
(1999) 03 MAD CK 0020
In the Madras High Court

Y. Ghanadhas and Others

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 2(42)

Citation : (1999) 2 MLJ 370

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Petitioners seek issuance of writ of certiorarified mandamus calling for the records of first respondent in letter

No.Ms.943, dated 8.7.1996, quash the same and direct first respondent to grant the scale of pay of Rs. 975-1660 to petitioners with effect from

1.6.1988 with all arrears and other benefits and pass such further orders.

2. Eighteen petitioners have joined together to file this writ petition of whom, 17th petitioner has been promoted as Assistant and third petitioner

has retired from service with effect from 31.8.1996. But all of them joined together only for one purpose, which relate to their entitlement to a

particular scale of pay with effect from 1.6.1988, which is common cause for all of them.

3. All the petitioners are junior bailiffs in High Court. According to petitioners, Junior bailiffs are equated to Junior Assistants in High Court from

first pay commission onward and scale of pay was also identical. In the first pay commission, Junior Assistant received a scale of Pay of Rs. 90-

140 and Junior Bailiffs also received the same scale of pay. In the second pay commission the scale of pay was revised to Rs. 200-300 for both

cadre. In the third Pay commission, Junior Assistants were given a scale of pay of Rs. 350-600, whereas junior bailiffs were given the scale of pay

of Rs. 325-550 only. In the 4th Pay commission, Junior Assistants were given the scale of pay of Rs. 610-1075 whereas junior bailiffs were given

the pay scale of Rs. 550-970. In the 5th Pay Commission Junior Assistants were given the scale of Pay of Rs. 975-1660 whereas junior bailiffs

were given the scale of Pay of Rs. 825-1200, Junior Assistants in High Court were upgraded as Assistants on par with Assistants in the Secretariat

Service of Government of Tamil Nadu and were given the scale of pay of Rs. 1100-1660.

4. Readers and examiners of High Court were given same scale of pay as junior bailiffs in all the five Pay commissions. Readers and examiners

filed a writ petition before this Court in W.P.No. 12737 of 1994 claiming parity on par with Junior Assistants and the same was allowed by this

Court as per order dated 23.5.1995. While doing so, this Court held that readers and examiners had been given identical scale of pay as Junior

Assistants in 1st and 2nd Pay commissions and further on comparison with the scales of Pay of Drivers and Constables Gr.I. there was justification

for granting higher scale of pay of Rs. 975-1660 with effect from 1.6.1988. It was further held in that case that under Article 229 of the

Constitution, when Honourable Chief Justice of High Court made recommendation regarding the scales of pay of staff of High Court, such

recommendation was originally binding on Government unless there were grave and compelling reasons to differ from the same. The said judgment

was implemented by Government as per G.O.Ms.No. 1193, Home (Court-V) Department, dated 7.8.1995.

5. Copyists in High Court had lower scale of Pay than Junior Assistants and readers and examiners in the first two pay commissions but in the 3rd,

4th and 5th Pay Commissions" recommendations, scale of pay of copyists was also equated with the scale of pay of Readers and Examiners as

well as of pay of Junior bailiffs. In December, 1989, High Court sent a proposal for revision of scale of pay of Copyists in Judicial Department

from Rs. 825-1200 to 975-1660. Government also accepted the same as per G.O.Ms.No. 903, Home (Courts-V) Department, dated 9.8.1994.

6. The post of junior bailiffs has always been equated with the post of senior bailiffs in the subordinate courts in the matter of scale of pay and this

has been the position in first pay commission. Senior bailiffs in the subordinate Courts through, Tamil Nadu Civil Courts Senior Bailiffs

Association" filed Writ Petition No. 6641 of 1991 and W.P.No. 1187 of 1992 for revision of scale of Pay of senior Bailiffs from Rs. 825-1200 to

Rs. 975-1660 with effect from 1.6.1988. Writ petition was allowed on 6.11.1995, and the same was also implemented by Government as per

G.O.Ms.No. 61, Finance (P.C.) Department, dated 24.1.1996.

7. In such circumstances petitioner sent detailed representation to second respondent claiming scale of Pay of Rs. 1100-1660 on par with the

Junior Assistants in High Court. This recommendation was considered by Honourable Chief Justice and a recommendation was made to first

respondent that junior bailiffs in High Court could be fixed in the scale of pay of Rs. 975-1660. In other words, though representation of petitioner

was for scale of pay 1100-1660, recommendation of Honourable Chief Justice was for a scale of pay of Rs. 975-1660.

8. Representation of petitioners along with recommendation of Chief Justice was forwarded to first respondent by letter dated 8.7.1996. First

respondent rejected the representation on the ground that revised scale of pay of Rs. 825-1200 was proper and proposal for revision of scale of

pay for the post of Junior bailiffs will be referred to next pay commission as and when it is constituted. Said order of first respondent is challenged

in this writ petition. On the ground that when recommendation is made by Chief Justice of High Court regarding scale of pay of servants of High

Court, in the absence of clear and compelling reasons, Government is normally bound by such recommendations. In this case,

Honourable Chief Justice already made recommendations for Junior Bailiffs to revise the scale of pay to Rs. 975-1660. Impugned order does not

give any reason as to why the recommendations cannot be accepted. It is further submitted that in a number of cases it has been held that the

recommendations of Chief Justice is binding on Government.

9. It is further said that in the case of Readers and Examiners, who were on par with Junior Bailiffs in the High Court as well as senior bailiffs in

subordinate courts, were always treated on par with junior bailiffs in High Court. This Court on judicial side has already taken the view that they

are entitled to a higher scale of pay of Rs. 975-1660. Junior bailiffs in High Court

are identically situated and there is no reason as to why they should not be allowed to receive highest scale of pay of Rs. 975-1660. The copyists were also given higher scale of pay. For the above reasons petitioners have come to this Court for the above relief.

10. A learned Judge of this Court admitted this writ petition. Learned Government Plader entered appearance. Though he did not file any counter-affidavit, he had argued the matter on instructions.

11. After hearing both sides, only question that requires consideration is whether petitioners are entitled to the relief sought for?

12. The impugned order reads thus, ""I am directed to state that the V pay commission has recommended considering the qualification and job

letter, the revised scale of pay of Junior Bailiff as Rs. 825-1200 against the pre-revised scale of pay of Rs. 555-970. The revised scale of pay

already fixed is appropriate. I am therefore to inform that the Government consider that the proposal for revision of scale of pay for the post of

Junior Bailiff in the High Court may be referred to next Pay Commission as and when it constituted. I am to request you to take action

accordingly.

13. W.P.No. 12737 of 1994 was filed by 33 petitioners working as Readers and Examiners of High Court. In that case also Chief Justice of High

Court recommended a Scale of pay of Rs. 975-1660. Government, on the basis of 5th Pay Commission recommendations fixed the scale of Pay

at Rs. 875-1200. Learned Judge, taking into consideration the effect of recommendation of Honourable Chief Justice and disparity in the scale of

pay of similarly situated employees, gave direction to Government to fix the scale of pay of readers and examiners with that of Junior Assistants for

getting scale of pay of Rs. 975-1660. It is not disputed that this order has been implemented.

14. Thereafter, senior bailiffs of civil courts through their Association filed various writ petitions. In W.P.No. 6641 of 1991 Lordships considered

various aspects of the case and how senior bailiff of this Court are treated equally with readers and examiners of this Court. All along readers,

examiners and junior bailiffs are treated as one class and taking into consideration various Pay commission recommendations, this Court directed

that senior bailiffs are entitled to higher scale of pay, equivalent to that of

readers and examiners. In that case also there was recommendation by Honourable Chief Justice. It is not disputed that this order of this Court was also implemented.

15. According to us, very same principle will have to be applied for petitioners also.

16. So far as junior bailiffs of this Court are concerned, they are all along treated on par with senior bailiffs of subordinate courts. Their duties and

functions are also similar and having more or less same responsibilities. Taking into consideration their responsibilities and on comparison of their

duties, they moved a representation before this Court that they must also be treated on par with senior bailiffs of civil courts. The representation

was dated 21.6.1995. Honourable Chief Justice after minutely considering the entire records, recommended that junior bailiffs of this Court also

must be treated on par with senior bailiffs of civil court and recommended for a scale of pay of Rs. 975-1660. The matter was also reported to

Government for necessary action. It was that recommendation by Honourable Chief Justice of High Court that had been turned down by the

impugned order.

17. We have already extracted the impugned order and we do not think that first respondent had applied his mind when passing the impugned

order.

18. In Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, , in paragraphs 57 and 58, their

Lordships held thus,

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.

58. In *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, , relied on by the learned attorney General, it has been

observed that 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. Although the said observation relates to the provision of Article 229(2), it also equally applies to the provision of Article 146(2) relating

to the grant of approval by the President of India. In this connection, we may also refer to a decision of this Court in *M. Gurumoorthy Vs.*

Accountant-General, Assam and Nagaland and Others, , this Court took the view that the unequivocal purpose and obvious intention of the

framers of the Constitution in enacting Article 229 is that, in the matter of appointments of officers and servants of 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 that article. The same observation will apply to the rules framed by the Chief Justice of India under Article 146 (2) of the Constitution.

[Italics supplied]

19. In *High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another*, , in paragraph 25 of the judgment, their Lordships said

thus,

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

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.

[Italics supplied]

20. The effect of Chief Justice's recommendation in so far as Staff salary of High Court is concerned was consider by Justice Jayasimha Babu

while disposing of W.P.No. 12737 of 1994 in paragraph 16 of the order, which read thus,

Article 229 of the Constitution vests in the High Court control over its staff in order to free the court from any interference from the Government in

relation to the administration of the Court. The nature of the work performed by the officials in the court is best known to the court and not to the

government and when a recommendation is made by the Honourable the Chief Justice to the effect that the work performed by the

readers/examiners employed in court is similar to that of the Junior Assistant in the court, and the scale of pay of the two posts should be identical,

it is not permissible for the Government to disregard the recommendation and persist in holding a contrary view. Such an attitude on the part of the

Government is wholly impermissible having regard to the object of Article 229. The failure on the part of the respondents to act in accordance with

the recommendations made by the Honourable the Chief Justice, which recommendation has been reiterated, is in the circumstances of the case,

violative of the petitioners' rights under Article 14 of the Constitution in as much as it has denied to their similar treatment in so far as their

emoluments are concerned, on par with that of the Junior Assistant.

21. It is again considered by Justice A.R. Lakshmanan while disposing of W.P.Nos. 6641 of 1991 and 1187 of 1992, Learned Judge, in

paragraphs 17 and 18 of the Judgment held thus,

17. Article 229 of the Constitution provides that any appointment of officers and servants of the High Court shall be made by the Chief Justice of

the court or by such other Judge or officer of the court as he may direct and subject to the provisions of any law made by the Legislature of the

State, the conditions of service of officers and servants of the High Court shall be such as may be prescribed by rules made by the Chief Justice of

the court or by some other judges or officers of the court authorised by the Chief Justice to make rules for the purpose provided further, that the

rules made under these clauses shall, so far as it relates to salaries, allowance, leave or pension, required the approval of the Governor of the

State,. Mr. N.R. Chandran therefore, submitted that unlike Article 309 of the Constitution, which gives to the Executive Government of the State

the power to make rules, Article 229 gives power to the Hon"ble Chief Justice of the High Court to make rules and the role of the Governor of the

State comes only for approval of the rules made by the Honourable Chief Justice in so far as they relate to salary, allowance, leave or pension. In

this connection, it is contended that the role assigned to the Governor under the proviso to Clause I of Article 229 of the Constitution is exclusive

to him and he is not required to act with the aid and advice of the council of Ministers as in Article 163 of the Constitution wherein it is stated that

there shall be a council of Ministers with the Chief Minister at the Head to aid and advise the Governor in the exercise of his functions. Therefore, I

am of the view, that in so far as the High Court is concerned, there cannot be any interference whatsoever by the Executive Government of the

powers of the Hon"ble Chief Justice by interfering with the independence of the judiciary or with the service conditions of the employees of the

High Court. In this view of the matter, it is to be noticed that in exercise of the powers under the proviso to Clause I of Article 229 of the

Constitution the Governor is not required to act with the aid and advice of the council of Ministers and hence ought to give his approval to the

recommendation of the Honourable Chief Justice.

18. A Division Bench of this Court consisting of P.S. Mishra, J, as he then was, and Janarthanam, J. in Review Application Nos. 72 and 73 of

1991 in Writ Appeal Nos. 413 and 414 of 1991 dated 5.12.1991, on an

interpretation of Article 229 of the Constitution, has taken the view that when the Honourable Chief Justice of the High Court makes a recommendation regarding the pay and allowances of officers and servants of the High Court, unless there is a compelling and valid reason not to approve, the Government should approve the recommendation. This is the view of the Apex Court also. In the instant case, since the Honourable Chief Justice has made the recommendation and the recommendation is based on the benefit extended to similar category of employees in the Judicial Department who have always been treated on par, it would be grossly arbitrary, illegal and violative of Arts. 14 and 16 of the Constitution besides being in violation of Article 229 of the Constitution if the recommendation of the Hon"ble Chief Justice is not accepted by the Government.

22. We also accept the same reasons to hold that the impugned order cannot be sustained. Only Chief Justice knows the duties and responsibilities of its officers and when Chief Justice recommends a particular scale of pay, after considering their responsibilities, unless there are cogent reasons, Government is bound to accept the same. So the reason mentioned in the impugned order that pay commission fixed the scale of pay taking into consideration the duties and responsibilities cannot be sustained when Chief Justice has taken a different view. When pay commission report is challenged, relying on the same, rejecting the recommendations of Chief Justice is most improper.

23. Therefore, the impugned order is quashed.

24. The further question arises is whether mandamus could be issued in such cases, or whether we should only direct the respondent to consider the representation once again and pass fresh orders. For the said purpose, we have to consider the scope of Article 226 of Constitution of India and whether there is limitation of power. This question came for consideration in a recent decision of Honourable Supreme Court reported in U.P.

State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, . In paragraph 25 of the judgment, their Lordships held thus,

25. In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State

would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the article it is not necessary for us to rely on the decision of English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate cases, any Government. Under Clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the state, an instrumentality of the state, a company or a cooperative society or association or body of individuals whether incorporated or not or even an individual, Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be

mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is

established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal

litigation. High Court does not act like a proverbial bull in china shop" in the exercise of its jurisdiction under Article 226.

[Italics supplied]

25. In W.A.No. 819 of 1994, decided on 10.8.1994, a Division Bench of this Court consisting of Justice M. Srinivasan (as he then was) and one

among us had occasion to consider a similar question. Very same contention was raised by learned Government Pleader before the Division Bench

that a court cannot issue writ of mandamus in the matter of fixation of scale of pay. Argument was that the court can direct Government to act in

accordance with law and fix the pay accordingly, Reliance was also placed in State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi

and Others, and the ratio of Supreme Court in that case read thus,

It is however, not possible to take the view that merely because the state Government does not seen 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 mala

fide and arbitrary.

After taking into consideration above judgment the Division Bench took into consideration how the order of Government was arbitrary and

discretionary, and how it violates Article 14 of Constitution of India. According to us, the same reasoning is to be followed in this case also. The

Division Bench took note of the fact that when same category of employees are getting higher pay, denying same to another set of employees

similarly situated is nothing but discrimination and violative of Article 14 of the Constitution. In paragraphs 5 and 6 of the judgment, Division Bench

held thus,

5...Inasmuch as, the Government has failed to revise the scale of pay of the overseer to be on par with that of the Assistant, it has introduced

discrimination and it has acted arbitrarily in the matter. The principles of Article 14 of the Constitution of India are already violated.

6. In such a case, it is certainly, open to this Court to issue a direction to

obliterate the discrimination that is maintained by the Government in the matter of scale of pay between the two categories in the High Court itself.

Their Lordships also considered whether in such cases mandamus could be issued. The Division Bench relied on the decision reported in

Sakharam Shripati Jadhav (Deceased) through his Lrs. and Others Vs. Chandrakant alias Madhav Laxman Agnihotri and Others, , for the said

purpose. Finally, Division Bench held thus,

There is no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ

in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has

wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion

mala fide or on irrelevant considerations or by ignoring the relevant considerations and the materials or in such a manner as to frustrate the object

of conferring such discretion or the policy for implementing with such discretion has been conferred. In all such cases and in any other fit and

proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or pass orders and give directions to

compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper

case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the Government or

the public authority should have passed or given had it properly and lawfully exercised its discretion.

In that case, their Lordships have fixed the pay scale and directed the Government to implement the same.

26. Mr. Justice Bhagwati Prosad Banerjee in his Book on Writ Remedies, Second Edition (1998), in Chapter IX, Learned Author said thus,

...If positive obligation exists mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The Judicial

control over the fast expanding maze of bodies affecting rights of the people should not be put into water-tight compartment. It should remain

flexible to meet the requirements of variable circumstances, mandamus is a very wide remedy which must be easily available to reach injustice

wherever it is found. Technicalities should not come in the way of granting that relief under Articles 32 and 226 of the Constitution. The object of

mandamus is to prevent disorder from a failure of justice and it should be granted in all cases where law has established no specific remedy and

where injustice there should be one. The writ of mandamus is regarded as one of the highest remedies in the Indian Judicial system. It is issued only

where there is a clear and specific legal right to be enforced or a duty which ought to be and can be performed.

Learned Author further said thus,

...As the object of mandamus is not to supersede the legal remedies, but rather to supply the want of them, two pre-conditions must exist, before

granting remedy by way of mandamus, first, it must be shown that the applicant has a clear legal right to the performance of a particular act or duty

at the hands of the respondents and second, it must appear that "the law affords no other adequate or specific remedy to secure the enforcement of

the right and the performance of the duty which it is sought to enforce. This jurisdiction cannot be exercised for the purpose of determining merely

fanciful, questions in which the applicant has no personal or pecuniary interest for deciding purely academic questions. Ordinarily, mandamus is not

granted in anticipation of a supposed omission of duty. As regards the necessity of previous demand and refusal to perform the act which is sought

to be enforced by mandamus, the authorities are not altogether reconcilable. Mandamus never lies when the writ, if granted, would prove

inoperative. The writ of mandamus is not to create duties but require the performance of duties already existing. It confers no new authority. It

never commands the performance of an act which was unauthorised in the absence of a writ but only to do that which it is the duty of the

respondents to do without the command of the writ, It is issued to stimulate, not to restrain the official function. In *R. v. Metropolitan Police*

Commissioner, ex-parte, Black-Burn (1968)¹ All E.R. 763, a former Member of Parliament of United Kingdom took proceeding for mandamus

requiring the Commissioner of Police, London, to reverse a policy decision to the effect that the time of the police officers would not be spent on

enforcing the complicated provisions of Betting, Gambling and Lotteries Act, 1963 in London. In the events that followed, the commissioner

agreed to change his policy decision and no mandamus was granted but the case was fully argued and it was accepted by the Court of Appeal that

a mandamus could lie against the Commissioner in such a case as it was the duty of the Police Officer to enforce the law. The fact that the

applicant for the order had another remedy open to him by taking private proceeding in criminal court was insufficient answer to the argument that

he should follow that remedy first, but the court was satisfied with that he would have had sufficient locus standi. In course of his judgment Lord

Denning M.R. said ""mandamus is a very wide remedy which has always been available against public officer to see that they do perform their

public duty. It went in the old days against Justices of peace both in their judicial and administrative functions, The legal status of the Commissioner

of Police, is still that he is a Justice of peace as well as a constable. No doubt the party who applied for mandamus must show he has sufficient

interest to be protected and that there is no other equally convenient remedy; but once that is shown, the remedy of mandamus is available, in case

of need, even against the Commissioner of police of the Metropolitan. No doubt any person who was adversely affected by the action of the

commissioner in making a mistaken policy decision would have such interest.

[Italics supplied]

27. In view of the position of law declared by Honourable Supreme Court and by this Court, we feel that we will not be exceeding in our

jurisdiction in issuing a writ of mandamus as prayed for by petitioners.

28. We hold that the impugned order is arbitrary and has not taken into consideration the fact stated in the representation and recommendation by

Honorable Chief Justice. The officers similarly situated having similar duties and responsibilities and who have been treated equally all along, have

been discriminated. When that fact was brought to the notice of respondent, it refused to act mainly based on the report of pay commission which

is basis of discrimination. First respondent also has not considered the scope and effect of recommendation of Honourable Chief Justice of High

Court in regard to salary of staff. Hence, we hold that the impugned order is arbitrary and cannot stand in the eye of law. We quash the impugned

order. This Court has already held in previous decisions of which reference was made earlier, junior bailiffs, readers and examiners and senior

bailiffs of civil courts are all form part of one class and have to be treated equally.

29. We declare that petitioners in this case are entitled to have the scale of pay fixed at Rs. 975-1660 with effect from 1.6.1988. We further direct

first respondent to implement the same and pay all arrears and other benefits consequent on the same without any further delay, at any rate within a

period of two months from today. 30. The writ petition is allowed and the impugned order is quashed. However, there will be no order as to costs.