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STATE OF MAHARASHTRA

v.

ASSN. OF COURT STENOS, P.A., P.S. AND ANR.

JANUARY 9, 2002

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[G.B. PATTANAIK, R.P. SETHI AND DORAISWAMY RAJU, JJ.]

Service Law:

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Constitution of India, 1950—Articles 226, 229(2), 39(d) and 14—Jurisdiction—Exercise of—Pay scales—Fixation of—Court Stenographers, Personal Assistants and Personal Secretaries to the Hon'ble Judges of the High Court—Court staff sought same pay scales as granted to the Personal Assistant to Chief Secretary and Additional Chief secretary—High Court in exercise of its jurisdiction under Article 226 applied principle of 'equal pay for equal work' and issued mandamus granting same pay scales—On appeal held, issuance of mandamus not justified—Fixation of pay scale is prerogative of the Chief Justice of the High Court on framing appropriate rules which require approval of Governor—Court would be justified in issuing direction to the Chief Justice to decide in exercise of powers under Article 229(2) of the Constitution.

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Doctrines:

'Equal pay for equal work'—Equitable principle—Enforceability of—Discussed.

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Respondents alleged that they were getting the same scales of pay, as was being paid to the Senior Personal Assistants, attached to the Chief Secretary and the Additional Chief Secretary in the State of Maharashtra prior to the Fifth Central Pay Commission but that parity has not been maintained after the fifth Pay Commission. Aggrieved, respondents filed a petition that their pay should be fixed in the same scale. High Court in exercise of its jurisdiction under Article 226 applied the principle of 'Equal pay for equal work' and on an evaluation of the nature of duties discharged by the respondents issued the mandamus directing that same pay scale to be given to the respondents as was being paid to the Senior Personal Assistant attached to the Chief Secretary and the Additional Chief Secretary in the State of Maharashtra. It further directed that special allowance be granted to Senior

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Administrative Judges. Hence the present appeal.

Appellant contended that the High Court was not justified in granting a particular scale of pay to a particular class of employees which tantamounts to granting a specific scale by the Court in exercise of its jurisdiction under Article 226. The Court might be justified in issuing the direction to the Chief Justice to perform his duty under Article 229(2) by framing a set of rules and fixing any pay scale therein. It further submitted that it is incorrect that prior to the Fifth Pay Commission parity was being maintained in the pay scales.

Allowing the appeal, the Court

HELD : 1. On a plain reading of Article 229(2) of the Constitution, it is apparent that the Chief Justice is the sole authority for fixing the salaries etc. of the employees of the High Court, subject to the rules made under Article 229. The rules made by the Chief Justice will be subject to the provisions of any law made by the Legislature of the State. In view of proviso to Article 229(2), any rule relating to the salaries, allowances, leave or pension of the employees of the High Court would require the approval of the Governor, before the same can be enforced. Such approval is a condition precedent to the validity of the rules made by the Chief Justice and the so-called approval of the Governor is not on his discretion, but being advised by the Government. Therefore, it would be logical to hold that apart from any power conferred by the Rules framed under Article 229, the Government cannot fix the salary or authorise any particular pay scale of an employee of the High Court.

[129-C-D]

2. In the *Supreme Court Employees' Welfare Association* *case this Court has considered the powers of the Chief Justice of India in relation to the employees of the Supreme Court in the matter of laying down the service conditions of the employees of the Court, including the grant of pay scale and observed that the Chief Justice of India should frame rules after taking into consideration all relevant factors including the recommendation of the Pay Commission and submit the same to the President of India for his approval. What has been stated in the aforesaid judgment in relation to the Chief Justice of India *vis-a-vis* the employees of the Supreme Court, should equally apply to the Chief Justice of the High Court *vis-a-vis* the employees of the High Court. [129-G-H]

**Supreme Court Employees' Welfare Association v. Union of India and Anr.*, [1989] 4 SCC 187, relied on.

A 3. The doctrine of 'equal pay for equal work' is an equitable principle but it would not be appropriate for the High Court in exercise of its discretionary jurisdiction under Article 226 to examine the nature of work discharged by the staff attached to the Hon'ble Judges of the Court and direct grant of any particular pay scale to such employees, as that would be a matter for the Chief Justice within his jurisdiction under Article 229(2) of the Constitution. However, this may not be construed as total ouster of jurisdiction of the High Court under Article 226 to examine the nature of duties of an employee and apply the principle of 'equal pay for equal work' in an appropriate case. [131-B-C]

C *All India Judges' Association v. Union of India and Ors.*, [1992] 1 SCC 119, referred to.

D 4. Between the period 1986 to 1990, the pay scale of Court Stenographers, Personal Assistants and Personal Secretaries was same as that of the Selection Grade Stenographers in Mantralaya viz. Rs. 2375-3500, the same was the position also for the period 1990 to 1996, and after the Fifth Pay Commission i.e. after 1996, it has become Rs. 7450-11500. The claim of parity with the pay scale attached to Senior Personal Assistants to Chief Secretary and Additional Chief Secretary, so far as Court Stenographers, Personal Assistants and Personal Secretaries attached to the Hon'ble Judges are concerned, possibly is not equitable. But this Court refrains from expressing any final opinion on the same, as this would be a matter for the Chief Justice of the Court to decide in exercise of power under Article 229(2) of the Constitution rather than a matter for a Court to issue a mandamus on the judicial side. Therefore, the impugned directions given by the High Court is set aside and is observed that it would be a matter for the Chief Justice of the High Court to frame the appropriate 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.

[131-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 109 of 2002.

G From the Judgment and Order dated 21.12.99 of the Bombay High Court in W.P. No. 2008 of 1999.

S.K. Dholakia, S.S. Shinde and S.V. Deshpande for the Appellant.

A.K. Sanghi and S.M. Jadhav for the Respondents.

H The Judgment of the Court was delivered by

PATTANAİK, J. Leave Granted.

This appeal by grant of special leave is directed against the judgment of Bombay High Court. The respondents are the Court Stenographers, Personal Assistants and Personal Secretaries attached to the Honb'ble Judges of Bombay High Court. They approached the High Court alleging that prior to 30th September, 1990, they were getting the same scale of pay, as was being paid to the Senior Personal Assistants, attached to the Chief Secretary and the Additional Chief Secretary in the State of Maharashtra, but that parity has not been maintained after 1st October, 1990. Prayer was, therefore, made by the Association that the Pay-scale should be fixed in the same scale, as the Senior Personal Assistant attached to the Chief Secretary and the Additional Chief Secretary in the Govt. of Maharashtra, has been fixed by the Fifth Central Pay Commission. The High Court by the impugned judgment, came to the conclusion that there was a parity of pay between the Court Stenographers, Personal Assistants and Personal Secretaries to the Judges of the High Court with the Senior Personal Assistants to the Chief Secretary of the State of Maharashtra and when the Fifth Central Pay Commission has revised the pay scale of the Senior Personal Assistants to the Chief Secretary and fixed it at the scale of Rs. 10,000-15,200, there is no reason why these respondents would not be entitled to the same. The Court, therefore, directed applying the principle of "Equal pay for equal work" that the writ petitioners are entitled to the pay scale of Rs.10,000-15,000 w.e.f. 1.1.1996. In case of Private Secretaries to the Senior Administrative Judges of the Court, the Court went further and directed special allowance should be granted, as may be deemed fit by the High Level Committee.

Mr. S.K. Dholakia, the learned senior counsel, appearing for the State, contended that the High Court was not justified in issuing the direction in the manner in which it has directed, which tantamounts to granting a specific scale by the Court in exercise of its jurisdiction under Article 226. According to Mr. Dholakia, the Court might be justified in issuing the direction to the Chief Justice to perform his duty under Article 229(2) by framing a set of rules and fixing any pay scale therein. But by no stretch of imagination, the Court would be justified in granting a particular scale of pay to a particular class of employees in exercise of its jurisdiction under Article 226. On facts also, Mr. Dholakia submits that it is not correct that uptill 1991, a parity was being maintained between the pay-scale of Private Secretary to the Judges and Senior Personal Assistant to the Chief Secretary inasmuch as in the High Court, while Court Stenographers, Personal Assistants and Personal Secretaries

A were getting the pay-scale of 2375-3500, but the Private Secretary to the Judges were getting the pay scale of Rs.3000-4500 and under the Government, the Senior P.A. to the Chief Secretary and Additional Chief Secretary was getting the pay scale of Rs.2375-3500. The same was the position until the Fifth Pay Commission considered the pay structure and made the necessary recommendation. Under the Fifth Pay Commission's Recommendation, the
B Private Secretary to the Judges were given the pay-scale of Rs.10,000-15,200 which is in *pari materia* of the pay scale given to the Senior Personal Assistant to the Chief Secretary and the Additional Chief Secretary, whereas the Court Stenographers, Personal Assistants and Personal Secretaries were given the pay scale of Rs. 7450-11500, which is the pay scale given to the
C Selection Grade Stenographers in Mantralaya. According to Mr. Dholakia, it is, therefore, wholly unreasonable for the Court to direct that the Court Stenographers, Personal Assistants and Personal Secretaries in the High Court would be given the pay scale of Rs. 10,000-15,200.

D Mr. A.K. Sanghi, appearing for the respondents on the other hand, contended that the staff attached to the Court, including the Stenographers, Personal Assistants and Personal Secretaries, discharge much more arduous and onerous duties, as compared to the stenographers attached to the Chief Secretary/Additional Chief Secretary in Mantralaya. The Hon'ble Judges of the High Court possess a higher status than the Chief Secretary or Additional
E Chief Secretary in Mantralaya. These stenographers, Personal Assistants and Personal Secretaries were getting the same scale of pay as the Senior Personal Assistant to the Chief Secretary and Additional Chief Secretary before the Fourth Pay Commission and after the Fourth Pay Commission, as well as in 1986 to 1990, though there has been some variation from 1990 onwards. That being the position, it is highly un-equitable to equate these Court
F Stenographers, Personal Assistants and Personal Secretaries with the Selection Grade Stenographers in Mantralaya. According to Mr. Sanghi, the High Court, therefore, was fully justified in issuing the impugned directions. According to Mr. Sanghi, so far as the Private Secretaries attached to the Senior Administrative Judges of the Court are concerned, even though they are
G being given the same scale of pay as the pay scale of Senior Personal Assistants to the Chief Secretary and Additional Chief Secretary, the Court was justified in directing that some special allowance should be given to them.

H Under the Constitution of India, appointment of officers and servants of a High Court is required to be made by the Chief Justice of the High Court

or such other Judge or officer of the Court as the Chief Justice directs. The Conditions of Service of such officers and servants of the High Court could be governed by a set of rules made by the Chief Justice of the High Court and even the salaries and allowances, leave or pension of such officers could be determined by a set of rules to be framed by the Chief Justice, but so far as it relates to salary and allowances etc., it requires approval of the Governor of the State. This is apparent from the Article 229 of the Constitution. On a plain reading of Article 229(2), it is apparent that the Chief Justice is the sole authority for fixing the salaries etc. of the employees of the High Court, subject to the rules made under the said Article. Needless to mention, rules made by the Chief Justice will be subject to the provisions of any law made by the Legislature of the State. In view of proviso to sub-Article (2) of Article 229, any rule relating to the salaries, allowances, leave or pension of the employees of the High Court would require the approval of the Governor, before the same can be enforced. The approval of the Governor, therefore, is a condition precedent to the validity of the rules made by the Chief Justice and the so-called approval of the Governor is not on his discretion, but being advised by the Government. It would, therefore, be logical to hold that apart from any power conferred by the Rules framed under Article 229, the Government cannot fix the salary or authorise any particular pay scale of an employee of the High Court. It is not the case of the employees that the Chief Justice made any rules, providing a particular pay scale for the employees of the Court, in accordance with the constitutional provisions and that has not been accepted by the Governor. In the aforesaid premises, it requires consideration as to whether the High Court in its discretionary jurisdiction under Article 226 of the Constitution, can itself examine the nature of work discharged by its employees and issue a mandamus, directing a particular pay scale to be given to such employees. In the judgment under challenge, the Court appears to have applied the principle of "equal pay for equal work" and on an evaluation of the nature of duties discharged by the Court Stenographers, Personal Assistants and Personal Secretaries, has issued the impugned directions. In the *Supreme Court Employees' Welfare Association v. Union of India & Anr.*, [1989] 4 S.C.C. 187, this Court has considered the powers of the Chief Justice of India in relation to the employees of the Supreme Court in the matter of laying down the Service Conditions of the employees of the Court, including the grant of pay scale and observed that the Chief Justice of India should frame rules after taking into consideration all relevant factors including the recommendation of the Pay Commission and submit the same to the President of India for its approval. What has been stated in the aforesaid judgment in relation to the Chief Justice of India *vis-a-vis* the employees of the Supreme

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A Court, should equally apply to the Chief Justice of the High Court *vis-a-vis* the employees of the High Court. Needless to mention, notwithstanding the constitutional provision that the rules framed by the Chief Justice of a High Court, so far as it relates to salaries and other emoluments are concerned, require the prior approval of the Governor. It is always expected that when the Chief Justice of a High Court makes a rule, providing a particular pay scale for its employees, the same should be ordinarily approved by the Governor, unless there is any justifiable reason, not to approve the same. The aforesaid assumption is on the basis that a high functionary like the Chief Justice, before framing any rules in relation to the Service Conditions of the employees of the Court and granting any pay scale for them is expected to consider all relevant factors and fixation is made, not on any arbitrary basis. It is important to notice that in the aforesaid judgment, the observation has been made:

D “It is not the business of this Court to fix the pay scales of the employees of any institution in exercise of its jurisdiction under Article 32 of the Constitution. If there be violation of any fundamental right by virtue of any order or judgment, this Court can strike down the same but, surely, it is not within the province of this Court to fix the scale of pay of any employee in exercise of its jurisdiction under Article 32 of the Constitution.”

E The Court also expressed the view in the aforesaid case that the Chief Justice of India is the appropriate authority to consider the question as to the distinctive nature and personality of the employees of the Supreme Court and before laying down the pay scales of the employees, it may be necessary to ascertain the job contents of various categories of employees and nature of duties which are performed by them. Further at the time of preparing the rules for prescribing the Conditions of Service, including the fixation of the pay scales, the Chief Justice of India will consider the representations and suggestions of the different categories of employees of the Supreme Court, also keeping in view the financial liability of the Government. In view of the aforesaid decision of this Court, it is difficult for us to sustain the impugned judgment, whereunder the High Court in exercise of its jurisdiction under Article 226, has issued the mandamus, directing a particular pay scale to be given to the Court Stenographers, Personal Assistants and Personal Secretaries attached to the Hon'ble Judges of the Court. In the *All India Judges' Association v. Union of India and Ors.*, [1992] 1 SCC 119, after a thorough analysis of Articles 233 to 235 of the Constitution, this Court no doubt has issued certain directions, ameliorating the Service Conditions of the Presiding

Officers of the Subordinate Courts and also dealt with the appropriate pay scales for such Presiding Officers, but ultimately did not propose to finally examine the propriety of the pay scale nor directed that any particular pay scale should be fixed. It is no doubt true that the doctrine of 'equal pay for equal work' is an equitable principle but it would not be appropriate for the High Court in exercise of its discretionary jurisdiction under Article 226 to examine the nature of work discharged by the staff attached to the Hon'ble Judges of the Court and direct grant of any particular pay scale to such employees, as that would be a matter for the learned Chief Justice within his jurisdiction under Article 229(2) of the Constitution. We however hasten to add that this may not be construed as total ouster of jurisdiction of the High Court under Article 226 to examine the nature of duties of an employee and apply the principle of 'equal pay for equal work' in an appropriate case.

That apart, it appears that between the period 1986 to 1990, the pay scale of Court Stenographers, Personal Assistants and Personal Secretaries was same as that of the Selection Grade Stenographers in Mantralaya viz. Rs.2375-3500, the same was the position also for the period 1990 to 1996 and after the Fifth Pay Commission after 1996, it has become Rs. 7450- 11,500, the claim of a parity with the pay scale attached to Senior Personal Assistants to Chief Secretary and Additional Chief Secretary, so far as Court Stenographers, Personal Assistants and Personal Secretaries attached to the Hon'ble Judges are concerned, possibly is not equitable. But we refrain from expressing any final opinion on the same, as in our view this would be a matter for the learned Chief justice of the Court to decide in exercise of power under Article 229(2) of the Constitution rather than a matter for a Court to issue a mandamus on the judicial side. We, therefore, set aside the impugned directions given by the Bombay High Court and observe that it would be a matter for the learned Chief Justice of the High Court to frame the appropriate 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.

This appeal is accordingly allowed. There will be no order as to costs.

N.J.

Appeal allowed.