

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 04TH DAY OF FEBRUARY 2021 / 15TH MAGHA, 1942

WP(C).No.25933 OF 2017(R)

PETITIONER:

N.MAHADEVAN,
PRIVATE SECRETARY TO HON'BLE CHIEF JUSTICE,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADVS.
SRI.K.JAJU BABU (SR.)
SRI.BRIJESH MOHAN
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY THE ADDL.CHIEF SECRETARY TO
GOVERNMENT, HOME DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 THE HIGH COURT OF KERALA,
ERNAKULAM, KOCHI.682 031,
REPRESENTED BY THE REGISTRAR GENERAL.

*ADDL R3 THE SECRETARY, DEPARTMENT OF FINANCE,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

*ADDL.R3 SUO-MOTO IMPEADED AS PER THE ORDER
DATED 24.08.2017.

BY ADVS. SRI.SANTHOSH MATHEW
SRI.B.G.HARINDRANATH
SRI.SUNIL KUMAR KURIAKOSE - GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04.02.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.

JUDGMENT

Dated this the 4th day of February 2021

The petitioner states that at the time when this writ petition was filed, he was working as the Private Secretary to the Chief Justice of High Court of Kerala. It is conceded that he has since retired from service.

2. The petitioner has approached this Court impugning Ext.P7 Government Order, dated 28.04.2018, as per which, the Rules framed by the Chief Justice under Article 229(2) of the Constitution of India, sanctioning the scale of pay of Rs.85000-117600 to the post of Private Secretary to the Chief Justice, as is evident from Exts.P2, P4 and P5,

has been "rejected".

3. The petitioner contends that Ext.P7 is illegal, unconstitutional and contrary to the well established principles of comity between the two Constitutional Institutions; and therefore, prays that said proceedings, to the extent to which it relates to non-sanctioning of the recommended scale of pay to the Private Secretary to the Chief Justice, be set aside and the Government be directed to grant the pay as recommended by Exts.P2, P4 and P5.

4. I have heard Sri.K.Jaju Babu, learned Senior Counsel instructed by Sri.Brijesh Mohan - learned Counsel appearing on behalf of the petitioner; Sri.B.G.Hareendranath - learned Counsel

for respondent No.2 and Sri.Sunil Kumar Kuriakose - learned Government Pleader appearing for respondents 1 and 3.

5. When I proceed to consider the issues impelled in this writ petition, my path certainly is guided by the affirmative declarations and views of the Hon'ble Supreme Court in **State of Rajasthan and Ors. v. Ramesh Chandra Mundra and Ors. [2019(4)SCT 360(SC)]**. In this judgment, the Hon'ble Supreme Court has pellucidly and unequivocally spoken about the manner and approach of the interaction required between the Judiciary and the Executive, within the umbra of Article 229(2) of the Constitution of India. The specific views of the Hon'ble Supreme Court on

this aspect are available in paragraphs 19, 20, 25 and 26 of the said judgment, which is extracted *infra* to enable a full reading:

19. It seems to us that the proviso to 229(2) (as also Article 146), does not reflect an architecture of hierarchy. We think that the correct constitutional approach is one of comity between different institutions working under the Constitution. The emphasis is not on the supremacy of one institution or demarcating the boundaries of the other. It is about ensuring institutional integrity of one while respecting the functional domain of the other. These provisions are meant to facilitate a dialogue of governance between high constitutional functionaries. A healthy dialogue, perhaps, even a debate is necessary for an efficient constitutional polity. The constitutional vision is not to draw "lakshman rekhas" between constitutional functionaries; its command is for the constitutional functionaries to efficiently coordinate to best achieve constitutional goals. It is this constitutional essence that was ignored when the request of the Id. Chief Justice was not even placed

before the Governor.

20. That independence of Judiciary is part of the basic structure of the Constitution is now well entrenched. The Constitution has insulated the Judiciary from outside influences both by the Executive and legislature. Article 223 to 234 in Chapter VI in part VI of the Constitution dealing with the Courts below the High Courts also show that the Constitution makers were equally keen to insulate even Subordinate Judiciary. Independence of Judiciary takes within its sweep independence of the individual Judges in relation to their appointments, tenure, payment of salaries and also non-removal except by way of impeachment. An integral part of Independence of Judiciary', as a constitutional value is the 'Institutional Independence' i.e. the aspect concerning the financial freedom or autonomy which the judiciary must possess and enjoy. This effective involvement of the judicial branch in budgeting, staff and infrastructure has also been recognized by the international community.

25. Adequate budgeting so as to meet the judiciary's work demands, so as to ensure proper, infrastructure and facilities is integral to judicial functioning.

It that sense, it is an aspect of judicial independence. That independence of Judiciary is part of the basic structure of the Constitution is by now well entrenched. An integral part of 'Independence of Judiciary', as a constitutional value is the 'Institutional Independence' i.e. the aspect concerning the financial freedom or autonomy which the judiciary must possess and enjoy.

26. *The scheme of Article 229 of the Constitution of India obviously requires a joint consideration of the proposal which the Chief Justice may make in regard to appointments, conditions of services, etc., in accordance with the Rules. Undoubtedly, if the Chief Justice takes a decision which has financial implications and that decision cannot be questioned by any authority, the financial implications which such decision may have imposed, should receive due consideration at the hands of the State Government and eventually the Governor.*

6. *It is thus irrefragable that the Constitutional Scheme, now granted binding jural reiteration, is that the Executive obtains no dominance or*

supremacy while considering the recommendations and Rules made and framed by the Chief Justice under Article 229 of the Constitution of India and that, at the best, the proviso to the said Article is designed and intended to facilitate a dialogue of governance between the two high functionaries. The inviolable concepts and established precepts of independence of Judiciary is of acme importance when decisions and actions are taken by the Government under the proviso to Article 229(2) of the Constitution of India and as a normal Rule, they ought to be approved and sanctioned, except in the case of legitimate and justified reasons being recorded.

7. In the backdrop of the afore observations, when one looks through the proceedings of the Government, dated 28.04.2018, namely Ext.P7, the recommended scale of pay to the Private Secretary of the Chief Justice has been declined by stating the following:

"Proposed scale of pay is above the pre-revised scale of 24040-38840 where hike in scale of pay is not allowed as per the general decision taken on revision of scale of pay and allowances. The existing scale of pay of the post is 40640 - 57440. Even the scale of pay of the Private Secretary to His Excellency the Governor of Kerala in the Governor's Secretariat is only 42500 - 87000. Hence the recommendation stands rejected."

8. As is perspicuous from the above, the reasons stated by the Government in Ext.P7 are that the scale of pay is above the pre-revised scale; and further that it is higher than that of the

Private Secretary to the Governor of Kerala.

9. The learned Government Pleader - Sri.Sunil Kumar Kuriakose, tried to justify the reasons stated in Ext.P7 by showing me paragraphs 6 and 8 of the counter affidavit filed on behalf of the third respondent, which avers as below:

"6. By virtue of the general norms adopted by the Cabinet, as aforesaid, where the proposed scale is above the pre-revised scale of Rs.24,040/- - Rs.38,840/-, only corresponding scales are to be given. Since, the existing scale of pay of the post of Private Secretary to the Hon'ble Chief Justice is Rs.40,640/- - Rs.57,440/-, corresponding scale of Rs.77,400/- - Rs.1,15,200/- only was given.

8. The post of Private Secretary to the Hon'ble Chief Justice and that of the Deputy Registrar are different and distinct, as averred hereinabove. At any rate, the said two posts are not comparable. Their method of appointment, nature of duties as

well as responsibilities is also different No parity has been granted to these posts in the 9th Pay Revision. Now the request of the petitioner is for higher scale equivalent to that of the Joint Registrar, which is devoid of any merit, improper, baseless and was rightly rejected by the Government."

10. I am afraid that the afore extracted explanation offered by the Government do not appeal to me because the Chief Justice, while framing the proposed Rules, had also placed the specific reasons behind it before the Government through Ext.P6, which are reproduced to facilitate a complete reading:

B) In many other High Courts the post of Private Secretary to Chief Justice is equivalent to the post of Registrar, in the designation Registrar-cum-Principal Private Secretary to Chief Justice. He supervises the work done by Personal Assistant and Additional Personal Assistant to Chief Justice. The

Private Secretary to Chief Justice is in charge of allotting the services of other Private Secretary to Judges, Personal Assistants to Judges and Confidential Assistants to Judges. Considering the special nature of duties attached to the post a scale of pay equivalent to that of Joint Registrar of the High Court is recommended.

11. Even though the Rule and the recommendation in question, made by the Hon'ble the Chief Justice of Kerala, were implicitly supported by the reasons as extracted afore, it is distressing that Government does not even appear - their counter pleadings on record being conspicuously silent - to have adverted to them, but choose to "reject" it through Ext.P7.

12. At this juncture, one further consterning aspect that engages my attention is that the Government records

in Ext.P7 that it "rejects" the recommendations of the Chief Justice. Going by the mandate of **Ramesh Chandra Mundra (supra)**, I do not understand how the Government can "reject" the proposals of the Chief Justice in such manner and to, even without a dialogue and initiating a debate in the matter, unilaterally take a stand that the recommendations are not acceptable and hence "rejected".

13. I am certain in my mind that this approach of the Government does not augur well for the imperative balance, particularly because, as has been declared in **Ramesh Chandra Mundra (supra)**, the provisions of the proviso to Article 229(2) of the Constitution of

India do not reflect hierarchy but comity between the different Constitutional Institutions working thereunder.

In the afore circumstances, I cannot find favour with Ext.P7, in so far as it relates to non-sanctioning of the recommended pay scale to the Private Secretary of the Chief Justice of High Court of Kerala; and therefore, allow this writ petition, quashing the same to such extent.

Resultantly, Government of Kerala will re-consider the recommendations made by the Hon'ble the Chief Justice of Kerala, in the light of the remarks contained in Ext.P6; and issue appropriate orders with respect to the

pay scale of the Private Secretary to the Chief Justice as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ORDER G.O(P)
NO.180/2016/HOME DATED 20.6.2016.
- EXHIBIT P2 TRUE COPY OF THE REQUEST OF THE
REGISTRAR GENERAL DATED 7.10.2016
SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE ORDER G.O(MS)
NO.40/17/HOME DATED 4.3.2017.
- EXHIBIT P4 TRUE COPY OF THE REQUEST OF THE
REGISTRAR GENERAL DATED 23.5.2017
SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE REMINDER DATED
16.6.2017 SUBMITTED BY THE REGISTRAR
GENERAL TO THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE RECOMMENDATION OF THE
HON'BLE CHIEF JUSTICE, HIGH COURT OF
KERALA VIDE NO.D.O NO. FW/J3-49631/2014
ON 6.11.2015 SUBMITTED BEFORE THE
GOVERNMENT.
- EXHIBIT P7 TRUE COPY OF THE G.O(P)NO.19/2018/HOME
DATED 28.04.2018 OF THE 1ST RESPONDENT.

RESPONDENT'S/S EXHIBITS : NIL.

//TRUE COPY//
P.A. TO JUDGE