

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2134 OF 2014

- 1) Association of Personal Assistants ... Petitioners.
Private Secretaries & Senior Private
Secretaries, High Court, Bombay,
through Secretary U.P. Kambli.
- 2) Mr. K.P.P.Nair, Aged 59 yrs.
Working as Sr. PS to Hon'ble Judge
& Chairman of the Petitioner No.1-
Association R/at. Y-8/121, Government
Colony, Bandra (E), Mumbai-400 051.

V/s.

- 1) The State of Maharashtra,
Through Principal Secretary, Law &
Judiciary Department, Mantralaya,
Mumbai – 400 032.
- 2) The Principal Secretary,
Finance Department, Government
of Maharashtra, Mantralaya, Mumbai-32.
- 3) The Registrar General,
Bombay High Court, Fort -400 001.
- 4) The Registrar, (Administration), ... Respondents.
Bombay High Court, Fort, Mumbai.

Mr. Ramesh Ramamurthy, Advocate i/by Mr. Saikumar
Ramamurthy for the Petitioners.

Ms. Geeta Shastri, Addl. Govt. Pleader for Respondent Nos. 1 and 2.

Mr. S. R. Nargaolkar, Advocate for Respondent Nos. 3 & 4.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.**

DATE : 31st JANUARY, 2018

**(Judgment Reserved on : 12.12.2017)
(- “ - Pronounced on : 31.01.2018)**

JUDGMENT : (Per Smt.Bharati H. Dangre, J.)

1 The Petitioner No. 1, an Association of Personal Assistants, Private Secretaries and Senior Private Secretaries of the High Court of Bombay, and Petitioner No. 2, working as Senior Private Secretary to the Hon'ble Judge and Chairman of the Petitioner No.1-Association, have invoked the writ jurisdiction of this court, seeking issuance of a writ of certiorari for quashing and setting aside the impugned order dated 26.11.2013 passed by the Respondent No. 1- Law and Judiciary Department, Mantralaya, Mumbai-32 and praying that the Respondents be directed to re-fix the pay of the similarly situated Personal Secretaries working at the

Principal Seat of the Bombay High Court, including its benches by merging the special pay of Rs.400/- into their pay from the date of their up-gradation and to have re-fixed their pay notionally from the date on which they were promoted as “Private Secretaries” and the benefit be conferred on them. On amendment, the Petitioners have also sought quashing and setting aside the communication dated 25.03.2015 issued by the Hon'ble High Court, thereby turning down the representation preferred by the Petitioners, by the Hon'ble Administrative Judges Committee held on 17.03.2015.

2 For effective adjudication of the matter in hand, it would be appropriate to highlight certain undisputed facts. The Hon'ble the Chief Justice of the High Court of Judicature at Bombay, in exercise of powers conferred by Article 229 of the Constitution of India, has framed the Bombay High Court Appellate Side Service Rules of 2000, to regulate the conditions of service of the members working on the establishment of the Hon'ble High Court. The controversy in the present writ

petition revolves around the posts of Personal Assistants / Personal Secretaries and Private Secretaries to the Hon'ble Judges. The Bombay High Court Appellate Side Rules 2000 provides for hierarchy amongst the said posts and prescribes the eligibility criteria to occupy the said posts. Rule 13 provides for appointment to the post of Private Secretary to the Hon'ble Judge and it reads as under :

“13. Private Secretary to the Hon'ble Judge – Appointment shall be by selection from amongst Personal Secretaries to the Honourable Judges who have served as Personal Secretaries for not less than 2 years.

Provided they hold a University Degree, Preference being given to holders of Degree in Law.

Rule 17 makes provision for appointment of Personal Secretary to the Honourable Judge, which reads as follows :

“17. Personal Secretary to the Honourable Judge – Appointment shall be by promotion on merit cum seniority from the Personal Assistants who have served as Personal Assistant for not less than three years.

Provided they hold a University Degree.

Rules 18 and 19 make a provision for appointment to the post of Personal Assistant to the Honourable Judge and Court Stenographer and the said Rules are reproduced below :

“18. Personal Assistant to the Honourable Judge – Appointment shall be on the basis of seniority -cum - suitability from amongst the Court Stenographers.

“19. Court Stenographer . – (a) Eligibility – The post shall be filled in from amongst the candidates who, –

(i) are not less than 21 years and not more than 35 years of age and

(ii) Possess University degree. However, this condition may be relaxed if the candidate is already working as Lower Grade Stenographer for not less than 10 years or Higher Grade Stenographer for not less than 8 years in the High Court or in any other Court or Tribunal or in the office of Advocate General or Government Pleader, Preference being given in to candidates possessing degree in law.

(iii) Possess at least speed of 120 w.p.m. In Shorthand and 50 w.p.m. in typing.

(b) Candidate shall be selected on the basis of examination in shorthand, typing and viva-voce.

(c) The Chief Justice may nominate a Judge of the High Court for supervising the process of selection of the candidates for being included in the Select List.

3 The hierarchy on the establishment of the High Court thus places the “Court Stenographer” at the lowest rank with opportunity for appointment to the post of “Personal Assistant”, to be appointed on the basis of seniority-cum-suitability amongst the court stenographers. The next post in hierarchy is the post of “Personal Secretary” and appointment to the said post is to be made from amongst the Personal Assistants on the basis of their merit-cum-seniority and from those, who have rendered service on the post of Personal Assistant for not less than three years. On top of the ladder is the post of “Private Secretary”, who is to be appointed from amongst the Personal Secretaries, who have rendered services

for not less than two years, provided they hold the University Degree, preference being given to holders of Degree in Law.

The State of Maharashtra, through the Law and Judiciary Department, issued a Government Resolution on 18.03.2005, thereby accepting the proposal forwarded by the Hon'ble High Court in regard to the up-gradation of 46 posts out of 111 posts of Private Secretaries in the existing pay-scale of Rs. 7450-225-11500 in the upgraded pay-scale of Rs. 10,000-325-15200/- and also further resolved that the remaining 66 posts of Court Stenographer/Personal Assistant and Personal Secretary, who were in the existing pay-scale of Rs.7450-11500/- will be conferred with pay-scale of Rs. 8,000-275-13500. The said revised pay-scales were made applicable to the said post w.e.f. 01.04.2005.

On issuance of the said Government Resolution, the High Court of Judicature of Bombay had recognized the said post, which were upgraded and Hon'ble the Chief Justice was pleased to convert 44 posts of Personal Secretary to the

Hon'ble Judge in the pay -scale of Rs.7450-225-11500/- plus special pay of Rs. 400/- per month and 2 posts of the Personal Assistant to the Hon'ble Judge in the pay-scale of Rs. 7450-225-11500/- to the post of Private Secretary to the Hon'ble Judge in the pay scale of Rs. 10,000-325-15200 and remaining posts of Personal Assistant to the Hon'ble Judge and Court Stenographer in the post of Rs.7450-225-11500/- to the post of Personal Assistant in the pay -scale of Rs. 8000-275-13500. The Hon'ble the Chief Justice appointed the Personal Secretary and Personal Assistants and the Court Stenographer working on the establishment of the High Court of Judicature at Bombay including its benches at Nagpur, Aurangabad and at Panji (Goa), as "Private Secretary" to the Hon'ble Judge and as the "Personal Assistant" to the Hon'ble Judges w.e.f. 01.04.2005.

4 The Petitioners Association includes Personal Secretaries who were upgraded to the post of Private Secretaries and placed in the pay-scale of Rs.10,000-325-

15,200. The Petitioners are aggrieved by the action of the Respondent of fixing the pay of the employees who were previously working as Personal Secretaries and who have been upgraded as Private Secretaries by not taking into account the special pay of Rs.400/- paid to the said employees in the erstwhile post of Personal Secretaries, as part of the basic pay fixation of their pay in the upgraded post of private Secretaries. The Petitioners preferred a representation to the Registrar of the High Court and prayed for treating special pay of Rs. 400/- as part of their basic pay in the upgraded post. The representation preferred by the petitioners was rejected on 05.09.2006. Three writ petitions came to be filed before the Aurangabad Bench of the Bombay High Court, assailing the said action of the Respondents, in not granting the benefit to merge of special pay of Rs.400/- on upgradation as private secretaries. The lead petition which was taken up by the Hon'ble High Court, Bench at Aurangabad was writ petition No. 7596 of 2006 filed by the petitioner Ajay K. Losarwar and two other petitions were preferred i.e. writ petition No. 6231

of 2010 filed by Shir N. D. Kulkarni and writ petition No. 7404 of 2010 filed by P.N. Kulkarni. The Aurangabad Bench of the High Court decided all the three writ petitions by a common judgment delivered on 17.08.2012. By the said judgment the Hon'ble High Court at Aurangabad Bench allowed all the petitions and issued directions to the administration to merge the amount of Rs. 400/- per month received by the petitioner i.e. Personal Secretaries in the basic wage of the petitioners in the respective cadre and to re-determine their wages as Private Secretaries in the pay-scale of Rs. 10000-15200. The said exercise was directed to be completed within the period of four months. The Hon'ble High Court, after referring to various provisions of the Maharashtra Civil Services (Revised Pay) Rules, 1998, arrived at a conclusion that the pay of Rs. 400/- per month to the petitioners was/is neither special pay nor personal pay but it was a grade pay of the Personal Secretaries. The High Court concluded that the pay of respective petitioners was rightly fixed by merging the amount of Rs. 400/- before undertaking

the promotional fitment and therefore, action of recovery of the amount from one of the petitioners was not justified. In case of the petitioner in writ petition no. 7596 of 2006, the Court held that the petitioner is entitled to have his fixation redetermined by adopting this equation.

On the judgment rendered by the Hon'ble High court at Aurabgabad Bench, the State of Maharashtra appealed to the Hon'ble Supreme Court, by filing a special leave petition which was numbered as Special Leave to Appeal (Civil) CC 4053/4055 of 2013. The Hon'ble Apex Court by the order dated 22.02.2013 was pleased to dispose of the special leave petition, by making following observations :

“Delay condoned.

Heard learned Counsel for the petitioners at length.

Although, strictly speaking, in law it would appear that the claimants, the writ petitioners, had been erroneously paid in excess of the salary due, yet in the peculiar facts and circumstance of this case, we are not inclined to interfere with the order passed by the High Court. We are not inclined to take this view in order to avoid any hardship to the petitioners from whom the excess amount paid, is sought to be recovered. We, however, make it clear that

the order passed by the High Court shall not be treated as a precedent in future.

With these observations, the special leave petitions are disposed of.”

5 The members of the Petitioners Association again preferred a representation to the Registrar General on 27.02.2013, seeking extension of the benefits of the judgment of the Aurangabad Bench of the Hon'ble High Court to the similarly situated persons and a reference was made to the judgment of the Hon'ble Apex Court. In the meantime, the State of Maharashtra addressed a communication to the Hon'ble High Court on 7.03.2013, seeking details of the persons who were eligible to avail the benefits in terms of the judgment of the Aurangabad Bench and also inquired about the financial implications involved in the matter. A reply was forwarded by the Registry of this Court on 16.03.2013, thereby intimating to the Principal Secretary of Law and Judiciary Department, Mantralaya, that if the benefits in terms of the judgment delivered by the Aurangabad Bench was to be extended, it would incur an additional financial

implication of Rs. 44,05,122/-. The Registry of the High Court, however, invited the attention of the State Government to the observations made by the Hon'ble Apex Court while disposing of the special leave to appeal vide (civil) CC 4053/4055 of 2013, wherein it had been made clear that the order passed by the High Court shall not be treated as "precedent" in future. On receipt of the said communication, the Law and Judiciary Department in the State of Maharashtra issued an order on 26th November, 2013, which is impugned in the present writ petition. By the said order the Law and Judiciary Department, after making reference to the opinion of the finance department, declined to consider the request of extension of the benefit of the judgment of the Aurangabad Bench to the similarly situated employees of the High Court by observing that in the light of the opinion of the finance department and the order of the Hon'ble Supreme Court dated 22.02.2013, cannot be treated as "precedent" in other cases and hence did not accept the request of the petitioners and ruled that the ratio of the judgement dated 17.08.2012

delivered by the Hon'ble High Court at Aurangabad Bench cannot be made applicable to the other private secretaries on the establishment of the High Court.

The Petitioner Association again forwarded representations dated 10.12.2013 and 06.01.2014 to the Registrar General, reiterating its request. It was canvassed by them that they cannot be refused the relief extended to other employees who were similarly situated and the order of the Hon'ble Apex Court would not come in their way of granting the benefits. However, since the petitioners did not receive any communication on consideration of the representations, they approached this court by filing the present petition in the month of February, 2014.

6 During the pendency of the said writ petition, this Hon'ble Court on 30th January, 2015, after taking note of the order passed by the Hon'ble Apex Court, issued a direction to decide the representation, without going into the question of interpretation of the terms, "shall not be treated as precedent"

and observed that if the representations made by the Petitioners is disposed of by the High Court, then it would not be necessary to go into that question. The Hon'ble Division Bench of this court, therefore, made a request to the Hon'ble Chief Justice to look into the representations made by the petitioners despite pendency of the writ petition and requested the said representation to be considered under Article 229 of the Constitution of India.

The Hon'ble High Court took a decision on the said representation and the decision was communicated to the counsel for the petitioners by the Registrar (Legal and Research) High Court, Appellate Side, Mumbai on 25.03.2015.

The contents of the said letter are reproduced below :

“With reference to the subject noted above, I am to inform you that the aforesaid Representations were placed in the meeting of the Hon'ble Administrative Judges Committee, which was held on 17th March, 2015 wherein the following decision was taken:-

Discussed.

Having considered the order of the Hon'ble Supreme Court as referred to in the order dated 30th January, 2015 of the Division

Bench of this Court in Writ Petition No. 2134 of 2014 (at page 95 of the paper book), it was decided not to accept the representation. However, this decision will not prevent the Association from making appropriate representation to the State Government.

The Registry to take follow-up action.”

The Petitioners also assailed this communication, by seeking an amendment, which was allowed by this court.

7 We have heard Shri Ramesh Ramamurthy, learned counsel appearing for the petitioners and Ms. Geeta Shastri, Additional Government Pleader appearing on behalf of the Respondent Nos. 1 and 2.

Shri Ramamurthy for the petitioners would argue before us that the members of the petitioners' association who were working as Private Secretaries to the Hon'ble Judges came to be upgraded and the pay-scale which was made applicable to the Personal Secretaries and Personal Assistants in the pay-scale of Rs.7450-11500/- was upgraded to Rs.10,000 – 15200/-. It is contended by Shri Ramamurthy

that the post of Personal Secretary had initially carried a pay of Rs. 680/-, which pay-scale is lower than the post of Court Stenographer or Personal Assistant, started with pay of Rs. 750/. The Court Stenographer satisfying seniority cum-suitability could become a Personal Assistant and a graduate Personal Assistant with two years of experience was entitled to be promoted as a Personal Secretary, as per merit cum-seniority test. The end point or stage in the pay-scale / wage structure of the Personal Secretary was, therefore, Rs. 1250/- which was in excess of Rs. 100/- as compared to the other two cadres. It is submitted by Shri Ramamurthy that on 01.01.1986 all the three cadres were conferred with the same pay-scale but a special pay of Rs. 200/- was given to the Personal Secretaries, which was enhanced in the year 1996 at Rs.400/- so as to compensate them for removal of more basic at the end of the wage structure. He would argue that this was made with an intention/purpose to remove stagnation in absence of any promotional avenues. It is the contention of Shri Ramamurthy that an amount of Rs. 400/- which was paid

to the Personal Secretaries, in view of the peculiar circumstances became a part of their basic pay and therefore, their fixation in higher upgraded pay-scale needs to be done by taking into consideration the amount of Rs. 400/- as a part of their basic pay. According to Shri Ramamurthy, the Aurangabad Bench had considered the issue in the right perspective and has held that the amount of Rs. 400/- is not a special pay but is a part of the basic pay conferred on the Personal Secretaries to the Hon'ble Judges in the pay-scale, who were conferred with the pay-scale of Rs.7450-11500. He, therefore, placed heavy reliance on the judgment delivered at Aurangabad Bench and he would argue that the non-extension of the benefits flowing from the said judgment in favour of the members of the Association of the Petitioners and the Petitioner No.2 would result into discrimination since the benefit has been conferred on Shri A.K. Losarwar and two other employees namely S/Shri N. D. Kulkarni and P.N.Kulkarni, who were similarly situated as that of the members of the Petitioners Association. He would therefore

argue that denial of the benefit to the members of the Petitioners Association, who are similarly placed as of the Petitioners before the Aurangabad Bench in whose favour the relief came to be granted, would violative of Article 14 of the Constitution of India and would violate the principles of “equal pay for equal work”, since the nature of the duties discharged by the members of the Petitioners Association are similar to the one discharged by the Petitioners before the Aurangabad Bench.

8 As against the arguments of the learned counsel for the Petitioners, Additional Government Pleader Ms. Geeta Shastri, on behalf of the State, justified the communication issued by the Law and Judiciary Department and she relies on the affidavit filed by the Joint Secretary of the Law and Judiciary Department on 9th July, 2013 and also a compliance affidavit filed by the Joint Secretary, Law and Judiciary Department on 16th January, 2016. Ms. Shastri submits that the Petitioners are the personal Secretaries working in the

Hon'ble High Court and they were given special pay of Rs. 400/- while they were working on the post of personal Secretaries. According to her, the High Court of Judicature at Bombay, in pursuance of the Government Resolution issued on 18.03.2005, converted 44 posts of personal Secretaries to the Hon'ble Judges in the pay-scale of Rs. 7450- 11500/- plus special pay of Rs. 400/- to the posts of Private Secretary and two posts of Personal Assistants in the pay-scale of Rs. 10,000 – 15,200/- to that of Private Secretary. She would submit that the Hon'ble High Court, Bench at Aurangabad had granted the relief in favour of the petitioners, who had approached the court, seeking reliefs of inclusion of special pay of Rs. 400/- in the basic pay and thereafter, their fixation of pay in the higher pay-scale. However, she would draw our attention to the order passed by the Hon'ble Apex Court while disposing of the special leave petition filed by the State Government, challenging the judgment of the High Court at Bench of Auranghabad and she would lay special emphasis on that part of the order of the Apex Court, where the Apex court

made it clear that the order passed by the High Court shall not be treated as “precedent” in future. She also invites our attention to the communication from the Registrar General of the Bombay High Court about the financial implications that would be required to be borne by the State Government, if the benefit of the Aurangabad Bench Judgment, was extended to the petitioners. According to her, the finance department had clearly opined that the benefit of the judgment of the Hon'ble High Court at Aurangabad Bench cannot be extended to any other employees except to Shri A.K. Losarwar, N. D. Kulkarni and P.N.Kulkarni. On merits, she would submit that the special pay conferred on an employee is never taken into consideration while granting further pay on promotion and according to her if this is permitted to be done, it would in contrast to the provisions and to the manner in which the fixation of the pay scale is to be done. She would also submit that the prayer of the petitioners to grant special pay and its merger into the basic pay is contrary to the provisions of the re-fixation of the particular pay-scale and based on this basic

principal of fixation of pay-scale the State Government has rejected their representations and it was so communicated to the petitioner no.1 on 3rd December, 2015.

9 We have also heard Advocate Shri S. R. Nargolkar, appearing for the Bombay High Court. He places reliance on affidavit-in-reply filed on behalf of the Respondent Nos. 3 and 4 and he would argue that in view of the order passed by the Hon'ble Apex Court in Special Leave Petition filed by the Government of Maharashtra, the Petitioners cannot claim relief on the basis of the judgment delivered by the Aurangabad Bench of the Bombay High Court. According to him except relying on the said judgment, the petitioners have failed to make out any independent case for grant of any relief in their favour for merger of "special pay of Rs. 400/-" apart from the basic pay while fixing the pay of the Personal Secretary. He would justify the decision taken by the Administrative Committee of the Hon'ble High Court and

submits that the same do not suffer from any illegality or impropriety and he prays for dismissal of the writ petition.

10 On perusal of the Maharashtra Civil Services Pay Rules, 1981 which are framed in exercise of powers conferred by the proviso to Article 309 of Constitution of India and are applicable to the members of service of Government of Maharashtra, we have noted some terms which have been assigned meaning thereunder. The term “Pay” in Section 9(36) reads as under : -

(36) “Pay” means the amount drawn monthly by a Government servant as –

(i) the pay (including special dearness pay) which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) Personal pay, and special pay; and

(iii) any other emoluments which may be specially classed as pay by Government.

Further the term “Personal Pay” is defined in Rule 9 (41) reads as follows :-

(41) Personal pay means additional pay granted to a Government servant –

(a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to revision of pay or due to any reduction of such substantive pay otherwise than as a disciplinary measure; or

(b) in exceptional circumstances, on other personal considerations.

Further 9 (48) defines the term “Special Pay” as below :

(48) “Special pay” means an addition, of the nature of pay, to the emoluments of a post or of a Government servant granted in consideration of -

(a) the specially arduous nature of the duties.

(b) a specific addition to the work or responsibility.

Thus, from the aforesaid definition, “pay” is an amount drawn by Government servant monthly as Pay which has been sanctioned for the post held by him and also includes personal pay and special pay and any other emoluments which are classified as pay by Government. The Government servant, when occupies a post is paid a consolidated sum as pay which includes the pay applicable to the said post including the dearness pay, his personal pay and special pay and if there are any other emoluments which are classified as pay by the Government. Thus, he is entitled for a consolidated sum under all these heads and takes the said sum as his “pay” per month.

When such a Government servant holding a post either in substantive, temporary or officiating capacity gets either promoted or appointed in a substantive temporary or officiating capacity to any other post, his pay is fixed in the manner prescribed in Rule 11 of the Maharashtra Civil Services Pay Rules. The said Rule prescribes the manner in which the pay of a Government servant is to be fixed in a situation when

he is promoted or appointed in a substantive, temporary or officiating capacity to a new post which either involves assumption of duties or responsibility of greater importance than those attached to the old post or in a contingency if the new post does not involve such assumption. Rule 11 is the guiding factor for resolving the present case in hand and would be required to be invoked in order to consider whether the petitioners are entitled for the relief which they have sought. Rule 11 (1) (2) of the Maharashtra Civil Services (Pay) Rules, 1981 is relevant for effective adjudication of the matter and it is reproduced as below :-

11. Fixation of pay on appointment to another post:

Save as provided in rules 12, 13, 14, 17 and 20 where a Government servant holding a post in a substantive, temporary or officiating capacity, is promoted or appointed in a substantive, temporary or officiating capacity, to another post including an ex-cadre post, his initial pay shall be regulated as follows :-

(1) When appointment to the new post involves assumption of duties or responsibilities of greater importance than those attaching to the old post and -

(a) if he is holding a post not higher than a Class II post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued and in the case of a Government servant drawing pay at the maximum of the pay-scale by an amount equivalent to the last increment; and

(b) if he is holding a post higher than a Class II post, he will draw as initial pay the stage of the time-scale next above his pay in respect of the old (lower) post.

(2) If the appointment to the new post does not involve such assumption:-

(a) if there is a stage in the time-scale of the new post which is equal to his pay in the old post, he shall draw pay at that stage;

(b) if there is no such stage, he will draw pay at the stage next below his pay in the old post plus personal pay equal to the difference;

(c) in either of these two cases he will continue to draw that pay until such time as he would have received an

increment in the time-scale of the old post, or till he would earn an increment in the time-scale of the new post, whichever is earlier;

(d) if the minimum of the time-scale of the new post is higher than his pay in the old post, he will draw that minimum as initial pay.

11 The claim of the petitioners is that when they were working on the post of Personal Assistant and Personal Secretary to the Hon'ble Judges of the High Court, they were held entitled for a Special Pay of Rs.200/- from the year 1986 and for Rs.400/- from the year 1996. The pay scale of the petitioners was fixed by taking into consideration the pay band of Rs.7450-225-11500 plus the Special Pay of Rs.400/-. Thus, the monthly pay of the petitioners is to be fixed by calculating the stage where a particular petitioner in the capacity as Personal Secretary to the Hon'ble Judge has reached and this was inclusive of the special pay and their pay to be fixed in the new pay band. The grievance which the petitioners are making before the Court is on up-gradation of their post to the post of Private Secretary in the pay scale of Rs.10,000-325-15200/-,

they should be placed in such a manner and at a stage that they are not deprived of the pay which they were getting as Personal Secretary. The grievance of the petitioners is that the special pay of Rs.400/- which they were availing throughout when they were working on the post of Personal Assistant/Personal Secretary which was part of their pay should be inclusive and when they step up at a stage of upgradation in the pay-scale of Rs.10,000-325-15200, their advancement in the said scale should start from the pay which they were earning in the erstwhile post of Personal Assistant / Personal Secretary and this should include the special pay of Rs.400/-.

It is not in dispute that the Personal Secretary were enjoying the pay scale of Rs.7450-225-11500+Special Pay of Rs.400/-. The Maharashtra Civil Services defines the term “Special Pay” which we have reproduced above to mean a pay which is a addition of the nature of pay to the emoluments of a post or of a Government servant granted in consideration of the specially arduous nature of duties and specific addition to

the work or responsibility. We need not deliberate as to how the and why the State Government has conferred this Special Pay to the said post in the year 1986 and made it applicable to the post of Personal Secretary / Personal Assistant. The State Government on 25/10/1982 created two cadres i.e. Personal Secretary and Private Secretary and since then there existed four cadres on the establishment of High Court (i) Court Stenographer and (ii) Personal Assistant (both carrying pay scale of Rs.750-1150) (iii) Personal Secretary 680-1250 and (iv) Private Secretary in Pay Scale of Rs.1000-1500/-.

12 The cadre of Personal Secretary was created with a view to remove the stagnation created by the first two feeder cadres in the same pay scale i.e. Court Stenographer and Personal Assistant. On 01/01/1986 these two cadres and the promotional cadre of Personal Secretary were placed in the same pay scale i.e. 2375-3500 with Special Pay Rs.200/- for peculiar post of Personal Secretary. The Cadre of Private Secretary was placed in the Pay Scale of Rs.3000-4500.

Further with effect from 01/01/1996 the first three cadres were placed in the pay scale of Rs.7450-11500 and Special Pay of Personal Secretary was raised to Rs.400/- per month. The Personal Secretary therefore continued to avail the benefit of the Special Pay of Rs.400/- till their upgradation to the post of Private Secretary to the Hon'ble Judges in the pay scale of Rs.10,000-325-15200 in pursuance of the Government Resolution dated 18/3/2005. By the Government Resolution dated 18/3/2005, the State Government had permitted upgradation of 46 posts out of total 111 posts of Personal Assistant and Personal Secretary work in the pay scale of Rs.7450-11500 in the pay scale of Rs.10000-15200. By the same Government Resolution the remaining Stenographers / Personal Assistant / Personal Secretary remaining 65 Stenographers / Personal Secretary were upgraded from Rs.7450-11500 to Rs.8000-13500/-. The said pay scales were made applicable from 01/04/2005.

The High Court of Judicature, in pursuance of the Government Resolution dated 18/03/2005 through the Hon'ble

Chief Justice was pleased to convert 44 posts of Personal Secretary to the Hon'ble Judges in the existing pay scale of Rs.7450-225-11500 plus Special Pay of Rs.400/- and two posts of Personal Assistants to all Hon'ble Judges in the existing Pay scale of Rs.11550 to the post of Private Secretary to the Hon'ble Judges in the pay scale of Rs.10,000-325-15200. Thus, there is conversion of the post of the petitioners who are holding the post of Personal Secretary and Personal Assistant to the post of Private Secretary and they are conferred with the pay scale of Rs.10,000-325-15200. Members of the petitioners Association holding the post of Personal Secretary, came to be upgraded to the post of Private Secretary, carrying a Higher Pay scale in the scale of Rs.10000-325-15200. It is not the case of the petitioners as made out in the writ petition nor is it argued by Mr Ramamurthy that the post of Personal Secretary results into assumption of duties or responsibilities of Greater Importance than those were attached to the post of Personal Secretary/Personal Assistants. Perusal of the Bombay High Court Appellate Side Service Rules 2000 reflects that the post

of Private Secretary is to be filled in by selection from amongst Personal Assistants to the Hon'ble Judges who have served as Personal Assistants for not less than two years. It cannot be said that the post of Private Secretary is higher in responsibilities as compared to the post of Personal Secretary and in fact looking back at the existence and progression of this post is concerned, the post of Private Secretary was in Higher Pay Scale than that of Personal Assistant/Personal Secretary and it is probably to compensate the holders of the post of Personal Assistant and Personal Secretary who could not be considered for selection to the post of Private Secretary, the number of posts being limited, were compensated by conferring with a special pay of Rs.200 from 01/01/1986 and Rs.400 from 01/01/1996. From 01/01/1986 the post of Court Stenographer / Personal Assistant and the post of Personal Secretary were placed in the same pay scale of Rs. 7450-225-11500 with special pay of Rs.200/- for Personal Secretary. On this revision of pay, the Private Secretaries were placed in Higher Scale i.e. Rs.3000-4500 from 01/01/1996. All the three

posts namely Court Stenographer/Personal Assistant / Personal Secretary were placed in the pay scale of Rs. 7450-11500 to Rs.8000-13500/- and special pay was conferred on personal Secretary to the extent of Rs.400 per month. An order was issued by the High Court of Judicature in pursuance of the GR dated 18/03/2005 by which 44 posts of Personal Secretary were converted to the post of Private Secretary and two posts of Personal Assistants were converted to the post of Private Secretary with commensurating pay of Rs.10000-325-15200. Thus, the petitioners who were working as Personal Secretary came to be appointed by conversion of their post as Private Secretary and the post of Private Secretary being new posts are entitled to be governed and their pay to be fixed in terms of Rule 11 of the Maharashtra Civil Services Pay Rules, 1981. Pertinently, no objection was raised by the State Government at the stage of conferment or grant of the special pay despite the financial implications being clear. The payment was made to the knowledge of the State Government and for years together. It is unfortunate that such an objection, as noted

above, is being raised only when the posts of Personal Secretary were converted to Private Secretary. Despite being fit for promotion these Secretaries could not be awarded the same and, therefore, the above decision was taken. That is an incentive and encouragement with an expectation that they continue to work with same zeal and devotion and to remove stagnation.

13 Since it is not the case of the petitioners that the post of Private Secretary involves assumption of duties or responsibilities of greater importance than that of Personal Secretary, the fixation will have to be processed in terms of sub-clause (2) of Rule 11. Since the appointment of the petitioners to the post of Private Secretary does not involve assumption of duties or responsibilities of greater importance than those attached to the old posts, the pay fixation is done by following sub-rule 2 of Rule 11. In case of the petitioners, clause (a) is inapplicable since in the time scale in the new post, the petitioners may not be able to find a stage equal to

their earlier stage. However, it can be calculated and their pay has to be fixed by taking into consideration clause (b) and clause (c). Pertinently, clause (b) of sub-rule 2 of Rule 11 employs the word “pay”. By its very definition it is a inclusion of both personal and special pay. The special pay which the petitioners were getting would get converted into a personal pay equal to the difference in the amount which particular incumbent would draw at a stage next below his pay in the old post and the personal pay would protect the loss of any substantive pay caused to him on account of applying clause (b) of sub-rule (2). In any case, the personal pay means an additional pay granted to a Government servant to save him from loss of substantive pay in respect of his post due to revision of pay or due to any reduction of such substantive pay and therefore the particular incumbent would stand protected by treating the different amount as personal pay and by virtue of clause (c) of sub-rule (2) of Rule 11, the incumbent would continue to get that pay only till such time he would earn an increment in the time scale of new post. The basic principle of

pay fixation being not to confer any undue benefit on any Government servant on one hand and being not to deprive a Government servant of pay which he would have otherwise been entitled to by virtue of his reaching a particular stage in a time scale. By this principle, members of the petitioner-association are entitled to have their pay fixation done by applying Rule 11 sub Rule 2 (b) and (c).

14 It is trite law and we are aware of the same that the fixation of pay is an executive function and we are aware of the limitations on our powers to interfere in the same. It is, however, equally well settled that this court would not hesitate to interfere when it is found that such an act/decision is unreasonable, unjust and pre-judicial to a section of employees and deprives them of the benefits due to them by ignoring relevant and material factors. We are inclined to interfere and consider the grievance raised by the present petitioner association merely on the ground that by not counting amount of Rs.400/- which was special pay conferred on the petitioners

who are working as a personal secretary to the Hon'ble Judges and not including the same into their pay in the next upgraded post of Private Secretary, resultantly the members of the petitioner association would be entitled for a payment of an amount which is less than the last pay drawn by them. From a perusal of the Service Rules which we have reproduced above it can be deduced that pay is essential consideration for the services rendered by an employee and it includes various components like pay, special pay, personal pay etc. As per the concise Oxford Dictionary the definition of the word "pay" in its ordinary significance in relation to service means "to give what is due for service done". Though in service jurisprudence, the term pay is assigned a definite connotation and is inclusive of various components and as noted by us in terms of Rule 9 (36) which we have quoted above it includes pay, personal pay and special pay. The whole genesis of service jurisprudence being not to deprive a Government servant of an amount which he has entitled to on account of his devoted service rendered to the State Government, under the guise of his re-fixation in a

different pay scale, though even in a higher pay scale. A Government servant is entitled to draw an amount of monthly salary not less than what he had last drawn and he should not be put to a disadvantageous position under the guise that the post on which he is working is upgraded.

The Hon'ble Apex Court dealing with a similar situation in case of Union of India & Ors. -Vs- B. Anil Kumar & Ors. reported in 2010 (6) Supreme Court Cases 419 was confronted with a situation when an identical rule was found in Rule FR 22 AL which is similar to Rule 11 of the pay rules which we have quoted above. The Hon'ble Apex Court observed in paras 18, 19 & 20 as below :

“18. The contention of the appellants, however, is that the respondents, who were Investigators as on 1-1-1986 and were promoted to the post of Assistant Superintendent after 1-1-1986, would not be covered under Rule 7(1)(B) of the 1986 Rules and that on such promotion their pay would be fixed under FR 22(I)(a)(1), the relevant portion of which is quoted hereinbelow:

“22.(I) *The initial pay of a government servant who is appointed to a post on a timescale of pay is regulated as follows-*

(a)(1) Where a government servant holding a post, other than a tenure posts, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant recruitment rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the timescale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only (now Rs.100), whichever is more”.

19. A plain reading of FR 22(I)(a)(1), quoted above, would show that where a government servant holding a post is promoted to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, “his initial pay in the timescale of the higher post” shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued. Thus, on promotion to a post carrying duties and responsibilities of greater importance, a government servant is entitled to his initial pay “in the timescale of the higher post”. In the present case, the higher post to which the respondents were promoted after 1-1-1986 was the post of Assistant Superintendent. If, therefore, the special pay of Rs.75 as has been awarded by the Board of Arbitration is for the higher post of Assistant

Superintendent, the respondents would be entitled to the benefit of special pay, but if the special pay was only for the Assistant Superintendents then serving, and not for the post of Assistant Superintendent, the respondents would not be entitled to the benefit of special pay having been promoted after 1-1-1986.

20. "Special pay" has been defined in FR25 as "an addition, of the nature of pay, to the emoluments of a post or of a government servant, granted in consideration of

(a) the specially arduous nature of the duties; or

(b) a specific addition to the work or responsibility."

Hence, special pay can be attached to either "a post" or "a government servant".

The Hon'ble Apex Court further observed in paragraph 22 and 23 as follows

"22. In our considered opinion, the 1986 Rules and FRs 22 and 25 have to read consistently with the equality clauses in Articles 14 and 16 of the Constitution and so read, all the Assistant Superintendents who are performing the same nature of duties and responsibilities would be entitled to the special pay and to deny such benefit of special pay to the respondents, who have been promoted to the post of Assistant Superintendents after 1-1-1986, would violate Articles 14 and 16 of the Constitution. In support of this view, we may now cite the authorities.

23. In M.P. Singh V. Union of India this Court held : (SCC p.599, para 10)

“10. From the foregoing discussion it emerges that the special pay that was being paid to all the officers in the cadre of Sub-inspectors, Inspectors and Deputy Superintendents of Police in the Central Investigating Units of the Central Bureau of Investigation has nothing to do with any compensation for which the deputationists may be entitled either on the ground of their richer experience or on the ground of their displacement from their parent departments in the various States, but it relates only to the arduous nature of the duties that is being performed by all of them irrespective of the fact whether they belong to the category of the 'deputationists' or to the category of the 'non-deputationists'. That being the position, the classification of the officers working in the said cadres into two groups, namely, deputationists and non-deputationists for paying different rates of special pay does not pass the test of classification permissible under Articles 14 and 16 of the Constitution of India since it does not bear any rational relation to the object of classification.”

15 We have carefully perused the order passed by the Hon'ble Apex Court on writ petition filed by the State Government before it, challenging the judgment delivered by by the Aurangabad Bench of this court. We are aware that

the Division Bench judgment of this Court delivered at Aurangabad and cited before us by Shri Ramamurthy is directed not be treated as a precedent by the Hon'ble Supreme Court of India. We are mindful of the legal consequences of such a direction. While it may not amount to a direction to completely ignore or brush aside the judgment of a co-ordinate Bench, yet, such a direction means that its operation was confined and limited to those parties in whose legal proceedings the judgment has been delivered. Therefore, we have not rested our findings and conclusions only on the reasoning of the Division Bench at Aurangabad. We have, independent of that judgment, considered the rival contentions and materials placed before us. By our independent appreciation and appraisal of these materials, we are of the opinion that the petitioners deserve to be granted the relief. Our reasoning is based on the reading and analysis of the rules, the communications placed on record and the facts as culled out from the pleadings in the petition.

All these materials having been considered by us independent of the conclusions reached by a co-ordinate Bench of this Court, we are of the opinion that the Writ Petition deserves to be allowed. We are thus not blindly following the judgment of this Court. Our reasoning and conclusions are independent thereof, but lead to the same conclusion. We are not in agreement with Ms. Shastri that the direction of the Hon'ble Supreme Court of India would mean that even in deciding a similar issue and dealing with a similar question, we cannot arrive at our independent conclusion and while we do so, we are necessarily following and applying the judgment of a co-ordinate Bench

16 Applying the aforesaid principle laid by the Hon'ble Apex Court, we do not feel that the members of the Petitioner Association and the Petitioner No.2 who was working as a Personal Secretary to the Hon'ble Judges and who were conferred with a special pay since 01/01/1986 in the earlier

pay revision, can be deprived the special pay which has become part of their pay, on their upgradation to the post of Private Secretary in a higher pay scale of Rs.10,000-325-15,200/-. By applying the principle as provided in Rule 11 (1) (a) sub Rule 2 (b) and (c) the pay scale of the members of the petitioner association who are working as Personal Secretary, who were upgraded to the post of Private Secretary can be fixed by making them eligible to earn a pay at the stage next below their pay in the old post and the differential amount would be carried by them as a personal pay. They would be entitled to continue to draw that pay until such time as they receive increment in the time scale of new post or that of the old post which ever is earlier. Ultimately, actual calculations would have to be drawn by the High Court being its employee and accordingly the arrears due and payable to the petitioner be calculated and paid to the petitioner forthwith.

17 In the light of the aforesaid discussion we are of the high view that the Writ Petition deserves to be allowed and the

petitioners are entitled for fixation of pay scale in the post of Private Secretary to be revised by merging the Special Pay of Rs.400/- with effect from 01.04.2005 i.e. the date from which the post were upgraded and the benefits accruing thereof be paid to the petitioners as expeditiously as possible. We quash and set aside the impugned order dated 26th November, 2013 passed by the Respondent No.1 Department of Law and Judiciary and also set aside communication dated 25th March, 2015 issued by the Respondent No.3. The Writ Petition is allowed in view of aforesaid terms. No order as to costs.

(SMT.BHARATI H.DANGRE,J.) (S.C.DHARMADHIKARI,J.)

.....