reference to the scale of pay of Chief Librarian and Librarian as the case may be. Thereafter also the High Court has taken up the matter before the Government requesting for rectifying the anomaly. But by Ext. P6 the request came to be rejected. It is contended that failure to give parity of scale of pay of the Chief Librarian and Librarian in the High Court to that of similar posts in the Legislative Secretariat would amount to violation of Article 14 of the Constitution of India.

Hence the High Court in their counter affidavit supports the case of the petitioners.

5. W.P.C. No. 15550 of 2012 is filed by the petitioner who is working as Private Secretary to Judge (Higher Grade). As per the 9th Pay Revision Commission report the scale of pay recommended for Private Secretary to Judges was Rs. 21,240-37,040 and Private Secretary (Higher Grade) was Rs. 22,360-37,940. By Ext. P1 the Chief Justice had requested the Governor to consider the change of pay scale of the Private Secretary to Judges (Hr. Gr) at Rs. 24,040-38,840. But according to the petitioner, when the pay revision order was published on 18.11.2011 as per Ext. P3 the scale of pay sanctioned was only Rs. 22,360-37,940. It is also contended that only an amount of Rs. 2500/- has been sanctioned as uniform allowance for once in three years. It is the case of the petitioner that certain anomalies were rectified by the Government to various other offices like Advocate General's Office, Secretariat Service and the Kerala Public Service Commission. In respect of the scale of pay of Under Secretary though the sanctioned scale of pay was Rs. 22,360-37,940, a modification was made to Rs. 24,040-38,840. During the pendency of the Writ Petition, the Government issued Ext. P6 declining to accept the proposal made by the Chief Justice and hence the Writ Petition is amended challenging Ext. P6 order as well and the contentions raised are similar to that of the contentions raised in W.P.C. No. 4325 of 2012.

6. Counter affidavit is filed by the 1st respondent inter alia contending that the pre-revised scale of pay of Private Secretary to Judges (Hr. Gr) was Rs. 12,250-19,800 and the revised scale of pay is Rs. 22,360-37,940. That is by giving one stage hike from the corresponding revised scale of pay. It was contended that one stage, hike is allowed to the post of Private Secretary to Judges (Hr. Grade) and vertical parity between feeder category (Private Secretary to Judges) and promoted category [Private Secretary to Judges (Hr. Gr)] is also maintained. In regard to the uniform allowance it is stated that it is a new benefit which was sanctioned to Court officers and Personal Assistants to Judges and Private Secretary to Judges of the High Court with effect from 1.2.2011 at Rs. 2500/- once in three years as per pay revision orders. Other contentions raised in the counter affidavit are similar to the counter affidavit filed in W.P.C. No. 4325 of 2012.

7. The 2nd respondent, the High Court has filed counter affidavit supporting the stand taken by the petitioner and contends that the Government ought to have accepted the recommendations made by the Chief Justice.

8. W.P.C. No. 18750 of 2012 is filed by members of Kerala High Court staff who are working in the cadre of Typists/Copyists. It is contended that the scale of pay of Typists/Copyists Gr. II was fixed at Rs. 9,190-15,780, for Gr. I at Rs. 11,620-20,240 and Senior Grade at Rs. 13,900-24,040. They were granted a special allowance of Rs. 200/- per month as per Government Order dated 4.11.2009 with effect from 1.11.1998. The special allowance was thereafter

discontinued. This was based on the recommendations made by the 9th Pay Revision Commission. Based on recommendations made by a Committee of the High Court Judges, the Chief Justice had proposed a change in the pay scale of various categories of Typists-Copyists. But, according to the petitioners, no change was made by the Government whereas the scale of pay recommended was denied as per Ext. P6. Similar contentions have been raised as that of the other two Writ Petitions as well. According to them, the Government ought to have accepted the recommendations made by the Chief Justice.

9. Counter affidavit is filed by the 1st respondent stating that the Government has not denied the special allowance to the Typists/Copyists Gr. II employees and the Registrar of the High Court was requested to furnish a proposal relating to the same as per Government letter dated 16.7.2012. It is further contended that the Typist category in High Court Service follows the Secretariat pattern in designation and scale of pay before and after the revision. Hence there is no disparity. Other contentions are same as that of the other two cases. Statement of objection is filed by the 2nd respondent supporting the stand taken by the petitioners.

10. W.P.(C) No. 34689 of 2010 relates to the disparity pointed out by the petitioners who were working in the cadre of Joint Registrar and Deputy Registrar in their scale of pay fixed on the basis of the recommendation of the 8th Pay Commission Report. The 7th petitioner is an association of Gazetted officers. The matter relates to the fixation of pay and allowances of the officers and staff of the High Court ignoring the recommendations of the Committee of the Judges constituted by the Chief Justice regarding revision of pay and allowances of employees of High Court. The issue relates to the pay revision order dated 26.12.2006 as per G.O.(Ms). No. 230/2006/Home. It is the contention of the petitioners that since the aforesaid Government Order was issued without any discussion or consultation with the High Court on the specific pay revision proposal made by the Chief Justice, the Registrar of the High Court by Ext. P2 requested the Chief Secretary to rectify the anomalies in the pay revision order. The basic issue projected in the present case is regarding the grade given to various posts in the High Court. The relevant portion of Ext. P2 reads as under:

I am to inform you that, the Committee of Honourable Judges, on examination of the recommendations of the Pay Revision Commission had noticed down gradation of certain posts such as Registrar (Subordinate Judiciary), Registrar (Vig.), Director of the Kerala Judicial Academy, Additional Director of the Kerala Judicial Academy, Registrar(Judicial), Joint Registrar, Deputy Registrar, Public Relations Officer, Protocol Officer and Private Secretary to Chief Justice. Prior to the issuance of G.O.(MS) No. 230/2006/Home dated 26.12.2006, the post of Joint Registrar, High Court was equated to the post of Additional Secretary in the Government Secretariat and the post of Deputy Registrar and posts carrying the same scale of pay in the High Court were equated to the Joint Secretary in the Secretariat. But the revision sanctioned to the scale of pay of the Additional

Secretary and Joint Secretary has not been extended to the Joint Registrars and Deputy Registrars respectively, which amounts to downgrading of their posts. This cannot be accepted and the pay of such officers has to be fixed maintaining the parity in identical scales of the Government Service as before, as recommended by the Committee of Honourable Judges.

11. No orders were passed by the Government to Ext. P2 and accordingly the 7th petitioner association submitted a representation dated 22.09.2010. During the pendency of the Writ Petition, the 9th Pay Revision Commission issued certain recommendations against which Ext. P9 report was made by the Committee of Judges on the basis of which the Chief Justice had made proposals for revision of scale of pay and allowances of High Court staff as per Ext. P10. Some of the proposals were accepted by the Government as per order dated 18.11.2011. Therefore the anomaly pointed out by the Chief Justice in respect of the petitioners per Exts. P2 and P6 ceased to be in existence from 1.7.2009 in view of 9th Pay Commission recommendation. But the anomaly in the 8th Pay Commission Report published on 26.12.2006 as Ext. P12 continued to remain in force. When a request was made to correct the said anomaly, by Ext. P13 order is issued confirming the stand taken in the 8th Pay Revision Commission recommendation. Petitioner has therefore amended the Writ Petition to the claiming the proposal made by the 3rd respondent in Exts. P2 and P6 for the period from 11.7.2004 to 1.7.2009 and for a direction to respondents 1 and 2 to rectify the said anomalies in the pay scale of senior officers of the High Court service.

12. Counter affidavit is filed by the second respondent inter alia contending that the Government as per G.O. (Ms) No. 230/2006/Home dated 26.12.2006 revised the pay and allowances of the Officers and Staff of the High Court with effect from 11.7.2004. The request of the Registrar to rectify the anomalies were considered and the Government sanctioned compensatory allowance/special allowance/other allowance to all the categories of Staff of High Court of Kerala as requested in Annexure II of Ext. P2. In regard to the proposal for the rectification of anomalies in the pay scales of the officers and staff of the High Court of Kerala, as requested in Annexure I of Ext. P2 it was inter alia stated that the same was declined on account of reasons stated in Ext. R2(b). It is further indicated that in respect of Chauffeurs the scale of pay has been modified as per G.O. (Ms) 48/2010/Home dated 15.2.2010. It is therefore contended that going by R2(b) reply, no changes would be effected with reference to the claim made by the petitioners. Statement of objection is filed by the 3rd respondent supporting the stand taken by the petitioners and inter alia indicating that the anomaly of the 8th pay revision remains unrectified for the period from 1.7.2004 to 30.06.2009.

13. The short question involved in the above Writ Petitions is whether the Government is bound to accept the recommendations of the Chief Justice of High Court in relation to the fixation of scale of pay and allowances of the staff of the

High Court of Kerala, and whether this Court can issue a writ of mandamus to accept such recommendation.

14. In W.P.C. No. 34689 of 2010 the anomaly pointed out was regarding the grade as well as the scale of pay which was fixed for certain categories of employees as per the recommendation of the 8th Pay Revision Commission. Admittedly, the said anomaly had been rectified in the 9th Pay Revision Commission recommendation and the orders passed thereon.

15. The other three cases relates to the rejection of the proposal made by the Chief Justice in respect of the scale of pay fixed for the post of Chief Librarian, Librarian, Private Secretary to Judges (Hr. Gr) and Typists/Copyists (Gr. II, Gr. I and Senior Grade). With reference to Librarians, they seek parity with the scale of pay fixed with reference to the scale of pay of Chief Librarian and Librarian in the Legislative Secretariat. In respect of the other categories of employees, they claim the scale of pay on the basis of the recommendations made by the High Court on the basis of their nature of work in the respective posts.

16. Heard the learned counsel for the petitioner Sri. Jaju Babu, the Learned Government Pleader appearing for the State and the learned senior counsel Sri. O.V. Radhakrishnan and learned counsel Sri. Elvin Peter appearing on behalf of the High Court.

17. Let me now refer to the judgments relied upon by the learned counsel for the parties.

(i) In Union of India (UOI) and Another Vs. S.B. Vohra and Others, a three Judges Bench of the Supreme Court had occasion to consider the question whether writ can be issued in the nature of mandamus directing the Union of India to pay the salary to the officers of High Court on a particular scale of pay. That was a case in which the scale of pay of the Assistant Registrar of the Delhi High Court was recommended at Rs. 3000-4500 by the Chief Justice of the High Court of Delhi. While fixing the scale of pay of Assistant Registrars it was noticed by the Government that it was a promotional post from the post of Superintendent, Court Master and Private Secretary whose scale of pay was only Rs. 2000-3500. Hence the recommendation was not accepted. A Division Bench of the High Court directed the Union of India to grant the pay scale of Rs. 3000-4500 in favour of the Assistant Registrars. The Supreme Court while considering the scope of Article 229(2) of the Constitution of India observed as under:

10. Clause (2) of Article 229 of the Constitution of India empowers the Chief Justice of the High Court to prescribe by rules the conditions of service of officers and servants of the High Court. Such rule shall, however, be subject to: (1) the provision of any law made by the legislature of the State; and (2) the approval of the President/Governor of the State so far as it relates to salary, allowances, leave or pensions.

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

Thereafter the Supreme Court considered the scope of issuing a mandamus vis-a-vis Article 229(2) of the Constitution.

12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.

Thereafter a reference is made to various judgments on the point and also the scope of judicial review in such matters, the modern trend of judicial restraint in administrative action and other judgments on the issue and finally in paragraphs 46 to 48 the Supreme Court held as under:

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

47. In a matter of this nature the appellant, with a view to show that its action is reasonable, was bound to perform its duties within a reasonable time. Reasonableness being the core of Article 14 of the Constitution of India would imply that the constitutional duties be performed within a reasonable time so as to satisfy the test of reasonableness adumbrated under Article 14 of the Constitution of India.

48. It has to be further borne in mind that it is not always helpful to raise the question of financial implications vis-a-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' Assn. v. Union of India as well as the report of the Shetty Commission.

And finally it was held by the Supreme Court in paragraphs 51 to 54 as under:

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 themselves 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 regards fixation of a revision of the scale of pay 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 same recommendations save and except for good and cogent reasons.

52. The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefor. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the Chief Justice of the High Court and the State are not ad idem, the matter should be discussed and an effort should be made to arrive at a consensus.

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.

54. As the matter has been pending for a long time and keeping in view the fact and the situation obtaining herein, namely, the officers holding the post of Private Secretaries to the Judges have been given a particular scale of pay, we are of the opinion that it is not a fit case wherein this Court should exercise its discretionary jurisdiction.

(ii) Asokan Vs. State of Kerala, That was a case in which petitioner challenged the conditions imposed in Ext. P1 order passed by the Government while

sanctioning 19 additional posts in the High Court of Kerala. The impugned condition was that out of the sanctioned and existing post only so many posts shall be filled as are commensurate with the number of judges actually in position. After considering the various issues involved in the matter, this Court held at paragraph 28 as under:

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

Reference is also made in this case to the judgment in *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, which was approved by the Constitution Bench in *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*. This judgment does not apply to facts of the present case as in *Asokan's* case the High Court was considering the scope of interference by the Government in the matter relating to power of Chief Justice to make appointments

(iii) Another judgment relied upon is *Kerala High Court Non-Graduate Staff Association and Another Vs. The State of Kerala and Another*. This Court held in paragraphs 15 to 18 as under:

15. The object of Art. 229 of the Constitution of India is to secure independence of the High Court, which is essential for the working of the democratic form of Government in this country by giving the High Court the absolute control over its staff, subject only to the limitations imposed by the Article itself and free from interference by the Government. Object of the Article is to secure independence of the High Court which is not possible, unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice. However, in the matter of salaries, allowances, leave or pensions, approval has to be obtained from the Governor of the State. Art. 229 is a Code by itself for making rules for appointment of members of staff of the High Court as well as for prescribing conditions of service.

16. The Chief Justice of Kerala in exercise of the powers conferred by Art. 229 of the Constitution of India, also framed the Kerala High Court Service Rules, 1970 with regard to conditions of service of Officers and servants of the High Court. R. 35 of the Rules also emphasises that except with regard to salaries, allowances,

leave and pension, the Chief Justice shall exercise the powers vested in the Governor or the Government under the Rules. However, Chief Justice can specifically issue orders sanctioning the grant of the scales of pay and allowances to the members of the service in accordance with those sanctioned by the Government. As per Art. 229 read with ft R. 35 of the Kerala High Court Service Rules, 1970, Chief Justice is to get approval of the Governor of the State with regard to salaries, allowances, leave or pensions.

17. The anxiety of the Constitution makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judges of the High Court nor can the amount of any expenditure so charged be varied even by the Legislature. Clause (1) read with clause (2) of Art. 229 confers exclusive power not only in the matter of appointments, but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. Under clause (3) the administrative expenses of a High Court including all salaries, allowances and pension 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. There is no separate power to raise it at the disposal of the High Court for the purpose of meeting the salaries, allowances, etc., of the High Court staff.

18. A constitutional obligation is cast on the Chief Justice of a High Court to get the approval of the Governor of a State. Constitutional duty is also vested in the Governor of a State as well to grant approval to the request made by the Chief Justice of the High Court. Situation may arise where the Governor of the State may refuse to give approval. It is true that the Chief Justice of the State has been placed at a higher level in regard to the framing of rules containing the conditions of service. It may not be possible to compel the Governor to grant approval to the rules framed by the Chief Justice of the State relating to salaries, allowances, leave or pension. Supreme Court, in its decision in *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, held as follows:

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The above mentioned principle laid down by the Supreme Court was later quoted with approval by a Five-Judge Bench of the Supreme Court in *State of U.P. and another Vs. C.L. Agrawal and another, etc.*, Constitutional duty cast upon the Government to consider the request of the Chief Justice of the State and to grant approval under the proviso to clause (2) of Art. 229 of the Constitution was also re-emphasised. Supreme Court in its recent decision in *Satnam Singh and others Vs. Punjab and Haryana High Court and others*, considering the proviso to clause 2 of Art. 229 reiterated the position that approval has to be sought from the Governor in respect of rules which relate to salaries, allowances, leave or

pension, etc. by the Chief Justice of the State. It is therefore evident from the pronouncement of the Supreme Court, approval of the Governor is a constitutional requirement. As held by the Supreme Court in Supreme Court Employees Welfare Association's case, the request made by the Chief Justice of the State would be looked upon by the Governor with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the Governor of the State is of the view that the approval cannot be granted, he cannot straightaway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the Governor of the State and the Chief Justice of the State. In other words, the recommendation made by the Chief Justice of the State with regard to salaries, allowances, leave or pension in all fairness be accepted by the Government.

(iv) In Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, the concept of equal pay for equal work was considered by the Supreme Court and it is held with reference to the Rules relating to salaries, allowances, leave etc., in respect of staff of Supreme Court that the said request cannot be straight away refused. There ought to be an exchange of thoughts between the parties. Reference is made to paragraphs 57 and 62 which reads as under:

57. 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, 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 straightaway 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.

62. Thus a delegated legislation or a subordinate legislation must conform exactly to the power granted. So far as the question of grant of approval by the President of India under the proviso to Article 146(2) is concerned, no such conditions have been laid down to be fulfilled before the President of India grants or refuses to grant approval. By virtue of Article 74(1) of the Constitution, the President of India shall, in exercise of his functions, act in accordance with the advice of the Council of Ministers. In other words, it is the particular Department

in the Ministry that considers the question of approval under the proviso to Art. 146(2) of the Constitution and whatever advice is given to the President of India in that regard, the President of India has to act in accordance with such advice. On the other hand, the Chief Justice of India has to apply his mind when he frames the rules under Art. 146 with the assistance of his officers. In such circumstances, it would not be unreasonable to hold that the delegation of the legislative function on the Chief Justice of India and also on the President of India relating to the salaries, allowances, leave and pensions of the officers and servants of the Supreme Court involve, by necessary implication, the application of mind. So, not only that the Chief Justice of India has to apply his mind to the framing of rules, but also the Government has to apply its mind to the question of approval of the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions. This condition should be fulfilled and should appear to have been so fulfilled—from the records of both the Government and the Chief Justice of India. The application of mind will include exchange of thoughts and views between the Government and the Chief Justice of India and it is highly desirable that there should be a consensus between the two. The rules framed by the Chief Justice of India should normally be accepted by the Government and the question of exchange of thoughts and views will arise only when the Government is not in a position to accept the rules relating to salaries, allowances, leave or pensions.

(v) In *High Court Employees' Welfare Association, Calcutta and Others Vs. State of West Bengal and Others*, a three Judges Bench of the Supreme Court considered the scope of Article 229(2) of the Constitution of India and held at paragraph 32 as under:

32, The petitioner contended that the State Government's refusal is arbitrary. It is submitted that the Special Pay Commission has considered the matter in detail and made the recommendations and that the Chief Justice who is the authority to make the rules relating to pay of the High Court employees has approved all the recommendations of the Special Pay Commission. It is contended that the role of the State Government is limited to approving the rules made by the Chief Justice insofar as it relates to salaries and allowances; and there is no justification for the State to disagree with para 2 of R.4 made by the Chief Justice on the recommendation of the Special Pay Commission. Though the power to make rules in regard to pay and allowances of the High Court employees is vested in the Chief Justice subject to any law made by Parliament, the Constitution has advisedly made the power of the Chief Justice to make such rules conditional upon approval of such rules by the Governor of the State, that is the State Government. The requirement of approval under the proviso to clause (2) of Article 229 is not a mere formality. We find that the State has approved all provisions except one clause. It has expressed its inability to agree to para 2 of R.4 as it provides for a general increase in pay of all existing employees by two stages, after fixation of pay in the revised pay scale. The non-approval is in consonance with the minutes of the meeting dated

13.4.2005/18.4.2005 between the Chief Justice and the ministers representing the State. But for the unfortunate misunderstanding relating to second para of R.4 of the modified draft Pay Rules, the High Court and the State Government have shown understanding of each other's problems and by exchange of views and discussions, sorted out the outstanding issues, thereby maintaining the high constitutional traditions. Therefore there is no need for any interference.

(vi) In *State of West Bengal and Another Vs. West Bengal Minimum Wages Inspectors Association and Others*, the Supreme Court considered the scope of review of the pay commission recommendation and held as under:

22. The claim in the Writ Petition was not based on the ground that subject post and reference category posts carried similar or identical duties and responsibilities but on the contention that as the subject post holders and the holders of reference category posts who were enjoying equal pay at an earlier point of time, should be continued to be given equal pay even after pay revision. In other words, the parity claimed was not on the basis of equal pay for equal work, but on the basis of previous equal pay.

23. It is now well settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts.

24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.

25. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust.

26. The respondents have neither pleaded nor proved that the holders of post of Inspectors (Co-operative Societies), Extension Officers (Panchayats) and KGO-JLRO (Revenue Officers) were discharging duties and functions similar to the duties and functions of Inspector, AMW. Hence, the prayers in the original Writ Petition could not have been granted. In fact, that is why the learned Single

Judge rightly held that whether the posts were equivalent and whether there could be parity in pay are all matters that have to be considered by expert bodies and the remedy of the respondent was to give a representation to the authority concerned and the court cannot grant any specific scale of pay to them.

Re: Question (2)

27. The Third Pay Commission did not accept the representation of the Inspectors, AMW seeking a higher pay scale. It held that they are entitled only to Pay Scale 9. When the respondents made a grievance in that behalf, it is no doubt true that the Pay Review Committee considered the representation and made a recommendation that the posts which were in the pay scale of Rs. 300-600 including those which were in the same pay scale but started with a higher initial start of Rs. 330, should be granted the scale of pay of Rs. 425-1050, as per the ROPA Rules, 1981. The said Committee did not take note of the fact that different posts having the same pay scale, may have different duties and functions and some may deserve a higher pay scale than the others. The Government rejected the recommendation of the said Committee, for valid and justifiable reasons.

28. The State Government categorically stated that the Pay Review Committee's general recommendation that all posts carrying a particular scale of pay should all be given automatically the same higher pay scale could not be accepted, as the Committee did not make the recommendation after considering the duties and responsibilities attached to different categories of posts. Therefore, we are of the view that the State Government was justified in acting on the recommendation of the Third Pay Commission and rejecting the recommendation by the Pay Review Committee.

18. Having regard to the law laid down by the Supreme Court and the High Court the scope of interference by this Court under Article 226 by issuing a writ of mandamus to direct the Government to accept the recommendation of the Chief Justice of the High Court of Kerala would be improper. The scope of judicial review that could be exercised is to verify whether the impugned orders declining to accept the recommendation of the Chief Justice is based on any material or sound principles of law applicable to the situation. In the impugned order, it is only stated that the Government, having considered the matter, declined to accept the recommendation. Certain factors are also seen mentioned in the counter affidavit filed to justify the stand taken in not accepting such recommendation. What is required under the proviso to Article 229(2) is that when the Chief Justice makes rules in relation to the salary, allowances, leave, pension or other aspects of High Court staff it requires the approval of the Governor of the State. Governor, of course, takes decisions based on the advice of the Council of Ministers. In *S.B. Vohra* (supra) the Supreme Court while considering the scope of Clause (2) of Article 229 of the Constitution of India held that the rules relating to the conditions of service of officers and servants of the High Court shall be subject to: (1) the provision of any law made by the

legislature of the State; and (2) the approval of the President/Governor of the State so far as it relates to salary, allowances, leave or pensions. It is further held that it is the primary duty of the State concerned 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 Supreme Court further held that it is not always helpful to raise the question of financial implications vis-a-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. The Supreme Court further held that fixation of a revision of the scale of pay 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 same recommendations save and except for good and cogent reasons. But when it came to the nature of relief to be granted the Supreme Court made a note of caution and held that "The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefor. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the Chief Justice of the High Court and the State are not *ad idem*, the matter should be discussed and an effort should be made to arrive at a consensus ". It is further held that only in exceptional cases the High Court should 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. In High Court Non-Graduate Staff Association case (*supra*) this Court was considering the scope of Article 229 of the Constitution of India. It is held that the object of the Article is to secure independence of the High Court which is not possible, unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice. However, in the matter of salaries, allowances, leave or pensions, approval has to be obtained from the Governor of the State. It is held that a constitutional obligation is cast on the Chief Justice of a High Court to get the approval of the Governor of a State. Constitutional duty is also vested in the Governor of a State as well to grant approval to the request made by the Chief Justice of the High Court. Situation may arise where the Governor of the State may refuse to give approval. It is true that the Chief Justice of the State has been placed at a higher level in regard to the framing of rules containing the conditions of service. It may not be possible to compel the Governor to grant approval to the rules framed by the Chief Justice of the State relating to salaries,

allowances, leave or pension. The application of mind will include exchange of thoughts and views between the Government and the Chief Justice of India and it is highly desirable that there should be a consensus between the two. The rules framed by the Chief Justice of India should normally be accepted by the Government and the question of exchange of thoughts and views will arise only when the Government is not in a position to accept the rules relating to salaries, allowances, leave or pension. In *High Court Employees' Welfare Association, Calcutta & Ors. (supra)* a three Judges Bench of the Supreme Court considered the scope of Article 229(2) of the Constitution of India and held that the requirement of approval under the proviso to clause (2) of Article 229 is not a mere formality. That was a case in which there was a meeting in which the difference of opinion was considered and decided showing that there was a decision based on factual consideration. In *State of West Bengal and Another Vs. West Bengal Minimum Wages Inspectors Association and Others*, the Supreme Court considered the scope of review of the Pay Commission recommendation and held that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts. It is further held that the Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust. The impugned order at Ext. P6 which is under challenge in three cases, only expresses an opinion that "Government have examined the proposal in detail and decline the same as the proposed scales are over and above the recommendation of the Pay Revision Commission." There is no material to indicate that any discussion had taken place to sort the difference of opinion, A cryptic order is passed declining to accept the recommendation by the Chief Justice. Government ought to have discussed the matter in detail with the Chief Justice and should have placed the relevant materials to decline such a request as held in the judgments referred above. As already indicated, the impugned order at Ext. P6 in W.P.C. Nos. 4325 of 2012, 15550 of 2012, 18750 of 202 which is the same as Ext. P13 in W.P.C. No. 34689 of 2010 does not disclose any cogent reasons for rejecting the proposal of the Chief Justice as held by the Supreme Court and this Court in the judgments cited above. There is also no material in the said order to indicate

that a discussion as contemplated has taken place. In W.P.C. No. 34689 of 2010, the Government refers to Ext. R2(b) in order to support their stand that a reconsideration of the matter is not required. But, it is relevant to note that when the 9th Pay Commission had rectified the anomaly that had happened during the 8th Pay Commission recommendation, necessarily the request made by the Chief Justice ought to have been considered for correcting the anomaly which had happened during the 8th Pay Commission Report. This, apparently, is not seen done. Therefore, I am of the view that a reconsideration of the matter is required to be undertaken by the Government in regard to the claims raised in the above Writ Petitions. It is true that certain reasons have been stated in the counter affidavit for rejecting the claim. But such reasons are not reflected in the order declining to accept the recommendation of the Chief Justice. As held by the Supreme Court, when the Government decides not to approve the request of the Chief Justice for fixing the salary and other benefits of the High Court employees, sufficient reasons are to be stated which is apparently lacking in these cases. Accordingly, these Writ Petitions are disposed as follows:

i) Ext. P6 order in W.P.C. Nos. 4325 of 2012, 15550 of 2012 and 18750 of 2012 are set aside and the 1st respondent shall reconsider the request made by the Chief Justice and pass orders keeping in mind the principles laid down by the Supreme Court in judgments cited above. This process shall be completed within a period of 6 months from today.

iii) In W.P.C. No. 34689 of 2010, the request as made in the above Writ Petition shall be reconsidered by the 1st respondent keeping in mind the principles laid down by the Supreme Court in the judgments cited above and this process shall be completed within a period of six months from today.