

**(1989) 07 SHI CK 0004**

**In the High Court Of Himachal Pradesh**

**Case No :** C.W P. No. 817 of 1986 and C.W.P. No. 39 of 1988

M.D. Kaushal

APPELLANT

Vs

State of H.P. and Another <BR> Mehar Singh Vs State of  
H.P. and Others

RESPONDENT

**Date of Decision :** 19-07-1989

**Acts Referred:**

Himachal Pradesh High Court Officers and Servants (Salaries, Leave, Allowances and Pension) Rules, 1971 — Rule 2

**Citation :** (1989) 2 ILR HP 676

**Hon'ble Judges :** V.K. Mehrotra, J; Bhawani Singh, J

**Bench :** Division Bench

**Advocate :** D.D. Sood, in C.W.P. No. 817 of 1986 and K.D. Sood, in C. W.P. No. 39 of 1988, for the Appellant; Inder Singh and Kamlesh Sharma, in C.W.P. No. 39 of 1988., for the Respondent

**Final Decision :** Allowed

## Judgement

V.K. Mehrotra, J.—Both these petitions raise similar issues. We have heard them together, as prayed by learned Counsel for the parties.

Shri M.D. Kaushal came to this Court first by filing Civil Writ Petition No. 817 of 1986 on September 26, 1986. He says that he was working as a Private Secretary in the High Court of Himachal Pradesh 25 % posts of Private Secretaries in the Himachal Pradesh Civil Secretariat had been upgraded to the post of Special Assistant in the grade of Rs. 1400-1850/-with a special pay of Rs. 250/-giving them status of Class I from September 1983. This has been done on the basis of Punjab pattern which was being followed by the Government of Himachal Pradesh in regard to the grant of pay scales etc. The Private Secretaries and Readers in the High Court of Punjab and Haryana had been given this scale of the upgraded posts to the extent of 25 per cent and the upgraded posts of Private Secretaries had been redesignated as Secretaries while that of the Readers are re-designated as-Court Secretaries.

2. Petitioner Kaushal further says that under the Himachal Pradesh High Court Officers and Servants (Salaries, Leave, Allowances and Pension) Rules, 1971, (for brief, "the 1971 Rules") framed by the Chief Justice, with the prior approval of the Governor of Himachal Pradesh, Private Secretaries and Readers to the Judges had been equated with the corresponding comparable posts of Private Secretaries to the Ministers in the Himachal Pradesh-Civil Secretariat in Schedule 1 (A) attached thereto. Consequentially the posts of Private Secretaries/Readers in the High Court of Himachal Pradesh should also have been upgraded and re-designated as Secretaries Court Secretaries in the scale of J As 1400-1850 with a special pay of Rs. 25G/- per month. There were eight Private Secretaries and eight Readers in the High Court of Himachal Pradesh 25% posts were required to be upgraded and re-designated as Secretaries Court Secretaries with a scale of Rs. 1400-1850 with a special pay of Rs. 250/-respectively.

3. The Petitioner also says that the High Court of Himachal Pradesh made a reference to the State Government to upgrade the posts aforesaid on the analogy of Punjab and Haryana High Court and the HVP. Civil Secretariat in November 1983. The State Government was sitting tight over the matter. The Petitioner was the senior most Private Secretary and was likely to get the post as and when it was sanctioned by the; State Government. He was being, denied the right from the year 1983 since when his counterpart in the Civil Secretariat and the Punjab and Haryana High Court were getting the .benefits. The prayer made in the writ petition is that the State Government be directed to sanction posts of Secretaries and Court Secretaries to the extent of 25 per cent of the existing posts with effect from August 1983, being the date when the same had been sanctioned in favour of their counter part in the Himachal. Pradesh Civil Secretariat and in the Punjab and Haryana High Court.

4. The State of Himachal Pradesh as also the High Court has filed their replies. Some additional affidavits have also been filed in the petition, as directed by this Court.

Mehar Singh v. State of H.P. and Ors.

5. Shri Mehar Singh approached this Court in the year 1988 by filing writ petition No. 39 of 1988 on January 13, 1988. He says that he retired as a Reader from the High Court on March 31, 1987. He was promoted as a Reader on August 20, 1973. In the pay scale of Rs. 825-1580, the maximum of the scale was readied by him on August 1, 1985 where after he stagnated in that scale till the date of his retirement.

6. According to Mehar Singh the scale of Private Secretaries had been upgraded/ revised to that of Rs. 1400-1850 with a special pay of Rs. 200/-from October 22, 1980 in respect of 25% of the posts and 20% posts of Private Secretaries were, there-after upgraded/revised in the scale of Rs. 2000-2300 plus special pay of Rs. 200/-with effect from May 5, 1986 in the H.P. Civil Secretariat. This was clear from the Office Order of the State Government dated May 18, 1987, appended as

Annexure P-2 to the writ petition.

7. Schedule 1(A) of the 1971 Rules, which provides for corresponding comparable posts in the H.P. High Court and the H.P. Secretariat, mentions that posts of Private Secretaries Readers of Judges in the High Court were corresponding and comparable to the posts of Private Secretaries to the Ministers in the H.P. Civil Secretariat. Since, there was up gradation and revision of scales of the Private Secretaries to the Ministers with effect from, the dates aforesaid, similar up gradation and revision in sales was due to the Private Secretaries/ Readers borne on the Establishment of the High Court. More so, as the Punjab pattern of pay safes is granted by the H.P. Government to its employees. Since, the up gradation of the aforesaid nature had been effected in the High Court of Punjab and Harayarna, which pattern is followed by the High Court of Himachal Pradesh, the High Court of Himachal Pradesh was competent to effect the up gradation arid revision of scales of pay as claimed by the Petitioner.

8. Petitioner Mehar Singh has also averred that he was the senior most Reader in the H.P. High Court and was entitled to the revised scale of Rs. 1400-1850 plus special pay of Rs. 200/-with effect from October 22, 1980 and the scale of Rs. 2000/-2300 plus Rs. 200/- as special pay with effect from May 5,1986. He was denied that scale, so that on March 22, 1987 he sent a representation (Annexure P-5) to the High Court and to the State Government for necessary redress. He was told that if and when the up gradation took place with retrospective effect pertaining to a period when he was in service, he would get the necessary relief, and then he approached this Court through the present petition. The prayer in the petition is that Petitioner Mehar Singh and other Readers of the High Court be granted the aforesaid pay-scales of Rs. 1400-1850 plus special pay of Rs. 200/- with effect from October 22, 1980" and the scale of Rs. 2000-2300/- plus special pay of Rs. 200/- per month with effect from May 5, 198 in relation to 25% and 20% of the posts. The Petitioner has, apart from claiming the arrears of pay arid allowances at the revised rates, also prated for fixation" of his pension In the revised pay scale.

9. In this petition also replies have been filed on behalf of the State of Himachal Pradesh as well as the second and the third, Resppondents, namely, the High Court and the Chief Justice An additional affidavit, sworn on May 27, 1989 with copies certain documents appended there to, as also Anr. additional affidavit sworn on June 1, 1989, have been, filed on behalf of the State, as directed by this Court.

The Essential facts;

10. The facts that emerge from the replies- filed by the "State Government and the High Court are these: After the creation of certain temporary posts of Secretaries to the Ministers in the scale of Rs. 1400-1850 plus special pay of Rs. 200/- per month in the Punjab Civil Secretariat, the Punjab and Haryana High Court also followed the same pattern and created temporary posts of Secretaries

in the same pay scale special pay on, August 23, 1983. Certain number of posts of private Secretaries and Readers in the pay scale of Rs. 825-1580 plus special pay of Rs. 150/- per month were held in abeyance from the date when appointments were to be made against the newly created posts. The Himachal Pradesh Government follows the Punjab pattern in the matter of creation of posts and pay scales. The Himachal Pradesh High Court also usually follows the pattern prevailing in the Punjab and Haryana High Court.

11. The letter dated November 11, 1983, Annexure R-2/A, was sent by the High Court of Himachal Pradesh to the State Government for creation of two posts of Secretaries (being 25% of the then permanent posts of Private Secretaries") in the pay scale of Rs. 1400-1850 plus special pay of Rs. 200/- per month plus Rs. 50/- as additional special pay as also for the creation of one post of Court Secretary (at that time being 25% of the then permanent posts of Readers) in the same scale. Following the Punjab pattern, it was simultaneously propounded that two posts of Private Secretaries and One post of Reader in the scale of Rs. 825-1580 with special pay of Rs. 150/- may be kept in abeyance: The number of posts of Readers went up that, ultimately, the proposal was for creation of two posts of Court Secretaries. The State Government wrote back on October 19, 1984. It said that the Private Secretaries in the Himachal Pradesh High Court were eligible for promotion to the post of Deputy Registrars. Such promotion was not available to the Private Secretaries in the Himachal Pradesh Secretariat. In case the High Court agrees to modify its Recruitment and Promotion rules and debar the Private Secretaries from their eligibility for promotion to the post of Deputy Registrars, the Government could consider making a provision for the posts of Special Assistants to Judges to the extent of 25 % of the posts of Private Secretaries as was done in the Civil Secretariat.

12. The High Court examined the matter in the light of this stand of the Government. Some of the Private Secretaries and Readers also met the Chief Justice on September 12, 1985. They informed the Chief Justice that all the officers in the cadre and the grade of Private Secretaries and Readers were agreeable to a change being made in the Rules on the lines suggested by the State Government. Thereafter, as a follow-up action, a letter dated November 18/19, 1985 (Annexure-R 2/C) was sent by the High Court to the State Government intimating it that the necessary amendments in the High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1975 (briefly the "1975 Rules") would be made immediately after the posts were created. The proposal that was made by the High Court was that 25 % posts of Private Secretaries and Readers be upgraded and created in the pay scale of Rs. 1400-1850 with special pay of Rs. 200/- and additional special pay of Rs. 50/- per month and be designated as Secretaries and Court Secretaries on the Punjab pattern on and with effect from August 23, 1983, which was the date with effect from which the pattern was adopted in the Punjab and Haryana High Court. Two posts of Private Secretaries and those of Readers were proposed to be held in abeyance.

13. The 1975 Rules were accordingly amended. They were notified through Notification dated October 21, 1986 (Annexure R-2/C-I). The eligibility of the Private Secretaries for the post of Deputy Registrars was done away with. The State Government then conveyed the approval of the Government, Himachal Pradesh, for the creation of two temporary posts of Secretaries and two temporary posts of Court Secretaries in the pay scale of Rs. 1400-1850 plus Rs. 200/- Special pay per month, through its letter dated January 7, 1987 (Annexure-R-2/D)". Two post of Private Secretaries and two posts of Readers in the pay scale of Rs. 825-1580 were held in abeyance, the creation of these posts was to take effect from the date of the filling up of the posts. So also the consequential effect of the keeping of the aforesaid four posts in abeyance in lieu of the newly created posts.

State Government Explains;

14. M.D. Kaushal had, in the meantime, approached this Court through his writ petition No, 817 of 1986, on September 26, 1986. By an interim order dated January 9, 1987, this Court, directed the State of Himachal Pradesh to clarify whether the posts have been created with effect from the same date as they were created in the Himachal Pradesh Civil Secretariat and, if not, to disclose the reason for adoption of two different dates for creation of the posts in the Himachal Pradesh Civil Secretariat and the Himachal Pradesh High Court. The State Government filed a supplementary reply dated January 30, 1987. It gave out its reasons for not creating the posts in the High Court with effect from the same date from which they were created) in the Himachal Pradesh Civil Secretariat. The Court directed the State Government by its order dated April 30, 1987, to reconsider the matter whether the higher grades could be allowed to the Private Secretaries and the Readers of the High Court from the year 1983, that is, the year when these higher grades were allowed to the similar categories in the Punjab and Haryana High Court keeping in view the policy of the Himachal Pradesh State Government that the Punjab pattern is to be followed. The State Government filed Anr. supplest mastery affidavit dated May 27, 1987 in the writ petition of M.D. Kaushal. It said that it could not agree to the creation of the posts with effect from the same date when the posts were created in the Punjab and Haryana High Court. The State Government took the stand that the posts of Secretaries Court Secretaries were new posts with new pay scales. It was not a case of revision of old pay scale on the Punjab pattern. Also that hi the matter of creation of posts, the Government of Himachal Pradesh was not bound to follow the Punjab pattern.

The Post in the Grade of Rs. 2000-2300:

15. The State Government has disclosed in its affidavits dated May 27, 1989 and June 1, 1989, filed in the writ petition of Mehar Singh that the posts of Special Assistants to Ministers were created with effect from October 22, 1980 as new posts and the higher pay scale was not provided for them by way of grant of selection grade. Initially, the two posts of Private Secretaries in the senior

selection grade of Rs. 1400-1850 plus Rs. 200/- per month as special pay were sanctioned by the State Government through its letter October 17, 1983 but later the posts were redesignated as Special Assistants to Ministers. Subsequently, by an order dated March 25, 1987, the State Government up graded two posts of Special Assistants to Ministers (in the scale of Rs. 1400-1850 plus special pay of Rs. 200/- per month) as Senior Assistants in the pay scale of Rs. 2000-2300 plus Rs. 200/- as special pay per month with effect from May 5, 1986. These were out of the six posts of Special Assistants to Ministers which were created by holding in abeyance six posts of Private Secretaries. By way of an explanation for the choice of October 22, 1980, as the date, it was averred in the latter of the aforesaid two affidavits that initially there was single cadre of Section Officers in the Himachal Pradesh Secretariat up to May 9, 1978 from which the promotion had to be made to the post of under Secretaries in the scale of Rs. 1400-1850". The cadre of Private Secretaries and Section Officers was separated with effect from May 10, 1978. As the Section Officers, who were junior to the Private Secretaries in the common seniority list, had been promoted as under Secretaries with effect from October 22, 1980, the State Government decided on January 2, 1981 to upgrade three posts of Private Secretaries (Senior Selection Grade) to the Ministers with effect from October 22, 1980 for awarding justice and parity to the officers of both the newly formed cadres. The posts of Secretaries and Court Secretaries are in the grade of Rs. 1400-1850, that is, the grade of the Special Assistants to Ministers.

Posts in the Scale of Rs. 1400-1850:

16. As directed by us during the course of the hearing of these petitions, the Registry of the Court placed the original files relating to the re-designation creation of the posts of Secretaries and Court Secretaries. We found that the original file also had letters relating to these posts in the Punjab and Haryana High Court. These letters shows that in the Punjab and Haryana High Court as, well, posts of Secretaries in the pay scale of Rs. 1400-1850 plus special pay of Rs. 200/- plus Rs. 50/- as additional special pay had been created a new and corresponding number of posts of Private Secretaries and Readers in the scale of Rs. 825-1580 with special pay of Rs. 150/- per month were held in abeyance in lieu of the newly Created posts. The creation was through a notification dated August 23, 1983. The creation of these posts in the Punjab and Haryana High Court was on the same pattern as posts of 1 Secretaries to Ministers in the pay scale of Rs. 1400-1850 plus with special pay of Rs. 200/- and additional special pay of Rs. 50/- per month were created by the Government of Punjab.

17. The material which has been brought before this Court in these writ petitions shows that in the Punjab and Haryana High Court the posts of Secretaries, in lieu of certain number of posts of Private Secretaries and Readers, were created with effect from August 23, 1983. The Himachal Pradesh High Court also wanted creation of these posts from that date. The State Government created the posts of Special Assistants to Ministers in the pay scale of Rs. 1400-1850 plus. Rs.

200/- as special pay per month with effect from October 22, 1980. Sanction for the creation of the posts of Secretaries and Court Secretaries in that scale Was communicated through letter dated January 7, 1987 (Annexure-R-2/D) with effect from the, date of filling up of these posts. It is also clear that the grade of posts of Special Assistants to Ministers is Rs. 1400-1850 plus Rs. 200/- as special pay, which is the same as the grade of the posts of Secretaries and Court Secretaries in the Himachal Pradesh High Court. In other words, the grade is identical in the case of Special Assistants and these posts of Secretaries and Court Secretaries irrespective of the fact whether it is the creation for new posts or only a re-designation of some posts out of the existing posts of Private Secretaries and Readers. It further appears that the post of Senior Assistants if the pay scale of Rs. 2000-2300 plus-special pay of Rs. 200/- with effect from May 5, 1986 was upgraded from out of the posts of Special, Assistants to Ministers in the Himachal Pradesh Civil Secretariat. A copy of this order is Annexure "C" to the affidavit of the Deputy Secretary (Home) to the Government of Himachal Pradesh dated May 27, 1989. As far as the High Court is concerned, one.

post in the same pay scale and designated as Special Secretary to the Chief Justice was sanctioned by the State Government, which was conveyed through letter dated April 13, 1987(Annexure R-2/E). to the reply filed in the petition of Mehar Singh by the High Court. This Communication says that the approval of the Governor, Himachal Pradesh, for equation/redefinition of the posts in the High Court of Himachal Pradesh with effect from September 25, 1986 was being conveyed through the letter.

18. The above narration of facts makes it abundantly, clear that as far as the post in the grade of Rs. 2000-2300 plus special pay of Rs. 200/- per month is concerned, it is a post distinct from the post of Special Assistants in the Himachal Pradesh Civil Secretariat and is higher to it. It is not possible to say, as canvassed by the learned Counsel appearing for Petitioner Mehar Singh, that the grade of Rs. 2000-2300 was a mere elongation of the grade immediately below it, namely, Rs. 1400-1850 plus special pay of Rs. 200/- per month in the nature of a special selection grade. The order of the State Government dated March 25, 1987 (Annexure-C to the reply affidavit dated May 27, 1989) when read in its" proper context, unmistakably shows that from out of six posts of Special Assistants to Ministers, which were created by holding, in abeyance six posts of Private Secretaries, two have been upgraded as posts of Senior Assistants in the pay scale of Rs. 2000-2300 plus special pay of Rs. 200/-. A similar pattern is discernible in the case of the post of a Special Secretary to the Chief Justice. A look at the notification dated October 21, 1986 (Annexure-.R-2|C-I) to the reply of the High Court dated October 28, 1988) would show that the post of a Special Secretary in the scale aforesaid is a Gazetted post in Class-I. The post is to be filled in by promotion on selection from amongst the Secretaries and Court Secretaries or by selection/deputation from amongst the officers of the Himachal Pradesh Higher Judicial Service or Selection Grade Officers of the Himachal

Pradesh Judicial Service. Where it is filled in from the Higher Judicial Service or from the Himachal Pradesh Judicial Service, the pay admissible to the Officer would be the pay in his own grade plus special pay of Rs. 200/- per month. It is not possibly to uphold the contention that Petitioner Mehar Singh can claim the higher grade of Rs. 2000-2300 plus Rs. 200/- as special pay, as it were, on the basis that it was a special selection grade admissible to the senior most official, of J the category to which he belongs.

High Court says:

19. The stand of the High Court in both these petitions is that in case this Court were to direct the creation of the post of Secretary or Court Secretary from a date prior to the one with effect from which these posts have been created by the State Government, it would have no objection thereto. This stand of the High Court is understandable, for it concerns the up gradation or creation of higher posts for its officers and servants from an earlier date. It is also consistent with its own recommendation that the posts of Secretaries and Court Secretaries be created with effect from August 23, 1983 when similar posts were created in the Punjab and, Haryana High Court and about the creation where of it had moved the State Government as early as in November 1983. The Himachal Pradesh High Court had made a express-recommendation for the creation of these posts with effect from August 23, 1983 in its letter dated November 18/19, 1985 (Atinexure R2/C to the reply of the High Court

Petitioner's Counsel Canvass:

20. The endeavour on the part of the learned Counsel appearing for the two Petitioners before us has been to persuade us to take the view that the post of Secretary or Court Secretary is a mere nomenclature given to a certain percentage of posts of Private Secretaries and Readers and that it was not creation of new posts. Both Shri K.D. Sood and Shri D.D. Sood, who appeared for Petitioner Mehar Singh and Petitioner Kaushal, respectively, have been at pains to establish this. The submission, oh the basis of this plea, was that the proviso to Rule 2 of .the" 1971 Rules enabled the Chief justice to direct the release of the higher grade to incumbents of 25 % posts of Private Secretaries and Readers without seeking sanction of the State Government in that regard. This proviso says that:

It shall be competent for the Chief Justice, to revise from time to time the scales of pay, special pay, selection grades, and allowances of the employees of the High Court so as to . bring them on par with the scales of pay and allowances which may be sanctioned by the Government of Himachal Pradesh from time to time for the corresponding or com-payable categories of the employees of the Himachal Pradesh Civil Secretariat, as shown in Schedule-I (A):

What was stressed by the learned Counsel Was that on the own showing of the State Government the post of Secretary and Court Secretary Was comparable to that of the Special Assistant in the "Himachal Pradesh Civil Secretariat. The State

Government having, given the grade of Rs. 1400-1850 plus special pay of Rs. 200/- per month to the Special Assistants with effect from October 22, 1980, the Chief Justice would be well within his rights, in exercise, of fee powers under the proviso aforesaid, to direct the release of the same grade to the incumbents of 25 % posts from "amongst the Private Secretaries and Readers with" effect from that date. It was further urged that, in any case the Chief-Justice was entitled to, direct the release of that grade with effect from August 23, 1983 when the Punjab and Haryana" High Court did SO.

21. The submission, though attractive, cannot be accepted. The Punjab and Haryana High Court also proceeded on the basis that the posts of Secretaries were new posts and were to be created with the sanction of the State Government. The correspondence in that regard was before the Registry of the High Court of Himachal Pradesh when the High Court chose to move the State Government in the matter. The High Court asked for the creation of these posts with effect from August 23, 1983.

Posts are Newly Created:

22. The posts of Special Assistants to Ministers in the Himachal Pradesh Civil Secretariat are new posts, higher than; the posts of Private Secretaries to the Ministers. This is clear from a conjoint reading of the letter dated January 21, 1983 from the Deputy Secretary (Personnel) to the Deputy Secretary. (SA-A) to the Government of Himachal Pradesh (copy provided by the learned Advocate General) intimating that the Governor of Himachal Pradesh was pleased to accord sanction for placing of three, posts of Private Secretaries in the. Senior Selection Grade of Rs. 1400-1850 plus Rs. 200/-per month as special pay; letter dated October 17, 1983 (Annexure-A to the supplementary reply of the State Government dated May 27,1989) and the notification dated July 16, 1984 (Annexure B to the same supplementary reply). The notification shows that certain Private Secretaries had been promoted, on the recommendation of the Departmental Promotion Committee, to the newly created posts of Private Secretaries (Senior Selection Grade) to Ministers re-designated as Special Assistants to Ministers in the pay scale of Rs. 1400-1850 plus Rs. 200/-as special pay per month.. When the posts of Special Assistants were created, an equivalent number of posts of Private Secretaries were kept in abeyance. This is reinforced by the order dated March 25, 1987 (Annexure-C to the aforesaid supplementary reply) as well. in this order, as noticed earlier, it has been mentioned that two posts of Senior Assistants to Ministers were upgraded to the higher pay scale of Rs. 2000- 2300 plus Rs. 200/- as "special pay per month with effect from May 5, 1986. The order reiterates that these two posts were out of the six posts of Senior Assistants to Ministers which .were created by holding in abeyance six posts of Private Secretaries and further that these six posts of Private Secretaries shall be continued to be kept in abeyance as here to before.

23. The same pattern of keeping in abeyance an equivalent number of posts of Private Secretaries and Readers, upon the up gradation of 25 % posts of each

category to the posts of Secretaries and Court Secretaries has been retained in the case of the Himachal Pradesh High Court. The mere fact that in the letters dated January 21, 1-983 and October 17, 1983; the words used were that sanction had been accorded to the placing of certain number of post of Private Secretaries in the Senior Selection Grade of Rs. 1400 -1850 plus. Rs. 200/-as special pay would not affect the real nature of the transaction being one of creation of new post in the higher grade, particularly when equivalent number of posts in the lower grade were kept in abeyance. The conclusion seems to be inevitable that the posts of Secretaries and Court Secretaries were newly created posts in a higher - pay scale.

Advocate General's Endeavour ;

24. The learned Advocate General, appearing for the State of Himachal Pradesh, was at some pains to bring out the fact that the posts of Secretary and Court Secretary were new posts, created by the State Government, on the basis of the proposal made by the High Court of Himachal Pradesh in that regard. We have no difficulty, particularly in view of what has been said earlier, in accepting this submission. The emphasis of the learned Advocate General also was upon the fact that the delay in the creation of the posts was on account of the time taken by the High Court in bringing about a change in the Rules by excluding the Private Secretaries from the field of eligibility for promotion to the post of Deputy Registrars. This amendment was brought about through the notification dated October 21, 1986 (Annexure R-2/C-I). Soon thereafter, says the learned Advocate General, sanction for the creation of posts was given by the State Government through its letter dated January 7, 1987(Annexure-R-2/D)I By this submission it was attempted by the learned Advocate General to persuade us to take the view that the decision of the State Government in not creating the post with effect from October 23, 1980, when the posts of Special Assistant was created in the Himachal Pradesh Civil Secretariat or from August 23, 1983 when the post of Secretary was created in the Punjab and Haryana High Court was not arbitrary.

Article 229 of the Constitution :

25. Article 229 of the Constitution, which deals with the Officers and servants and the expenses of High Courts, says :

229. Officers and servants and the expenses of High Courts.

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

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

(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 authorized 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.

26. The post of Secretary and Court Secretary is one which is governed by the provisions of this Article. There is no dispute about it. The question about the scope of powers under this Article was considered by a constitution Bench of the Supreme Court in *M. Gurumoorthy v. The Accountant General, Assam and Nagaland and Ors.*, (A.I.R. 1971 S.C 1850). The relevant facts in *Gurumoorthy* were these: *Gurumoorthy* was a Stenographer in the Ministry of law at New Delhi and had been confirmed as such in the Income Tax Tribunal, Delhi Branch. The Chief Justice of the High Court of Assam and Nagaland appointed him as his Secretary, on the basis of the competitive examination and interview, temporarily. The State Government had informed the Registrar of the High Court conveying the sanction of the Governor to the creation of a post of Secretary to the Chief Justice for the time being in the same scale as before, subject to the revision of the pay scale.

27. By a letter dated August 6, 1958, the State Government informed the Registrar that the Governor had agreed to: the reorganization of the Stenographers Service in the High Court; as had been done by the Chief Justice with a view to provide them sufficient incentive." This was, however, subject to the condition that the procedure of recruitment, promotion etc, " should be the same or similar in nature as contained in the Government resolution dated October 22, 1955. The pay scales were to be the same as accepted by the Government on the recommendation of the Pay Committee. The Registrar wrote back to the Government that the conditions which had been imposed relating to the procedure of recruitment, promotion, etc., could not be so imposed in view of the provisions of Article 229 of the Constitution as it was for the Chief Justice to regulate the conditions of service of the officers and the employees of the High Court. The Court had framed its own Rules in that behalf; A request was made, to the Government to waive these conditions in so far as the reorganization of the Stenographers Service of the Court was concerned. The State Government, thereafter, formed the Registrar that whenever a Stenographer was attached to the Chief Justice as his Private Secretary, he was to have gazette status. This was in reply to a specific query made by the Registrar, " from the State

Government on the point whether the Government sanction related to the post of Secretary to the Chief Justice cum-Stenographer or not. The Chief Justice then appointed Gurumoorthy in the Selection Grade of Stenographers with effect from the date of his appointment and directed that the revised pay scale, as recommended by the Pay Committee and accepted by the Government, would be admissible to him. All this was brought to the notice of the Government through a letter of the Registrar.

28. The Accountant General felt satisfied about the validity of the order of the Chief Justice by which the post of the Secretary to the Chief Justice was directed to be merged in the post of the Selection Grade Stenographer and the pay scale was revised in accordance with the recommendations of the Pay Committee, which had been accepted by the Government. However, the State Government asked for a clarification from the High Court. It said that a definite assurance had been given by the High Court in one of its letters that action was being taken separately to make the necessary modification in the High Court Appointment and Conditions of Service Rules while seeking the sanction of the Government for creation and reorganization of the Stenographers Service in the High Court and seeking its sanction for the post of Selection Grade Stenographer to be posted as Secretary to the Chief Justice. The charge report of Gurumoorthy showed that his appointment was exclusively to the post of Private Secretary. He could not be held to have been appointed to any other post. In other words, the post could not be merged into the post of Selection Grade Stenographer.

29. The matter was pending when the Chief Justice (Shri C.P. Sinha), who had been made the order of appointment of Gurumoorthy vacated his office, Shri H. Deka had become the Chief Justice. He felt that the post of Secretary to the Chief Justice could not be merged with the post of Selection Grade Stenographer. Agreeing with the suggestion made in this behalf by the State Government, he vacated the order merging the post of Secretary with that of the Selection Grade Stenographer. This order was, thereafter, reconsidered by Shri Gopalji Mehrotra, who had succeeded Shri H. Deka as Chief Justice. Chief Justice Mehrotra did not agree with the view taken by Deka, Chief Justice. He restored the Order which had been passed by C.P. Sinha, C.J. Upon this, the State Government directed the Accountant General not to issue any pay slip to Gurumoorthy until the State Government had re-examined the matter and issued final orders. Gurumoorthy then challenged the action of the State Government in a petition under Article 226 of the Constitution. The petition was dismissed by the High Court. Gurumoorthy then approached the Supreme Court in appeal.

30. The constitution Bench of the Supreme Court, examined the matter of the power and authority of the Chief Justice of the High Court under Article 229 of the Constitution at some length, Speaking through Grover, J, the Supreme Court said that the unequivocal purpose and obvious-intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of the 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. This was to secure and maintain the independence of the High Courts. The anxiety of the Constitution makers to achieve that object was 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. The amount of any expenditure so charged could not be varied even by the legislature. To borrow the words of their Lordships of the Supreme Court:

Clause (1) read with. Clause (2) of Article 229, confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but-only in respect of conditions of service. In the matter of appointments even the legislature cannot abridge or modify the powers conferred on the Chief Justice under Clause (1). The approval of the Governor, as noticed in the matter of Rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval Thus Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. These can be prescribed by, rules made by him. Apart from the special situation contemplated by the proviso to Clause (1) the only exception is that the Governor's approval must be sought to the extent the rules relate to salaries, leave or pension. This exception, it is abundantly clear, had to be made because the, finances have to be provided by the Government and to the extent there is any involvement of expense the Government has to approve of it.

31. The Supreme Court noticed the view expressed by Dutta J. of the Assam High Court in the judgment under appeal, where it said that When a post was created with the approval of the government in the High Court and the pay scale was sanctioned for it, its-inclusion in the rules was a mere formality. It was also held by him that the conditions laid down while sanctioning the post of selection grade stenographer in the letter of the Government dated August 6, 1958 that the procedure of recruitment should be on the same or similar lines as laid down in the Government Resolution dated October 22, 1955 came into conflict with the powers of the Chief Justice under Article 229 The Supreme Court said that the view of Duttam, J. finally was that the government had the authority to sanction the post but it could not interfere with the choice of the incumbent which undoubtedly was to be of the Chief Justice under Article 229 of the Constitution. The Supreme Court also said that "we are inclined to concur with the reasoning and conclusion of Dutta J".

32. The Supreme Court also noticed the view expressed by Gossami, J. of the Assam High Court. He had said that while sanctioning the post to which

Gurumoorthy had been appointed, the Government had made it clear that the Selection Grade post should be filled by promotion strictly on merits from amongst the Stenographers Grade-I. Dealing with it, the Supreme Court observed (in paragraph 13 of the report) that :

It may be stated at once that any restrictions imposed by the Government of the above nature while communicating the sanction could not bind the Chief Justice in, view of Article 229 of the Constitution, Even as regards the strength of the cadre of stenographers which was seven there was evidence that at the relevant time all the posts were not filled up" At any rate, the Government had itself taken up the position that as a result of the order of the Chief Justice of May 7, 1959, one post of grade I Stenographer stood automatically retrenched. If that be the correct position there was no additional financial burden involved in the appointment of the Appellant as Secretary-cum-Selection Grade Stenographer the Appellant was appointed by the Chief Justice who was Competent to do so under Article 229. If there were any technical difficulties they could be easily sorted out by mutual co-operation which is essential between the Chief Justice of the High Court and the State Government in such matters. But instead of doing so the un-usual step of the Accountant General withholding the pay slips under the directions of the Government was taken for which there was no legal justification or warrant.

The Supreme Court allowed the appeal and said that an appropriate writ or direction shall issue to the Resppondents to give effect to the orders of Sinha C.J. and Mehrotra C.J.

The Principle:

33. The observations of the Supreme Court in Gurumoorthy make one thing absolutely clear and it is this: If sanction to the creation of a post is given by the State Government, it would not be competent for the Government to hedge-in the sanction with a condition under which the choice of the incumbent by the High Court gets; restricted or its choice the matter of a condition of service, other than the one for which the approval of the Governor is necessary under the proviso to Article 229(2) is likely to be impinged In other words, it is not competent for the State Government to require the High Court to lay down any condition of service which does not relate to salaries, allowances, leave or pension as a pre-condition for the grant of sanction approval to the creation of the post, If such a pre-condition is laid down, it would come in conflict with the provisions of Article 229 of the Constitution and would be honest.

34. A condition, like the one insisted upon by the State Government in the present case, that be made ineligible for promotion to the post of Deputy Registrar in the High Court is not a condition of service relating to salaries, allowances, leave or pension, The field of eligibility for promotion to a higher post on the Establishment of the High Court is a condition of service which is within the sole discretion of the Chief Justice of the Court to lay down, subject of

course, to the provisions of any law made by the legislature of the State as envisaged by Article 229(2). The State Government could not have insisted, as it did in the present case, that the Rules be amended by the Chief Justice. to exclude the Private Secretaries from the field of eligibility for promotion to the post of Deputy Registrar as a pre condition to its sanction to the creation of the post of Secretary and Court Secretary.

35. In the present case, the amendment of the Rules made under the High Court notification dated October 21, 1986 was done on account of the insistence of the State Government that the amendment be made before the posts of Secretary and Court Secretary could be sanctioned. The High Court it appears, felt compelled to make the amendment upon an erroneous assumption that the State Government could subject the creation of these posts to an amendment of this nature. The fact that the High Court made the amendment in the year 1986 cannot reasonably be jessed into aid by the State. Government for justifying the delayed creation of the posts of Secretary and Court Secretary in the Himachal Pradesh High Court by its order dated January 7, 1987.

Some Decisions:

36. The learned Advocate General argued that the creation of a post was a matter of governmental policy dependent upon exigencies of administrative necessity and relied up on the decision of the Supreme Court in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, That was a case in which the post of a Vigilance Commissioner, to which Ramanatha was appointed by an order dated September 24, 1968, was decided to be abolished by confining the sanction to the post up to February 28, 1970. Earlier, by an order dated November 2, 1968, the Government of Kerala had directed that the Vigilance Commissioner would hold office for a period of five years or till he attained the age of 60 years whichever was earlier. On December 20, 1968, there was an agreement between Ramanatha Pillai and the Government of Kerala which provided that the term of appointment was to be for a period of five years from October 3, 1968 or till Ramanatha attains the age of 60 years, whichever was earlier. The challenge to the order by which the post of Vigilance Commissioner came to be sanctioned only up to February 28, 1970 by Ramanatha failed before the High Court of Kerala. The matter was taken up in appeal to the Supreme Court by Ramanatha. One of the submissions made before the Supreme Court was that the abolition of the post resulted in the termination of the service of Ramanatha which contravened Article 311 of the Constitution as well as the agreement which the State Government had entered into with Ramanatha. It was, therefore stopped from abolishing the post.

37. The Supreme Court said (in paragraph 14 of the report) that the power to create or abolish a post was a matter of governmental policy. Every sovereign Government had this power in the interest and necessity of internal administration and that the creation or abolition of post was dictated by policy decision, exigencies of circumstances and administrative necessity. They are all

decided by the Government in the interest of administration, and general public. The right to hold the post came to an end on the abolition of the post.

38. The observations of the Supreme Court must be read in the context of the facts of the case before it. There can hardly be any doubt that the creation of a post is dictated by policy decision, exigencies of circumstances and administrative necessity. But it does not follow there from that while taking a decision about the creation of a post on the establishment of a High Court, it is open to the State Government to impose a condition: of service which is not countenanced by Article 229(2) of the Constitution or comes in conflict with the powers of the Chief Justice there under.

39. There has been a catena of decisions of the Supreme Court relating to the binding nature of the recommendations of the High Court in cases governed by Article 233(1) read with Article 235 of the Constitution. In the matter of appointment of District judges, from the cadre of the Subordinate Judges of the State, the Supreme Court has ruled time and again, that normally the recommendations made by the High Court should be accepted by the State Government and the Governor should act on the same. We may only refer to a recent decision of the Supreme Court in State of Kerala Vs. Smt. A. Lakshmikutty and others, in which the Supreme Court noticed its earlier decisions including the one in M.M. Gupta and Others Vs. State of Jammu and Kashmir and Others, The observations made by the Court in M.M. Gupta were reproduced in A. Lakshmikutty as representing the true position in law (in paragraph 26 of the report). These observations are that

Normally, as a matter of rule, the recommendations made by the High Court for the appointment of a District Judge should be accepted by the State Government and the Governor should act on the same. If in any particular case, the State Government for good and weighty reasons finds it difficult to accept the recommendations of the High Court, the State Government, should communicate its views to the High Court-and the State Government must have complete and effective consultation with the High Court in the matter. There can be no doubt that if the High Court is convinced that there are good and weighty reasons for the, objections on the part of the State Government, the High Court will undoubtedly reconsider the matter and the recommendations made by the High Court.

40. Dealing with the question of compulsory retirement of a member of the Judicial Service, the Supreme Court emphasised the same aspect in The Registrar, High Court of Registrar, High Court of Madras Vs. R. Rajiah, . The Supreme Court said (in paragraph 11 of the report) that:

The power of control envisaged under Article 235 of the Constitution relates to the power of making a decisions" by the High Court against a member of the subordinate judicial service the High Court will make a recommendation in that regard to the Governor and the Governor will act in accordance with such

recommendation The Governor cannot -take any action against any member of a subordinate judicial service without, and contrary to the recommendation of the High Court.

41. The observations apply with greater vigour in respect of the officers and servants of a High Court, who are governed by Article 229 of the Constitution. It would not, we feel, be possible for the Governor to ignore, the recommendation of the High Court in regard to the conditions of service and the number and category of posts required for the efficient functioning of the Court, made by the High Court. He cannot ignore or act contrary to the decision of the Chief Justice made in exercise of his jurisdiction under Article 229 of the Constitution: Nor can he subject the creation of a post, asked to be created by the High Court, to a condition of service which comes in conflict with the powers of the Chief Justice under Article 229(2) of the Constitution.

42. The decisions of the Suprerhe Court in The The State of Haryana Vs. Subash Chander Marwaha and Others, and Mani Subrat Jain and Others Vs. State of Haryana and Others, upon which reliance was placed by the learned Advocate General, do not lay down anything to the contrary. Those were cases where the question was about appointment to posts in the P.C.S. (Judicial Branch) and of Additional District and Sessions Judges in the Haryana Superior Judicial Service, respectively. What the Supreme Court said--in these cases was that the initial appointment was to be made by the State Government The fact that it had laid down certain minimum standards of a score of marks in the Rules in the former case or did not accept the recommendation made by the High Court in the latter case would not give any enforceable right to the persons borne on the list of successful candidates in the first case or those recommended for appointment by the High Court; in the second case. The Government had not accepted the recommendations of the High Court. Reliance upon these decisions is not apposite in the circumstances of the present petitions.

43. What is the effect of the insistence of the State Government of laying down a pre-condition, which it could not lay down on account of the powers enjoyed by the Chief Justice under Article 229 of the Constitution, in a given case has to depend upon the circumstances of that case. The question does not admit of a universally applicable answer. The facts; of each case would have to be considered for the ultimate relief that may be granted by the High Court oh the judicial side in such matters.

44. In Purshottam Lal and Others Vs. Union of India (UOI) and Another, a five judge Bench of the Supreme Court was considering the grievance of Research Assistants falling with m Class lit of the Non-gazette^ the Forest Research Institute and Colleges, Dehra Dun. The Government of India had set-up a Commission known as the. Second Pay Commission to enquiry into the emoluments and conditions of service of the Central Government employees. The Pay Commission made recommendations which were accepted by the Government of India, In the case of posts similar to those held by the Petitioners

in other similar Institutions. (Except the Forest Research institute) the recommendations were to be implemented from July 1, 1959. In the case of the Petitioners, the recommendations were to take effect from June 21, 1962, which was the date of issue of the orders. The submission which was made before the Supreme Court on behalf of the Government was that the Pay Commission Report did not deal with the case of the Petitioners. This submission was negative. The further submission was that it was for the Government " to accept the recommendations of the Pay Commission and while doing so, to determine which categories of employees should be, taken to have been included in the terms of reference. The Supreme Court said (in paragraph 15 of the report) that:

We are unable to appreciate this point Either the Government has made reference in respect of all Government employees or it has not But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement- the report regarding some employees only it commits a breach of Articles. 14 and 16 of the Constitution. This is what the Government has done as far as these Petitioners are concerned.

45. The Supreme Court allowed the petition, which had been filed under Article 32 of the Constitution the revised pay scales of the Petitioners will have effect from July 1, 1959 in accordance with the recommendations of the Pay Commission.

46. Relying upon its decision in *Purshottamji*, the Supreme Court held in *Laljee Dubey and Others Vs. Union of India (UOI) and Others*, that the order of the President of India contained in the letter dated November 17, 1953, sanctioning the recommendation of Kalyanwala Committee, inter alia, relating to the designation of checkers employed in Harness and Saddlery Factory, Kanpur, as clerks, be also given effect to in the case of the Appellants before it. The Appellants were doing clerical work. The recommendation of the Committee was that in case the checkers were Matriculates, or had completed three years continuous service, they were to be designated as Lower Division Clerks. The Supreme Court held that having regard to the facts of the case and the recommendations contained in the letter dated November 17, 1953, the Appellants were entitled to be designated as Lower Division Clerks. The failure to do so had resulted in arbitrary discrimination against them.

47. A Division Bench of the Orissa High Court dealt with a similar situation in *Khiron Chandra Dasv. The State of Orissa and Anr.* 1977(2) SLR 403 the Petitioner was recruited as an Amin under the Delta Land Acquisition Organization set up in the year 1956. The State Government accepted the claim of the Amins working in that organisation and equated their pay scale with that of the Amins working in other departments of the Government in the year 1973. The decision of the State Government was that the pay scale of Amins working in the Settlement Department, P & S Department and Town Planning and Capital Administration in the Urban Development Department shall stand enhanced with

effect from January 1, 1965. The same benefit was extended to the Amins working under the Land Acquisition Organization. However, the benefit was extended to Petitioner Khirod Chandra with effect from January 1, 1967.

48. Speaking through R.N. Misra, J., the Division Bench said that the fact that government had accepted in the year 1973 the claim of the Amins working in the Delta Irrigation Organisation and equated their pay scales with that of the Amins in the other departments supported the Petitioner's contention that Amins under that organisation and elsewhere in the Government service were of the same status. The failure of the State Government to give benefit to the Amins working in the Delta Irrigation Organisation also with effect from January 1, 1965 was discriminatory in character. The High Court directed the State Government to pay to the Petitioner the enhanced pay scale with effect from January 1, 1965.

49. This decision was followed by a single Judge of the Punjab and Haryana High Court in *Ndchhattar Singh and Ors. v. The State of Punjab and Ors.* 1981 (1) SLR 512. The Tubewell Operators in the Public Health Department of the Punjab Government were given enhanced pay scale with effect from February 1, 1968 when they raised a labour dispute. The Petitioners before the High Court were employed as Tube-well Operators in the Punjab- Irrigation Department. They claimed that similar benefit of enhanced pay scale should be given to them as well with effect from February 1, 1968. The High Court made that direction

50. The principle on which relief was founded by the Orissa and Punjab and Haryana High Courts was that in case of persons similarly situated, the State Government cannot practice hostile discrimination. The principle is a salutary one and is founded upon the requirements of Article 14 of the Constitution. The grant of relief is dependent upon a finding of hostile discrimination where either persons similarly situated are "treated differently or those dissimilar are treated similarly; without there being any legitimate basis therefore

The present petitions :

51. The State Government has sanctioned the posts of secretary and Court Secretary for the Himachal Pradesh High Court from a date different from the one with effect from which it sanctioned the creation of posts of Special assistants to Ministers in the Himachal Pradesh Civil Secretariat namely, October 22, 1980. It has given its reasons for choosing this date for the creation of the posts in the Himachal Pradesh Civil Secretariat. The reason put forward by the State Government in that respect does not appear to be perverse or arbitrary

52. The post of Secretary was created in the Punjab and Haryana High Court with effect from August 23, 1983. Since, admittedly, the Punjab pattern is followed by the High Court of Himachal Pradesh, a request for creation of the posts of secretary and Court Secretary was made by the High Court of Himachal Pradesh to the State Government with effect from that date. The State Government has come out with a reason for not creating the posts with effect from that date and the reason is that the High Court was asked to amend its Rules excluding the Private

Secretaries from the field of eligibility for promotion to the post of Deputy Registrars.

53. We have come to the conclusion that a condition of this nature could not be imposed, by the State Government as if impinged upon the discretion of the Chief Justice under Article 229 of the Constitution. The Government could not ask the Chief Justice to decide a channel of promotion for the persons borne on the Establishment of the High Court, and within the rule making power of the Chief Justice under Article 229, without impinging upon the powers of the Chief Justice under that Article. The failure of the State Government to create the posts with effect from August 23, 1983 is thus founded upon an irrelevant consideration and is, therefore, arbitrary within the meaning of that word as understood in law. The State Government cannot justify the creation of the posts through its order dated January 7, 1987 on this account, ignoring the recommendations of the High Court.

We hold:

54. Having regard to the object with which Article 229 has been incorporated in the Constitution, as laid down by the Supreme Court in Gurumoorthy's case, it is only to be expected that whenever the creation of a post to be borne on the Establishment of the High Court, which is within the rule making power of the Chief Justice under Article 229 of the Constitution, is made, the State Government would normally accept the suggestion except in a case where it feels that having regard to genuine constraints of its finances, the creation of the post cannot be sanctioned. This is implicit in the scope of Article 229 of the Constitution itself. The sanction to the creation of the posts, we hold, cannot be subjected to any requirement which impinges upon the freedom of action of the Chief Justice under Article 229 of the Constitution nor can it be deferred for any such reason.

55. In the present case on the own showing of the State Government, the creation of the posts of Secretary and Court Secretary for the Himachal Pradesh High Court was not deferred by the State Government for any reason of genuine financial constraint. It was delayed of account of the insistence of the State Government for incorporation of a service condition which fell outside the ambit of the proviso to Article 229(2) of the Constitution. The reason for delay in the creation of the posts is thus irrelevant and, therefore, arbitrary.

The result:

56. We allow these petitions only to the extent that a direction shall issue to the State Government to reconsider the question of sanctioning the creation of the posts of Secretary and Court Secretary with effect from the date suggested by the High Court, namely, August 23, 1983. It shall do so in the light of what we have said in this judgment.

57. The Petitioners will be entitled to their costs.