

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1013 OF 2015

Shri. Mahendra F. Rupwate)
 Section Officer,)
 Office of the Registrar General,)
 High Court, Appellate Side, Mumbai)
 and resident of A-1/5, Jai Santoshimata)
 Co-op. Hsg. Society, Kopri Colony,)
 Thane East 400 603.) ... Petitioner

Versus

1. State of Maharashtra)
 Through the Chief Secretary,)
 General Administration Department,)
 Mantralaya, Mumbai.)
)
 2. The Principal Secretary,)
 Finance Department,)
 Government of Maharashtra,)
 Mantralaya, Mumbai.)
)
 3. The Principal Secretary,)
 Law and Judiciary Department,)
 Mantralaya, Mumbai.)
)
 4. Registrar General,)
 High Court, Appellate Side,)
 Mumbai.) ...Respondents

...

Mr. Sanjay Kulkarni for the Petitioner.

Smt. Poormina Kantharia Government Pleader for Respondent No. 1 to 3

Mr. Rahul Nerlekar for Respondent No. 4

**CORAM : ANOOP V. MOHTA &
G.S. KULKARNI, JJ.**

RESERVED ON: 5th August,2016

PRONOUNCED ON : 9th August,2016

ORAL JUDGMENT (Per G. S. KULKARNI, J) :

1. Admit. Taken up for final hearing pursuant to the earlier orders and by consent of the parties.
2. The petitioner who is working as Section Officer, Class-II, in the office of the Registrar General of the Bombay High Court has filed this petition in a representative capacity on behalf of the Section Officers working on the Appellate Side, Original Side at Mumbai and bench offices at Nagpur, Aurangabad and Goa.
3. The petitioner has prayed for a writ under article 226 of the Constitution of India to respondent No 1 to 3 to make applicable revised pay scales as provided in the Government Resolution dated 11 February 2013 issued by the Finance Department of the Government of Maharashtra, to the Section Officers on the High Court Administration, from the date it has been made applicable to the Section Officers working at Mantralaya (Government of Maharashtra), on the basis of parity of pay

scales accepted by the Government between the Section Officers working with the High Court and those working with the State Government at Mantralaya.

4. In nut shell, the facts are:-

The case of the petitioner is that the Government of Maharashtra since more than three decades has accepted that there would be parity of pay scales between the staff of High Court and the staff of the Mantralaya at Mumbai. The petitioner has referred to a letter dated 11 August, 1965 addressed by the Hon'ble Chief Minister of Maharashtra to the Hon'ble Chief Justice of the Bombay High Court, wherein it was recorded that the Government in principle has agreed to grant a parity to the High Court staff and the details were being worked out in consultation with the Finance Department and therefore no further discussion in that regard would be necessary. The petitioner has averred that a pay parity being accepted to be maintained between the staff of Mantralaya and the staff of the High Court, upto the level of post of Superintendent, is also evident from a letter dated 19 August, 1967 addressed by the Deputy Secretary, Government of Maharashtra to the Prothonotary Senior Master of the Bombay High Court. The Petitioner also makes a reference to a letter dated 8th April 1992 of the Deputy Secretary, Law and Judiciary

Department, Government of Maharashtra addressed to the High Court administration informing of the proposal of the merger of cadre of Senior Superintendent and Superintendent in the High Court to be re-designated as Section Officer (Class-II) being approved by the Hon'ble Governor of Maharashtra.

5. Further it is the case of the petitioner that Writ Petition No.4085 of 1986 was filed by one Arun Ambadasrao Deshmukh against the State of Maharashtra and Ors. before the Aurangabad Bench of this Court, for a prayer that the Section Officers in the High Court be granted the Pay Scale of Rs.3000-4500 (unrevised) w.e.f. 1 January, 1986. In this context, reliance of the petitioner is on the letter dated 28 September, 2005 whereby the Government of Maharashtra instructed the Government Pleader that if the Section Officers in the High Court were awarded the Pay Scale of Rs.3000-4500 then there would be a demand that the same pay scale be awarded to the Section Officers in Mantralaya as well, which will have financial repercussions. It is thus contended that the State Government had even otherwise accepted the principle of pay parity between the Section Officers working with the State Government and those in the service of the High Court. A reference is also made by the petitioner to the letter dated 21 October, 2005 of the Joint Secretary, Law

and Judiciary Department, Government of Maharashtra to the Assistant Government Pleader, Aurangabad Bench referring to the recommendation of Anomalies Committee to be confidential and that the report of the said Committee cannot be produced in the context of parity.

6. It is the case of the petitioner, that the Government of Maharashtra had issued Government Resolution dated 27 February, 2006 in its Finance Department by which the Section Officers in the Government of Maharashtra were awarded a revised pay scale of Rs.8,000-13,500 w.e.f from 1 October 2003 or from the date from which the incumbent completed four years of regular service on the post of Section Officer. The petitioner avers that this Government Resolution was to be made applicable to the Section Officers working with the High Court administration. The Government of Maharashtra accordingly issued a Government Resolution dated 29 January, 2010 making applicable the revised Pay Scale of Rs.8000-13500 to the Section Officers on the High Court administration as being granted to the Section Officers working at Mantralaya. Accordingly, Section Officers working with the High Court administration were extended the benefit of the Government Resolution dated 27th February, 2006. The Government accordingly maintained a parity between the Section Officers working at Mantralaya with those

working on the High Court administration.

7. It is the petitioner's case that G.R. Dated 27 February 2006 revising pay scale of Section Officers of Mantralya was issued pursuant to the recommendations of the Anomalies Committee, although no proposal on behalf of the Section officers of High Court was sent before the Anomalies Committee. Notwithstanding the same, based on the said Government Resolution dated 27 February 2006, the Government Resolution dated 29 January 2010 came to be issued granting parity. Thus it was never a case of the State Government, that claim of Section Officers of the High Court, was not placed or ought to be placed before the Anomalies Committee.

8. The petitioner has also relied on the report of the 2nd Maharashtra Pay Commission (1975-1977) Part-I popularly known as Justice Bhole Pay Commission. It is stated that the terms of Reference of this Commission would indicate that the Commission was to review the existing pay-scales and suggest revised scales after taking into account, amongst other parameters, duties and responsibilities attached to the posts and qualifications and experience prescribed for recruitment thereto, so as to resolve anomalies, if any, in the existing pay-scales. The Bhole

Pay Commission in para 8.135 and para 8.149 (page nos.67-68 of the Report) observed as under:

“.....

8.135. From the existing pay structure of the High Court staff, it is seen. that there is parity of pay scales between the High Court staff and the Mantralaya Departments staff upto the level of Superintendent. It appears that it was not considered feasible to establish a similar parity in respect of higher levels.

... ..

8.149. Assistant Registrar (9) :Rs.700-1050 (880-1210)

We have accepted the High Court's suggestion to equate these posts with Under Secretary in Mantralaya. Accordingly we have recommended Grade 16 (Rs.1000-1500) for them.

8.150. There is at present parity in the pay scales of Superintendents and below as between the High Court and Mantralaya”.

(emphasis supplied)

9. Then reliance is also placed on the Justice Naik Committee Report which recommended a Pay Scale to the Superintendent (now Section Officer) of Rs.2000-3500 with remark **“As in Mantralaya”** showing the pay parity. It is thus the Petitioner's case that the expert committees have undertaken an appropriate exercise before awarding the parity to the Section officers with that of their counterparts at Mantralaya and the same was always accepted by the Government. That pay parity has been maintained all throughout in pursuance to the recommendations

of the expert bodies. The petitioner has drawn our attention to the comparative statement of pay scales of Section Officers since the Bhole Pay Commission as under:

No.	Pay Commission / Committee	Supdt./Section Officer Mantralaya	Supdt./Section Officer High Court
1	Bhole Pay Commission	500-900	500-900
2	Naik Pay Committee	2000-3500	2000-3500 SO.High Court (As in Mantralaya)
3	5 th Pay Sukhtankar Committee	6500-10500	6500-10500
4	Pursuant to Anomalies Committee Recommendations	Non Functional pay 8000-13500 as per GR dated 27/2/2006 w.e.f. 1/10/2003 or after continuous service of 4 years, which ever is earlier	Non Functional Pay of 8000- 13500 As per GR dated 29/1/2010 making GR dated 27/2/2006 applicable
5	6 th Pay Hakim Committee	9300-34800 GP 4400 After 4 years 9300-34800 GP 5400	9300 -34800 GP 4400 After 4 years 9300 – 34800 GP 5400
6	Pursuant to Anomalies Committee Recommendations	9300-34800 GP4800 After 4 years 15600-39100 GP 5400 as per GR dated 11/2/2013	The pay scale is claimed by SO High Court in the present petition.

10. Thereafter, the Government of Maharashtra through its

Finance Department issued Government Resolution dated 11 February 2013 re-revising the pay scale of the Section Officers in Mantralaya in the 6th Pay from Rupees 9300-34800 Grade Pay 4400 to Rupees 9300-34800 Grade Pay 4800 and after putting in regular service of four years from Rupees 9300-34800 to Rupees 34800 Grade Pay 5400 to Rupees 15600 -39100 Grade Pay 5400.

11. As the Government Resolution dated 11 February 2013 pertained to the Section Officers working at Mantralaya, the Petitioner contends that it was expected that the same would be made applicable to the Section Officers of the High Court. However, it was not so implemented. Therefore, pursuant to the directions of the Hon'ble the Chief Justice, the Registrar (Personnel) of the High Court addressed a letter dated 10 April 2013 to the Principal Secretary, Government of Maharashtra, Law and Judiciary Department, recording that in view of the acceptance of the parity of pay scales amongst the staff of the High Court and that of Mantralaya, the Government Resolution dated 11th February, 2013 be made applicable to the Section Officers working on the High Court (Appellate Side and Original Side) and its bench offices at Nagpur, Aurangabad, Goa with retrospective effect i.e. w.e.f. 1 January, 2006 notionally and the actual benefit of the Pay Scale w.e.f. 10 April 2013.

12. The petitioner has averred, that however the Additional Secretary, Government of Maharashtra Law and Judiciary Department by his letter dated nil/October 2014, received by the office of the Registrar (Personnel) on 30 October, 2014 stated that there was a pay Anomalies Committee, and that the Section Officers of the High Court did not forward their proposal to the said committee for revision of pay scale of the Sections Officers. It is recorded that after revision of pay scale of the Section Officers of Mantralaya, the pay revision has been asked by the Section Officers of the High Court as also there were several representations received from other departments and that all the representations will be considered together.

13. The petitioner thereafter made an application to the Registrar (Personnel) of the High Court requesting for copies of the necessary documents showing parity of pay scale with the Section Officers of Mantralaya to be provided to them. This came to be furnished to the petitioner by the letter dated 3 March 2015.

14. The petitioner contends that there was no reason whatsoever that the revised pay scale which came to be granted under Government Resolution dated 11 February 2013 to the Section Officers working at

Mantralaya, should not be made applicable to the Section Officers working on the High Court administration on its Appellate Side / Original Side and bench offices at Nagpur, Aurangabad, Goa and more particularly when the parity to that effect was accepted since the year 1965. The petitioner has thus before us in the present petition being aggrieved by the inaction on the part of the Government of Maharashtra to a grant to the petitioner and similarly placed Section Officers the benefit of Government Resolution dated 11 February, 2013.

15. The Government of Maharashtra (respondent nos.1 to 3) has appeared and has filed an affidavit of opposition of Mr. Neeraj Pradeep Dhote, Joint Secretary, Law and Judiciary Department, Mantralaya wherein the affiant has categorically admitted that by the Government Resolution dated 29 January, 2010, the Pay Scale of Rupees 8000-13500 made applicable to the Section Officers of Mantralaya was made applicable to the Section Officers on the High Court establishment. It is not in dispute that the effect of this Government Resolution was that the pay revision applicable under Government Resolution dated 27 February, 2006 to the Section Officers of Mantralaya was also made applicable to the Section Officers working with the High Court. However, the affiant states that the revision of pay under Government Resolution dated 11

February, 2013 as prayed to be implemented in favour of the Section Officers of the High Court, was based on the recommendations as made by the Pay Anomalies Redressal Committee. It is stated that as per the report of the said Committee, the recommendation of the revised Pay Scale of Rs.9300-34800 plus Grade Pay of Rs.4800/- is only applicable to the Section Officers of Mantralaya, on their rendering four years of regular service. It is stated that this is on the basis of the observations as made by the Pay Anomalies Committee, in respect of the nature of the work of the Section Officers at Mantralaya. It is next contended on behalf of the State Government that various departments of the Government of Maharashtra were asked to submit their proposals to the Pay Anomalies Committee, for revision of pay scales, however, proposal of the Section Officers working with the High Court was not received by respondent no.2 to enable it to be placed before the said Anomalies Committee. It is further stated that the proposals to be received from various departments would be placed before the said Committee to be constituted for consideration of revision of Pay Scale at the time of 7th Pay Commission. The affiant further refers to the nature of duties of the Section officers at Mantralaya which were considered by the Anomalies Committee so as to grant the revised pay scales.

16. The petitioner has filed a rejoinder affidavit dated 9 November, 2015 interalia contesting the stand taken by the State Government. The petitioner contends that the Government Resolution dated 29 January, 2010, by which the revised pay scale of the Section Officers of Mantralaya were made applicable to the Section officers of the High Court was itself issued on the basis of recommendations of the Anomalies Committee, without which the same could not have been made applicable to the Section officers of the High Court. Thus all aspects of parity were taken into consideration while applying the revised pay scales under Government Resolution dated 27 February 2006. It is contended that when the effect of Government Resolution dated 27 February 2006 was granted to the Section Officers of the High Court by Government Resolution dated 29 January 2010, at that point of time the Section Officers on the High Court establishment were not called upon to appear before the Anomalies Committee. Nonetheless the pay parity was granted to the Section Officers of the High Court with that of the Section Officers working at Mantralaya. It is thus submitted that the contention of the Government of Maharashtra that the Section officers of the High Court were required to approach the Anomalies Committee is not correct. The Petitioners contend that thus the Section Officers of the High Court and the Section officers working at Mantralaya were always considered at par,

and pay parity was accordingly granted from time to time. It is contended that the historical background in this regard was clear which is also confirmed by all the previous actions taken by the State Government.

17. On behalf of the Government of Maharashtra (respondent nos.1 to 3), an additional affidavit of Rajendra Dattaram Sawant, Legal Advisor-cum-Joint Secretary, Law and Judiciary Department is filed reiterating the contention as urged in the first affidavit of opposition. It is inter alia stated that the proposal of the Section Officers of the High Court was not before the Pay Anomalies Committee and that unless this said exercise is completed by the Pay Anomalies Committee it cannot be assumed that the Section Officers of the High Court should be treated at par with the Section Officers at Mantralaya and be granted a parity of the revised pay scales. The petitioner by the further affidavit has disputed the contention as urged in the additional affidavit filed on behalf of the Government of Maharashtra.

18. We have heard the learned counsel for the petitioner, the learned Government Pleader for the Government of Maharashtra (respondent nos.1 to 3) and the learned counsel appearing on behalf of the High Court administration (respondent no.4).

19. The learned counsel for the petitioner in support of the prayers in the writ petition, submits that the Section Officers on the High Court establishment on its Appellate Side / Original Side and its Benches at Nagpur, Augurangabad and Goa are legitimately entitled to revised Pay Scale as made applicable to the Section Officers working at Mantralaya under the Government Resolution dated 11 February 2013. It is submitted that the parity of the pay scales between these two cadres is well accepted by the State Government. It is submitted that this position is also clear from the recommendations / report of the Bhole Committee, Naik Committee and lastly the Hakim Committee (supra). The learned counsel for the petitioner has relied on the correspondence as we have noted above on the basis of which it is contended that historically the State Government has accepted parity between the Section Officers working at Mantralaya with those working on the High Court administration. The learned counsel for the petitioner would argue that the issuance of Government Resolution dated 29th January, 2010 making applicable to the Section Officers of the High Court, the revised pay scale, as granted to their counterparts at Mantralaya (vide Government Resolution dated 27 February, 2006), leaves no manner of doubt, as regards the parity of pay scale, accorded by the State Government to the

Section Officers working on the High Court establishment. It is therefore submitted that the action on the part of the State Government in not granting the benefits of Government Resolution dated 11 February 2013 to the Section Officers of the High Court was contrary to the principle of parity as accepted and implemented by the State Government. It is submitted that the contention as urged in the affidavit of opposition that the proposal of the Section Officers of the High Court was not before the Anomalies Committee is also untenable, as the benefit of Government Resolution dated 27 February 2006 which was itself on the basis of the recommendation of the Anomalies Committee was made applicable to the Section Officers of the High Court by Government Resolution dated 29 January 2010. It is therefore submitted that the petition deserves to succeed in view of the clear facts, that the State Government at all material times had accepted parity between the Section Officers of the Mantralaya with those working with the High Court. In support of his submission, the learned Counsel for the Petitioner has placed reliance on the decision in the case of “*Harayana State Minor Irrigation Tubewells Corporation & Ors. Vs. G.S.Uppal & Ors.*”¹”.

20. On the other hand the learned Government Pleader in the course of her submissions opposing writ petition, has made submissions

1(AIR 2008 SC 2152)

on the grounds as urged in the counter affidavit's filed on behalf of the State Government. It is contended that the Anomalies Committee is required to undertake an exercise to confer a parity and that no proposal in that regard was received from the Section Officers working on the High Court establishment and thus the benefit of Government Resolution dated 11 February 2013 cannot be granted to the Section Officers of the High Court. The learned Government Pleader has placed reliance on the decisions in *State of UP and Ors. Vs. J. P. Chaurasia & Ors.*²; *State of Harayana Vs. Civil Secretarial Personnel Staff Association*³; *State of Punjab and Anr. Vs. Surjit Singh and Ors.*⁴.

21. With the assistance of the learned counsel for the parties, we have perused the documents placed in the paper book and also the Government Resolution which are referred and relied by the parties.

22. On examining the material on record we find that the there is much substance in the contention as urged on behalf of the petitioner. It is not disputed that the Government has accepted pay parity between the staff of Mantralaya and the High Court staff and the same is reflected in

2(1989) 1 SCC 121

3(2002) 6 SCC 72

4 (2009) 9 SCC 514

the communication dated 11 August, 1965 of the Hon'ble Chief Minister to the Hon'ble Chief Justice of Bombay High Court. Further there is no dispute on the acceptance of the pay parity up to the level of Superintendent as recorded in the letter of the Government dated 18 August 1967 which we have noted above. Further the recommendations / report of the Bhole Committee, Naik Committee and the Hakim Committee, fully supports the contention of the Petitioner on parity of pay scales. These reports of the said committees are acted upon and implemented by the State Government, so as to maintain the parity between these two sets of Section Officers. Further there is no dispute that this position of parity was also accepted by the State Government as informed to the Division Bench of this Court at Aurangabad, as made clear by the State Government in the letter dated 29 September 2005 addressed to the Government Pleader. These documents clearly indicate that the Section Officer on the High Court establishment were treated by the State Government at par with those working at Mantralaya by granting them the same pay scale. The State Government has also not disputed this position.

23. It is significant that the things do not stop at this. By Government Resolution dated 27 February 2006 issued in pursuance of

the recommendation of the Anomalies Committee the pay scale of the Section Officers of Mantralaya were revised and notional benefit was given from 1 October 2003 and actual benefit from 1 April 2006. Admittedly there was no participation of the Section Officers of the High Court before the Anomalies Committee. Nonetheless, State Government issued Government Resolution dated 29 January 2010 making applicable to the Section Officers of the High Court the Government Resolution dated 27 February 2006 granting benefit of the revised pay scale as made available to the Section Officers working at Mantralaya, though the actual benefit was give from 1 February 2010.

24. Thus, issuance of Government Resolution dated 29 January 2010 compounds the position that the State Government always recognized the parity between the Section Officers working at Mantralaya with those working on the High Court Establishment. There is no dispute whatsoever in this regard in the opposition affidavit as filed on behalf of the State Government or on the basis of any other material referred on behalf of the State Government or on any other issue of fact or law. If this be the admitted position on record then we fail to appreciate as to how the State Government can deviate from this position and not continue with the accepted course of parity by not applying the revised pay scale

under Government Resolution dated 11 February 2013, made applicable to the Section Officers working at Mantralaya.

25. Before us the only contention as urged on behalf of the State Government not to grant the benefit of the Government Resolution dated 11 February 2013 to the Section Officers of the High Court, is that the no proposal was received from the Section Officers of the High Court before the Anomalies Committee. We do not find any substance in this contention, for the reason that there is nothing placed on record on behalf of the Government to show that any such proposal was called from the Section Officers of the High Court to be placed before the Anomalies Committee. The learned Government Pleader fairly concedes that there is no material to show that after the last parity between the Section Officers of the High Court with their counterparts at Mantralaya, was accepted vide Government Resolution dated 29 January 2010, the Section Officers were at any point of time called upon or were required by the Government to establish a pay parity. Asking the Section Officers of the High Court to submit a proposal for revision of Pay scales or for application of Government Resolution dated 11 February 2013 would have been definitely a deviation from the previously accepted course adopted by the State.

26. Be that as it may if the contention as urged by the State Government is to be accepted then logically as also what would sound to reason, is that such a course of action should have been preceded by some action in that direction, and there would be some material to show, that the State Government really desired the Section officers of the High Court to be before the Anomalies Committee. This would be significant to establish that the Government intended to deviate from the long accepted position of parity which it had accepted right from the year 1965 till the issuance of Government Resolution dated 29 January 2010, whereby the revised pay scales under Government Resolution dated 27 February 2006 as applicable to the Section Officers at Mantralaya came to be made applicable to the Section Officers on the High Court establishment. However there is not the remotest material which would persuade us to accept that the stand as taken by the Government has some foundation. We thus unhesitatingly conclude that the assertion on the Government that the Section officers of the High Court should have approached the Anomalies Committee is simply without any basis.

27. For another reason we cannot accept the contention on behalf of the State, of the non-submission of the proposal of the Section officers

of the High Court to the Anomalies Committee as a ground not to grant benefit of Government Resolution dated 10 February 2013 as granted to their counter parts at Mantralaya. It is undisputed that the revised pay scale under Government Resolution dated 27 February 2006 was as a result of an exercise undertaken by the Anomalies Committee. These, recommendations of the Anomalies Committee were ipso facto made applicable to the Section Officers of the High Court, when admittedly no proposal of the Section officers of the High Court was sent before the Anomalies Committee, despite which the revised pay scales under the Government Resolution dated 27 February 2006 were made applicable to the Section officers of the High Court. The Government at that point never thought of the necessity of the Anomalies Committee to examine the parity of the Section Officers of the High Court as now sought to be contended. The Government in fact never felt it necessary to do so more particularly in view of the long accepted parity between these two set of employees.

28. In our view, another reason for which the contention on behalf of the State Government, that only because the Section Officers of the High Court were not before the Anomalies Committee and therefore the benefit of the Government Resolution dated 11 February 2013 cannot

be granted to the Section Officers of the High Court, deserves to be rejected and that is in view of the observations of the Supreme Court in the case of **Nain Singh Bhakuni & Ors. Vs. Union of India & Anr⁵**, in **which their Lordships observed** has held that merely because the appellant therein had not gone to the board of Arbitration would not dis-entitled them to the benefit of the relief which was already granted. The Supreme Court observed as under:-

“We agree with the learned Senior Counsel for the appellants that merely because the appellants had not gone to the Board of Arbitration, if the relief given to the CPWD Draftsmen by the said Board of Arbitration which was accepted by the authorities become available to the appellants who were identically situated and were doing the same type of work as Draftsmen in other departments of the Government, the question whether they had gone for similar arbitration or not would pale into insignificance.

29. Admittedly this is not a case where the State Government for some justifiable reasons has withdrawn the parity which came to be granted by a Government Resolution dated 10 February 2010. The State Government also has not come with a case that the nature of duties i.e. qualifications,, functions, responsibilities etc. of the Section officers working at High Court are different from the Section Officers working at

5(1998) 3 SCC 348

Mantralaya. In fact a categorical assertion on the part of the petitioner in the comparative chart showing the similarity of the duties responsibilities and other conditions of service between the Section Officers of the High Court to those in Mantralaya goes un-traversed by the State Government. It is thus a case that the parity is being denied only because the Section officers have not approached the anomaly committee, when admittedly they were never called upon to do so. Moreover, as noted above, the State Government always and at all relevant times treated, both the Section Officers working in Mantralaya and working at High Court administration, at par for the purpose of pay scale and this was not without any basis but on recommendations/ reports of the different committees which we have noted above. No other ground, factual or legal, has been asserted on behalf of the State Government to deny to the Section Officers the benefits of the Government Resolution dated 11 February 2013. This is thus in our opinion a clear case where the guarantee enshrined under Articles 14 and 16 is being deprived to the Section Officers of the High Court. If the position of parity between the parties has continued to operate for such a long period that is almost from the year 1965, then, there is no reason why the mandate of Articles 14 and 16 of equality and non discrimination is not available to the Section Officers of the High Court. Considering the facts of the case in its entirety, the paramount consideration which would

weigh with us is to enforce the mandate of Article 14 and 16 of the Constitution qua the Section Officers of the High Court, as we are of the clear opinion that the impugned action of the State Government has resulted in breach of these fundamental rights of the Section Officers. Thus in the facts and circumstances of the case and considering the limited defence of the Respondent-State, the mandate of Articles 14 and 16 cannot be nullified in not granting such benefit so as to deprive the Petitioners of the benefits of the Government Resolution dated 11 February 2013.

30. Our above conclusion in our opinion is also supported by the decision of the Supreme Court in the case of ***“Harayana State Minor Irrigation Tubewells Corporation & Ors. Vs. G.S.Uppal & Ors., (AIR 2008 SC 2152)”***, which is almost proximate to the issue involved in the present case. In this case the Supreme Court was considering an issue as regards the pay revision which was granted to the engineers of the State Government and was also granted to the engineers of the Government Corporation with effect from 1 January 1986 thereby maintaining parity. What was not extended to the Corporation employees, which was the issue in the decision was a further revision by way of “removal of anomaly in pay scale given to AEE/AC/SDO/SDE of the State Government with

effect from 1 May 1989. The Supreme Court in this context observed as under:-

“23. A careful examination shows that the issue was not really about grant of pay scales to Corporation Engineers on par with PWD Engineers. When the pay revision took place, the revised pay scales that were given to the Engineers of the State Government were also given to the engineers of the Corporation with effect from 1.1.1986 thereby maintaining the parity. What was not extended to the Corporation employees, which is the subject matter of the grievance, is the further revision by way of 'removal of anomaly in pay scales' given to AEE/AE/SDO/SDE of the State Government with effect from 1.5.1989 vide circular dated 2.6.1989 of the Finance Commissioner. The real question would be whether what is given by way of anomaly removal in the case of Engineers of State Government, should automatically be extended to the corresponding categories of engineers of the Corporation. When, after a pay revision, an anomaly is found in the pay scale given to a class of Government servants and such anomaly is rectified, it is not a new pay revision but a correction of the original pay revision, or an amendment to the pay scale that has already been granted. Therefore, where the pay revision extended to the government servants has already been extended to the employees of the Corporation also, it follows that any

correction of anomaly in the revised pay scale given to the government servants should also be made in the case of those who were earlier given parity by extending the pay scale which is the subject matter of the correction. It should be borne in mind that the question whether Corporation engineers were on par with PWD Engineers and should be given parity in pay scales was already decided when the pay scale revision granted to Government (PWD) engineers was extended to the corporation Engineers also with effect from 1.1.1986. That question did not again arise when the anomaly in the pay revision was rectified with reference to the Government engineers. When the anomaly in the pay scale of Government engineers was rectified, the rectification should apply to Corporation engineers also to maintain the parity.”

(emphasis supplied)

31. From the observations of the Supreme Court in the above decision the position which becomes absolutely clear is that, once the pay revision was already extended to the Section Officers of the High Court by virtue of Government Resolution dated 10 February 2010, it would follow that correction of anomaly in the revised pay scale granted to the Section Officers of Mantralaya by virtue of the Government Resolution dated 11 February 2013 is required to be made applicable to the Section Officers of the High Court as they were earlier granted parity, by extending the Pay

Scale which was the subject matter of correction by the Anomalies Committee. What would also instantly emanate from the above observations of their Lordships of the Supreme Court is that the highest Constitutional guarantee conferred under Articles 14 and 16 which are the fundamental rights, cannot be permitted to be taken away on such a weak plea that there was no proposal put forward before the Anomalies Committee. It is of extreme significance that in the present case the parity is not new, it is granted, followed and implemented since 1965. This is another reason as to why the benefit of the Government Resolution in question dated 11 February 2013 ought to be granted to the Section Officers of the High Court.

32. We now refer to the decisions as relied by the learned Government Pleader. The reliance on behalf of the Respondent-State on the decision of the Supreme Court in the case of ***State of UP and Ors. Vs. J. P. Chaurasia & Ors. (1989) 1 SCC 121***, is not well founded. There can be no dispute on the proposition as laid down in the said decision that the Courts are not suited to evaluate to compare on the basis of affidavit and pleadings the issue in regard to pay parity and that such matter is required to be decided by the executive by appointing an Expert body for the purpose. We are surely not doing so. The facts of the case in hand

however as noted above are completely different. In our opinion, the State Government has taken a peculiar and strange stand by contending for the first time that the Anomalies Committee would be required to look into issue. As observed by us, such a plea is completely unsupported by any documents. It thus appears to be some kind of casual assertion to defend this petition without any factual or documentary foundation considering the facts of the case. We may observe that in fact everything was at the disposal of the State Government to take all necessary steps whichever required in law and to ensure that the Section Officers of the High Court are also granted appropriate revision of pay scale, if their counterparts at Mantralaya were so granted under Government Resolution dated 11 February 2013. However, it is absolutely clear that no steps of any nature in that regard were taken on the part of the State Government. We may also note that though the State Government accepted pay parity in 2006, the benefit of the Government Resolution dated 27 February 2006 was belatedly granted to the Section Officers only in January, 2010 which is on a delay of about four years. It thus appears, that the intention of the State Government, was only to delay and not grant any benefit of the pay revision to the Section Officer of the High Court and the same was granted only to the Section Officers working at Mantralaya by turning a blind eye to the Section Officers of the High Court. This approach is

clearly hit by the guarantee of equality and non discrimination as conferred under Article 14 and 16 of the Constitution. These Constitutional rights cannot be permitted to be tinkered in this manner by the State Government.

33. The decision of the Supreme Court in “*State of Harayana Vs. Civil Secretarial Personnel Staff Association (2002) 6 SCC 72*” also would not assist the respondent-State Government, in the facts of the present case. This was the case where the Harayana Government accepted the report of the Forth Central Pay Commission w.e.f. 1 January 1986. It granted to the Personal Assistants working in its Civil Secretariat the pay scale of Rs.1640-2900 plus 150 as special pay, whereas the Central Government had revised the pay scale of personal assistants working in the Central Secretariat to Rs.2000-3500. The State Government however, granted the selection Grade of Rs.2000-3200 to the Personal Assistants having completed 12 years service upto maximum of 20% of the post. At the instance of the respondents in the said case the High Court had held that the Personal Assistants of the Haryana Civil Secretariat, be granted the scale of Rs.2000-3500 from 1 January 1986 and left the issue of special pay to be considered by the State Government relying on the principle of equal pay for equal work. It is in this context, the Supreme Court observed that the High Court had not made any comparison of the

nature of duties and responsibilities in the qualification for recruitment for the post of Personal Assistants in State Civil Secretariat with those of Personal Assistants of the Central Secretariat. The Supreme Court observed that such issues ought to have been left for consideration of the Government and that such a scale ought not to have been granted. The reliance on this decision on behalf of the State in its application to the facts of the present case is, therefore, not well founded.

34. In *State of Punjab and Anr. Vs. Surjit Singh and Ors. (2009) 9 SCC 514*, the Supreme Court was concerned with the issue of the equal pay for equal work. The respondents in the case were admitted as daily wagers and some of them were appointed on a requisition from the Employment Exchange, no recruitment process was followed. They were paid wages on the terms and conditions as contained in the appointment letter. The respondents asserted that, they had put in number of years of service, and thus they were entitled to benefit of equal pay for equal work. They had approached the High Court. The writ petitions were allowed. On this background, the Supreme Court considering the law on the issue directed the State Government to examine the case of the respondents by appointing an Expert Committee so as to ascertain whether the demand of the respondents can be granted. The facts therefore are completely different from the present case. In the

case in hand the Government has never disputed parity between the said two categories of Section Officers.

35. In view of the clear position of parity between the Section Officers of the High Court to those working with Mantralaya, the stand taken by the State Government is quite surprising and is completely contrary, not only to the record but to the clear established position that the State Government always treated the Section Officers on the High Court establishment at par with those working at Mantralaya. We, therefore, see no justification for the State Government to withhold the benefit of the Government Resolution dated 11 February 2013 to the Section Officers of the High Court. We are, thus, inclined to accept the contention as urged on behalf of the petitioner that there is a pay parity between the Section Officers of the High Court and the Section Officers working at Mantralaya. As such the Section Officers of the High Court are entitled to the benefit of Government Resolution dated 11 February 2013.

36. As a result, we allow the present writ petition in terms of prayer clause (a) which reads thus:-

“(a) By a suitable writ, order or direction this Hon'ble Court be pleased to direct the Respondents to make applicable the

Government Resolution No.VePuR-1212/Pra.Kra.31/Seva-9 dated 11 February 2013 issued by the Finance Department, Mantralaya, Mumbai to the Section Officers working in the High Court (Appellate Side, Original side and its Bench Offices at Nagpur, Aurangabad and Goa) from the date as it has been made applicable to the Section Officers working in Mantralaya on the basis of parity pay scales between the staff of High Court and staff of Mantralaya.”

37. Rule is accordingly made absolute in the above terms. No orders as to costs.

(G.S.KULKARNI, J.)

(ANOOP V. MOHTA, J.)