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THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 28.11.2019

Order Pronounced on : 09-07-2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Petition No. 22730 of 2018
and
Writ Petition No. 21586 of 2019

WP No. 22730 of 2018

1. R.N. Arul Jothi
2. P. Selvaraja Divakar
3. M. Rajendran

.. Petitioners

Versus

1. The Principal Secretary to Government
Home (Cts.V) Department
Secretariat
Chennai

2. The Registrar General
High Court, Madras

.. Respondents

(R2 impleaded as per Order dated 18.12.2018
made in WMP No. 39302 of 2018 in WP No. 22730 of 2018)

WP No. 21586 of 2019

The Madras High Court and Madurai
Bench Officers and Staff Association
Registration No.122 of 2016
rep. by its Secretary A. Raman
High Court, Madras - 600 104

.. Petitioner

Versus

1. The Registrar General
High Court, Madras
2. The Additional Chief Secretary to Government
Home (Courts-V) Department
Secretariat, St. George Fort
Chennai - 600 009

.. Respondents



recommendation of the Honourable Chief Justice of Madras High Court, as communicated by the Registrar General, vide his letter in Roc.No.61942/B/2016/G2 dated 10.02.2017 for the revision of the pay structure in favour of the staff of the Honourable High Court, Madras on par with the pay structure of the staff of the Honourable Supreme Court of India within a time frame as may be fixed by this Court.

WP No. 21586 of 2019- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the second respondent in Letter No.13418/Cts.V/2018-4 dated 29.01.2019 and quash the same as unconstitutional, arbitrary, irrational and discriminatory and consequently directing the second respondent to place the pay scale rules as forwarded by the first respondent vide his letter ROC No.61942/B/2016/G2 dated 10.02.2017, for the approval of His Excellency The Governor.

For petitioners : Mr. Ar.L. Sundaresan, Senior Advocate

for Mr. J. Nagarajan
in both the Writ Petitions

For respondents : Mr. V. Ayyadurai, Senior Advocate

for Mr. A. Durai Eswar for R1
in W.P.21586 of 2019 and for R2
in W.P.No.22730 of 2018

Mr. Vijay Narayan
Advocate General

assisted by Mr. V. Shanmuga Sundar
Special Government Pleader for R2
in W.P.No.21586 of 2019 and
for R1 in W.P.No.22730 of 2018

COMMON ORDER

R. Subbiah, J

Out of the two writ petitions before us, the first writ petition viz., WP No. 22730 of 2018 has been filed by the petitioners, who are employees of the Madras High Court. They have prayed for a Writ of Mandamus to the Government of Tamil Nadu to accept and implement the recommendation made by the Honourable Chief Justice of this Court, as communicated by the Registrar General, vide his letter in Roc.No.61942/B/2016/G2 dated 10.02.2017, for revision of the pay structure in favour of the staff of the Madras High Court on par with the pay structure of the staff of the Honourable Supreme Court of India within a time frame as may be fixed by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

2. When the first writ petition was pending before this Court, the Government passed an order dated 29.01.2019 and rejected the request made by the staff of the Madras High



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Court to pay salary and other perquisites to them on par with the staff of the Supreme Court of India. Challenging the said order dated 29.01.2019, the Staff Association of the Madras High Court and Madurai Bench of this Court have filed the second writ petition being WP No. 21586 of 2019.

3. Thus, the issue involved in both these writ petitions is common and identical. The learned counsel on either side have advanced common arguments in both these writ petitions. Therefore, these writ petitions are taken up for hearing together and disposed of by this common order.

4. The petitioners in WP No. 22730 of 2018, who are employees of this Court, have filed this writ petition stating that the service required to be rendered in the Judiciary requires enormous perseverance and long hours of work beyond the prescribed duty time unlike other Departments of the Government. According to the petitioners, their counterparts in the Delhi High Court are paid more, however, the same pay scale has not been extended to them. In other words, it is contended by the petitioners in WP No. 22730 of 2018 that the pay structure of Delhi High Court is on the higher side as compared to their pay structure. When the nature of service rendered by them is equivalent and akin to the work discharged by the staff of the Delhi High Court, by adopting the concept of 'equal pay for equal work', it is desirable that the pay structure prescribed by the Delhi High Court to their staff has to be adopted to the staff of the Madras High Court. In this regard, the petitioners have placed heavy reliance on the decision taken by the Karnataka High Court in similar circumstance. According to the petitioners, the pay structure of the staff of the Karnataka High Court was ordered to be enhanced to the level of the staff of the Central Administrative Tribunal, on the basis of the order passed by the Division Bench of the Karnataka High Court. Such an order passed by the Division Bench of the Karnataka High Court, was also affirmed by the Honourable Supreme Court. By citing the above order passed by the Division Bench of the Karnataka High Court, as a precedent, the petitioners have submitted representation. The Staff Association of this Court also submitted representation to the Honourable Chief Justice of this Court. Such representations so made, were also directed to be forwarded to the Government with the recommendation of the Chief Justice of this Court for grant of enhanced pay structure in favour of the staff members of the Madras High Court. Accordingly, by proceedings dated 10.02.2017, the recommendation of the Honourable Chief Justice of this Court was also forwarded by the Registrar General of this Court to the Government. However, no order had been passed pursuant to the proceedings dated 10.02.2017. According to the petitioners, the proposal of the Honourable Chief Justice, communicated through the proceedings dated 10.02.2017, has not been acted upon and was kept pending for about two years. In such circumstances, the first writ petition No. 22730 of 2018 was filed by the employees working in the High Court, for a Mandamus. However, during the pendency of WP No. 22730 of 2018, an order dated 29.01.2019 was passed by the



Government rejecting the recommendations of the Chief Justice of this Court for fixation of higher pay scales to the staff of the Madras High Court. Challenging the order dated 29.01.2019, the second writ petition No. 21586 of 2019 has been filed by the Staff Association of this Court.

5. Mr.Ar.L.Sundaresan, learned Senior Counsel appearing for the petitioners in these writ petitions contended that the representation dated 08.08.2016 submitted by the staff of the Madras High Court, was placed before the Chief Justice of this Court. The Honourable Chief Justice, in exercise of powers conferred under Article 229 of The Constitution of India, has directed constitution of a Staff Grievances Committee to study the grievances of the employees and to submit a report. The Committee, analysed in-depth the pay structure of the Officers and Staff Members of the various High Courts in the Country. After such analysis, the Committee zeroed in on the pay structure prevailing in the Delhi High Court and submitted a report stating that adopting the pay structure of the Delhi High Court will be more suitable and adaptable to the staff of the Madras High Court. Such report of the Committee was accepted by the Chief Justice of the High Court and the recommendation was directed to be forwarded to the Government. The recommendation of the Honourable Chief Justice was also forwarded to His Excellency the Governor of Tamil Nadu through the Government as required under Article 229 (2) of The Constitution of India. However, the recommendations of the Honourable Chief Justice of this Court, has not been acted upon by the Government, which necessitated the filing of the first writ petition being WP No. 22730 of 2018. In this context, the learned Senior Counsel for the petitioners placed reliance on the decision of the Honourable Supreme Court in State of Uttar Pradesh vs. Section Officer Brotherhood and another reported in (2004) 8 Supreme Court Cases 286. In that case, it was contended that the Honourable Chief Justice of Allahabad High Court had merely forwarded the representation of the employees to the State Government with recommendation to consider the same favourably for grant of higher pay scales on grounds of parity. The State Government did not consider such recommendation. It was argued before the Honourable Supreme Court that the Chief Justice of the High Court did not frame any Rules when the writ petition was filed and overlooking the same, the High Court has passed the order. The Honourable Supreme Court held that the matter relating to fixation of scale of pay of officers working in different High Courts must either be examined by an expert body like the Pay Commission or any other body and in absence thereof, the High Court itself should undertake the task, keeping in view the special Constitutional provisions contained in Article 229 of The Constitution of India. It was further held that having regard to the high position and status enjoyed by the Chief Justice, his recommendations should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. By placing reliance on this decision, it was contended by the learned Senior Counsel that the refusal by the State Government was without any



strong or adequate reasons and therefore, interference by this Court is warranted.

6. The learned Senior counsel for the petitioners further contended that by an order dated 29.01.2019, the Government rejected the recommendations made by the Honourable Chief Justice of this Court for revision of higher pay scales to the staff members during the pendency of WP.No.22730 of 2018. As per the order of rejection, it was stated that the pay scale of members and staff of the High Court is always determined in each pay Commission/panel based on the vertical and horizontal parity with state Government staff and therefore, any change in one department will have cascading effect on the pay structure of the other department. It was also reasoned that the pay structure of one State cannot be compared with other States, especially with Government of India, as the resource opportunities are quite different. Therefore, the proposal for enhancing the pay structure of the staff members of the Madras High Court on par with the Supreme Court of India, is not feasible of acceptance. Commenting on the order of rejection, the learned Senior Counsel for the petitioners would contend that the reasons assigned by the Government for rejecting the revision in pay structure was already taken note of by the Staff Grievance Committee constituted by the Honourable Chief Justice of this Court and the recommendations made by the Committee have been accepted in principle and forwarded by the Honourable Chief Justice for consideration and acceptance. When a recommendation has been made by the Honourable Chief Justice and forwarded to the Government, by and large, it has to be accepted by the Government without rejecting the claim of the petitioners on assumption, presumption and conjectures. In this context, the learned Senior Counsel for the petitioners placed heavy reliance on the decision of the Honourable Supreme Court in the case of Union of India and another vs. S.B. Vohra and others reported in 2004 (2) Supreme Court Cases 150 and contended that whenever a recommendation has been made by the Honourable Chief Justice of a High Court in exercise of power under Article 229 of the Constitution of India, such recommendation has to be accepted by the Government normally and rejection is called for only in exceptional cases. Even the reasons for differing must be cogent and sufficient and the recommendation made by the holder of such high office should not be treated lightly. In effect, it was held that the recommendations of the Honourable Chief Justice of a High Court must ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. This decision of the Honourable Supreme Court in the case of Union of India and another vs. S.B. Vohra and others reported in (2004) 2 Supreme court Cases 150, was also followed by the High Court of Karnataka while ordering higher scales of pay to the staff of the Karnataka High Court. However, the Government of Tamil Nadu has not followed the parameters laid down by the Honourable Supreme Court in the above said case while turning down the legitimate request made by the petitioners for fixation of higher scales of pay, which was recommended by the Honourable



Chief Justice of this Court.

7. Elaborating further as to the need for fixation of revised pay scales to the staff of the Madras High Court, the learned Senior Counsel for the petitioners contended that the nature of work, responsibilities shouldered and the extent of working hours of the employees of the High Court call for making a distinction with that of the employees of the Secretariat and other Departments of the Government. According to the learned Senior Counsel for the petitioners, the work required to be performed by the employees of the Judiciary are dual in nature viz., both administrative and judicial. The normal working hours will stretch till the odd hours of the day and the employees could not expect that their work will come to an end during the normal office hours on any given day. Furthermore, their work will get stretched and extended even during the holidays and the personal staff attached to the Honourable Judges of this Court have to work even on holidays owing to the nature of the work discharged by the Honourable Judges of this Court. In effect, it is contended by the learned Senior Counsel for the petitioners that the employees in the Judicial Department, by their nature, have to discharge their work beyond the office hours, unlike the other departments of the Government. Though a well considered recommendation was made to the State Government, it was rejected on the ground that it will have a cascading and spiralling effect among the pay scales received by the employees of other departments of the Government and therefore, it cannot be conferred to the staff of the Madras High Court. According to the learned Senior counsel for the petitioners, the Government, without taking note of the special nature of employment of the staff of the Madras High Court, is not justified in comparing the pay scales granted to the staff of the Judiciary with the State Secretariat or other Departments of the Government. Therefore also, the order of rejection is liable to be interfered with by this Court.

8. According to the learned Senior Counsel, the presumption raised by the Government that the revision of pay scales, if conferred to the staff of the Madras High Court, will have a cascading effect on the other departments of the Government, cannot be countenanced. The revision in pay scales is sought for by the petitioners on par with their counter-parts in other High Courts and the same cannot be compared with the other Departments of the Government. Further, higher pay scales are sought for keeping in mind the nature of work discharged by the employees in the Judiciary. Unlike the other Departments of the Government, the work discharged by the employees in the Judiciary is different and a class apart. In any event, according to the learned Senior counsel for the petitioners, the fixation of pay scale to the employees of the High Court is the prerogative of the Honourable Chief Justice as contemplated under Article 229 (2) of The Constitution of India. As per Article 229 (2) of the Constitution of India, the Honourable Chief Justice of this Court is empowered to frame a set of rules with regard to salary and allowance, leave or pension to the officers and



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staff of the High Court and when a recommendation has been made by the Honourable Chief Justice of this Court, normally, it has to be accepted by the Government. In this context, the learned Senior Counsel for the petitioners placed reliance on the decision of the Honourable Supreme Court in the case of *State of Maharashtra vs. Association of Stenographers* reported in AIR 2002 Supreme Court 555, wherein it was held that High Courts shall have their own pay scales to its employees and it shall be fixed by the respective Chief Justices of the High Court in exercise of power under Article 229 of The Constitution of India. Therefore, when a recommendation has been made by the Honourable Chief Justice of this Court under Article 229 of The Constitution of India, it becomes a Rule by itself under the proviso to Article 309 of The Constitution of India.

9. The learned Senior Counsel for the petitioners has also drawn our attention to Article 146 of The Constitution of India, which empowers the Honourable Chief Justice of India to fix the scales of pay and allowance to the officers and servants of the Supreme Court of India, based on the Rules to be prescribed by the Honourable Chief Justice of India. The power exercisable by the Honourable Chief Justice of the High Court under Article 229 of the Constitution of India is akin to the one exercised by the Honourable Chief Justice of India under Article 146. Therefore, as per Article 229 of The Constitution of India, the Honourable Chief Justice of Madras High Court has prerogative powers to fix the scales of pay to the officers and staff of the High Court and the Government has to only allocate financial sanction thereof.

10. The learned Senior Counsel for the petitioners also relied on several decisions to drive home the point that the higher scales of pay sought for by the petitioners is justifiable. The learned Senior Counsel placed reliance on the decision of the Honourable Supreme Court in the case of *High Court Employees' Welfare Association, Calcutta and others vs. State of West Bengal and others*, reported in (2007) 3 Supreme Court Cases 637. According to the learned Senior Counsel, the facts involved in the above said case are similar to the case on hand. In that case, the staff of the Calcutta High Court submitted a representation for revision of their pay scales and it was placed before the Three-Judge Committee appointed by the Honourable Chief Justice of the Calcutta High Court to examine the feasibility of making Pay Rules for them. Subsequently, the Full Court of the Calcutta High Court resolved to constitute a committee of five Judges to advise the Chief Justice in framing the relevant rules. The Committee examined the matter in detail and framed two set of Rules relating to the fixation of pay scales and it was placed before the Honourable Chief Justice for approval. When it was sent to the Government, it was rejected on 21.11.1998 expressing its inability to recommend the two Draft Rules for approval to the Governor. On 21.12.1998, the High Court expressed the view that such rejection was not proper and against the spirit of Article 229 of The Constitution of India. When the matter ultimately reached the



Supreme Court, a Special Pay Commission was constituted on 18.11.2003 and the said Committee submitted a report. The State Government opposed the recommendations of the Special Pay Commission. In that case, the Honourable Supreme Court held that the power to frame Rules vests with the Chief Justice of the High Court and when once a recommendation has been made, the role of the State Government is limited in approving the Rules made by the Chief Justice, insofar as it relates to salaries and allowance. Therefore, it is submitted that the recommendations of the Honourable Chief Justice of this Court ought to have been accepted by the State Government, instead of passing an order of rejection without any strong reasons for such rejection. The learned Senior counsel for the petitioners therefore prayed for allowing Writ Petition No. 21586 of 2019 as prayed for.

11. Per contra, Mr. Vijay Narayan, learned Advocate General representing the State contended that the Government of Tamil Nadu passed an order in G.O.(Ms).No.40, Finance (Pay Cell) Department dated 22.02.2017, ordering to constitute an official committee to examine and make recommendations on revision of scales of pay and allowances for State Government employees and the Official Committee submitted its recommendations to the Government of Tamil Nadu. The Government, based on the recommendations of the Committee, has decided to accept the recommendations and accordingly, the Government issued order in G.O.(Ms). No.303, Finance (Pay Cell) Department dated 11.10.2017 for revision of pay and allowances. However, even before the issuance of the order implementing the new pay structure proposed by the Government, the Registrar General of the High Court sent a proposal dated 10.02.2017 seeking enhancement of pay in respect of 34 categories of posts from the cadre of Registrar to Office Assistant. Such a proposal dated 10.02.2017 has been sent pursuant to the report submitted by the Staff Grievance Committee to the Honourable Chief Justice of this Court recommending higher scales of pay to the staff of the Madras High Court. According to the learned Advocate General, from the letter dated 10.02.2017 of the Registrar General of the High Court, it is explicit that the Honourable Chief Justice of this Court has only given his approval for forwarding the report of the Staff Grievances Committee. Even in the report of the Staff Grievances Committee, it was only suggested that the matter shall be addressed to the Government for consideration of the proposal. When the proposal of the Registrar General of the High Court dated 10.02.2017 was under consideration of the Government, the first writ petition being WP No. 22730 of 2018 was filed before this Court.

12. The learned Advocate General proceeded to contend that the staff of the Madras High Court are, at the outset, paid well befitting the nature of their duties and responsibilities. The pay scale of the staff of the High Court is determined in each pay Commission/panel based on the vertical and horizontal parity with the State Government staff. While so, any change or revision in the pay scales payable to the staff of the Madras High Court, will have a



bearing and spiralling effect on the pay structure maintained by the Government in the other wings of the Department.

13. Elaborating on the Rule making powers of the Honourable Chief Justice of the High Court, the learned Advocate General contended that even though Article 229 of The Constitution empowers the Honourable Chief Justice of the Madras High Court to regulate the conditions of service of Officers and Servants, the Rules relating to Salary, allowances, leave or Pension require the approval of the Governor of the State. In this case, on the basis of the Official Committee constituted to consider the fixation of pay scales, Rules have been framed under the proviso to Article 309 of the Constitution of India. In the absence of any amendment made to or challenge to the Rules, the claim of the petitioners for enhancement of the pay scales, contrary to the Rule, cannot be countenanced. It is further stated that the Honourable Chief Justice of this Court should make Rules and in the absence of any Rule being framed, the letter of the Registrar General, forwarding the representation of the members, cannot be said to be in accordance with the Rules, within the meaning of Article 229 (2) of the Constitution of India. In the instant case, the Chief Justice of the Madras High Court has merely directed that the report of the Staff Grievance Committee be forwarded to the Government. Such an action on the part of the Honourable Chief Justice does not involve any application of mind as required under Article 229 of The Constitution of India. Unless the Chief Justice of this Court acted on the recommendations of the Staff Grievance Committee by specifically directing the fixation of pay scale in a particular manner, it cannot be said that the recommendations made is in consonance with Article 229 of The Constitution of India.

14. The learned Advocate General also placed reliance on the decision of the Honourable Supreme Court in the case of Punjab State Power Corporation Limited vs. Rajesh Kumar Jindal, reported in (2019) 3 Supreme Court Cases 547, wherein it was held that ordinarily, the Courts will not enter upon the task of job evaluation, which is generally left to expert bodies like the Pay Commission etc., The aggrieved employees, claiming parity in pay, must establish that they are unjustly treated by arbitrary action or discriminated. Thus, the learned Advocate General contended that in exercise of the power conferred under Article 226 of The Constitution of India, this Court need not enter into an arena which is occupied by the expert body in the matter of revision of pay scales to the staff of the Madras High Court.

15. The learned Advocate General further proceeded to contend that when once the Government has taken a decision to reject the claim of the petitioners, the same need not be interfered with by this Court in exercise of the power of Judicial Review. In matters relating to fixation of pay and allowances to the employees of the Government, the Judicial Review to be exercised by this Court is very limited. Unless there is violation of Articles 14 and 16 of The Constitution of India, this Court, in exercise of power under Article 226



of The Constitution of India, need not interfere in the claim of the petitioners seeking higher pay scales much to the chagrin of their counterparts in the State Secretariat.

16. The learned Advocate General appearing for the State has also submitted that hitherto, the parity between the Secretariat Staff of the State and their counterparts i.e., staff of the Madras High Court, has been maintained cordially, while so, any slight disturbance or revision in the pay scale of the staff Members of the High Court, will result in grave financial implications on the exchequer, besides, it will result in similar claim to be made by the staff of the Secretariat. The pay fixation is a complex issue which requires consideration of several factors. There can be no comparison of the pay of the Staff of the Madras High Court with that of the staff of the Delhi High Court or Supreme Court, which are coming under the control of the Central Government. The pay structure of the staff of Madras High Court cannot be compared with the Delhi High Court, in view of the different resource opportunities in the State of Tami Nadu and the National Capital Region, Delhi. In any event, the Government is entitled to take a decision in the above matter as per the Rules of Business and the same need not be forwarded to the Governor for a decision. In this context, the learned Advocate General placed reliance on the decision of the Honourable Supreme Court in the case of State of Uttar Pradesh vs. Section Officer Brotherhood, reported in (2004) 8 Supreme Court Cases 286, which was also relied upon by the learned counsel for the petitioner and contended that even though the Honourable Chief Justice of this Court is empowered with laying down the conditions of service of the staff and officers of the High Court, in case of any financial implication thereof, the approval of the Governor of the State is imperative. It was further contended that the Honourable Chief Justice has merely directed to forward the report of the Staff Grievance Committee without any specific remark or recommendation, while so, it cannot be said that the so-called recommendations made by the Honourable Chief Justice of this Court was in exercise of the powers under Article 229 of The Constitution of India. The learned Advocate General vehemently relied on para No.31 of the said Judgment, wherein it was held as follows:-

"31. In this case, the Chief Justice merely forwarded the representation of the respondents dated 15.03.1994 for grant of a higher scale of pay with effect from 01.01.1986 directing the Registry to forward the same to the State Government with recommendations to consider the same on the ground of parity. Such forwarding of recommendations to the State Government did not involve any application of mind on the part of the Chief Justice as was required under Article 229 of The Constitution of India. The Chief Justice on his own did not arrive at any decision that the jobs performed by the officers concerned were comparable to their counterparts in the Central Secretariat of the Delhi High Court. No rule was framed fixing



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the terms and conditions of service or the scale of pay for different categories of employees of the High Court. Only because in the forwarding letter, the State Government was asked to consider the demand of the officers concerned favourably, the same by itself would not mean that the requirements of Article 229 of the Constitution stood complied with. Unless the Chief Justice of the High Court exercises his constitutional power or acts on the basis of the recommendations of a committee constituted by him for the purpose of fixation of scale of pay and laying down other conditions of service; only forwarding a representation to the State Government to consider the same favourably without anything more would not amount to exercise of the constitutional jurisdiction under Article 229 of the Constitution."

17. For the same proposition, with respect to the powers exercisable by the Chief Justice of the High Court under Article 229 of The Constitution of India, the learned Advocate General placed reliance on the decision of the Honourable Supreme Court in the case of State of Maharashtra vs. Association of Court Stenos, P.A.s and P.S., reported in (2002) 2 Supreme Court Cases 141 and contended that the Chief Justice of the High Court is the sole authority for fixing the salaries etc., of the employees of the High Court. At the same time, as contemplated under Article 229 (2) of The Constitution of India, any Rules relating to salaries, allowances, leave or pension of the employees of the High Court, requires the approval of the Government of the State. Even the so-called approval to be given by the Governor is not on his discretion, but subject to the advise to be given by the Government.

18. It is further contended by the learned Advocate General that the claim of the writ petitioners is not based on any Constitutional or any other legal provisions for claiming parity with the posts. While so, the petitioners have no vested or legal right to seek parity in the pay scale or for revision of pay scale. In this context, the learned Advocate General placed reliance on the decision of the Honourable Supreme Court in State of Himachal Pradesh vs. P.D. Attri, reported in 1999 (3) Supreme Court Cases 217, wherein, it was held as follows:-

"5. The case of the respondents is not based on any constitutional or any other legal provisions when they claim parity with the posts similarly designated in the Punjab and Haryana High Court and their pay scales from the same date. They do not allege any violation of any constitutional provision or any other provision of law. They say it is so because of "accepted policy and common practice", which according to them, are undisputed. We do not think we can import such vague principles while interpreting



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the provisions of law. India is a union of States. Each State has its own individualistic way of governance under the Constitution. One State is not bound to follow the rules and regulations applicable to the employees of the other State or if it had adopted the same rules and regulations. It is not bound to follow every change brought in the rules and regulations in the other State. The question then arises before is whether the State of Himachal Pradesh has to follow every change brought in the States of Punjab and Haryana in regard to the rules and regulations applicable to the employees in the States of Punjab and Haryana. The answer has to be in the negative. No argument is needed for that as anyone having basic knowledge of the Constitution would not argue otherwise. True, the State as per "policy and practice" has been adopting the same pay scales for the employees of the High Court as sanctioned from time to time for the employees of the Punjab and Haryana High Court and it may not even now follow to grant pay scales but is certainly not bound to follow. No law commands it to do so.

6. The State of Punjab was reorganised into States of Punjab, Haryana and Himachal Pradesh. Himachal Pradesh, to begin with, was a Union Territory and was given the status of full statehood in 1970. Since employees of the composite State of Punjab were taken in various departments of the State of Himachal Pradesh in order to safeguard the seniority, pay scales, etc., the State of Himachal Pradesh followed the Punjab pattern of pay scales. After attaining the status of full statehood, the High Court of Himachal Pradesh formulated its own rules and regulations for its employees. It adopted the pattern of the Punjab and Haryana High Court of their employees. When the Punjab and Haryana High Court gave effect to a certain portion of its Rules from 25.09.1985 by notification dated 23.01.1986 as a result of which redesignation of the posts of the Senior Translators and Junior Translators were equated to the posts in the Punjab Civil Secretariat, in the Himachal Pradesh High Court similar effect was given to in its rules for its employees. When the Punjab and Haryana High Court gave effect to those rules from 23.01.1975, the State Government did not agree to the recommendations of the Chief Justice of the Himachal Pradesh to follow the same suit. It is true that till now, the Himachal Pradesh High Court has been following the rules applicable to the employees of the Punjab High Court and it may go on following those rules as may be amended by the Punjab and Haryana High Court from time to



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time, but certainly it is not bound to so follow. No law commands the State Government to follow the rules applicable to the employees of the Punjab and Haryana High Court to the employees of the Himachal Pradesh High Court. That being the position, it is not necessary for us to examine different qualifications for appointment to the posts of Senior Translators and Junior Translators that may exist between the Punjab and Haryana High Court and the Himachal Pradesh high Court and also as to the mode of their recruitment/placement in the service. Moreover, any change in the pay scale following the Punjab and Haryana High Court can set in motion chain reaction for other employees which may give rise to multiplicity of litigation among various categories of employees. Rules of each High Court have to be examined independently. There cannot be any such law that the Himachal Pradesh High Court has to suo motu follow the same rules as applicable to the employees working in the Punjab and Haryana High Court."

19. By placing reliance on the above decision, it was contended by the learned Advocate General that one State is not bound to follow the Rules and Regulations applicable to the employees of another State, since budget sanction or allocation to a particular Head differ from State to State. Moreover, the Central Government has more resources on its command. Hence, the manner of spending by the Central Government, cannot be compared with that of the State(s). Therefore, the pay structure of the Delhi High Court need not be adopted to the employees of the Madras High Court. Any change in the scale of pay to the staff of the Madras High Court will set in motion a chain of reaction for other employees, which may give rise to multiplicity of litigation among various categories of the employees of the Departments of the Government. The State, as per the "policy and practice" has been adopting the same scales of pay for the employees of the High Court and the State Secretariat and any deviation or revision in the scales of pay will result in cascading and spiralling effect in the pay structure of one another. Such a situation will not be in the best interest of the administration and will result in enormous financial burden for the exchequer.

20. According to the learned Advocate General, the proposal submitted by the Registrar General, High Court, Madras for revision of pay structure of the staff members of the High Court, Madras on par with the pay structure of Honourable Supreme Court, was carefully examined by the Government and it was rejected as not feasible of consideration. The learned Advocate General has also made a comparison of the pay scales of the Officers of the Secretariat with that of the High Court of Madras and contended that the pay structure of the staff of the Madras



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High Court from the post of Assistant to Deputy Registrars is equal to the staff of the Secretariat discharging identical duties and therefore, the claim made by the petitioners, if granted, will have a spiralling and cascading effect on the pay structure maintained in the Secretariat. The learned Advocate General also placed reliance on the order passed by the Government in G.O.(Ms) No.220, Home (Courts-V) Department, dated 21.03.2018, whereby the Grade pay of the Registrars working in the Madras High Court has been enhanced on par with the Additional Secretaries to the Government in the Tamil Nadu Secretariat. Therefore also, it is submitted that any kind of revision of pay of the staff and officers of the High Court will result in pay anomaly with the staff of the Secretariat, besides, it will attract revision of pay for the various categories of employees working in other wings of the Government. In any event, the claim of the petitioners, if entertained, would badly affect the administration, and the exchequer of the Government would be put to enormous strain. In this context, the learned Advocate General made a reference to the claim of the Registrar General of this Court that the revision of pay, if granted, will cause a sum of Rs.15,39,600/- per annum, which according to the learned Advocate General is factually incorrect. It is his claim that only the difference in pay and grade pay alone has been calculated for arriving at the aforesaid amount leaving the difference in Dearness Allowance, House Rent Allowance, City Compensation Allowance etc., which, if included, will hover the amount arrived at by the Registrar General of this Court. Above all, the learned Advocate General would contend that the revision of the pay of the staff of the Madras High Court will open the flood gates in respect of similar pay drawn by the employees working in the other Government owned or Government Controlled Departments of the Government. The pay scales of the staff of the Madras High Court are determined based on the parity of the posts, which were available in other Departments of the Government and therefore, any change or revision in the pay scales, will have a cascading effect on the pay structure maintained for the other Departments. Therefore, the learned Advocate General prayed for dismissal of the writ petitions.

21. Mr. Ayyadurai, learned Senior Counsel appearing for the Registrar General of the High Court, Madras contended that the petitioners working under the category of Group A to D employees in the Madras High Court and Madurai Bench of the Madras High Court, claimed equal pay on par with the staff of the Delhi High Court. Such claim made by the petitioners was rejected by the Government by an order dated 29.01.2019, which is assailed in WP No. 21586 of 2019. According to the learned Senior Counsel, the Supreme Court of India in the case of State of Maharashtra vs. Association of Stenographers, reported in AIR 2002 SC 555, directed the Registrar General of the Supreme Court to issue a circular to all the Registrar General of the High Courts indicating that the High Courts can have their own pay scales to its employees after considering the special nature of duties and functions. It is pursuant to the Circular issued by the



Registrar of Supreme Court, representations dated 08.08.2016 and 19.12.2016 were submitted by the employees of the High Court, Madras and they were placed before the Staff Grievance Redressal Committee constituted by the Honourable Chief Justice of the Madras High Court. Such a committee was constituted by the Honourable Chief Justice of the Madras High Court prior to implementation of the 7th Pay Commission by the Government. The Committee before submitting a report, directed that the pay structures of A to D cadres of employees in the other High Courts similar to the pay structure of the employees in the High Court, Madras, be obtained, together with the duties and responsibilities discharged, eligibility criteria for holding the post and promotional avenues etc. Accordingly, such details were obtained from various High Courts in the country. On verification of the details received, it was seen that there is no parity in the nomenclature of the posts and the pay scales between the employees of the Madras High Court and other High Courts. However, the pay structure of the Delhi High Court appears to be more and adaptable to the employees of the Madras High Court. It was also seen that the pay structure of the employees of the Delhi High Court and the Honourable Supreme Court of India, have got similarity. Therefore, a report was submitted by the Staff Grievance Committee recommending that the pay structure prevailing in the Delhi High Court will be more suitable and adaptable to the staff of the Madras High Court. The report of the Committee was placed before the Honourable the Chief Justice for consideration and orders. The Honourable Chief Justice of the Madras High Court directed a proposal to be forwarded to the Government in exercise of the power under Article 229 of The Constitution of India. In fact, no Rules were framed under Article 229 (2) of The Constitution of India relating to the conditions of service of the employees of the Madras High Court and therefore, in the absence of a statutory rule, the proposal dated 10.02.2017 has to be treated as a Rule within the meaning of Article 229 (2) of The Constitution of India. In order to buttress this submission, the learned Senior Counsel placed reliance on the decision of the Full Bench of the Bombay High Court in the case of (Chandrakant Sakharani Karkhanis and others vs. State of Maharashtra, reported in AIR 1977 Bombay 193 (FB), wherein it was held as follows:-

"66. Circulars, orders or Resolutions or parts thereof laying down the rules or principles of general application, which have to be observed in the recruitment or fixation of seniority of Government servants generally or a particular class of them, and which have been duly authenticated by a signature under the endorsement "By order and in the name of the Governor of Maharashtra" and intended to be applicable straightaway can amount to rules framed in exercise of the powers conferred under the proviso to art.309 of the Constitution, although the said Circulars, Orders or Resolutions do not expressly



state that the same are made or issued in exercise of the powers conferred under the proviso to art.309 of the Constitution of India and are not published in the Government Gazette."

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22. By placing reliance on the above decision, it was contended by the learned Senior Counsel appearing for the Registrar General of this Court that in the absence of any Rule framed under Article 309 of The Constitution of India, even a letter or memorandum or Circular issued by the Honourable Chief Justice of a High Court can be treated as the one issued in exercise of the power under Article 229 of The Constitution of India. He also relied on the decision of the Division Bench of the Gujarat High Court in the case of (High Court of Gujarat vs. K.K. Parmer, reported in 1992 (2) GLH (DB) 379, wherein it was held that Article 229 (2) of the Constitution of India nowhere prescribes or indicates any particular form in which Rule should be framed nor does it prescribe any formalities required to be gone through. Even though the decision is not expressed in the form or in words in which Rule is framed, or an order is issued, the same amounts to a Rule framed in exercise of the powers conferred under Article 229 (2) of the Constitution of India.

23. According to the learned Senior counsel appearing for the Registrar General of the Madras High Court, following the decisions quoted above, the Division Bench of the Karnataka High Court in Writ Appeal No. 4411 of 2011 has held that the recommendatory letter with model pay scale attached thereto by way of Annexure in itself is to be taken as a Rule and the Government is required to act on the same, as if it is a Rule framed by the Honourable Chief Justice in exercise of the power under Article 229 (2) of The Constitution of India. This decision of the Division Bench of the Karnataka High Court was also confirmed by the Honourable Supreme Court in Civil Appeal No. 5914 to 5915 of 2012 on 18.11.2015. Therefore, the learned Senior counsel would contend that the decision rendered by the Division Bench of the Karnataka High Court, which was subsequently affirmed by the Honourable Supreme Court, squarely applies to the facts of the present case. Even in the decision rendered by the Division Bench of the Karnataka High Court, reference has been made to the constitution of a three-Judge committee for considering the parity of the scale of pay of the employees of the High Court of Karnataka similar to the Staff Grievance Committee constituted by this Court. Such a Committee was constituted pursuant to the orders passed by the Honourable Chief Justice of the Madras High Court in exercise of power under Article 229 of The Constitution of India. As directed, the Staff Grievance Committee has gone into the issue in detail by comparing the pay scales paid to the staff of the other High Courts in the country and concluded that the pay structure maintained by the Delhi High Court can be abreast to and adaptable by this Court. The report was also accepted and approved by Honourable Chief Justice and it binds the



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Government in all respects. While so, the order of rejection dated 29.01.2019 passed by the Additional Chief Secretary to the Government is invalid. The subject issue touching upon the policy of the Government is required to be dealt with in accordance with the procedures prescribed for issuing a Government Order. However, the order of rejection has been passed by means of a Government letter dated 29.01.2019 and it was issued without any authority of law. Further, the nature of recommendation proposed for revision of salary is a policy matter, which cannot be considered and rejected by the Government without following the Tamil Nadu Government Business Rules, 1978.

24. Elaborating on the procedures contemplated under the Tamil Nadu Government Business Rules, 1978, the learned Senior Counsel appearing for the Registrar General of the High Court contended that the Government of Tamil Nadu framed Rules in exercise of power under Article 166 (2) and (3) of the Constitution of India called as Tamil Nadu Government Business Rules, 1978. Part II of the said Rules deals with Secretariat instructions, while Rule 35 (1) (a) talks about the cases to be submitted to the Chief Minister which relates to policy and administratively important decisions. Rule 35 (2) enumerates the cases which are required to be forwarded from the Chief Minister to the Governor. The recommendations made by the Honourable Chief Justice of the Madras High Court for revision of pay scales involves a policy decision to be taken by the Government and therefore, it ought to have been circulated to the Council of Ministers, then to the Chief Minister of the State and thereafter to His Excellency the Governor for approval. This according to the learned Senior Counsel is a Constitutional requirement in terms of Tamil Nadu Government Business Rules, 1978, but it has not been followed in this case. Therefore, the learned Senior Counsel contended that non-compliance of Rule 35 (1) (a) (iv) read with Rule 35 (2) (ii), renders the order of rejection dated 29.01.2019 passed by the Additional Chief Secretary to the Government invalid and non-est in the eye of law. However, the learned Advocate General appearing for the State submitted that the procedures contemplated under the Tamil Nadu Government Business Rules are not mandatory and therefore, it would not vitiate the order of rejection. This submission of the learned Advocate General cannot be accepted, when it is admitted that the proposal forwarded by the Registrar General of the High Court, as directed by the Honourable Chief Justice of the Madras High Court, has not been placed before His Excellency the Governor of Tamil Nadu for approval. Therefore, the learned Senior Counsel appearing for the Registrar General of this Court would vehemently contend that the order of rejection dated 29.01.2019 is liable to be set aside, as it was passed without authority and in violation of the procedures contemplated under the Tamil Nadu Government Business Rules, 1978. In this context, the learned Senior Counsel for the Registrar General also placed reliance on the decision of the Honourable Supreme Court reported in 2011 (12) Supreme Court Cases 333 (Narmada Bachao Andolan Versus State of Madhya Pradesh), wherein it



was held that when a decision of the Government did not satisfy the requirements of the Business Rules framed by the Government under Article 166 (3) of The Constitution of India, it would render such decision void-ab-initio.

25. The learned Senior Counsel for the Registrar General of the Madras High Court also contended that as per Article 229 of The Constitution of India, the representations made by the writ petitioners were duly examined by the Staff Grievance Redressal Committee and a report was submitted by the Committee to the Honourable Chief Justice of the Madras High Court. The Honourable Chief Justice of the Madras High Court directed the report to be forwarded to the Government in exercise of the powers conferred under Article 229 (2) of The Constitution of India. When such a recommendation has been made to the Government, without placing the same before His Excellency the Governor of the State, it ought not to have unilaterally rejected the claim of the writ petitioners.

26. With regard to the submissions made by the learned Advocate General by placing reliance on the decision in State of Maharashtra vs. Association of Court Stenos, P.A.s and P.S. reported in (2002) 2 Supreme Court Cases 141 to the effect that though the Honourable Chief Justice of the High Court is the sole authority in matter relating to fixation of salaries of employees of the High Court and it requires the approval of the Governor of the State, the learned Senior Counsel appearing for the Registrar General replied that in the said case, employees of the High Court have straightaway filed the writ petition seeking enhancement of salary without submitting any representation, whereas, in the present case, the representation of the petitioners was routed through the proper channel and a considered recommendation was made by the Honourable Chief Justice which was communicated by the Registrar General of this Court in the letter dated 10.03.2017. Therefore, the said decision cannot be made applicable to this case. Similarly, the decision relied on by the learned Advocate General, in High Court Employees Welfare Association vs. State of West Bengal, reported in (2007) 3 SCC 637 is not applicable to this case, where the Honourable Supreme Court dealt with the requirement of approval of the Governor of the State in a different situation. But in this case, the order of rejection was passed by the Additional Chief Secretary to the Government without placing it before His Excellency the Governor of the State and therefore, the decision is factually distinguishable.

27. Lastly, it was contended by the learned Senior Counsel appearing for the Registrar General of this Court that recommendation of the Honourable Chief Justice of the Madras High Court, in the form of a proposal for revision of pay scales of the staff of the Madras High Court, was made in accordance with the established procedures contemplated under law. The recommendations made by the Honourable Chief Justice of the Madras High Court ought not to have been dealt with lightly by the Government, unless there are strong and compelling reasons to do so. The reasons assigned by the Government that any enhancement or revision in the scale of



pay of the staff of the Madras High Court will have a spiralling and cascading effect, cannot be accepted. The Government compared the scales of pay existing between the staff of the Secretariat and the employees of the High Court, when the duties and responsibilities shouldered by the staff of the Secretariat and the employees of the High Court are totally different. In such circumstances, the learned Senior Counsel appearing for the Registrar General of this Court prayed for allowing WP No. 21586 of 2019 by setting aside the order of rejection dated 29.01.2019 passed by the Additional Chief Secretary to the Government.

28. We have given our anxious consideration to the rival submissions made and perused the materials placed on record. Article 229 of The Constitution of India reads as follows:-

"229. Officers and servants and the expenses of High Courts:- (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

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

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

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

29. Article 229 of the Constitution of India contemplates Rules to be framed by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice. Article 229 of The Constitution of India is akin to the one under Article 146 of



The Constitution of India. As per Article 146, the expenses relating to the officers and servants of the Supreme Court of India, have to be met by the Central Government. Similarly, the power of appointment of officers and Servants of the High Court, is vested with the Chief Justice of the High Court, but the expenses thereof have to be met by the State Government concerned.

30. Clause (2) to Article 229 empowers the Chief Justice of High Court to make rules prescribing the conditions of service of officers and servants of a High Court. However, as per proviso to sub-clause (2) of Article 229 of Constitution of India, rules relating to salaries, allowances, leave or pensions, require the Governor's approval. Clause (3) requires the administrative expenses, including all salaries, allowances and pension payable to or in respect of the officers and servants of the High Court to be charged upon the consolidated fund of the State. Thus, High Court is an independent authority and subordinate to none.

31. Article 229 of the Constitution of India, as we see today, is traceable to Section 228 of The Government of India Act, 1935 and Article 205 of the Draft Constitution of India.

32. Section 228 of The Government of India Act, 1935 read as below:-

"SECTION 228: EXPENSES OF HIGH COURTS

(1) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the Judges of the Court shall be charged upon the revenue of the Province, and any fees or other moneys taken by the Court shall form part of those revenues.

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates or expenditures laid down by him before the Legislature."

33. Under Section 228 of the Government of India Act, 1935, the administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the Judges of the Court were to be charged upon the Revenue of the Province, and any fees or other moneys taken by the Court would form part of those Revenues.

34. As per Sub-section (2) of Section 228 of the Government of India Act, 1935, the Governor had to exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates or



expenditures laid down by him before the Legislature.

35. However, the framers of the Constitution of India consciously departed from the above scheme and gave authority to the Chief Justice of High Court in the matter of fixation of salaries, allowances and pensions payable to or in respect of the officers and servants of the Court.

36. Article 205 of the Draft Constitution of India, to which the present Article 229 of the of the Constitution of India, is traceable, reads as follows:-

"205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct: (Offices and servants and the expenses of High Courts)

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

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

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultations with the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the Court shall form part of those revenues."

37. Sub-clauses (1), (2) and (3) of Article 205 were retained in Article 229 (1), (2) and (3) of The Constitution of India. As per Sub-clause (2) of Article 229 of the Constitution of India, subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court



authorised by the Chief Justice to make rules for the purpose.

38. However, as per the second proviso to Article 205 of the Draft Constitution, the salaries, allowances and pensions payable by or in respect of such officers and servants were to be fixed by the Chief Justice of the Court in consultation with the Governor of the State in which the High Court has a principal seat.

39. An amendment to Article 205 was moved before the Constituent Assembly on 08.06.1949 by Dr.B.R.Ambedkar, to bring it in parity with the provisions for the Supreme Court. In this context, it is apt to refer the debate in the Constituent Assembly for amendment to Article 205. Shri Sardar Hukum Singh (East Punjab - Sikh) submitted before the Assembly as follows:-

".....The very fact that the Chief Justice has to consult the Governor would be a sufficient guarantee that the rules would be framed in a spirit of accommodation. Can't he be trusted that he would not unnecessarily burden the exchequer by extravagant expenditure? No doubt the Governor is the keeper of the purse, but at the same time the judiciary is the guardian of the civil liberties and nothing should be done to jeopardize the independence of the latter. Consultation would be sufficient and I think the amendment now moved is a dangerous one and I oppose it..."

40. Eventually, the amendment was accepted by majority and thus we have Article 229 in its present form. Though we are not faced with a grave situation and apprehension expressed by Shri Sardar Hukum Singh, it is to be nevertheless emphasized and underlined that the Chief Justice of a High Court as the highest Constitutional head of the State Judiciary, has been given the power under the Constitution in the matter relating to fixation of salaries, allowances leave, pension payable to officers and servants of the High Court.

41. The Madras High Court has so far not framed any Rules under Article 229 of the Constitution of India. Therefore, in the absence of Rules approved by the Governor, the question remains to be answered is as to whether the recommendation of the Chief Justice is sufficient?

42. The Chief Justices of the respective High Court with their vast experience, assess the ground realities and are expected to see that the needs of the officers and servants are met.

43. They may either recommend the salary, wages and allowances payable to staffs that are paid to the Secretariat or may recommend an altogether a different pay structure considering the nature of work carried on by such officer and



servants of the High Court. However, such pay structure has to be as per Rules approved by the Governor.

44. It is the exclusive domain of the Chief Justice of a High Court in the matter relating to salaries, allowances, leave or pension. The decision of the Chief Justice can neither be curtailed nor interfered with by either the Legislature or the Executive. The Executive cannot impose conditions in respect of the terms and conditions of service.

45. While dealing with Article 146 of the Constitution of India which is similar to Article 229 of the Constitution of India, the Hon'ble Supreme Court in *Supreme Court Employees Welfare Association vs. Union of India*, reported in (1989) 4 SCC 187, observed that the president of India is the highest dignitary of the State and the Chief Justice of India also is a high dignitary of the State. The Court further held that except in the cases of the officers and servants of the Supreme Court and those of the High Courts, in other cases either the President of India or the Governor has been empowered to frame rules, which had to be approved by the President / Governor as the case may be. It was further held that the approval of the President is not a matter of mere formality. Once the rules are duly framed by so high a constitutional dignitary as the Chief Justice of India (or the High Court as in these cases), it will only be in the truly exceptional cases alone the President or the Governor can withhold assent. The Court also held that it is but proper and appropriate that, in view of the spirit of the constitutional provision, approval would be accorded in all but the exceptional cases (see the observations of the Hon'ble Supreme Court in *State of Andhra Pradesh vs. T. Gopalakrishna Murthi* reported in AIR 1976 SC 123 = 1976 (1) SCR 1008). In this connection, the observation of Mukharji, J., in *State of U.P. vs. Renuagar Power Co.* reported in (1988) 4 SCC 59, is apposite:

"The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated."

46. In *M. Gurumoorthy vs. Accountant General, Assam (Nagaland)*, reported in (1971) 2 SCC 137, the Honourable Supreme Court observed as under:-

10. We may now refer to the constitutional provisions for determining the power and authority



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of the Chief Justice of a High Court in the matter of appointments of officers and servants of that Court. Clause (1) of Article 229 provides that appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct i.e. his nominee. The proviso empowers the Governor of the State to require by Rule in certain cases to make appointments after consultation with the State Public Service Commission. Clause (2) of the article contains two important provisions. The first is that conditions of service of officers and servants of a High Court shall be such as may be prescribed by Rules made by the Chief Justice or his nominee. This is, however, subject to the provisions of any law made by the Legislature of the State. The second is that the Rules so far as they relate to salaries, allowances and pensions require the approval of the Governor. Clause (3) declares that the administrative expenses of a High Court including all salaries, allowances etc. in respect of officers and servants of the Court shall be charged upon the Consolidated Fund of the State. Under Article 202 the Governor shall, in respect of every financial year, cause to be laid before the House or Houses of the Legislature of the State a statement, of, the estimated receipts and expenditure for that year. Under clause (2) the estimates of expenditure shall show separately: (a) the sums required to meet expenditure described by the Constitution as expenditure charged upon the Consolidated Fund of the State; and (b) the sums required to meet other expenditure. Clause (3) gives the expenditure which shall be charged on the Consolidated Fund of each State. Clause (f) reads "any other expenditure declared by this Constitution or by the Legislature of the State by law to be so charged". Under Article 203, the estimates which relate to expenditure charged upon the Consolidated Fund of the State shall not be submitted to the vote of the Legislative Assembly. Article 204 relates to Appropriation Bills. The bill to provide for appropriation out of the Consolidated Fund of the State must include the expenditure charged on that Fund. Clause (2) prevents any amendment being proposed to an Appropriation Bill which will have the effect, inter alia, of varying the amount or altering the destination of any grant or varying the amount of expenditure charged on the Consolidated Fund of the State. Article 146 contains provisions relating to officers and servants of the Supreme Court in terms analogous to Article 229 the other provisions being also similar.



51. The Honourable Supreme Court, in State of



Maharashtra vs. Stenographers, P.A. and P.S. AIR 2002 SC 555, observed that for the purpose of fixation of pay scales, it would be appropriate for the learned Chief Justice of the respective High Court to frame Rules in accordance with the Constitutional provisions, which could be duly approved by the Governor, so that the grievances of the employees of the Court could be mitigated.

52. It is in pursuance of the above direction, the Registrar of the Supreme Court issued a Circular to the effect that all the High Courts shall have their own pay scales for their employees. On receipt of the said Circular, the Chief Justice of the High Court of Karnataka, in exercise of the powers conferred under Article 229 of the Constitution of India, constituted a three-member committee to examine and study the grievance of the employees of the Karnataka High Court with respect to the pay scales received by them and to submit a report. The said Committee recommended that the pay scales applicable to the employees of the Central Administrative Tribunal be applied to the employees of the High Court of Karnataka, having regard to the nature and quantum of work discharged by them.

53. The report of the Committee was also accepted by the Chief Justice of the Karnataka High Court, who in turn recommended the same for approval by the Governor through the Government. The Government also forwarded the same to the Governor of the State as required under Article 167 (a) of The Constitution of India. However, the recommendation of the Chief Justice of Karnataka High Court was not implemented.

54. Ultimately, by an order dated 19.10.2006, the Governor of the State had referred the recommendations made by the Chief Justice of Karnataka High Court to the Pay Commission constituted by the State Government to study and report on the revised pay scales payable.

55. A Writ Petition No. 2810 of 2017 was therefore filed before the Karnataka High Court by the employees of the Karnataka High Court, to quash the order dated 19.10.2006 passed by the Deputy Secretary to the Government, Government of Karnataka, Department of Finance.

56. Two other writ petitions being WP Nos. 36958 of 2011 and 12993 of 2011 were also filed before the single Bench of Karnataka High Court praying to issue appropriate direction to the first respondent therein--Registrar General of Karnataka High Court to frame requisite Rules for implementation of higher scale to the staff and officers of the Court, having regard to the Constitutional mandate under Article 229 (2) in regard to salary, allowances and pension. The said Writ Petition No. 2810 of 2007, etc., were disposed of by the learned single Judge of the Karnataka High Court by stating that already the Pay Commission had made recommendations for revised pay scales for High Court employees and therefore, no further revision of pay scales is necessary.

57. Aggrieved by the order dated 26.04.2011 passed in WP



No. 2810 of 2007 etc., Writ Appeal No. 4411 of 2011 was filed before the Division Bench of the Karnataka High Court contending that in terms of Article 229 (2) of the Constitution of India, the State Pay Commission or other authority have no power to be exercised in the matter of revision of pay scales, especially when the Chief Justice of the High Court has recommended for fixation of higher pay scales and it only requires a formal approval by the Governor of the State.

58. It was further contended that when the Chief Justice of the High Court, in exercise of the power conferred under Article 229, made recommendation for fixation of higher pay scales, the State Government must ordinarily accept such recommendations and refusal thereof must be for strong and adequate reasons. Further, it was argued that when the Chief Justice had acted on the basis of the recommendation of the Committee constituted for the purpose of examining the pay scales of the staff of the Karnataka High Court and other High Courts, it cannot be said that the recommendation made by the Chief Justice of High Court is without application of mind as was required under Article 229 of The Constitution of India.

59. The Division Bench of the Karnataka High Court, after elaborate consideration of the rival submissions, held that inspite of recommendations made by the Chief Justice of High Court of Karnataka way back on 06.10.2004, the Government had not taken any steps to implement the recommendations. It was also held that the recommendations of the Chief Justice of the High Court should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons and one cannot treat the same lightly.

60. By holding that the recommendations made by the Chief Justice of the High Court have to be implemented in letter and spirit, the Division Bench of the High Court allowed the Writ Appeal and set aside the order passed by the learned single Judge on 12.10.2011. As against the order dated 12.10.2011 of the Division Bench of the Karnataka High Court, an appeal was filed before the Honourable Supreme Court. It was dismissed on 18.11.2015. However, the learned Advocate General appearing for the State would contend that the order dated 18.11.2015 of the Honourable Supreme Court was not passed on merits. The appeal was dismissed at the admission stage and therefore, the order dated 18.11.2015 of the Honourable Supreme Court cannot be relied on. We are not in agreement with such a submission of the learned Advocate General as the order dated 18.11.2015 was passed by the Apex Court considering all the materials placed by either side. In this context, useful reference can be made to the order dated 18.11.2015 passed by the Honourable Supreme Court, confirming the order dated 12.10.2011 passed by the Division Bench of the Karnataka High Court in W.A. No. 4411 of 2011, as follows:-

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"1. These appeals are directed against the Judgment (s) and order (s) passed by the High



Court of Karnataka at Bangalore in Writ Appeal No. 4411 of 2011, dated 12.10.2011 and Review Petition No. 63 of 2012, dated 30.03.2012.

2. We have heard the learned counsel for the parties to the lis.

3. After going through the judgment (s) and order (s) passed by the High Court and the material available on record, we see no infirmity in the impugned judgment (s) and order (s) passed by the High Court. Accordingly, the Civil Appeals are dismissed.

4. As a sequel to the above, the interim stay granted by this Court on 13.08.2012 stands vacated.

5. Application (s) for impleadment are dismissed."

61. Further, it appears that the order dated 12.10.2011 passed by the Division Bench of the Karnataka High Court in W.A. No. 4411 of 2011 etc., was not implemented by the State Government, inspite of the dismissal of the appeal by the Honourable Supreme Court on 18.11.2015. Therefore, Contempt Petitions in C.C.C. (Civil) Nos. 1241 and 1244 of 2016 were filed before the Division Bench of the Karnataka High Court. The Division Bench of the Karnataka High Court, by its order dated 14.07.2017, held that the State Government did not comply with the order dated 12.10.2011 passed by the Division Bench of the Karnataka High Court in W.A. No. 4411 of 2011 etc. and therefore, refused to drop the contempt proceedings. As against the order dated 14.07.2017, Special Leave to Appeal (C) No. 23220-23221 of 2017 were filed before the Honourable Supreme Court. The Honourable Supreme Court dismissed the Special Leave to Appeal (C) No. 23220-23221 of 2017 on 18.09.2017 by directing the State Government of Karnataka to implement the order of the Division Bench of the Karnataka High Court within a period of four months.

62. Pursuant to the order dated 18.09.2017 passed by the Honourable Supreme Court, the State Government has also issued a Government Order on 11.01.2018 conferring Central Government Pay Scales to the employees of the High Court of Karnataka. This has apparently blown the lid off and prompted the filing of the present writ petitions before this Court.

63. Admittedly, in the present case, there was no Rule framed touching the conditions of service of officers and servants of the High Court of Madras. Whether in the absence of the Rule, a recommendation of the Honourable Chief Justice of the High Court will partake the character of an order passed in exercise of the power under Article 229 of The Constitution of India or not, has been answered in State of Uttar Pradesh vs. Section Officer Brotherhood, reported in (2004) 8 Supreme Court Cases 286.

64. Therefore, the recommendation of the Honourable Chief



Justice of The High Court cannot be said to be without application of mind. In the present case, Staff Grievance Committee was constituted by the Chief Justice. The said Committee had undertaken a study by comparing the pay scales of the staff of the various High Courts. The Committee ultimately concluded that there has to be parity with respect to the pay scales between the staff of the Delhi High Court and the Madras High Court, and therefore, it was desirable to adopt the pay pattern of the Delhi High Court. The report of the Committee was submitted before the Honourable Chief Justice for consideration and orders.

65. The Honourable Chief Justice recommended that the conclusion arrived at by the Committee, can be accepted. After perusal of the report of the Committee and after subjective satisfaction, the Government can be addressed to consider the report of the Committee. A proposal was directed to be forwarded. While so, it cannot be said that the Honourable Chief Justice merely directed the Registrar General of this Court to forward a proposal to the Government. Therefore, the submission of the learned Advocate General that the recommendations were merely forwarded on the directions of the Honourable Chief Justice was without application of mind, cannot be countenanced.

66. Normally, once a recommendation is made by the Chief Justice of the High Court, it is not for the Government to reject it based on the apprehension that it will have a cascading and/or spiraling effect on the salaries to be paid to staffs at the secretariat. Even in the decisions cited by the counsel on either side, it was time and again held by the Honourable Supreme Court that the recommendations made by the Chief Justice of the High Court must ordinarily be accepted by the Government, but the refusal of such recommendations would require strong and adequate reasons. In this context, the decision rendered by the Honourable Supreme Court in the case of Union of India vs. S.B.Vohra and others, reported in (2004) 2 Supreme court Cases 150, can usefully be quoted below:-

"Clause 2 of Article 229 of The Constitution of India empowers the Chief Justice of the High Court to prescribe by rules the conditions of service of officers and servants of the High Court. Such Rule shall, however, be subject to : (1) the provision of any law made by the legislature of the State; and (2) the approval of the President/Governor of the State so far as it relates to salary, allowances, leave or pensions. Independence of the High Court is an essential feature for working of the democratic form of the Government in the Country. An absolute control, therefore, have been vested in the High Court over its staff which would be free from interference from the Government subject of course to the



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limitations imposed by the said provision. There cannot be however, any doubt whatsoever that while exercising such a power, the Chief Justice of the High Court would only be bound by the limitation contained in Clause 2 of the Article of the Constitution of India and the proviso appended thereto. Approval of the President/Governor of the State, is, thus, required to be obtained in relation to the Rules containing provisions as regard, salary, allowances, leave or promotion. It is trite that such approval should ordinarily be granted as a matter of course."

67. The Honourable Supreme Court of India in Supreme Court Employees' Welfare Association vs. Union of India, reported in (2004) 2 Supreme Court Cases 150, has further held that the Chief Justice of the High Court has to apply his mind to the question of approval of the Rules relating to salaries and allowances. The application of mind will include exchange of thoughts and views between the Government and the Chief Justice and it is highly desirable that there should be consensus between the two. In the present case, we find there is hardly any exchange of thoughts.

68. The Rules framed by a Constitutional authority such as Chief Justice should normally be approved by the other Constitutional authority, namely the Governor, unless there is very good reason not to grant approval. In the present case, the report of the Staff Grievance Committee was placed before the Honourable Chief Justice of High Court, Madras for consideration and after going through the report, a proposal was directed to be forwarded to the Government for approval of the Governor.

69. It is evident from the above decision of the Honourable Supreme Court that an absolute control is vested with the Chief Justice of the High Court with respect to appointment, transfer or any other conditions of service, even in the absence of any Rule to ensure that the independence of the High Court is maintained without there being any form of interference at the instance of the State Government. They can only place their grievance before the Head of the Institution and if the Head of the Institution finds sufficient reason to ameliorate the situation, the Rule can be framed or altered to meet the requirement. However, such exercise has to be within the four corners of Law.

70. As far as the present case is concerned, the Writ Petitioners submitted a representation dated 08.08.2016 to the Chief Justice of this Court seeking to issue appropriate direction to the Government of Tamil Nadu to fix the pay structure of the Staff Members of Madras High Court and its Madurai Bench, on par with the salary structure of the employees of the Supreme Court of India. A similar



representation was made on 19.12.2016 reiterating the request made in the earlier representation dated 08.08.2016.

71. Along with the second representation dated 19.12.2016, the petitioner Association had enclosed the pay particulars of the Delhi High Court and made a comparison with the pay of the staff of the Madras High Court and requested the Registrar General of this Court to compute the revised pay structure to the employees of the Madras High Court, on par with Delhi High Court, which, according to them will be more appropriate. In this case, admittedly, the Honourable Chief Justice of this Court is vested with such power under Article 229 of The Constitution of India.

72. Thereafter, by a communication dated 10.02.2017 of the Registrar General of this Court, addressed to the Principal Secretary to the Government, Home (Courts-V) Department, it was stated that considering the representation of the staff of the High Court, the matter was placed before the Staff Grievance Committee and the Committee called for pay particulars prevailing in various other High Courts.

73. After making an analysis of the pay scales, the Committee has concluded that the pay structure of the Delhi High Court is suitable for being adopted for revision of the pay scales of the staff of the Madras High Court. The Committee also submitted a report which was placed before the Honourable Chief Justice of the Madras High Court.

74. It was specifically stated in the communication dated 10.02.2017 that the Honourable Chief Justice has approved the report of the Staff Grievance Committee. Therefore, it was requested that necessary orders may be passed by the Government for revised pay structure, as proposed by the High Court. Along with the communication dated 10.02.2017, the pay particulars received from various other High Courts, were also enclosed for the consideration of the Government. It is pertinent to mention that such communication dated 10.02.2017 was made prior to the implementation of the 7th Pay Commission. Further, in the communication dated 10.02.2017, reference was also made to the fact that High Court, Madras is a Chartered High Court and that both the Delhi and Chennai are Chief Metropolitan Cities. Therefore, adopting the pay structure of the Delhi High Court, will be justifiable. However, since no order was passed thereof by the Government, Writ Petition No. 22730 of 2018 is filed. Pending writ petition No. 22730 of 2018, an order of rejection dated 29.01.2019 was passed by the Additional Chief Secretary to the Government of Tamil Nadu. The order of rejection dated 29.01.2019 is questioned in WP No. 21586 of 2019. Therefore, the relief sought for in W.P.No.22730 of 2018 has become infructuous and nothing survives for consideration in that Writ Petition.

75. It is contended on behalf of the State that the recommendation said to have been made by the Honourable Chief Justice of this Court, is not in accordance with Article 229 of The Constitution of India, inasmuch as there was no occasion for applying mind to the proposals placed and it was



merely forwarded to the Government.

76. In the order of refusal dated 29.01.2019, which is challenged in WP No. 21586 of 2019, the Government has mainly reiterated that the revision of pay scales of the staff of the Madras High Court is always determined in the Pay Commission/Pay Panels. It was also reasoned that the revision of pay of the staff of the Madras High Court was recently given effect to on the basis of the recommendations made by the Official Committee constituted for the purpose of giving effect to the Seventh Pay Commission. While so, any change in the revision of pay of the members of the staff of the High Court, will have a spiraling and cascading effect on the pay scale of the staff of the State Secretariat as well as other Departments of the Government. It was also reasoned that the pay structure of the staff members of the Madras High Court cannot be compared with the Delhi High Court, where the pay structure is different and the expenses of which are borne by the Central Government, which has its own resources at its command. Thus, it is evident that the order of rejection mainly proceeds on the footing that the revision of scale of pay, if effected to the staff of the Madras High Court, will have a spiralling and cascading effect on the pay scales of the staff of the Secretariat and other wings of the Department and it will lead to multiplicity of claims by others. This reason in the impugned order cannot be accepted for more than one reason. First of all, the comparison between the scale of pay between the staff of the High Court and the State Secretariat, cannot be made. The nature of work discharged by the staff of the High Court is not akin to or comparable with the nature of work discharged by the members of the State Secretariat. This has been reiterated time and again by this Court as well as the Honourable Supreme court. In one of the decisions rendered by the Honourable Supreme Court in the case of SAIL vs. Dibyendu Bhattacharya reported in 2011 (11) Supreme Court Cases 122, it was held by the Honourable Supreme Court that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. It was also held in that judgment that the functions may be the same, but the skills and responsibilities may be really and substantially different. Since the Chief Justice of the High Court is better equipped to assess the requirements of High Court staff and servants, the decision taken by the Chief Justice of the High Court cannot be ignored by citing the spiralling and cascading effect. The High Court staff and servants render service which are quite different from the service rendered by the staff of the Secretariat. Further, neither the High Court staff/ servants nor Secretariat staff can, as a matter of right, demand increase in salary. Constitutionally, the power to fix pay, allowance, pension, leave etc., is vested with the Chief Justice of the High Court for the staff and servants. The framers of the Constitution, have in their wisdom, bestowed the powers to fix salary and allowance of such staff and servants by Rules with the Chief Justice of the High Court.



77. As far as the nature of duties and responsibilities shouldered by the staff of the State Secretariat and the High Courts, there is a vast difference. It is the contention of the learned Senior Counsel appearing for the petitioners that unlike the State Secretariat, the staff of the High Courts have to strive hard to accomplish the given task. This submission of the learned Senior Counsel appearing for the petitioners needs to be considered and analysed to arrive at appropriate decision. The duty hours of the staff of the High Court normally get stretched and extended to odd hours and they are required to work quite often till late in the night. It is needless to mention that most of the work assigned to the staff of the Madras High Court, are to be accomplished and/or completed in a time-bound manner and it cannot be delayed. Such nature of work is required to be discharged by the employees in the High Court from the date of commencement of their service till their retirement. Therefore, when a comparison is made between the nature of work discharged by the staff of the Judiciary on the whole, with the staff of the State Secretariat, there is vast difference. Therefore, fixation of same scale of pay to the staff of the State Secretariat and the staff of the High Court, is not warranted taking into account the peculiar nature of work expected out of the staff of the Judiciary. It is in the light of the above traits and characteristic, the Staff Grievance Committee made a comparison of the pay scale prevailing among the staff of the various High Courts and not among the staff of the various State Secretariat. The Staff Grievance Committee has also concluded that the pay pattern prevailing in the Delhi High Court is suitable for being adopted to the staff of the Madras High Court and accordingly, a report was filed before the Honourable Chief Justice of Madras High Court.

78. Even before the Karnataka High Court, it was contended that the employees of various High Courts, draw wages and pay scales equivalent to the Central Government employees or even more. The comparative statement produced by the employees was also re-produced in the Judgment of the Division Bench of the Karnataka High Court. On comparing the scales of pay, as also the nature of work and responsibilities and working hours of the employees of the High Court of Karnataka, the Division Bench held that the work that is required to be turned out by the employees of the High Court, more particularly, the Senior Judgment writers, Judgment Writers, Stenographers etc., is not time-bound and that the employees of the High Court were made to work beyond the normal office hours. The observations made in the Judgment of the Division Bench of the Karnataka High Court squarely applies to the facts and circumstance of this case. In the present case also, the main contention urged on behalf of the petitioners is that their counterparts in Delhi High Court are paid more and therefore, their scale of pay or pattern of pay has to be revised. The Staff Grievance Committee, which was tasked to submit a report, has also zeroed in on the pay pattern of the High Court of Delhi



suitable for being adopted to the staff of the Madras High Court. Thus, the comparison of the pay pattern is among the various High Courts in the Country. The nature of duties discharged by the employees of the High Court is different and it cannot be compared with the duties and responsibilities shouldered by the employees in the State Secretariat or other Departments of the Government. In such circumstances, the argument advanced by the learned Advocate General that the revision of pay of the staff of the Madras High Court will have a cascading effect or a chain of reaction among the employees of the Secretariat and other Departments, cannot be accepted. In fact, it is an irrelevant criteria under the scheme of the Constitution as fixation of pay and allowance for the staff of the High Court is not only as per the Constitution, but also there is no comparison made between the staff/servants of the High Court and the staff of Secretariat of the State. Therefore, the argument of the learned Advocate General that such revision will have a spiralling effect cannot be accepted. Even otherwise, merely because the revision will result in a chain of reaction or have a cascading effect, as contended, the same will not be a ground for passing the order of rejection, particularly when the claim of the writ petitioners was duly considered and recommended by the Honourable Chief Justice of the Madras High Court.

79. Mr. Ayyadurai, learned Senior Counsel appearing for the Registrar General of the Madras High Court vociferously contended that the order of rejection passed by the Additional Chief Secretary to the Government is without authority of law. It is his contention that when the State Government, either accepts or decides to reject the recommendations made by the Registrar General of this Court, as directed by the Honourable Chief Justice of this Court, the proposal ought to have been placed before His Excellency the Governor of the State. However, without placing the proposal for consideration of His Excellency the Governor of the State, the Additional Chief Secretary to the Government has unilaterally passed the order of rejection. It is also his contention that the order of rejection is contrary to the Tamil Nadu Government Business Rules, 1978. We find enormous force in such submission of the learned Senior Counsel.

80. As such recommendation of the Honourable Chief Justice of the High Court, has to be placed for approval of Governor unless there are strong and cogent reason for refusal. While the Governor is the highest Constitutional head of the Executive wing of the Government, the Chief Justice of the High Court is the highest Constitutional head in the State Judiciary and is the best Judge to intervene in the matter relating to salaries, pension, allowance, leave etc., payable to officers and servants of High Court. The Governor is therefore expected to reciprocate by giving approval by applying the principle of comity between two Constitutional functionaries of the State. We are of the view that the Chief Secretary ought to have placed the recommendations of the Honourable Chief Justice of the Madras



High Court before the Governor of Tamil Nadu for approval on the principle of comity. The recommendations ought not to have been filtered by the Additional Chief Secretary to Government.

81. When it is the contention of the State Government that the revision of pay would cause enormous financial burden on the exchequer or it will have a chain of reaction or cascading effect on the pay pattern, the proposal sent by the Registrar General ought to have been placed before His Excellency the Governor of the State. Admittedly, the proposal sent by the Registrar General of this Court has not been placed before His Excellency the Governor of the State. In this context, reference was made to Article 166 of The Constitution of India, which contemplates that the conduct of business of the Government of a State shall be deemed to have been done in the name of the Governor. Further, a reference was also made to the provisions of the Tamil Nadu Government Business Rules and Secretariat Instructions. According to the learned Senior Counsel, matters of administrative importance shall be forwarded to the Governor of the State as required under Rule 35 (2).

82. Therefore, when it is the case of the Government that the revision of pay scales to the officers and staff of the Madras High Court will have a spiralling and cascading effect among the other employees of the Government and it is a question of policy decision to be taken, the matter ought to have been placed before His Excellency the Governor of the State. In the present case, the matter relating to the revision of pay, as proposed by the Registrar General, has also not been placed before the Honourable Chief Minister of the State and it was decided at the Secretary level. In this context, Rule 35 of the Tamil Nadu Government Business Rules, 1978 shall be looked into for ready reference:-

"35. (1) (a) The following classes of cases shall be submitted to the Chief Minister before the issue of orders.

(iv) Cases raising questions of policy and cases of administrative importance not already covered by the second schedule.

35 (2) The following cases shall be submitted by the Chief Minister to the Governor before the issue of orders...

(ii) Cases raising questions of policy."

83. Thus, it would be evident that the matter, which according to the Government would involve financial implication, has not been placed either before the Honourable Chief Minister of the State or His Excellency The Governor of the State. Therefore, in our view, the non-compliance of Rule 35 (1) and (2) of The Tamil Nadu Government Business Rules, 1978 would render the order of rejection dated 29.01.2019



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Judges and Administrators shall be constituted by the Chief Justice in consultation with the Government to make a report and on receipt of such report, the Chief Justice and the Government shall thrash out the problem and work out an appropriate formula in regard to pay scales to be fixed for the High Court employee. Let such action be taken within six months from today."

87. In the light of the above decision, in order to give a quietus to this raging issue, we deem it appropriate to direct that this Judgment shall be placed before the Honourable Chief Justice of this Court for constituting a Committee consisting of (i) Judge(s) of this Court (ii) Secretary or Additional Secretary to the Government of Tamil Nadu, Finance Department and Law Department and any other prominent person. The Committee shall go into the details with respect to the nature of duties discharged by the staff working in various cadres before the Delhi High Court as well as the Madras High Court before effecting the pay pattern.

88. Since Article 229 of the Constitution of India contemplates framing of Rules for salaries, allowances, leave or pension, the Honourable Chief Justice of this Court may constitute an empowered committee to frame appropriate Rules for the aforesaid purpose for the future. The above exercise may be completed preferably within a period of four months.

89. In the result, WP No. 22730 of 2018 stands dismissed as having become infructuous and WP No. 21586 of 2019 is allowed to the extent indicated above. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh/cs
To

1. The Principal Secretary to Government
Home (Cts.V) Department
Secretariat, Chennai
2. The Registrar General
High Court, Madras
3. The Additional Chief Secretary to Government
Home (Courts-V) Department
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