
(2008) 06 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18415 of 2002

P. Hari Hara Prasad and Another

APPELLANT

Vs

High Court of A.P. and Others

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Andhra Pradesh High Court Service Rules, 1959 — Rule 19
Andhra Pradesh High Court Service Rules, 1975 — Rule 21(3), 3, 31(3)
Constitution of India, 1950 — Article 146, 148, 187, 226, 229
Government of India Act, 1935 — Section 241, 242(4)

Citation : (2008) 5 ALD 59 : (2008) 4 ALT 661

Hon'ble Judges : V.V.S. Rao, J;C.V. Ramulu, J

Bench : Division Bench

Advocate : C. Kodanda Ram, for the Appellant; M. Bhaskara Lakshmi and J. Sudheer, Special Government Pleader for Respondent Nos. 2 to 4, for the Respondent

Judgement

C.V. Ramulu, J.—This writ petition is filed seeking a certiorari (i) to call for the records pertaining to G.O.Rt. No. 1805, Law (LA&J Courts.C1) Department, dated 22.10.2005 and declare the same as arbitrary and illegal, (ii) to declare the continuation of Schedule III of Rule 21(3) of Andhra Pradesh High Court Service Rules, 1975 (for short "the Rules") without incorporating the recommendation of the Chief Justice for upgradation of 24 posts of Deputy Section Officers to that of Section Officers as arbitrary and illegal; and (iii) consequently, to direct the first respondent to treat the recommendations of the Chief Justice dated 6.7.1992 as a sanction and comply with the same immediately and pay the arrears from 6.7.1992 till date.

2. The writ petition is filed by one P. Hari Hara Prasad, Retired Section Officer of the High Court of Andhra Pradesh and the Andhra Pradesh High Court Junior Officers' Association, represented by its President Md. Mohmood Ali, initially, challenging G.O. Rt. No. 1221, Law (L.A. & J Courts.C1) Department, dated 5.8.2002 issued by the second respondent, rejecting the approval of the

recommendation made by the Chief Justice for upgradation of 24 posts of Deputy Section Officers/Translators to that of Section Officers, on the ground that it was issued without jurisdiction and contrary to Article 229(2) of the Constitution of India and further to declare continuation of Sl. No. 7 in Schedule III of Rule 31(3) of the Rules as arbitrary and illegal. However, during the pendency of the writ petition, on the feeling expressed by a Division Bench of this Court that the case of the petitioners was not properly considered as is required, the matter was taken up again and G.O. Rt. No. 1805, dated 22.10.2005 was issued reiterating the same stand as was taken earlier. Thereafter, the prayer in the writ petition was amended to the effect of challenging the said G.O. dated 22.10.2005.

3. According to the petitioners, there are 60 posts of Deputy Section Officers/Translators in the High Court of Andhra Pradesh. The said posts are enumerated as Category I of Division II under A.P. High Court Service Rules, 1975. Further promotion from the post of Deputy Section Officer/Translator is to that of Section Officer. In view of certain exigencies of service, the Chief Justice while exercising powers under Article 229(2) of the Constitution of India recommended for upgradation of 24 posts of Deputy Section Officers to that of Section Officers, as the Deputy Section Officers are being entrusted with various responsibilities and attending to duties, such as, Heads of certain Sections like Vernacular Records, English Records etc., besides scrutiny and translation works. The posts of Deputy Section Officers/Translators in the High Court are equated with the posts of Translators in the Law Department of Secretariat, Government of Andhra Pradesh, in fixing the cadre and scale of pay. Responsibilities discharged by Deputy Section Officers/Translators in the High Court are much more in quantity and onerous than that of Translators in the Law Department. When the petitioners earlier filed a writ petition in W.P. No. 4650 of 1991 seeking upgradation of the posts of Deputy Section Officers to that of Section Officers, it was disposed of by an order dated 28.11.1991 with an observation that it is open to the petitioners to make a representation to the High Court on administrative side and the Registrar (Administration) shall consider the same and may accordingly recommend the case of the petitioners to the Government. In view of the same, Deputy Section Officers/Translators made a representation on 6.1.1992 pointing out the anomalies and seeking to recommend for upgradation of 24 posts of Deputy Section Officers to that of Section Officers. In turn, the Registrar (Management) vide his letter Roc. No. 647/E. 1/92-1, dated 6.7.1992 addressed the Principal Secretary to Government, Home (Courts-A) Department with a positive recommendation. Registrar also informed the Government that the approval of the said proposal would not involve any much financial burden. However, the proposals were rejected by the Government through Letter No. 30444/Cts.C/93-5, dated 22.7.1993 on two grounds; firstly, there is a financial burden involved in the matter and secondly, it does not satisfy the ratio of feeder posts vis-a-vis promotional posts i.e. 4:1. While that being so, a second writ petition was filed by the petitioners in W.P. No. 15133 of 2001 seeking a direction

to the Government to pass appropriate orders on the proposals sent by the High Court for upgradation of 24 posts of Deputy Section Officers to that of Section Officers, as per the recommendations made by the Chief Justice. However, the said writ petition was disposed of on 21.11.2001 with a direction to the State Government to consider the representation of the petitioners as well as the recommendation of the Chief Justice dated 6.7.1992 and pass appropriate orders within a period of one month. Even after those directions, Government did not issue any orders, which resulted in filing a contempt case in C.C. No. 200 of 2002. However, during the hearing of the said contempt case, Government through its Counsel informed the Court that it had issued G.O. Rt. No. 1221, dated 5.8.2002 rejecting the proposals on fresh ground. Aggrieved by the same, the present writ petition is filed. However, as noticed above, during the pendency of the writ petition, a Division Bench of this Court expressed unhappiness as to the way in which the matter was dealt with and on the advice of the learned Advocate General, the case of the petitioners was once again examined and felt that it is not feasible to consider the request for upgradation of Deputy Section Officers posts to that of Section Officers and thus rejected the case of the petitioners vide G.O. Rt. No. 1805, Law (LA & J Courts C1) Department, dated 22.10.2005. Thus, the prayer in the writ petition was amended to the effect of challenging the said G.O.

4. It is the contention of the petitioners that under Article 229(2) of the Constitution of India, the appointment of officers and servants of the High Court shall be made by the Chief Justice of the High Court or such other Judge or officer of the Court as the Chief Justice may direct. Therefore, under Article 229(1) any recommendation made by the Chief Justice is absolute and no limitations can be imposed by the Government. The control over the staff of the High Court is free from interference by the Government. The object of the Article is to secure independence of Judiciary, which is not possible unless the authority is vested in the Chief Justice to appoint subordinate staff with complete control over them. The Chief Justice is vested with wide powers to run the administration of High Court independently without interference from the other wings. The Chief Justice can create and reorganize the cadre of A.P. High Court services as per administrative requirement without any approval or consent from the Government. Therefore, the impugned order is arbitrary, illegal and contrary to Article 229(1) of the Constitution of India.

5. Respondent No. 1 filed counter supporting the case of the petitioners. Whereas, other respondents filed separate counters and additional counters denying allegations made by the petitioners and asserting that recommendation of the Chief Justice regarding upgradation of the posts of Deputy Section Officers to that of Section Officers was examined and it was felt that if recommendations of the High Court are accepted, it would disturb the ratio between the promotion posts and feeder posts. Government also considered that the Sheristadars of District Courts are holding higher responsibilities than that of Deputy Section Officers of High Court and that the duties and responsibilities of both the

categories are different and, therefore, they are not entitled for equal pay. Further, Government also examined the matter thoroughly and felt that if the posts of Deputy Section Officers are upgraded to that of Section Officers, then the Section Officers strength would be $84+24=108$ + Sheristadars 64 (existing + upgraded). Thus, the strength of Section Officers would be 172. Since the strength in the lower category posts are 26, the ratio would become 172:26, which is not in accordance with the rules, because the feeder category should always be more than that of promotion category of any service, so that the personnel in lower category will get promotions in routine course. In the additional counter filed by the 3rd respondent, it is stated thus:

3. ...W.P. No. 18415/2002 was filed by the petitioner against the orders of the Government issued in G.O. Rt. No. 1221, Law (LA&F Courts.C) Department, dated 5.8.2002. Thereon the matter has been taken up third time with this department and it was again opined that taking into account the duties and responsibilities of both these cadres i.e. Deputy Section Officer and Section Officer and different pay scales assigned to them, there is no justification in their request. The following pay scales were assigned for the above categories based on the recommendations of successive Pay Revision Commissions from time to time:

PRC	SECTION OFFICER	DEPUTY SECTION OFFICER	1978	800-1450	750-1300
1986	1550-3050	1380-2750	1993	3110-6380	2750-5960
1999	5980-12100	5300-11300	2005	9385-21550	7770-18675

Moreover Deputy Section Officer is the feeder channel for the promotion to the post of Section Officer. The Anomalies Committee has also not accepted the proposal. The request was examined several times from 1992 onwards. If these posts are upgraded there would be an increase in the scales and apart from involving huge financial implications, the upgradation also involved change from Non-Gazetted to Gazetted cadre, without any justification. If this is conceded, flood gates will open and similar requests may arise from number of cadres from various departments of the State Government and thus it is not advisable to concede to this request.

In view of the above, the matter has been circulated by Secretary, Law Department upto Hon'ble C.M. through C.S./M(L.&C)/M (Finance) and orders have been issued rejecting the proposal vide G.O. Rt. No. 1805, Law (LA&J Courts.C1) Department, dated 22.10.2005. As the matter has been negated by the Government and hence neither any financial implications are involved in the matter nor any policy decision taken by the Government and it is only a request for upgradation of the post of Deputy Section Officer to that of Section Officer, which is negated by the Government. Now again on this petition, the Secretary to Government, Legislative and Justice, Law Department has filed an additional counter-affidavit on 7.9.2006.

6. Sri C. Kodanda Ram, learned Counsel for the petitioner, strenuously contended

that it is the prerogative of the Chief Justice to create/upgrade posts in the A.P. High Court establishment. Government cannot enter into the arena of creation or upgradation of posts and ordinarily refuse the recommendation made by the Chief Justice under Article 229 of the Constitution, except in exceptional cases where huge financial burden is involved. Further, the rejection of the recommendation of the Chief Justice without any consultation/discussion with the Chief Justice is arbitrary and illegal. This is a dead lock between two constitutional authorities i.e. Executive and the Judiciary. The Chief Justice, under the powers vested in him under Article 229 recommended upgradation of 24 posts of Deputy Section Officers to that of Section Officers and it was made clear that no much financial burden was involved and proportionately the posts of Deputy Section Officers would be reduced. Therefore, the contention of the Government that the posts of Deputy Section Officers are feeder posts for the posts of Section Officers and, as such, after upgradation of 24 posts of Deputy Section Officers to that of Section Officers, total number of Section Officers posts will come to 108 and not 172 as stated by the Government is not correct and the further contention that the ratio was also not properly maintained is incorrect. This is only an imaginary position taken up by the Government. Even after upgradation of 24 posts of Deputy Section Officers, the posts of Deputy Section Officers remain to be 36. Therefore, absolutely there is no financial burden involved. The very rejection of the case of the petitioner is contrary to the recommendations of the Chief Justice under Article 229. Once the recommendation of the Chief Justice is made, the Government is bound to accept the same; otherwise it amounts to belittling the institution of the Chief Justice. In this case, absolutely there is no financial burden and the Government could have accepted the recommendations of the Chief Justice as it is; instead of that, they have made a hue and cry. In support of his contention, the learned Counsel relied upon the decisions reported in *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, , *State of U.P. and another Vs. C.L. Agrawal and another, etc.*, , *High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another*, , *Personal Secretaries to the Hon''ble Judges and Court Masters Association, High Court Buildings, Hyderabad Vs. Secretary Finance, Government of A.P. and others*, , *The High Court Employees Welfare Association, Calcutta and Others Vs. State of West Bengal and Others*, , *Union of India (UOI) and Another Vs. S.B. Vohra and Others*, , *High Court Employees' Welfare Association, Calcutta and Others Vs. State of West Bengal and Others*, and *State of U.P. v. Section Officer Brotherhood* 2004 AIR SCW 5441.

7. Sri J. Sudheer, learned Special Government Pleader appearing for respondents 2 to 4, submitted that the power of the Chief Justice under Article 229 is not absolute and it is subject to the constitutional limitations and the very Article 229 limits the power of the Chief Justice insofar as creation, upgradation and appointments, which are again subject to approval of the Government, wherever financial burden is involved. Once the power of the Government is not in doubt, it is always open for this Court to examine as to whether the rejection of the

approval was right or wrong. In this case, 24 posts are sought to be upgraded and that results in great financial burden on the State Exchequer. Therefore, Government has rightly rejected the proposals for upgradation of 24 posts of Deputy Section Officers to that of Section Officers, since they involve financial burden. The power of the Chief Justice under Article 229 is not absolute and it is subject to limitations prescribed in the very same Article. Generally speaking, the recommendations of the Chief Justice are not desirable to be rejected, but that does not mean that the Government could not have refused to accord approval to the recommendations made by the Chief Justice in this case. Though it is not desirable in every case to reject the recommendations of the Chief Justice, but the Government is vested with the power, under the Constitution, to approve or to reject the same. Therefore, the contention of the learned Counsel for the petitioner that the power vested under Article 229 with the Chief Justice is absolute is not correct and the power is further subject to scrutiny by the Government in certain areas. In the present case, since it involved financial burden, Government has rightly rejected the proposals. Further, no mandamus can be issued straightaway and the judicial review has to be exercised coupled with factual scenario. Upgradation is a creation of post and it involves financial implications and creation of posts is the prerogative of the Government and not the High Court. No rule is made or sought to be amended for creation of the cadre strength. The recommendation of the Chief Justice seems to be not on the exigencies of service, but on the representation of the employees' association and further the Chief Justice has not invoked the power under Article 229. The writ petition is devoid of merits and is liable to be dismissed. In support of his contention, learned Special Government Pleader relied upon the decisions in *Darshan Lal Vs. State of Jammu and Kashmir*, *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, *State of U.P. v. C.L. Agrawal* (supra) and *Union of India v. S.B. Vohra* (supra).

8. We have given our earnest consideration to the respective submissions made by the learned Counsel on either side and perused the impugned order and other material made available on record.

9. From the pleadings noticed above, the following questions arise for consideration:

1. Whether the power of the Chief Justice under Article 229 of the Constitution of India is absolute and recommendation made by him is binding on the Government and whether the Government can reject the approval of the recommendation of the Chief Justice ?

2. Whether the proposals sent by the Chief Justice, in this case, could not have been rejected by the Government?

10. It appears, the Association of the Junior Officers of the A.P. High Court earlier filed a writ petition in WP No. 4650 of 1991 seeking upgradation of the posts of Deputy Section Officers in the High Court to that of Section Officers. The said

writ petition was disposed of on 28.11.1991 with an observation that it is always open for the petitioners to make a representation to the Chief Justice on administrative side. Subsequently, a representation was made by the Deputy Section Officers/Translators on 6.1.1992 pointing out the anomalies in the pay scales and recommending for upgradation of the posts of Deputy Section Officers to that of Section Officers, since they are discharging onerous responsibilities. On the said representation, the then Chief Justice passed an order dated 26.6.1992 to the following effect:

At present 24 posts of D.S.Os should be upgraded to that of S.Os and equivalent posts in the existing cadre of D.S.Os may be abolished. This should not involve much financial burden. On the contrary, it may result in some saving. Write to the Government stating that HCJ strongly recommends accordingly. This should also meet to some extent the legitimate grievance of the A.P. High Court Service Association.

In turn, the Registrar (Management) addressed a letter to the Government on 6.7.1992 stating that the Chief Justice strongly recommended the legitimate request of the Deputy Section Officers/Translators of the High Court establishment and requested to issue orders for upgradation of 24 posts of Deputy Section Officers to that of Section Officers. From the above, it is clear that it is not forwarding of the representation of the Association by the Registrar, but on the strong recommendation made by the Chief Justice while invoking the powers under Article 229. Therefore, we need not go into the controversy raised by the learned Special Government Pleader that there was no such recommendation as required under Article 229(2) of the Constitution.

11. Thereafter, Government sent a letter dated 22.7.1993 stating that the post of Deputy Section Officer/Translator is a feeder category post to that of Section Officer and if 24 posts of Deputy Section Officers are upgraded, the remaining posts would come down to 26 and the total number of feeder category posts will be 26, while promotion posts are 172. In fact, we have looked into the letter dated 22.7.1993 and the same was not in good taste and the way in which it was to be dealt with was not dealt and the learned Special Government Pleader also conceded the same. However, when a further recommendation was made by the Registrar vide Proceedings No. 647.El/92-3 reiterating the request for approval of the upgradation of 24 posts, G.O. Rt. No. 1221, dated 5.8.2002 was issued. Initially, the writ petition is filed challenging the said G.O.

12. It seems, when the matter had come up for hearing on 1.9.2005, a Division Bench of this Court expressed unhappiness over the manner in which the whole issue was dealt with. Learned Advocate General has brought this to the notice of the Government. Thereafter, the matter was reexamined by the Government and felt that it is not feasible to consider the request of upgradation of 24 posts of Deputy Section Officers to that of Section Officers and thus again rejected the request of the petitioners vide G.O.Rt. No. 1805, Law (LA&J Courts.Cl) Department, dated 22.10.2005. The prayer in the writ petition was, thereafter,

amended to the effect of challenging the said G.O.

13. Now, we may notice various decisions relied upon by learned Counsel for the petitioners as under:

In M. Gurumoorthy's case (*supra*), the Apex Court held as under:

(4) Once an order had been passed by the Chief Justice of the High Court in exercise of his power under Article 229 of the Constitution the only course open to the Government, if it wanted to challenge those orders, was to take appropriate proceedings either by way of persuading the Chief Justice to rescind or amend his order on the administrative side or to file a writ petition challenging his orders in the High Court. But the Government took the extraordinary and somewhat unusual step of directing the Accountant General not to issue any pay slip to the appellant until final orders of the Government were issued. This is clear from the letter of the Government to the Accountant General dated 7.10.1961. It appears that the appellant challenged the directions given by the Government to the Accountant General by a petition under Article 226 of the Constitution. That petition was however, withdrawn on 12.7.1963 in view of an assurance given by the Advocate General that if a proposal was sent to the Government by the High Court on the following lines it would be accepted: " (1) Creation of a permanent post of Secretary to the Hon'ble Chief Justice, outside the cadre of Stenographers, in the scale of Rs. 450-30-600 with retrospective effect the date with reference to which this would take effect being decided by the Government in consultation with the Hon'ble Chief Justice. (2). Pending finalization of the above proposal, the petitioner would be allowed to draw pay in the above mentioned grade at Rs. 570. 00 per month subject to adjustment in the light of the finalization of the matter. "On 23.7.1963 the Registrar wrote to the Government enclosing a copy of the High Court order dated 12.7.1963. It was stated that in accordance with that order a proposal was being sent to the Government for creating a permanent post of Secretary to the Chief Justice with effect from 24.8.1956 the date on which the appellant joined on a pay scale of Rupees 450-30-600. On 1.10.1963 the Government wrote to the Registrar intimating sanction of the Governor to the creation of a permanent post of Secretary with effect from 7.5.1959. The Registrar in his letter of 12.11.1963 pointed out that the sanction was inconsistent with the High Court's proposal. This was followed by a long correspondence but the Accountant General revived his demand for refund of a sum of Rs. 15,621.02np. On account of the salary which was stated to have been overdrawn by the appellant.

(8) 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 a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the Executive except to the limited extent that is provided in the Article. This is essentially to secure and maintain the independence of the High Courts. 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 Judge 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 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. Even under the Government of India Act the power to make rules relating to the conditions of service of the staff of the High Court vested in the Chief Justice of the Court u/s 242(4) read with Section 241 of the Government of India Act, 1935. By way of contrast reference may be made to Article 148 relating to the Comptroller and Auditor General of India. Clause (5) provides. "subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General."

(9) It is significant that the Comptroller and Auditor General unlike the Chief Justice of a High Court has not been given the power to prescribe the conditions of service of persons serving in the Indian Audit and Accounts Department in the same terms as are embodied in Article 229(2). There the Rules have to be made by the President after consultation with him. Article 187 may also be noticed. Clause (2) of that Article provides that the Legislature of a State may by law regulate the recruitment and conditions of service of persons appointed to the secretarial staff of the House or Houses of Legislature. Clause (3) is to the effect that until provision is made under Clause (2) the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the Assembly or Council. 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.

14. In Agrawal's case (supra), while referring to the said Gurumoorthy's case (supra), the Supreme Court held as under:

(12) Article 229 does not state that posts in the High Court are to be created by the Governor; it does not even deal with the creation of posts. Clause (1) thereof empowers the Chief Justice to make the appointments of officers and servants of a High Court. Clause (2) empowers the Chief Justice to make rules prescribing the conditions of service of officers and servants of a High Court with the proviso that so far as these rules relate to salaries, allowances, leave or pensions, they require the Governor's approval. Clause (3) requires the administrative expenses of the High Court to be charged upon the Consolidated Fund of the State.

(13) Rule 3 of the 1976 Rules requires that the number of permanent posts of the various categories in classes I to IV in the High Court's establishment shall be determined from time to time by the Chief Justice with the approval of the Governor. It is, therefore, the Chief Justice who has the power to create posts in the High Court. That he may do so with the approval of the Governor does not detract from this position. The creation of a post precedes and is different from the approval of its creation. In any event, by reason of the provisions of the 1976 Rules referred to above, the powers of the Governor under the rules and orders of the Government are exercisable by the Chief Justice in respect of matters not covered by the 1976 Rules.

(16) It will have been noted that the appellants did not directly challenge the orders of the Chief Justice giving the premature increments to the first respondents. They employed a side wind, by refusing to take these premature increments into account for the purposes of calculating the first respondents' pensionary benefits and, accordingly, compelled the first respondents to file the writ petitions challenging the orders in this behalf. The appellants' approach must be deplored. We can do no better than to refer to the observations of a Constitution Bench in *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, at p. 1853, thus : "once an order had been passed by the Chief Justice of the High Court in exercise of his power under Article 229 of the Constitution the only course open to the Government, if it wanted to challenge those orders, was to take appropriate proceedings either by way of persuading the Chief Justice to rescind or amend his order on the administrative side or to file a writ petition challenging his orders in the High Court. But the Government took the extraordinary and somewhat unusual step of directing the Accountant General not to issue any pay slip to the appellant until final orders of the Government were issued."

(17) During the course of the hearing of these appeals we noticed that an order dated 27.10.1995, made by a Division Bench of the High Court (in Writ Petition No. 32987 of 1993, *S.D. Dixit v. State of U.P.*) had been included in the paper books and asked about it. It appears that the said writ petitioner is in the same position as are the first respondents in the appeals before us. Learned Counsel on his behalf prayed that the Division Bench hearing the said writ petition follow

the impugned Full Bench judgment. The Division Bench observed:

the submission made above by Dr. Padia appears to be contrary to the Apex Court decisions rendered in Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, , and in H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, . Further, these two decisions appear to have not been brought to the notice of the Full Bench inadvertently as the Full Bench has not referred to these two above mentioned Apex Court decisions which have binding effect. It is, therefore, necessary to examine the issue involved in this petition in the light of the above referred decisions of the Apex Court as the aforesaid decisions of the Apex Court are binding on this Court notwithstanding the aforesaid pronouncement of the Full Bench in C.L. Agarwal's case in this regard. Sri Padia has prayed for and is granted time. LIST this case on 15.12.1995.

We asked learned Counsel for the appellants whether he desired to rely upon the aforementioned judgments of this Court in the cases of the Supreme Court Employees' Welfare Association and M.C. Puttaswamy. Learned Counsel stated that they were not relevant having regard to the interpretation of the Rules that has appealed to us.

(18) There is a passage in the judgment in the case of Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, that, in the context of the matters before us, deserves to be set out. We endorse what is observed and commend it to the States so that they may deal with proposals made by their Chief Justices with due deference and respect. "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 be, is required. It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the President of India and the Chief Justice of India.

15. In Ramesh Chand Paliwal's case (supra), it was held by the Apex Court as under:

(18) This Article makes Chief Justice of the High Court the supreme authority in the matter of appointments of the High Court officers and servants. This Article also confers rule-making power on the Chief Justice for regulating the condition of service of officers and servants of the High Court subject to the condition that if the rules relate to salaries, allowances, leave or pensions, they have to have the approval of the Governor of the State. If the Legislature of the State has made any law, the rules made by the Chief Justice would operate subject to the conditions made in that law.

(21) Under Article 229, power of appointment can also be exercised by such other Judge or officer of the Court as may be directed by the Chief Justice. So also the rule-making power can be exercised by some other Judge or officer of the Court provided he is authorised in that behalf by the Chief Justice.

(22) The power available to the Chief Justice of the High Court, under Article 229, is akin to the power of the Chief Justice of India under Article 146 of the Constitution, which is quoted below.

146. Officers and servants and the expenses of the Supreme Court.-(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct: provided that the President 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 Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India 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 President.

(3) The administrative expenses of the Supreme 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 India, and any fees or other money taken by the Court shall form part of that Fund.

(24) The power to appoint an officer or servant of the High Court also includes the power to dismiss as was held in, *Pradyat Kumar Bose Vs. The Hon''ble The Chief Justice of Calcutta High Court*, . It was also held in that it was not necessary for the Chief Justice to consult the State Public Service Commission before dismissing the Registrar of the original side of the High Court. In *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, , it was held that in the matter of appointment of the High Court officers and servants, the Chief Justice is the supreme authority and there can be no interference by the Executive except to the limited extent indicated in Article 229. If, however,

the matter relates to pay fixation, it has to have the approval of the Governor of the State.

(25) Since, under the Constitution, Chief Justice has also the power to make rules regulating the conditions of service of the officers and servants of the High Court, it is obvious that he can also prescribe the scale of salary payable for a particular post. This would also include the power to revise the scale of pay. Since such a rule would involve finances, it has been provided in the Constitution that it will require the approval of the Governor which, in other words, means the State Government. This Court in, *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, , had expressed the hope that "one should accept in the fitness of things and in view of the spirit of Article 229 that the approval, ordinarily and generally, would be accorded. "This was reiterated by this Court in *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, . We again reiterate the hope and feel that once the Chief Justice, in the interest of High Court administration, has taken a progressive step specially to ameliorate the service conditions of the officers and staff working under him, the State Government would hardly raise any objection to the sanction of creation of posts or fixation of salary payable for that post or the recommendation for revision of scale of pay if the scale of pay of the equivalent post in the Government has been revised.

(32) If the impugned directions are analysed in this background, it will be seen that the real purport of the directions is to override not only the constitutional provisions contained in Article 229 but also the rules made in exercise of powers available to the Chief Justice under that Article. Even if the Registrar, in compliance of the impugned directions, is to report that the posts on which officers of the Rajasthan Higher Judicial Service or Rajasthan Judicial Service are appointed on deputation, can well be managed by the High Court staff itself or that when the officers are brought from the District Courts to the High Court for appointment on the aforesaid posts, some of the subordinate Courts become vacant as the Presiding Officers having been sent on deputation to High Court are not available to hear and dispose of cases pending in those Courts and even if such report is placed before the Full Court, can Full Court give a direction to the Chief Justice not to fill up those posts by bringing officers on deputation but to fill up those posts by promotion from amongst the High Court staff? The answer is an emphatic "no, it cannot be done. "A Judge of the High Court individually or all the Judges sitting collectively, as in the Full Court, cannot either alter the constitutional provisions or the rules made by the Chief Justice. They have no jurisdiction even to suggest any constitutional amendment or amendment in the rules made by the Chief Justice nor can they create any avenue of promotion for the High Court staff so as to be appointed on posts meant for officers from Rajasthan Higher Judicial Service or Rajasthan Judicial Service. The Chief Justice has been vested with wide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his Brother Judges who, however, can scrutinize his

administrative action or order on the judicial side like the action of any other authority. It should not be lost sight that Registrars, under Rules of various High Courts, have also to perform some limited judicial functions which cannot be done by an officer other than a Judicial Officer in the High Court establishment.

16. In *P.Ss. and C.Ms. Association v. Secretary, Finance* (supra), a Division Bench of this Court held as under:

(18) In *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, , the Supreme Court held that the object of this Article is to secure the independence of the High Court, which is essential for the working of the democratic form of Government in the country, by giving the High Court absolute control over its staff, subject only to the limitations imposed by the Article itself and free from interference by the Government. In *Union of India and others Vs. Pratibha Bonnerjea and another*, , the Supreme Court has opined that not only the High Court Judges but even the staff members of the High Court are insulated from the influence of the Executive and the Legislature. Clause (2) of Article 229 empowers the Chief Justice of the High Court to make rules, in the absence of law made by the Legislature of the State, governing the conditions of service of officers and servants of the High Court. However, the proviso to Clause (2) of Article 229 provides that the rules that may be made by the Chief Justice under Clause (2) shall, so far as they relate to salaries, allowances, leave or pension, require the approval of the Governor of the State before they can be enforced. That means without such prior approval, such rules or any order made under Clause (2) of Article 229 have no validity. On the question of what should be the attitude of the Government when rules are framed by the Chief Justice relating to salaries, allowances, leave or pension, there is lot of case law. By and large the Courts have held that the Government should, ordinarily, accord its approval to the rules made by the Chief Justice.

(19) The Supreme Court in *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, , has held that one should expect in the fitness of things and in view of the spirit of Article 229 that ordinarily and generally approval should be accorded to the rules framed by the Chief Justice under Article 229(2) of the Constitution relating to the salary, allowances, leave or pension etc., or the service conditions of the officers and servants of the High Court. The same view was reiterated by the Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, . Further, the Supreme Court in *High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another*, , in paragraph 25 held "25. Since under the Constitution, the Chief Justice has also the power to make rules regulating the conditions of service of the officers and servants of the High Court, it is obvious that he can also prescribe the scale of salary payable for a particular post. This would also include the power to revise the scale of pay. Since such a rule would involve finances, it has been provided in the Constitution that it will require the approval of the Governor which, in other words, means the State Government. This Court

in State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others, , had expressed the hope that "one should accept in the fitness of things and in view of the spirit of Article 229 that the approval, ordinarily and generally, would be accorded. "This was reiterated by this Court in Supreme Court Employees" Welfare Association and Others Vs. Union of India (UOI) and Another, . We again reiterate the hope and feel that once the Chief Justice, in the interest of High Court administration, has taken a progressive step specially to ameliorate the service conditions of the officers and staff working under him, the State Government would hardly raise any objection to the sanction of creation of posts or fixation of salary payable for that post or the recommendation for revision of scale of pay in the scale of pay of the equivalent post in the Government has been revised.

17. In High Court Employees" Welfare Association, Calcutta v. State of West Bengal (supra), it was held by the Supreme Court as under:

(10) In the instant case, the primary reason for refusal of grant of approval by the Governor has been the Government's claim of inability to bear the financial burden imposed by the draft rules. The Governor, under Article 229(2) has the power to refuse grant of approval, provided there is "very good reason" for the same. It cannot be said that there has been no exchange of views between the Chief Justice and the State Government. The correspondence between the State Government and the Chief Justice commencing from 21.11.1998 reveal sufficient degree of ex-change of ideas. During the negotiation between the Government and the Chief Justice, both sides expressed their respective views on the matter. However there is no meeting point.

18. In S.B. Vohra's case (supra), the Apex Court held as under:

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

(50) We agree with the submission of the learned Additional Solicitor General to the effect that the decision of the High Court had been rendered having its origin in A.K. Gulati (CW. 289/91) which had a spiraling effect particularly in the case of Assistant Registrars. That was more a reason why a competent authority of the appellant should have taken immediate steps in holding a meeting with the Chief Justice or an authorized officer of the High Court.

(51) Having regard to the aforementioned authoritative pronouncements of this Court there cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. In this case the appellants even addressed itself on the recommendations made by the High Court. They could not have

treated the matter lightly. It is unfortunate that the recommendations made by a high functionary like the Chief Justice were not promptly attended to and the private respondents had to file a writ petition. The question within exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons.

19. In *High Court Employees' Welfare Association v. State of West Bengal* (supra), it was held by the Supreme Court 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 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 Rule 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 the 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 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 Rule 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 inconsonance with the Minutes of the meeting dated 13/18.4.2005 between the Chief Justice and the Ministers representing the State. But for the unfortunate misunderstanding relating to second para of Rule 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.

20. In *State of U.P. v. Section Officer Brotherhood* (supra), it was held by the Apex Court as under:

(20) In *State of Maharashtra v. Association of Court Stenos, P.A., P.S. and Anr. Pattanaik, J.*, (as the learned Chief Justice then was) noticed this Court's earlier decision in *Supreme Court Employees' Welfare Assn. v. Union of India* and stated the law in the following terms: "on a plain reading of Article 229(2), it is apparent that the Chief Justice is the sole authority for fixing the salaries etc., of the employees of the High Court, subject to the rules made under the said Article. Needless to mention rules made by the Chief Justice will be subject to the provisions of any law made by the Legislature of the State. In view of proviso to

Sub-article (2) of Article 229, any rule relating to the salaries, allowances, leave or pension of the employees of the High Court would require the approval of the Governor, before the same can be enforced. The approval of the Governor, therefore, is a condition precedent to the validity of the rules made by the Chief Justice and the so-called approval of the Governor is not on his discretion, but being advised by the Government. It would, therefore, be logical to hold that apart from any power conferred by the rules framed under Article 229, the Government cannot fix the salary or authorise any particular pay scale of an employee of the High Court. It is not the case of the employees that the Chief Justice made any rules, providing a particular pay scale for the employees of the Court, in accordance with the constitutional provisions and that has not been accepted by the Governor. In the aforesaid premises, it requires consideration as to whether the High Court in its discretionary jurisdiction under Article 226 of the Constitution, can itself examine the nature of work discharged by its employees and issue a mandamus, directing a particular pay scale to be given to such employees. In the judgment under challenge, the Court appears to have applied the principle of "equal pay for equal work" and on an evaluation of the nature of duties discharged by the Court Stenographers, Personal Assistants and Personal Secretaries, has issued the impugned directions. In *Supreme Court Employees' Welfare Assn. v. Union of India*, this Court has considered the powers of the Chief Justice of India in relation to the employees of the Supreme Court in the matter of laying down the service conditions of the employees of the Court, including the grant of pay scale and observed that the Chief Justice of India should frame rules after taking into consideration all relevant factors including the recommendations of the Pay Commission and submit the same to the President of India for his approval. What has been stated in the aforesaid judgment in relation to the Chief Justice of India vis-a-vis the employees of the Supreme Court, should equally apply to the Chief Justice of the High Court vis-a-vis the employees of the High Court. Needless to mention, notwithstanding the constitutional provision that the rules framed by the Chief Justice of a High Court, so far as they relate to salaries and other emoluments are concerned, require the prior approval of the Governor. It is always expected that when the Chief Justice of a High Court makes a rule, providing a particular pay scale for its employees, the same should be ordinarily approved by the Governor, unless there is any justifiable reason, not to approve the same. The aforesaid assumption is on the basis that a high functionary like the Chief Justice, before framing any rules in relation to the service conditions of the employees of the Court and granting any pay scale for them is expected to consider all relevant factors and fixation is made, not on any arbitrary basis. "it was furthermore stated:" the Court also expressed the view in the aforesaid case that the Chief Justice of India is the appropriate authority to consider the question as to the distinctive nature and personality of the employees of the Supreme Court and before laying down the pay scales of the employees, it may be necessary to ascertain the job contents of various categories of employees and nature of duties which are performed by them. Further, at the time of preparing the rules

for prescribing the conditions to service, including the fixation of the pay scales, the Chief Justice of India will consider the representations and suggestions of the 1 different categories of employees of the Supreme Court, also keeping in view the financial liability of the Government. In view of the aforesaid decision of this Court, it is difficult for us to sustain the impugned judgment, whereunder the High Court in exercise of its jurisdiction under Article 226, has issued the mandamus, directing a particular pay scale to be given to the Court Stenographers, Personal Assistants and Personal Secretaries attached to the Hon"ble Judges of the Court.

21. In the judgment relied upon by the learned Counsel for the respondents reported in Bhuban Chandra's case (supra), it was held by the Apex Court as under:

(17) Article 229 of the Constitution confers power on the Chief Justice of the High Court to appoint officers and servants of the High Court. Article 229(2) states that subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose. It is also provided that the rules made under Article 229(2) shall, so far as they relate to salaries, allowances, leave or pensions require the approval of the Governor of the State. It is not disputed that the appointment of Bhubhan Chandra Dutta by the Chief Justice of the High Court at a salary of Rs. 1500.00 per month with special allowance of Rs. 250.00 per month was made without the approval of the Governor. If the Chief Justice of the High Court wanted to appoint the Registrar at the initial salary of Rs. 1500.00. with a special salary of Rs. 250.00 per month, special approval of the Governor should have been taken in view of the fact that the rules did not permit such salary and the higher salary involved greater financial burden on the Government....

22. Learned Counsel for the respondents relied upon the decision in T. Gopalakrishnan's case (supra), wherein it was held by the Supreme Court as under:

(4) In support of the writ petition reliance was placed before the High Court on the power of the Chief Justice under Article 229 and Rule 19 of the Andhra Pradesh High Court Service Rules, 1959 (for brevity, the 1959 Rules). The High Court has taken the view that for the purposes of appointments of officers and servants of the High Court and laying down the conditions of their service the Chief Justice is the highest authority. The requirement of the approval of the Governor of the State under the proviso to Clause (2) of Article 229 is a requirement of a mere formal approval. The Government could not refuse to accord their approval when the recommendation of the Chief Justice was merely for equation of the pay scales of the High Court staff with those of the Secretariat's. The High Court has not rested its judgment on Rule 19 of the 1959 Rules.

(6) Leaving aside the proviso to Clause (1) of Article 229 in the matter of appointments of officers and servants of a High Court the power is of the Chief Justice or of such other Judge or officer of the Court as he may direct. Under Clause (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 are a charge upon the Consolidated Fund of the State. Any fees or monies taken by the Court formed part of that Fund. There is no separate fund or power to raise it at the disposal of the High Court for the purposes of meeting the salaries etc., of the High Court staff. In this context Clause (2) of Article 229 may now be read with the proviso appended thereto. "subject to the provision of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose, provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State. "if there is a law made by the Legislature of the State then subject to that law, otherwise without it, the Chief Justice or some other Judge or officer of the Court authorised by the Chief Justice is empowered to make rules laying down the conditions of service of the High Court staff. But if the Rules made under Clause (2) relate to salaries, allowances, or pensions then since in them is involved the question of finance the framing of the rules under Clause (2) requires the approval of the Governor - that means the State Government. One should expect in the fitness of things and in view of the spirit of Article 229 that ordinarily and generally, the approval should be accorded. But surely it is wrong to say that the approval is a mere formality and in no case it is open to the Government to refuse to accord their approval. On the facts and in the circumstances of this case and in the background of the conditions which are prevalent in other States Government could have been well-advised to accord approval to the suggestion of the Chief Justice, as the suggestion was nothing more than to equate the pay scales of the High Court staff with those of the equivalent posts in the Secretariat. That merely because the Government is not right in (not) accepting the Chief Justice's view and refusing to accord the approval is no ground for holding that by a writ of mandamus the Government may be directed to accord the approval. The High Court staff has not always been treated at par with the Secretariat staff in the matters of scales of pay. The matter has been taken up in the Chief Justices' Conference and with several State Governments. Most of them have acceded to the request of the High Court to bring its staff at par with the Secretariat staff in the matter of pay etc. It is, however, not possible to take the view that merely because the State Government does not see its way to give the required approval it will justify the issuance of a writ of mandamus under Article 226 of the Constitution as if the refusal, of the State Government was ultra vires or made mala fide and arbitrary.

23. Learned Counsel for the respondents further relied upon the decision

reported in Agrawal's case (supra), which was also relied upon by the learned Counsel for the petitioners, and drawn attention of the Court to paragraphs 11 to 13, which read as under:

11. The learned Counsel for the appellants then based his case upon Rule 27 of the Financial Handbook, Vol. II, Parts II to IV, which reads thus:

27. An authority may grant a premature increment to a Government Servant on a time scale of pay if it has power to create a post in the same cadre on the same scale of pay.

The learned Counsel submitted that it was the Governor who had created the posts which the first respondents in these appeals had occupied and, therefore, it was only the Governor who could have approved the grant of premature increments to them.

12. Article 229 does not state that posts in the High Court are to be created by the Governor; it does not even deal with the creation of posts. Clause (1) thereof empowers the Chief Justice to make the appointments of officers and servants of a High Court. Clause (2) empowers the Chief Justice to make rules prescribing the conditions of service of officers and servants of a High Court with the proviso that so far as these rules relate to salaries, allowances, leave or pensions, they require the Governor's approval. Clause (3) requires the administrative expenses of the High Court to be charged upon the Consolidated Fund of the State.

13. Rule 3 of the 1976 Rules requires that the number of permanent posts of the various categories in Classes I to IV in the High Court's establishment shall be determined from time to time by the Chief Justice with the approval of the Governor. It is, therefore, the Chief Justice who has the power to create posts in the High Court. That he may do so with the approval of the Governor does not detract from this position. The creation of a post precedes and is different from the approval of its creation. In any event, by reason of the provisions of the 1976 Rules referred to above, the powers of the Governor under the rules and orders of the Government are exercisable by the Chief Justice in respect of matters not covered by the 1976 Rules.

24. Learned Counsel for the respondents relied upon the judgment in S.B. Vohra's case (supra), which was also relied upon by the learned Counsel for the petitioners and drawn attention of the Court to paragraphs 51 to 53, which read 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.

The ratio laid down in the judgments relied upon by learned Counsel for the petitioners can be concluded as under:

25. In Gurumoorthy's case (supra), it was held that the unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 of the Constitution is that in the matter of appointments of officers and servants of 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 said Article. This is essentially to secure and maintain the independence of the High Courts. 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 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 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.

26. In Agrawal's case (supra), it was held that under Article 229 of the

Constitution, it is the Chief Justice, who has power to create posts in the High Court and he may do so - the Governor's approval does not detract from this position. The creation of posts precedes and is different from the approval of its creation. It was categorically held that that when the 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.

27. In Ramesh Chand Paliwal's case (supra), it was held that Article 229 of the Constitution makes the Chief Justice of the High Court the supreme authority in the matter of appointments of High Court officers and servants and also confers rule making power on the Chief Justice for regulating the condition of service of officers and servants of the High Court, subject to the condition that the rules relate to salaries, allowances, leave or pensions, have to have the approval of the Governor of the State. The power available to the Chief Justice of the High Court, under Article 229, is akin to the power of the Chief Justice of India under Article 146 of the Constitution. The Chief Justice has also the power to make rules regulating the conditions of service of officers and servants of the High Court. Therefore, it is obvious that the Chief Justice can also prescribe the salary payable for a particular post. This would also include the power to revise the scale of pay. Since such a rule would involve finances, it has been provided in the Constitution that it will require the approval of the Governor which, in other words, means the State Government. It was also held that once the Chief Justice, in the interest of High Court administration, has taken a progressive step specially to ameliorate the service conditions of the officers and staff working under him, the State Government would hardly raise any objection to the sanction of creation of posts or fixation of salary payable for that post or the recommendation for revision of scale of pay if the scale of pay of the equivalent post in the Government has been revised. The Chief Justice is vested with wide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his brother Judges, who, however, can scrutinize his administrative action or order on the judicial side like the action of any other authority.

28. In Personal Secretaries and Court Masters' Association case (supra), a Division Bench of this Court while taking into consideration the ratio laid down in Gurumoorthy's case and other cases reiterated that once the Chief Justice, in the interest of High Court administration, has taken a progressive step specially to ameliorate the service conditions of the officers and staff working under him, the State Government would hardly raise any objection for sanction of creation of posts.

29. In High Court Employees' Welfare Association, Calcutta's case (supra), the Supreme Court held that, under Article 229(2) of the Constitution, the Governor has the power to refuse grant of approval, provided there is "very good reason" for the same.

30. In *S.B. Vohra's case* (supra), it was held by the Apex Court that the recommendations made by the High Court would not have been treated as a matter of course or lightly. In that case, as the recommendation made by high functionaries like the Chief Justice was not promptly attended to, the private respondents therein had filed the writ petition. It was held that as the matter is within exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations, save and except for good and cogent reasons.

31. In *High Court Employees' Welfare Association* (supra), it was held that the role of State Government in approving the rules made by the Chief Justice is limited insofar as they relate to salaries and allowances and there is no justification for the State to disagree with the recommendations made by the Chief Justice on the recommendations of the Special Pay Commission. It appears, in that case, there were deliberations and discussions in view of certain misunderstandings cropped up between Judiciary and the Executive and after discussions, the differences were sorted out on the outstanding issues, thereby maintaining high constitutional traditions.

32. In *Section Officer Brotherhood's case* (supra), the Apex Court reiterated that on a plain reading of Article 229(2) of the Constitution, it is apparent that the Chief Justice is the sole authority for fixing the salaries etc., of the employees of the High Court, subject to the rules made under the said Article. Further, it is needless to mention that rules made by the Chief Justice will be subject to the provisions of any law made by the State Legislature. In view of proviso to Clause (2) of Article 229, any rule relating to the salaries, allowances, leave or pension of the employees of the High Court would require the approval of the Governor, before the same can be enforced. The approval of the Governor, therefore, is a condition precedent to the validity of the rules made by the Chief Justice and the so-called approval of the Governor is not on his discretion, but being advised by the Government. It would, therefore, be logical to hold that apart from any power conferred by the rules framed under Article 229, the Government cannot fix the salary or authorize any particular pay scale of an employee of the High Court. It is always, of course, expected that when the Chief Justice of a High Court makes a rule, providing a particular pay scale for its employees, the same should be ordinarily approved by the Governor, unless there is any justifiable reason not to approve the same. Such assumption is on the basis that a high functionary like the Chief Justice, before framing any rules in relation to the service conditions of the employees of the Court and granting any pay scale for them is expected to consider all relevant factors and fixation is made, not on any arbitrary basis.

The ratio laid down in the judgments relied upon by the learned Counsel for the respondents can be concluded as under:

33. In *Bhuban Chandra's case* (supra), it was held by the Apex Court that Article 229 of the Constitution confers power on the Chief Justice of the High Court to

appoint officers and servants of the High Court. Article 229(2) states that 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. However, the approval of the Governor should be taken in view of the fact that the rules did not permit such salary and higher allowances involving greater financial burden on the Government. In Gopalakrishnan's case (supra), the ratio laid down in Bhuban Chandra's case (supra), was also taken into consideration and it was held "it is, however, not possible to take the view that merely because the State Government does not see its way to give the required approval, it will justify the issuance of a writ of mandamus under Article 226 as if the refusal of the State Government was ultra vires or mala fide and arbitrary."

34. Learned Special Government Pleader appearing for the respondents also placed reliance on the very same judgments relied upon by the learned Counsel for the petitioners as noticed above and made submissions that the creation of a post precedes and is different from the approval of its creation. It is, therefore, the Chief Justice who has the power to create posts in the High Court. He may do so - the approval of the Governor does not detract his position. The High Court should not ordinarily issue a writ in the nature of mandamus or refer the matter to the Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking decision and 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, 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.

35. Thus the sum and substance of the above judgments relied upon by both the learned Counsel would speak that the Chief Justice is a high dignitary and ordinarily it should not be thought that any recommendation made by him while exercising the powers under Article 229 of the Constitution is arbitrary or illegal. Generally it could not be rejected except in extraordinary cases and for very good reasons. Of course, no mandamus can be issued for asking the Government to grant approval holding the rejection as arbitrary and illegal. As far as possible, the State Government should be directed to discuss the matter with the High Court on administrative side and sort out any misunderstandings between them.

36. While coming to the facts on hand, as is noticed above, the Chief Justice had strongly recommended for upgradation of 24 posts of Deputy Section Officers as that of Section Officers by abolishing equal number of posts in the cadre of Deputy Section Officer. Thus, as is pointed out by the learned Counsel for the petitioners as well as the 1st respondent, practically there was no financial burden involved, since 24 posts of Deputy Section Officers are sought to be abolished. The Chief Justice recommended on the ground that many of the

Deputy Section Officers are attending to the job of more than a Section Officer by taking up various responsibilities in manning such sections. The Chief Justice has all the power to take a decision, in the exigencies of services of the High Court for upgradation of a post. Upgradation of a post though seems to be creation of more number of (24) Section Officer posts, but equal number of Deputy Section Officer posts are sought to be abolished. Therefore, the financial burden purported to have been involved is also not much. The theory that always the feeder posts should be more than the promotional posts or its ratio shall not be less than 4:1 may not be applicable in every case. It all depends upon the nature of work to be attended to. This may be true in case of subordinate Courts and other departments of the Government. But when it comes to High Court or any of the Heads of Department of any other wing of the Government, this rule may not be applicable. High Court exercises appellate jurisdiction over the entire State of Andhra Pradesh, both on criminal and civil side and other matters. Therefore, there appears to be more onerous duties to be attended to by the Deputy Section Officers, since the number of Section Officers already there are not able to meet the challenges. Even assuming that the ratio of 4:1 is to be maintained, in fact, this was not available even before the recommendation made by the Chief Justice. This is not a case where there is a financial burden in view of any scale (salary) fixed or leave/pension rules are amended or recommended governing the service conditions of the High Court employees. The only recommendation, in this case, is upgradation of a post. Upgradation is nothing but an exigency of service in view of heavy responsibilities undertaken by some of the Deputy Section Officers. No much financial burden is involved. The pay structure of the Deputy Section Officers/Translators is altered on upgradation and they would be put into the time scale available, as fixed by the Government against the post of Section Officer. This is the only change that takes place and nothing more nothing less. Therefore, the reasons furnished by the Government for rejecting the approval seem to be not on sound lines and the Government has not taken into consideration the pragmatic approach made by the Chief Justice while ameliorating the conditions of service of 24 Deputy Section Officers, who are attending to onerous duties in the High Court.

Under the above circumstances, while following the ratio laid down in the decisions relied upon by the learned Counsel on either side, we are of the view that though the power of the Chief Justice under Article 229 of the Constitution of India is not absolute and is subject to limitations as contemplated under the very same Article, in the instant case, the exercise made by the Government, cannot be said to be reasonable while rejecting the approval of the recommendation made by the Chief Justice under Article 229 of the Constitution.

37. For all the above reasons, we are of the opinion that it is necessary that the Government shall reconsider the issue, after taking up necessary consultations with the High Court on administrative side and taking into consideration the observations made by us, as above, and pass appropriate orders, within a period of eight (8) weeks from the date of receipt of a copy of this order.

38. With the above directions, the writ petition is disposed of. No order as to costs.