

Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4759 OF 2022**

1. **CHARUSHILA M VAIDYA,**
2. **HRUSHIKESH P NIKUMB,**
3. **DINESH B ISWALKAR,**
4. **DEEPAK S BHALERAU,**
5. **JAYASHREE M INGLE,**
6. **RAMESH N KUSURKAR,**
7. **VARSHA M ULHE,**
8. **VARSHA N UBALE,**
9. **SHRIKRUSHNA H HADAP,**
10. **MAYANK M RAWAL,**
11. **SWATI M TARI,**
12. **DIPIKA S KUBAL,**
13. **PRAKASH S TATHE,**
14. **DIPALI R MUSALE,**
15. **CHANDRAKANT K PASHIME,**
16. **DURGADAS S CHOUDHARI,**
17. **PRAVIN V TAWADE,**
18. **SANJAY V JADHAV,**

All adults, Indian Inhabitants,
above are the officers working as

... PETITIONERS

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Associates on the Original Side of High Court of Bombay and having their office at High Court of Bombay, M.G. Road, Fort, Mumbai 400 032.

~ VERSUS ~

1. **STATE OF MAHARASHTRA**,
Through its Chief Secretary, through
Government Pleader (Original Side),
High Court of Bombay,
Mumbai 400 032.
2. **THE PRINCIPAL SECRETARY**,
Finance Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
3. **THE PRINCIPAL SECRETARY**,
Law & Judicial Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
4. **REGISTRAR GENERAL**,
High Court of Bombay,
Mumbai 400 032.
5. **REGISTRAR PERSONAL**,
High Court of Bombay,
Mumbai 400 032.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS **Mr Anil Anturkar, Senior**
*Advocate, with SC Naidu,
Manoj Gujar, TR Yadav,
Sudeshkumar Naidu, Divya
Yajurvedi, Pradeep Kumar &
Abhishek Ingale, i/b*

*Sudeshkumar Naidu & Divya
Yajurvedi.*

FOR RESPONDENTS NOS 4 TO 6 **Mr Rafique Dada, Senior
Advocate, with Rahul
Nerlekar.**

**FOR RESPONDENT-
STATE** **Mr Manish Upadhye, AGP, with
Himanshu Takke, AGP.**

**CORAM : G.S. Patel &
Kamal Khata, JJ.**

DATED : 29th February 2024

ORAL JUDGMENT (Per GS Patel J):-

1. Rule, returnable forthwith.
2. We propose to dispose of this Petition, having heard Mr Anturkar for the Petitioners and Mr Dada for the 5th and 6th Respondents, not with an order in terms of the relief sought but rather with a moulded relief in the form of a direction to reconsider the matter to which we will presently advert. Having said that, we do not believe that merely asking for a reconsideration is sufficient or will serve the purpose on either side. We believe it is necessary, therefore to summarize briefly the contentions and to set out why we believe a reconsideration is necessary.
3. Before we proceed to that, we note the reason why we do not think it is possible in the present circumstances for us to fully grant

the relief that is sought. Prayers (a), (b) and (c) of the Petition at pages 58 to 60 read as follows:

“a) This Hon’ble Court in exercising of its extra ordinary jurisdiction under Article 226 call for the records and proceedings from the office of the Respondent No.4 in relation to the Representations dated 26th August 2016 and 9th April 2018 and thereafter be pleased to hold, decide and declare that three posts viz. Associates (OS), Senior Private Secretaries to the Hon’ble Judges and one post at Appellate Side i.e. post of Deputy Registrar are at par and entitled to identical pay scale with admissible allowances and perquisites including retirement benefits and service conditions as may be revised and made applicable with effect from 1st October 2007;

b) This Hon’ble Court in its extra ordinary jurisdiction under Article 226 be pleased to issue a Writ of Mandamus or a writ in the nature of mandamus commanding the Respondent Nos. 1 to 3 to extend to the post of Associates (O.S.) same pay scale with effect from 1st October 2007, with admissible allowances and perquisites including retirement benefits and service conditions as may be revised and made applicable to the post of Senior Private Secretaries to the Hon’ble Judges and Master and Assistant Prothonotary (Adm.) on Original Side as well one post at Appellate Side i.e. post of Deputy Registrar;

c) This Hon’ble Court in its extra ordinary jurisdiction under Article 226 be pleased to issue a Writ of Mandamus or a writ in the nature of mandamus commanding the Respondent Nos. 4 to 6 to submit to the Hon’ble Governor a proposal for amendment to the Bombay High Court Service Rules, 2002 incorporating the pay scale of Civil Judge Senior Division (ACP-I) i.e. Rs.43,690-1080-49,090-1230-56. Senior Private Secretaries to the Hon’ble Judges as well Deputy Registrars at Appellate Side;”

4. The difficulty with this is that however the prayers may be worded, the very real risk to a Writ Court is succumbing to a temptation to effectively legislate, i.e., to frame a substitute rule in place of the impugned rule. That is not something we are prepared to do.

5. We must also have regard to the two distinct constitutional provisions namely the Powers of the High Court under Article 226, and the wording of Article 229 of the Constitution of India.

“226. Power of High Courts to issue certain writs.—

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

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 pensions, require the approval of the Governor of the State.

(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, 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.”

6. The 18 Petitioners are all Class-I Gazetted Officers who work on the establishment of the Original Side of the High Court as Associates. The challenge in the Petition is that these persons have been denied various benefits including pay and career progression although these were previously assured to the Petitioners (or to that class) as long ago as 18th June 2009. That was the time when substantially these grievances of these petitioners were taken up by a Committee of Justice VC Daga and Justice VM Kanade as they then were. A copy of this Committee’s recommendations has been provided by the Registry. It is in the compilation. It inter alia notes the question of disparities in incomes, the provisions of Article 229 of the Constitution of India and at page 8 of this Report is the recommendation. It says that officers, namely First Assistant to Official Assignee, Second Assistant to Court Receiver, Second Assistant Master and Third Assistant Master and Associates be upgraded in their pay scales from Rs 10,000-325-15,200 to Rs 12,000-375-16,500 by placing this recommendation before the

Hon'ble the Chief Justice under Article 229 of the Constitution of India and by directing the Principal Secretary Law and Judiciary to move the Government to a Court approval.

7. Mr Anturkar for the Petitioners submits that the conclusions of this report compared the post of Associate on the one hand with the post of Private Secretaries and the post of eight Senior Private Secretaries on the other. The report clearly indicated that in the view of that Committee, the work of an Associate carries greater responsibility, work volumes and more onerous duties as compared to the eight Senior Private Secretaries. It also says that before upgrading the pay scales of the eight Senior Private Secretaries, the pay scales of those Senior Private Secretaries and the Associates were the same. Under the High Court (OS) Service Rules 2002, Private Secretaries and Senior Private Secretaries were clearly defined as being the feeder posts for the promotional posts of Associates under Rule 14(i).

8. Pausing for a moment, this encapsulates Mr. Anturkar's submission that as a result of what is impugned in the present Writ Petition, those in the feeder post enjoyed greater benefits than those in the promotional posts. He describes this, in his typically mild manner, as a wholly anomalous situation. But he does point out that the consequences are indeed grave including for the proper management and administration of the High Court itself.

9. The submission is not necessarily that one be ranked above the other but that the promotional post could not under any

circumstances have been positioned less than at parity with the feeder post. He points out that the two Judge Committee had eliminated the disparity by drawing precisely the comparison of the post of Associates with the post of eight Senior Private Secretaries.

10. Even if the Private Secretaries/Senior Private Secretaries are no longer the feeder cadre for Associates, yet the distinction made by the Justice Daga-Justice Kanade between their respective job descriptions and responsibilities remains. No one has ever argued, Mr Anturkar says, and we think rightly because it cannot be so argued, that since 2009 the private secretaries/senior private secretaries now have duties far more onerous than that of Associates. Therefore, Mr Anturkar submits, at the very least parity ought to be maintained.

11. Viewed from any perspective, therefore, the Associates could not be positioned at a lower payscale/grade than senior private secretaries. We believe this to be correct.

12. Indeed, thereafter, these recommendations were acted upon and the necessary orders were passed, recommendations made, accepted and implemented following Article 229 of the Constitution of India. Consequently, Associates were given the same pay scale as given to Senior Private Secretaries with a retrospective effect from the year 2005.

13. This continued until 2021. It is in that year, Mr Anturkar says, that a disparity arose again between the post of Associates and

Senior Private Secretaries and this crept in, possibly inadvertently or through oversight, and resulted in a Government Resolution(“**GR**”) of 19th April 2021.

14. This is the canvas of the Petition. At this stage, it is not necessary to consider any more detailed challenge, whether under Article 14 of the Constitution of India otherwise. Mr Dada points out that under the Service Rules, Rule 3 provides for the constitution of classes and categories of the service. Entry 15A is Senior Private Secretary to Judges. Entry 20 is Associates. Then Rules 3(b) and (b)(i) provide for pay scales at various levels. In Rule (b)(iv) it is provided that those posts at Sr No 16 to 20 namely, Second Assistant Master, First Assistant to Official Assignee, Second Assistant to Court Receiver, Third Assistant Master and Associate shall carry the pay scale applicable to a Civil Judge Junior Division, ACP-1, with the pay scale that is mentioned and admissible allowances.

15. But as far as the Private Secretaries are concerned, they are covered by a High Court Appellate Side Rule 3(b)(2) which puts them in the pay scale of a *Senior* Civil Judge ACP-1. Meanwhile, Rule 8-a of the Original Side Service Rules says that Senior Private Secretaries may be appointed by promotion from those Private Secretaries who have served as such for not less than two years provided they hold a university degree, preference being given to holders of a degree in law.

16. Most importantly, Mr Anturkar submits, there is no material at all before us to indicate that anyone has ever suggested that suddenly in 2021 it was found that the work and responsibilities of Private Secretaries and Senior Private Secretaries was more than that of Associates. That is untrue even today. Since 2009, that position is not shown to have been altered. Abruptly, however, those who were discerned to have responsibilities less than Associates were in 2021 advanced to the Senior Civil Judge level, but Associates, who responsibilities were and continue to be more, were left languishing at the level of a Civil Judge, Junior Division.

17. This, then, is the disparity of which Mr Anturkar speaks. This is the disconnect that must be rectified, in his submission.

18. Mr Dada for the High Court points out that the 19th April 2022 GR was based on a recommendation and a communication from the High Court. This clearly applied the pay scale of a Civil Judge *Junior* Division (ACP-1) to Associates as can be seen from entry 5 in the table.

19. Mr Dada submits that this GR did not come out of context. He points out that draft Rules were in fact placed before a Rules Committee and that having been approved then followed the usual process. Mr Dada states on instructions that he believes that the recommendations of the Justice VC Daga and Justice VM Kanade Committee were or at least must have been placed before the later Committee in 2020–2021. Mr Dada points out that the rule in

question passed through at least three sets of committees before the final GR was issued.

20. Whether or not that is so, it is clear that there is no detailed assessment of why they should now be a departure from the recommendations of Justice VC Daga and Justice VM Kanade Committee Report especially when that is of vintage of 2009 and was acted upon and implemented till 2021. We do not mean to suggest that these matters are forever written in stone or that they can never be a change from a position previously held. But once a recommendation has been made, accepted, acted upon, implemented and has held the field for a long period of 11 or 12 years, it would be exceedingly strange if this was to be entirely reversed and the earlier disparity was to be brought back without any explanation at all or sufficient reasons for the departure at all. Indeed, nowhere on record are we able to find any justification for a reversal of the disparity-dispelling recommendations of the Justice VC Daga and Justice VM Kanade Committee and which, as we noted were fully implemented without complaint until 2021.

21. Mr Dada is correct in saying that it is not for a Writ Court to specify what the Rule should be, let alone frame it. We are endeavouring nothing of that kind. Even if we were to make rule absolute, the maximum that would happen would be that it would revert to the position as it stood before the impugned GR. There is no question of us framing any special rule.

22. But having regard to these circumstances and the administrative factors that Mr Dada has pointed out, we believe a more prudent and wiser cause of action would be to dispose of this Petition by requiring a reconsideration of the GR and the underlying Rule and its amendment, i.e., Rule 3 (b)(4) and the corresponding Rule on the Appellate Side Service Rules so that at least parity is maintained between the two sets of posts in question.

23. We should not be misunderstood to have expressed any opinion on the merits of the challenge that is before us. We have only summarized the rival contentions.

24. We now leave it to the Registry to take the necessary steps in accordance with the usual practices and protocols but we would only emphasize that the matter be given some priority and be dealt with some urgency. This is after all also a question of not only the morale of our staff but of reiterating that very popular phrase where especially the High Court and especially with its own staff justice was not only be done but must be seen to be done.

25. In light of this, we would direct the Registry to place the matter before the Hon'ble Chief Justice for suitable direction within 10 days from today.

26. The Petition is disposed of in these terms. There will be no orders as to costs.

27. Mr Dada submits that while Senior Private Secretaries may have been feeder posts for Associates at the time in 2009 at the time of Justice VC Daga and Justice VM Kanade Report, today is no longer a feeder post. But this argument to our mind perhaps raises more questions than it answers because that is not all that the Justice VC Daga and Justice VM Kanade Committee said. It did not rest merely on a hierarchical structure but looked at the nature of the duties and responsibilities and it can hardly be suggested today that the Private Secretaries or Senior Private Secretaries has greater responsibilities, duties or burdens than an Associate of this Court on the Original Side.

(Kamal Khata, J)

(G. S. Patel, J)