
(2000) 11 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Writ Petition No. 569 of 1998

Ramesh Chandra Mundra and Others APPELLANT
Vs
State of Rajasthan and Others RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Constitution of India, 1950 — Article 229, 235, 309
High Court Establishment (Appointment and Conditions of Service) Rules, 1973 — Rule 16, 30
Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 — Rule 2, 3

Citation : (2001) 2 RLW 714 : (2001) 1 WLC 511 : (2001) 1 WLN 403

Hon'ble Judges : Sunil Kumar Garg, J; Rajesh Balia, J

Bench : Division Bench

Advocate : M.R. Singhvi and B.M. Bohra, for the Appellant; Rajendra Vyas and Sangeet Lodha, for the Respondent

Judgement

Balia, J.

(1). Heard learned counsel for the parties.

(2). The question in this petition concerns about the ambit and scope of Article 229 of the Constitution of India as to the extent of power of Chief Justice and the extent of the field in which interference or say of the Government can prevail. The petition is arising in the back drop of letter Annexure/1 dated 8.8.1997 issued by the Registrar, Rajasthan High Court to the Secretary Law and Legal Affairs Department, Government of Rajasthan, Secretariat, Jaipur for according sanction regarding upgradation of 16 posts of Private Secretaries as Senior Private Secretaries in the pay scale of Rs. 3450-5000 with the special pay of Rs. 350/- equating this post with the Senior Private Secretary of State Assembly Secretariat. This was followed with quite a few reminders. The request was turned down by the State Govt. vide Annexure/5 dated 30.4.1998.

(3). Aggrieved with this rejection, the present petition has been filed by the petitioners who are working in the cadre of Private Secretary in the Rajasthan

High Court, it would be appropriate to recount the reasons which weighed with the Hon''ble Chief Justice to recommend upgradation of 16 posts of Private Secretary as Senior Private Secretary cum Judgment Writer as the matter of reorganising and restructuring the existing staff of the Rajasthan High Court in the interest of administrative efficiency which was felt to be adversely affected due to stagnancy in certain cadres. It is also pertinent to notice that at the time, when the recommendations were made, the pay scale in which the Private Secretaries were drawing their pay was in the pay scale of Rs. 2500/- 4250/- with special pay. Promotional avenue from the post of Private Secretary was to the post of Deputy Registrar (Non-RJS) in the pay scale of Rs. 3450-5000 with special pay of Rs. 350/-. The present pay scale of Private Secretaries is Rs. 10000-15200 with special pay of Rs. 340/- per month, whereas pay scale applicable to Deputy Registrar (Non-RJS) is Rs. 12000- 16500/- with special pay of Rs. 525/-. This is also not in dispute before us that same pay scale which is applicable to Deputy Registrar (Non-RJS) working in the High Court is applicable to Senior Private Secretaries. In short, the next promotional post for the Private Secretaries working in the State Assembly Secretariat with similar amount of special pay attached thereto. There is no intermediary promotion post for the Private Secretaries working in the pay scale of Rs. 2500-4250/- (10000-15200) was already to the post carrying pay scale of Rs. 3450- 5000 with special pay of Rs. 350/- (at present 12000-16500 with special pay of Rs. 525/-). This recommendation has been returned by the State Government in the following terms:

"I am directed to inform that the proposal of upgradation of 16 posts of Private Secretaries is not acceptable to the Government."

(4). The contention of the learned counsel for the petitioners in this case is that under Article 229 of the Constitution of India, the Chief Justice of the High Court is the only authority vested with the power of appointment of officers and servants of the High Court and lay down conditions of service of officers and servants of the High Court except to the extent that rules made in that regard in so far as they relate to salaries, allowances, leave, or pension of the employees, they require approval of the Governor. Accordingly to the learned counsel, since upgradation of certain posts of the existing staff was merely reorganisary step taken by the Hon''ble Chief Justice and within the frame work of pay scale current amongst staff of the High Court already applicable to the next promotional avenue, it was not in the domain of the Governor to interfere with that part of exercise on behalf of the Chief Justice and in the aforesaid circumstances, the respondent No. 1 has seriously erred in treating the letter Annex. 1 by the Registrar which was more in keeping with harmony of the conducive functioning between the executive and judiciary, as a matter on which State could exercise its discretion and scuttle the need of the High Court as envisaged by the Hon''ble Chief Justice and that too, in the summary manner in which the letter reflects.

(5). Responding to the aforesaid contention, Mr. R. P. Vyas, learned Additional Advocate General has contended that since upgradation of posts involved financial implication, it was necessary for the Hon"ble Chief Justice to have sought approval of the Governor before upgrading the posts. The opinion of approval of Governor is not an empty formality. It was within the discretion of the Governor to have accepted or rejected the recommendations. He places reliance on the following decisions of Supreme Court:

1. Supreme Court Employees Welfare Association vs. Union of India and ors. (1)

2. Satnam Singh and ors. vs. Punjab and Haryana High Court and ors. (2).

3- State of U.P. & Another vs. C.L. Agrawal & Another (3)

(6). Replying to the contention raised by Mr. Vyas, Mr. Singhvi has invited our attention to the following precedents:

1. M. Gurumoorthy vs. The Accountant General. (4), and

2. High Court of Judicature for Rajasthan vs. Ramesh Chand Paliwal.

(5)

(7). In support of his contention, Mr. Singhvi further submits that the matter of upgrading new posts in pay scale available to existing promotional avenue in the structure of Court staffing is not governed by proviso to Article 229(2) so as to require the approval of the Governor. The creation of post within the High Court and every appointment thereon is exclusively in the domain of the Hon"ble Chief Justice.

(8). Article 229 of the Constitution of India reads as under:

"229(1) Appointment 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 required that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

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

(3) The administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other money taken by the Court shall form part of that Fund."

(9). A perusal of the aforesaid Rule reveals that in contrast of Article 235 of the Constitution of India, the power under Article 229 is vested in the Chief Justice alone or some other Judge or officer of the Court to whom such authority is delegated by the Chief Justice. The expression used by the Constitution further is clear indication of exalted position assigned to Chief Justice of the High Court in the matter of staffing of the High Court. It has not been even left to the Court as has been envisaged under Article 235 of the Constitution so as to require a collective decision but is left to only to the Chief Justice or any of his delegate. The organisational structuring of staff of High Court as per its requirement and efficient functioning and that power includes number of manpower and different posts required and their manning.

(10). The position appears to have been settled by the Supreme Court in the case of High Court of Judicature for Rajasthan vs. Ramesh Chand Paliwal (supra), wherein the Court considering the case arising from Rajasthan High Court in the context where directions were issued by the Court in its judicial side for placing a report whether the posts on which officers from Rajasthan Judicial Service are appointed on deputation can be manned by the High Court and further directing such report to be placed before the Full Court for consideration of other Judges on the administrative side. Hon"ble S. Saghir Ahmad, J speaking for the Court said:

"Article 229 makes the Chief Justice the Supreme authority in the matter of appointment of 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 condition that if the rules relate to salaries, allowances, leave or pensions, they 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 of the Constitution of India is akin to the power of the Chief Justice of India under Article 146 of the Constitution of India just as the Chief Justice of India is the Supreme Authority in the matter of Supreme Court Establishment including its office staff and officers, so also the Chief Justice of the High Court is the sole authority in these matters and no other Judge or officer can usurp those administrative functions or power."

(11). The position of Chief Justice of High Court with reference to Article 229 viz-a-viz Article 235 was also clarified and it was held:

"What is, therefore, significant is that although in Article 235, the word "High Court" has been used, in Article 229, the word "Chief Justice" has been used. The Constitution, therefore, treats them as two separate entities in as much as "control over Sub-ordinate Courts" vests in the High Court, but High Court

administration vests in the Chief Justice."

(12). Viewed in the aforesaid backdrop, it is to be seen whether Sub-clause 1 of Article 229 provides jurisdiction to the Governor only to provide for condition of consultation with State Public Service Commission in the matter of appointment, where appointment under the High Court is to be offered to any person not already in service of High Court. Thus, for promotional post from amongst the staff of High Court, no requirement of consultation with Commission can be laid by the Governor. This proviso supports the view that in the matter of appointment of officer or servants in the High Court from amongst the existing staff, no outside agency is involved.

(13). Clause 2 of Article 229 is in the same view in which Article 309 has been couched conferring power on the President or Governor, as the case may be, for framing rules laying down conditions of services of public servant where law has not been enacted by the Legislature of Union or of the concerned State. While public servants in general are governed by the Rules framed by the Governor or the President as the case may be, in absence of any law made by the concerned Legislature, in the matter of establishment of High Court, this power has been conferred on the Chief Justice and is not subject to approval of any other authority.

(14). It is not a case in which any law has been made by the Legislature governing the conditions of services of officers and servants of the High Court and, therefore, in laying down conditions of service of officers and servants of the High Court, the Chief Justice reigns Supreme. The condition of service of officers and servants would include strength of staff, promotional avenues available to the staff of the Court as per requirement of the High Court and for better administrative efficiency. So far as these matters are concerned, any outside agency has no say. The proviso to clause (2) which requires approval of the Governor of the State relates to salaries, allowances, leave or pension. In our opinion, it can have no reference where conditions of service salaries, allowances, leave or pension are altered outside these existing rules. It does not amount to laying down the rules relating to salaries, allowances, leave or pension. It is only where as a matter of fact deviations in salaries, allowances, leave or pension are sought to be made or altered outside the existing rule structure governing service condition to the matters provided in the proviso that the approval of the Governor of the State is required. In this connection, it would be relevant to refer to the decision of Supreme Court in the case of M. Gurumoorthy (*supra*). It was the case where Hon'ble the Chief Justice of Assam High Court made two orders on 7.5.1959, one was to merge the post of Secretary into the post of Selection Grade Stenographer with effect from 24.8.1956, and another appointing Shri M. Gurumoorthy as Secretary to Hon'ble the Chief Justice of Assam High Court cum Selection Grade Stenographer in substantive capacity in the pay scale of Rs. 450/- 600/-. In pursuance of this order, when appointment of Shri M. Gurumoorthy took place, the Accountant

General of Assam refused to honour the pay slip of M. Gurumoorthy on the ground that it was not within the domain of Chief Justice to make the order of merging the post of Secretary to the Chief Justice with the post of Selection Grade Stenographer with the pay scale stated therein, which also required sanction by the Governor. The Constitution Bench held:

"that the unequivocal purpose and obvious intention of the framers of 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 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 pulling the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judges of the High Court nor can the amount of any expenditure so charges be varied even by the legislature. Clause CO 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 and 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."

(15). So far as creation of posts within the High Court, the power of Chief Justice has been placed beyond the pale of doubt in the case of State of U.P. vs. C.L. Agarwal (*supra*), the position has been further made clear by the Apex court:

"that in the matter of creation of posts within High Court and making appointment thereon, the Governor has no role to play. Article 226 does not state that posts in the High Court are to be created by the Governor; it does not even deal with 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. Rule 3 of the 1976 Rules (of the Allahabad High Court) 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."

(16). Thus, it is to be seen that in the matter of creation of posts, the Chief Justice is supreme and in the matter of appointment on the post, within the Court also, the Chief Justice's authority is supreme to be interrupted by any outside agency. The salary is paid to the staff of the High Court is chargeable to the consolidated fund of India so as to remain unaffected by any executive interference.

(17). The answer to the question raised in this petition (flows therefrom. The upgradation of posts amongst existing staff is restructuring exercise by the Chief Justice which fell within his exclusive domain for which no sanction was required. The creation of new posts by upgrading certain number of posts, thus in our opinion did not involve any question of framing new rules relating to salaries, allowances, leave or pension of the High Court's staff de hors the Rules. Merely by upgrading the posts from the post of Private Secretary, it would not have altered the position in as much as how many promotional posts ought to be (here within the establishment of the High Court was within the exclusive domain of the Chief Justice for which no sanction was required to be obtained either under the Rules or de hors the Rules.

(18). Rule 3 of the Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 inter alia provides that the Chief Justice may keep unfilled or hold in abeyance any vacant post without giving the persons any compensation or may after obtaining sanction of the Governor increase or reduce the strength of the Staff attached to the High Court. This rule, in our opinion does not spell out requirement of approval of Governor or where there is no increase or reduction of existing strength of staff attached to the High Court, but only the strength already existing is proposed to be reshuffled by upgrading certain number of posts within the cadre for the purpose of providing promotional avenues to the stagnated cadre within the High Court, and for that promotional avenues for the Private Secretaries, there already existed a pay scale and the proposed upgradation was only to that pay scale. This conclusion also finds support from the decision in C.L. Agarwal's case, wherein the Court has said that Article 229 does not state that posts in the High Court are to be created by the Governor. Therefore, in our opinion, when creation of new post within the existing staff does not require the approval of the Governor, the question of upgrading some of the existing posts within the existing strength also would not fall outside the authority of the Chief Justice and within the authority of the Governor. The decision In C.L. Agarwal's case which is referred to by the learned counsel for the respondents in stead of supporting the contention of the respondents, rather supports the contention of the petitioner.

(19). Once it is established that in the matter of appointment and providing terms and conditions of service for the Officers and Staff of the High Court, the

authority of the Chief Justice is the supreme and the constitutional mandate is devised to secure and maintain independence of the High Courts and the anxiety of the Constitution makers to achieve that object is manifested in Art. 229 of the Constitution, merely because in framing rules, the Chief Justice for the purpose of maintaining the administrative harmony with the executive makes a rule for seeking its approval before reducing or increasing the strength of the staff of the High Court, it cannot be read as amounting to giving a superior authority of the State or its agency to reject the recommendations made by the Chief Justice in that regard, which do not come within the province of proviso to Art. 229 of the Constitution and interpreting the rule in any other manner would be contrary to the scheme of the Constitutional design to maintain the independence of the judiciary and to keep it away from the interference from any other agency i.e. executive or legislative in its internal functioning except to certain limited matters which is apparent from Ramesh Chand Paliwal's case (supra). Scope of such exceptions cannot be enlarged by constructing the proviso beyond that it provides for. The proviso does not deliberately use the expression "financial implications", which is of much wider amplitude than the financial implication arising from specified areas referred to in the proviso. Therefore, each and every action of the Chief Justice is not subject to scrutiny and amenable to discretion of the State Govt. because in some way or other, it may involve additional expenditure. That way, every decision on administrative side requiring some expenditure has some financial implication. If the expression used in proviso is to be equated with "financial implication" in generic sense, as contended by learned Addl. Advocate General, it will render the basic feature of the Constitution guaranteeing an independent judiciary free from the constraints of executive interference. The very purpose of complying with the requirement of approval of Governor only to four specified matters indicates the restrictive concession made in the field of financial independence of High Courts. Such proviso must be construed strictly. Therefore, no restriction can be read on the powers of the Chief Justice in the Rules, which are contrary to the scheme of the Constitution. The provision at best only amounts to laying the procedure for the Chief Justice to have a complete look to the financial requirement, its feasibility and the constraints of State Govt. in that regard, if any, before he finally takes his decision. But ultimate decision rests with him alone. Exercise of such power by the Chief Justice is not amenable to be called in question except on the ground that such power has not been exercised in reasonable manner as that the same has been exercised arbitrarily. That position was made clear in M. Gurumoorthy's case (supra).

(20). In this connection, another principle, now well settled, must be noticed. While reorganising or restructuring the staffing of the High Court, it is not only open for the Chief Justice to create new posts whether in addition to existing strength or by upgrading some of the posts within the existing strength. It is also within the exclusive jurisdiction of the Chief Justice to declare equivalence of various posts within the establishment. These exercises do not require approval of the

Governor. That being so, upgrading some posts with different nomenclature but with the pay scale equivalent to existing promotional posts shall fall within the exclusive field of authority exercisable by the Chief Justice.

(21). In *S. B. Mathur vs. Hon'ble Chief Justice of Delhi High Court* (6), it was said by the Apex Court:

"It is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions of promotions or transfer of employees inter se will necessarily arise for the purpose of maintaining the efficiency of the organisation."

(22). It was a case in which Hon'ble Chief Justice of Delhi High Court has declared certain posts of different nomenclatures in different cadres providing a channel of promotion as equated posts. This action was challenged. Referring to above principle, the Court further considered that when there is no difference in the pay scales of two posts, notwithstanding there is variation in their duties and qualifications of holder of the posts, the same may be considered equated or equivalent posts reasonably.

(23). On the above premise, it can safely be concluded that mere change in nomenclature of upgraded posts would not make any difference, It was within the authority of the Chief Justice to create additional posts of Deputy Registrars (Non-RJS) for promotional avenue to Private Secretaries and also to frame rules for providing different representations to different channels of promotions. In such event, on promotion by granting to new posts, the incumbent would get the pay scale applicable to Deputy Registrar (Non-RJS). Such an exercise would not require approval for such creation of posts and appointments thereto. On promotion to such posts, salary and allowances would also be payable without altering any Rules relating to salary. Hence for that purpose also, no approval under proviso to Art. 229(2) of the Constitution shall be needed. It cannot make any difference if instead of creation of new posts with the nomenclature of Deputy Registrar (Non-RJS), keeping in view the object of such exercise, the posts of one cadre are upgraded with different nomenclature but equivalent to Deputy Registrar (Non-RJS), In the present case, this is the exact exercise which the Hon'ble the Chief Justice has proposed to take. We are tempted to recall Shakespear's saying "What's there in the name". It is substance that has to be looked into.

(24). The learned counsel for the respondent has placed reliance on *Satnam Singh's Case* (supra). In our opinion, this case is of no relevance to the controversy that has been raised before us. It was a case in which the Chief Justice of Punjab and Haryana High Court has issued statutory Rules known as *The High Court Establishment (Appointment and Conditions of Service) Rules, 1973* in exercise of powers conferred by Article 229(2) of the Constitution of

India. The provisions in these rules which related to administration were made applicable with effect from 1.3.1974 and the provisions involving financial aspects were referred for approval to the Government and for their enforcement, the date fixed was 23.1.1975. The dispute related to the date on which Rules 16 and 30 came into force. Rule 16 prescribed the quota for filling the posts and Rule 30 prescribed the method of determining seniority. The contention of the State was that the entire set of Rules would be effective with effect from the later date i.e. 23.1.1975 when the approval by the Governor was granted and notification to that effect was published. The contention of the appellant was that Rules relating to quota and seniority were not at all subject to proviso to Article 229(2) and they became effective as soon as the Rules have been promulgated. Setting aside the judgment of the High Court and upholding the plea of the appellant, the Court said:

"that a proviso has to be strictly construed inasmuch as it carved out an exception to the general rule. The general rule enacted in the main part is not to be unduly restricted by expanding the content of the proviso which is intended to carve out the exception from the general rule. The plain words of the proviso to clause (2) of Article 229 leave no doubt that the requirement of approval thereunder is confined to the rules only so far as they relate to salaries etc. and no more. It is settled that a proviso cannot expand or limit the clear meaning of the main provision,"

(25). With this premise, the Court held that "rr. 16 and 30 came into force with effect from 1.3.1974 and could not be deferred until grant of approval by the Governor."

(26). We are not faced with such a situation in this case.

(27). Another decision referred by the counsel for the respondent is Supreme Court Employees Welfare Association vs. Union of India (supra). This case too in our opinion is wholly outside the field of present controversy before us. It was a case arising in the background that a 5 Judges Committee at the Hon'ble Supreme Court made recommendations for revision of pay scale of Staff belonging to the Registry of the Supreme Court. The recommendations were to provide a separate and independent pay scale. The Committee observed:

"that the salary scale applicable to various categories of staff in the Registry would show that at least since the Second Pay Commission appointed by the Central Government for Central Govt. Servants, the pay scales revised by the Pay Commission were practically bodily adopted by the Chief Justice of India for comparable categories in the Supreme Court. The petition was rejected by holding that so far as Supreme Court and High Courts are concerned, the Chief Justice of India and the Chief Justice of the concerned High Court are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor as the

case may, is required."

(28). While explaining the limits of respective fields of authority in the matters of laying down conditions of service, the Court made further observations which need special attention. The Court said:

"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 pension, 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. 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 Art. 146."

(29). It was with this background that the Court also observed:

"that there can be no doubt that an authority exercising legislative function cannot be directed to do a particular act. Similarly, the President cannot be directed by the Court to grant approval to the proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India,"

(30). We are unable to see any parallel. First of all, as is apparent from the facts of the case that it was a clear case in which proposal for laying down separate set of salary and allowances for the staff of Supreme Court was recommended by the Hon'ble Supreme Court which directly fell within the purview of proviso to Section 229. It was not even the controversy raised before the Hon'ble Supreme Court. The only contention was whether it was obligatory upon the presidents, once such recommendations are made to accord his approval. Even in the said case, it is to be noticed that while Supreme Court refrained from issuing any such direction it observed that it is not open to the President or Governor as the case may be, to return the approval made by the Chief Justice of India or Chief Justice of High Court without application of mind and without due consultation from the passage quoted above, it is clear that Hon'ble Apex Court has given clear emphasis to the manner in which the question of grant or refusal or approval ought to be proceeded with and processed by the Executives. It was emphasised that when rules have been framed by a very high dignitary of the State, unless there is very good reason for not granting approval, the approval should always be granted, It has further been made clear that even if the President 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 Approving Authority and the Chief Justice and the Chief Justice's view must be given due weightage. If in the light of the above, the communication received from the respondent State Govt. is seen, the very regrettable picture emerges. The letter issued by the Deputy Secretary to the Government shows no reason much less good reason has been assigned for not accepting the recommendations made by the Chief Justice nor any exchange of thought appears to have taken place between the Governor and the Chief Justice before returning the recommendations with thanks.

(31). For the reasons mentioned above, we come to the conclusion that the derision of Chief Justice in recommending upgradation of a certain number of posts from amongst the existing strength of staff to next higher post in the same pay scale with special allowance to which promotion to existing avenue of promotion could be made, did not fall within the ambit of proviso to Article 229(2) of the Constitution of India, which required approval of the Governor. It was not open for the respondents to ignore and have rejected the recommendations. We are further of the opinion that even such rejection cannot come in the way of Hon'ble Chief Justice if he so desires to create posts within the establishment of the High Court and appoint any person thereto within existing pay scale operating in the High Court, by upgrading posts in it which is only an exercise in restructuring the organisation.

(32). As a result, this petition is allowed and we hold that the letter/order Annex.5 dated 30.4.98 was not justified and cannot affect the authority of the Chief Justice of the High Court in the matter of reorganization of the staff of the High Court by upgrading certain number of posts and putting them on promotional avenues within existing pay scale available on the promotion to next higher grade. However, it is for the Hon'ble Chief Justice to take necessary action and decision regarding upgradation of posts of Private Secretaries as Senior Private Secretaries in the pay scale of Rs. 12000-16500 with the special pay of Rs. 525/- per month, if he so desires and the impugned letter Annexure/5 cannot be an impediment on exercise of such authority. There shall be no order as to costs.