A UNION OF INDIA AND ANR.

v.

S.B. VOHRA AND ORS.

JANUARY 5, 2004

B [V.N. KHARE, CJ, S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

Constitution of India, 1950:

C

Article 229—Officers of High Court—Promotion—Power and jurisdiction of Chief Justice of High Court—Held: Chief Justice of High Court not bound to accept the plea of Central Govt. that the posts of Asst. Registrar and Court Masters should be merged—The question as regards merger of these posts D *was within the exclusive domain of the CJ—Whether the Post of Asst. Registrar was a promotional post or not. thus, could not fall for the decision of the Central Govt.*

Article 229—Officers of High Court—Fixation/revision of pay scales—Power and Jurisdiction of Chief Justice of High Court—Held; Recommendation E *of Chief Justice of High Court regarding fixation/revision of pay scales should ordinarily be approved by the State—Refusal thereof must be for strong and adequate reasons—It would not be always helpful to raise the question of financial implication in this regard.*

Article 229—Officers of High Court—Fixation/revision of pay scales— F *Modalities of—Held: An expert body like the Pay Commission should examine this matter—But in the absence of such expert body, the High Court itself should undertake the task keeping in view the special Constitutional provisions existing in this behalf in terms of Article 229.*

Article 226-Mandamus—Writ—Issuance of—To Central Govt. to grant G *a particular scale of pay to Officers of High Court—Correctness of—Held: Not proper—Exercise of discretion by High Court depends upon the law which governs the field—High Court should allow statutory authorities to perform statutory duties at the first instance—Administrative Law.*

Articles 226 and 229—Officers of High Court—Fixation/revision of pay H

scales—Power of High Court—Held: Only in exceptional cases, the High Court may interfere on the judicial side—But ordinarily it should not do so—Even if interference is necessary, the High Court should exercise its jurisdiction with care and circumspection. A

Article 133—Officers of High Court—Fixation/revision of pay scales—In respect of Private Secretaries to Judges —Appeal against —Held: As the matter was pending for a long time and pay scale already given, Supreme Court declined to exercise its discretionary jurisdiction. B

The respondents were Assistant Registrars in the High Court. The post of Assistant Registrar was a promotional post for the Superintendents, Court Masters and Private Secretaries. The Chief Justice of the High Court recommended that the scales of pay of the respondents be revived. As the appellant paid no heed to this recommendation, the respondents filed a writ petition before the High Court. C

The High Court allowed the writ petition by issuing a writ of mandamus directing the appellant to grant the recommended pay scale to the respondents. Hence the appeal. D

On behalf of the appellant, it was contended that the High Court could not issue a writ of mandamus directing the appellant to grant the recommended pay scale to the respondents; that fixation of pay scale by the Chief Justice of the High Court required the approval of the President of India in terms of Article 229(2) of the Constitution; that the Fourth Pay Commission had recommended the same pay scales for Superintendents, Court Masters and Private Secretaries as also the Assistant Registrars and, therefore, both these categories of posts were treated as equal or merged; and that granting of a higher scale of pay would have adverse effect on other employees of the State. E F

Dismissing the appeal, the Court

HELD: 1.1. The Chief Justice of the High Court in this case was not bound to accept that the posts of Assistant Registrar and Court Masters should be merged. The question as regard merger of the two posts was within the exclusive domain of the Chief Justice. Whether the post of Assistant Registrar should be a promotional post or not, thus, could not fall for decision of the Central Government. [56-C-D] G

Tarsem Singh **v.** *State of Punjab*, **[1994] 5 SCC 392, referred to.** H

A **1.2. If the nature of duties performed by the Assistant Registrars had been more onerous than the Court Master, a higher scale of pay was required to be fixed. Furthermore, merger of the cadres must be made in terms of the statutory rules. For the said purpose, an order is required to be passed. Conjectures or surmises in such a situation had no role to play. [56-H; 57-A]**

B

1.3. The Chief Justice was entitled to hold the opinion that hierarchy of the posts was required to be maintained in respect whereof the necessary scales of pay could be directed to be revised. [57-B]

C *State of U.P.* **v.** *C.M. Agarwal,* **[1997] 5 SCC 1,** *High Court of Judicature for Rajasthan* **v.** *Ramesh Chand Paliwal,* **[1998] 3 SCC 72,** *State of Maharashtra* **v.** *Association of Court Stenos, PA, PS* **[2002] 2 SCC 141 and** *High Court Employees Welfare Association, Calcutta* **v.** *State of West Bengal,* **(2003) AIR SCW 6338, relied on.**

D **2.1. In a matter of this nature the appellant, with a view to showing that its action is reasonable, was bound to perform its duties within a reasonable time. Resaonableness being the core of Article 14 of the Constitution of India would imply that the constitutional duties be performed within a reasonable time so as to satisfy the test of reasonableness adumbrated under Article 14 of the Constitution of India.**

E **[60-B]**

2.2. It is not always helpful to raise the question of financial implications *vis-a-vis* the effect of grant of a particular scale of pay to the officers of the High Court on the ground that the same would have adverse effect on the other employees of the State. Scale of pay is fixed on certain

F **norms; one of them being the quantum of work undertaken by the officers concerned as well as the extent of efficiency, integrity, etc. required to be maintained by the holder of such office. [60-C-D]**

All India Judges Association **v.** *Union of India,* **[1992] 1 SCC 119, relied on.**

G

3.1. The matter as regards the fixation of scale of pay of the officers working in the different High Courts must either be examined by an expert body like the Pay Commission or any other body but in the absence of constitution of any such expert body the High Court itself is to undertake

H **the task keeping in view the special Constitutional provisions existing in this behalf in terms of Article 229 of the Constitution of India. [60-E-F]**

3.2. There cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. In this case the appellants even addressed itself on the recommendations made by the High Court. They could not have treated the matter lightly. It is unfortunate that the recommendations made by a high functionary like the Chief Justice were not promptly attended to and the private respondents had to file a writ petition. The question as regards fixation of a revision of the scale of pay of the Officers of the High Court being within the exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons. [60-H; 61-A-B]

S.B. Mathur **v.** *Hon'ble the Chief Justice of Delhi High Court,* **AIR (1988) SC 2073;** *Comptroller and Auditor General* **v.** *K.S. Jaganathan,* **[1986] SCC 679;** *Ajit Singh* **v.** *State of Punjab,* **[1999] 7 SCC 209;** *Superintending Engineer, Public Health, U.T. Chandigarh* **v.** *Kuldeep Singh,* **[1997] 9 SCC 199;** *State of A.P.* **v.** *T.Gopalakrishna Murthi,* **[1976] 1 SCR 1008 and** *Supreme Court Employees Welfare Association* **v.** *Union of India,* **[1989] 4 SCC 187, relied on.**

P.N. Chopra **v.** *Union of India,* **ILR (1981) II Del, 102, approved.**

4.1. No standard can be laid down exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not. In other words, exercise of its discretion by the Court will also depend upon the law, which governs the field, namely, whether it is a fundamental law or an ordinary law. [55-E]

4.2. The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefor. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the chief Justice of the High Court and the State are not *ad idem*, the matter should be discussed and an effort should be made to arrive at a consenus. [61-C-D]

Sterling Computers Ltd. **v.** *M/s. M&N Publications Ltd.:,* **[1993] 1 SCC 445;** *Kumari Shrilekha Vidyarthi* **v.** *State of U.P.,* **[1991] 1 SCC 212;** *Life Insurance Corporation* **v.** *Escorts,* **AIR (1986) SC 1370;** *F.C.I.* **v.** *Jagannath*

A *Dutta*, AIR (1993) SC 1494; *State of Gujarat* v. *Meghraj Peth Raj Shah Charitable Trust*, [1994] 3 SCC 552; *Assistant Excise Commissioner* v. *Issac Peter*, [1994] 4 SCC 104; *National Highway Authority of India* v. *M/s. Ganga Enterprises*, (2003) 7 Scale 171; *Tata Cellular* v. *Union of India*, [1994] 6 SCC 651; *Monarch Infrastructure (P) Ltd.* v. *Commissioner, Ulhasanagar Municipal Corporation*, [2000] 5 SCC 287; *W.B. State Electricity Board* v. B *Patel Engineering Co. Ltd.*, [2001] 2 SCC 451; *L.I.C.* v. *Consumer Education and Research Centre*, AIR (1995) SC 1811; *Comptroller and Auditor General of India* v. *K.S. Jagannathan*, [1986] 2 SCC 679; *Dwarkanath* v. *ITO*, [1965] 3 SCR 536; *Hochtief Gammon* v. *State of Orissa*, [1976] 1 SCR 667; *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*, [1997] 7 SCC 622 and C *State of West Bengal* v. *Nuruddin Mallic*, [1998] 8 SCC 143, referred to.

Mayor of Rochester v. *Regina*, (1858) EB & E 1024; *The King* v. *Revising Barrister for the Borough of Hanley*, (1912) 3 KB 518; *Padfield* v. *Minister of Agriculture, Fisheries and Food*, (1968) AC 997; *Council of Civil Service Unions* v. *Minister for the Civil Services*, (1985) AC 374, *R.V. North* D *and East Devon Health Authority* (2000) 2 WLR 622 and *R.* v. *Secretary of State for the Home Department*, (1995) 2 WLR 1, referred to.

Wade: *Administrative Law*, **6th Edn. p. 401, 8th Edn. p. 609 Grahame Aldous and John Alder; Application for Judicial Review, Law and Practice"**

E

Halsbury's *Laws of England*, **4th Edn. Volume 1, para 80; Dawn Oliver: Constitutional Reforms in the U.K. p. 105, referred to.**

5. Only in exceptional cases, the High Court may interfere on the judicial side, but ordinarily it would not do so. Even if an occasion arises F **for the High Court to interfere on its judicial side, the jurisdiction of the High Court should be exercised with care and circumspection. [61-E]**

6. As the matter has been pending for a long time and keeping in view the fact and the situation obtaining herein, namely, the officers G **holding the post of Private Secretaries to the Judges have been given a particular scale of pay, this is not a fit case wherein this Court should exercise its discretionary jurisdiction. [61-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2887 of 2001.

H From the Judgment and Order dated 21.7.2000 of the Delhi High Court

in W.P. No. 1131 of 1993. A

L.N. Rao, Additional Solicitor General, Hemant Sharma, Rajeev Sharma, B.K. Prasad and P. Parmeswaran for the Appellants.

S.R. Bhat, Ashok K. Gupta and Farrukh Rasheed for the Respondents.

B

The Judgment of the Court was delivered by

S.B. SINHA, J. INTRODUCTION:

How far and to what extent a writ of or in the nature of mandamus should issue directing the Union of India to pay salary to the Officers of the C High Court in a particular scale of pay is the question involved in this appeal which arises out of a judgment and order dated 21.07.2000 passed by the High Court of Delhi in Writ Petition No. 1131 of 1993.

BACKGROUND FACTS:

D

The respondents are Assistant Registrars of the Delhi High Court. Their scale of pay was fixed at Rs. 3000-4500 and recommendations therefor were made by the Chief Justice of the High Court of Delhi in terms of his letter dated 15.10.1991 to the effect that the scales of pay be revised with effect from 1.1.1986. Before making the said recommendations, the Chief Justice of the High Court constituted a committee which had gone into the said E matter. The Committee submitted a report which was accepted by the Chief Justice. While fixing the scales of pay of the Assistant Registrars, it was noticed that the post of Assistant Registrar is a promotional post for the Superintendents, Court Masters and Private Secretaries who had been placed in the Scale of pay of Rs. 2000-3500. As despite such recommendations no F heed was paid thereto by the appellant, the writ petition was filed.

The appellants herein *inter alia* contended before the High Court that the Assistant Registrars should not have been placed in a higher scale of pay of Rs. 3000-4500 as the Fourth Pay Commission, had recommended the scale of pay of Superintendent, Court Master and Private Secretary as also the G Assistant Registrar at Rs. 2000-3500 and thus it must have given a go-bye to the old relativities and treated both categories of the post as equal or merged. The appellant also highlighted the repercussions thereof on the officers of the equivalent rank of Central Government who might also agitate for higher scale of pay.

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A JUDGMENT OF THE HIGH COURT:

The High Court having regard to the decisions of this Court in *S.B. Mathur and Ors.* v. *Hon'ble the Chief Justice of Delhi High Court and Ors.*, AIR (1988) SC 2073 wherein Kania, J. held that the three categories of posts, namely, Private Secretary, Court Master and Superintendent are of equal B status and they are interchangeable and further having regard to the fact that the post of Assistant Registrar was still a promotional post rejected the contention of the appellant that such posts must be held to have merged. It was observed:

> C "Another stand taken by respondents Nos. 1 and 2 in their reply affidavit that in case same scales of pay have been prescribed by Pay Commission for two posts, one promotional to another, the old relativities are no more valid and new relativities have been established by the Commission and the two posts are treated equal/merged. In other words after 1.1.1986, no promotion can be made from the feeder D cadre to the promotion cadre since the post of Private Secretary, Court Master, Superintendent and those of Assistant Registrar will be deemed to have merged. This contention is also not tenable since as per the rules, promotion is made and is being made to the post of Assistant Registrar from only three feeder cadres of Superintendent, Court Master and Private Secretary and from no other source. These E posts cannot be said to have deemed merged as alleged."

The High Court opined:

> "The Committee submitted its report recommending higher pay scales. Hon'ble the Chief Justice agreed with the recommendations made by F the Committee. The reasons which prevailed with the Chief Justice in agreeing with the recommendations of the Committee may be stated as follows:-"
>
> (i) FR 22-C lays down that an officer performing duties and functions involving higher responsibility should draw higher pay. Admittedly, G the post of Assistant Registrar carries duties and functions of a higher responsibility than those attached to the posts of Private Secretaries, Court Masters and Superintendents.
>
> (ii) The Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 lay down the mode of appointment to the H

post of Deputy Registrar and Joint Registrar. These posts carry the pay scales of Rs. 3700-5000 respectively. These officers besides administrative work, also hold Court in accordance with the powers delegated to them under the High Court Rules and Orders, as also under Delhi High Court (Original Side) Rules. The responsibilities attached to these posts are higher than those of the Assistant Registrar.

(iii) The Registrar who is a senior Officer of Higher Judicial Service is the Head of the Office of this Court. Apart from administrative functions, the incumbent to the post of Registrar has also to discharge judicial functions and hold Court in exercise of powers under the High Court Rules and Orders and Original Side Rules of this Court. The present pay scale of the post of Registrar is Rs. 5900-6700.

(iv) If the imbalance as stated above, is allowed to continue, it will, besides causing hardship, lead to frustration and heart-burning amongst the officers of this Court which would be detrimental to the smooth and efficient functioning of the Registry. Thus, in public interest, it is essential that the imbalance created in the pay structure of the officers of this Court be removed without undue delay."

It was further observed that the repercussion of a higher scale of pay upon the officers of the equivalent rank of the Central Government cannot be a ground to deny the legitimate scale of pay to the Assistant Registrar stating:

"The respondents have not refuted and cannot legitimately refute the fact that the post of Assistant Registrar is a higher status post attaching to it higher responsibility and moreover it is a promotional post from the post of Superintendent, Court Master and Private Secretary. Similar is the position with respect to the post of Deputy Registrar and Joint Registrar *vis-a-vis* the post of Assistant Registrar."

SUBMISSIONS:

Mr. L. Nageshwar Rao, learned Additional Solicitor General, appearing for the Union of India, inter alia, submitted that the Division Bench of the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that no writ of or in the nature of mandamus directing the Central Government and the Respondents herein to grant the pay scale of Rs. 2000-3500 w.e.f. 1.1.1986 in favour of the respondents can be issued. The learned counsel would urge that having regard to the provisions contained in Clause 2 of Article 229 of the Constitution of

A India, the Chief Justice of the High Court may in his wisdom fix the pay scale but therefor approval of the President of India was required to be obtained.

Mr. Bhat, learned counsel, appearing on behalf of the private respondents, on the other hand, supported the order of the High Court.

B

Mr. Bhat would submit that the need for pay revision arose in the following factual background :

(i) Superintendents, Court Masters and Private Secretaries constitute feeder channel for promotion to the post of Assistant Registrar. These three posts are interchangeable. It was held so specifically by this Hon'ble Court in a decision in *SB Mathur* v. *Hon'ble the Chief Justice of Delhi High Court and Ors.*, AIR (1988) SC 2073.

C

(ii) After the implementation of the IIIrd Pay Commission recommendations, Private Secretaries and Court Masters of the High Court of Delhi filed Writ Petition seeking parity of pay with that of Private Secretary to the Chief Secretary, Delhi Administration. The same was allowed by the High Court of Delhi in a judgment in *P.N. Chopra* v. *Union of India,* [ILR (1981) II Delhi 102].

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(iii) Sangram Singh, representing the Superintendents also filed a writ petition before the High Court claiming parity of pay scales with Private Secretaries and Court Master on the strength of pre-existing parity of status with the said two categories of posts. The writ petition was allowed. The Union of India challenged the decision by way of SLP (C) No.8934 of 1982, which was however dismissed by this Hon'ble Court on 3.1.1982.

F

(iv) A writ petition being CWP No.2901 of 1984 (*Trl. Narayanan and Ors.* v. *Union of India and Ors.*) came to be filed by Assistant Registrars, Deputy Registrars and Joint Registrars of the High Court of Delhi seeking enhancement of pay scales. A Division Bench of the High Court on 18.12.1985 allowed the same.

G

(v) After the Fourth Pay Commission Private Secretaries, Court Masters and Superintendents were drawing pay in the scale of Rs.2000-3500.

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(vi) Shri A.K. Gulati, a Private Secretary filed writ petition before the High Court of Delhi (CWP No.289 of 1991) contending *inter alia* that Private Secretaries to Secretaries, Government of India were drawing pay in the scale of Rs. 3000-4500 whereas the pay-scale of Private Secretaries in the High Court was kept at Rs. 2000-3500. The claim was that the pre-existing and unbroken parity, crystallized by judgment that had become final, was broken. The writ petition was allowed on 7.5.1991 granting the pay scales at par with the Private Secretaries in the Government of India. The special leave petition filed by the Union of India (SLP (C) No.13229/1991 was dismissed by this Hon'ble Court on 26.8.1991. The matter, thus, attained finality and pay scales of Private Secretaries in the High Court and Private Secretaries in the Government of India were brought on par.

(vii) In the wake of Gulati's judgment, Court Masters and Superintendents also approached the High Court of Delhi by way of a writ petition (CWP No. 2756 of 1991; *Hari Sharma and Ors.* v. *Union of India*) which was allowed on 14.11.1991,. following the reasoning in *Mathur's* case (supra). Accordingly, their pay fixation and payment of arrears were directed by this Hon'ble Court. The judgment was implemented. Here too, the matter attained finality, and the Government of India did not raise any objection.

(viii) As a result of the implementation of the said judgment, Court Master, Superintendents and Private Secretaries in the High Court of Delhi started drawing pay on the same scale of pay as prescribed for Assistant Registrars (Rs. 3000-4500). As already stated the post of Assistant Registrar is a promotional post for the three feeder cadres mentioned.

Only thereafter representations were made by the Assistant Registrar, pursuant whereto a Committee of three Judges, as noticed hereinbefore, was constituted.

ARTICLE 229 OF THE CONSTITUTION:

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

A subject to : (1) the provision of any law made by the legislature of the State; (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, B 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 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 C Article 229 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.

D MANDAMUS VIS-A-VIS ARTICLE 229(2) OF THE CONSTITUTION:

Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

E A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required F to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.

In *Comptroller and Auditor General* v. *K.S. Jaganathan,* [1986] 2 SCC 679 it was held that, "Article 226 is designedly couched in wide language in G order not to confine the power conferred by it on the High Courts only to the power to issue prerogative writs as understood in England. The High Courts exercising jurisdiction under Article 226 can issue directions, orders or writs so as to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the particular and complicated needs of this country.

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It was, however, held in *Ajit Singh and Ors. (II)* v. *State of Punjab and Ors.*, [1999] 7 SCC 209 in a different context that the view taken in the above decision and in *Superintending Engineer, Public Health, U.T. Chandigarh and Ors.* v. *Kuldeep Singh and Ors.*, [1997] 9 SCC 199 cannot be said to be correct as Article 16(4) confers a discretion and does not confer any constitutional duty or obligation and therefore the view taken in the aforementioned cases that a writ of mandamus can be issued in such cases, cannot be said to be correct.

In *State of A.P. and Anr.* v. *T. Gopalakrishna Murthi and Ors.*, [1976] 1 SCR 1008, a three Judge Bench of this Court observed :

> "One should expect in the fitness of things and in view of the spirit of Article 229 that ordinarily and generally the approval should be accorded. But surely it is wrong to say that the approval is a mere formality and in no case it is open to the Government to refuse to accord their approval. On the facts and in the circumstances of this case and in the background of the conditions which are prevalent in other States Government could have been well-advised to accord approval to the suggestion of the Chief Justice, as the suggestion was nothing more than to equate the pay scales of the High Court staff with those of the equivalent posts in the Secretariat. That merely because the Government is not right in accepting the Chief Justice's view and refusing to accord the approval is no ground for holding that by a writ of mandamus the Government may be directed to accord the approval."

Despite the said finding, it was observed :

> "We, however, trust and hope that the Government will give their second thought to the matter and see whether it is possible in the State of Andhra Pradesh to obliterate the distinction in the matter of pay scales etc. between the High Court and the Secretariat Staff. There does not seem to be any good and justifiable reason for maintaining the distinction."

In *Supreme Court Employees Welfare Association* v. *Union of India and Anr.*, [1989] 4 SCC 187 this Court, while considering the provisions of Article 146(2) of the Constitution of India which is in *pari materia* with Article 229 of the Constitution of India, held :

A "The legislative function of Parliament has been delegated to the Chief Justice of India by Article 146(2). It is not disputed that the function of the Chief Justice of India or the Judge or the officers of the Court authorised by him in framing rules laying down the conditions of service, is legislative in nature. The conditions of service that may be prescribed by the rules framed by the Chief Justice of B India under Article 146(2) will also necessarily include salary, allowances, leave and pensions of the officers and servants of the Supreme Court. The proviso to Article 146(2) puts a restriction on the power of the Chief Justice of India by providing that the rules made under Article 146(2) shall, so far as they relate to salaries, C allowances, leave or pensions, require the approval of the President of India. *Prima facie*, therefore, the conditions of service of the employees of the Supreme Court that are laid down by the Chief Justice of India by framing the rules will be final and conclusive, except that with regard to salaries, allowances, leave or pensions the approval of the President of India is required. In other words, if the D President of India does not approve of the salaries, allowances, leave or pensions, it will not have any effect. The reason for requiring the approval of the President of India regarding salaries, allowances, leave or pensions is the involvement of the financial liability of the government."

E It was further observed :

"It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that F when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the G President of India and the Chief Justice of India."

JUDICIAL REVIEW:

The scope of judicial review in the context of grant of contract has been the subject matter of a decision of this Court in *Sterling Computers* H *Limited* v. *M/s. M&N Publications Limited and Ors.*, [1993] 1 SCC 445

wherein this Court noticed the commentary of Prof. Wade in his well-known treatise 'Administrative Law' in the following terms:

> "It is true that by way of judicial review the Court is not expected to act as a court of appeal while examining an administrative decision and to record a finding whether such decision could have been taken otherwise in the facts and circumstances of the case. In the book Administrative Law, Prof. Wade has said:
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> "The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended. The decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. With the question whether a particular policy is wise or foolish the court is not concerned it can only interfere if to pursue it is beyond the powers of the authority."
>
> But in the same book Prof. Wade has also said:
>
> "The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependents, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest.
>
> There are many cases in which a public authority has been held to have acted from improper motives or upon irrelevant considerations, or to have failed to take account of relevant considerations, so that its

A action is *ultra vires* and void."

The Court further noticed:

"While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily
B as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to the case of Chief Constable of the *North Wales Police* v. *Evans* where it was said that: (p. 144 a)

"The purpose of judicial review is to ensure that the individual receives
C fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court."

In *Kumari Shrilekha Vidyarthi and Ors.* v. *State of U.P. and Ors.*
D [1991] 1 SCC 212, however, the Court sought to draw a distinction between the powers of public authorities *vis-a-vis* the private authorities referring to Wade's Administrative Law, 6th Edition, page 401 to the following effect and stating:

"For the same reasons there should in principle be no such thing as
E unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of
F abuse, and that legal limits to every power are to be found somewhere."

The power of judicial review of High Court as also this Court is now well-defined in a series of decisions of this Court. It is trite that the court will not exercise its jurisdiction to entertain a writ application wherein public law element is not involved. (See *Life Insurance Corporation* v. *Escorts,* AIR
G (1986) SC 1370, *F.C.I.* v. *Jagannath Dutta,* AIR (1993) SC 1494, *State of Gujarat* v. *Meghraj Peth Raj Shah Charitable Trust,* [1994] 3 SCC 552, *Assistant Excise Commissioner* v. *Issac Peter,* [1994] 4 SCC 104, *National Highway Authority of India* v. *M/s. Ganga Enterprises and Anr.,* [2003] 7 SCALE 171)

H In any event, the modern trend also points to judicial restraint in

administration action as has been held in *Tata Cellular* v. *Union of India,* [1994] 6 SCC 651, *Monarch Infrastructure (P) Ltd.* v. *Commissioner, Ulhasnagar Municipal Corporation and Ors.,* [2000] 5 SCC 287, *W.B. State Electricity Board* v. *Patel Engineering Co. Ltd. and Ors.,* [2001] 2 SCC 451 and *L.I.C.* v. *Consumer Education and Research Centre,* AIR (1995) SC 1811.

The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the actions of the authority need to fall in the realm of public law—be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question is required to be determined in each case having the aforementioned principle in mind. However, it may not be possible to generalize the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions.

The question as to whether this Court, would permit judicial review and, if any, to what extent will vary from case to case and no broad principles can be laid down therefor.

We may usefully notice that Grahame Aldous and John Alder in "Applications for Judicial Review, Law and Practice" stated the law thus:

> "There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the royal prerogative are inherently unreviewable but since the speeches of the House of Lords in *Council of Civil Service Unions* v. *Minister* for the Civil Service this is doubtful. Lords Diplock, Scaman and Roskili appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for

A example, foreign affairs, but some are reviewable in principle, including where national security is not involved. Another non-justiciable power is the Attorney General's preprogative to decide whether to institute legal proceedings on behalf of the public interest."

However, we may notice that in the *Comptroller and Auditor General* B *of India and Anr.* v. *K.S. Jagannathan and Anr.*, [1986] 2 SCC 679 : 1987 SC 537 this Court upon considering a large number of decisions including *Dwarkanath* v. *Income-Tax Officer, Special Circle, Kanpur.*, [1965] 3 SCR 536, *Hochtief Gammon* v. *State of Orissa,* [1976] 1 SCR 667, *Mayor of Rochester* v. *Regina,* (1858) EB & E 1024, *The King* v. *Revising Barrister* C for the Borough of Hanley (1912) 3 KB 518, *Padfield* v. *Minister of Agriculture, Fisheries and Food,* (1968) AC 997 and Halsbury's Laws of England, Fourth Edition, Volume I, paragraph 89 observed:

"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of D mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion *mala fide* or on irrelevant considerations or by ignoring the relevant considerations and materials E or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. *In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or* F *pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully* G *exercised its discretion."* [Emphasis supplied]

In *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat,* [1997] 7 SCC 622] this Court held:

"Mandamus which is a discretionary remedy under Article 226 of the H Constitution is requested to be issued, inter alia, to compel performance

of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this is not conclusive as "shall" and "must" have, sometimes, been interpreted as "may". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the "duty" has been set out. Even if the "duty" is not set out clearly and specifically in the statute, it may be implied as correlative to a "right".

In the performance of this duty, if the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion."

Prof. Wade, also, in his well-known treatise 'Administrative Law', 8th Edition, at page 609 makes a distinction between a discretionary power and obligatory duties in the following terms:

"Obligatory duties must be distinguished from discretionary powers. With the latter mandamus has nothing to do: it will not, for example, issue to compel a minister to promote legislation. Statutory duties are by no means always imposed by mandatory language with words such as 'shall' or 'must'. Sometimes they will be the implied counterparts of rights, as where a person 'may appeal' to a tribunal and the tribunal has a correlative duty to hear and determine the appeal. Sometimes also language which is apparently merely permissive is construed as imposing a duty, as where 'may' is interpreted to mean 'shall'. Even though no compulsory words are used, the scheme of the Act may imply a duty.

Having developed from a piece of purely administrative machinery, mandamus was never subject to the misguided notion which at one time afflicted its less fortunate relative certiorari, that it could apply only to 'judicial' functions. Administrative or ministerial duties of every description could be enforced by mandamus. It was, indeed, sometimes said that this remedy did not apply to judicial functions, meaning that where a public authority was given power to determine some matters, mandamus would not lie to compel it to reach some

A particular decision. The law as to this is explained below under 'Duty to exercise jurisdiction'.

> The fact that the statutory duty is directory as opposed to mandatory, so that default will not invalidate some other action or decision, is no reason for not enforcing it by mandamus."

B

The broad principles of judicial review as has been stated in the speech of *Lord Diplock in Council of Civil Service Unions* v. *Minister for the Civil Service,* (1985) A.C 374 i.e., illegality, irrationality and procedural impropriety, have greatly been overtaken by other developments as for example, generally not only in relation to proportionality and human rights but also in the direction C of principles of legal certainty, notably legitimate expectations.

In *R.* v. *North and East Devon Health Authority, ex parte Coughlan,* [2000] 2 WLR 622, CA the Court of Appeals held that a health authority which promised a small number of residents in a care home for the severely D disabled that it would be their home for life was not entitled to frustrate the legitimate expectation they had generated by closing the home as this would be an abuse of power.

Judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is E considered to be the basic feature of the Constitution. The Court in exercise of its power of judicial review would jealously guard the human rights, fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds which could be expended on building F hospitals, roads and the like, or overseas aid, or compensating victims of crime (See for example, *R.* v. *Secretary of State for the Home Department, ex parte Fire Brigades Union,* [1995] 2 WLR 1.

The Court, however, exercises its power of restraint in relation to interference of policy. In his recent book 'Constitutional Reform in the UK' G at page 105, Dawn Oliver commented thus:

> "However, this concept of democracy as rights—based with limited governmental power, and in particular of the role of the courts in a democracy, carries high risks for the judges and for the public. Courts may interfere inadvisedly in public administration. The case of *Bromley* H *London Borough Council* v. *Greater London Council,* (1983) 1 AC

768, HL is a classic example. The House of Lords quashed the GLC cheap fares policy as being based on a misreading of the statutory provisions, but were accused of themselves misunderstanding transport policy in so doing. The courts are not experts in policy and public administration—hence Jowell's point that the courts should not step beyond their institutional capacity (Jowell, 2000). Acceptance of this approach is reflected in the judgments of Laws LJ in *International Transport Roth GmbH* v. *Secretary of State for the Home Department,* (2002) EWCA Civ 158, (2002) 3 WLR 344 and of *Lord Nimmo Smith in Adams* v. *Lord Advocate* (Court of Session, Times, 8 August 2002) in which a distinction was drawn between areas where the subject matter lies within the expertise of the courts (for instance, criminal justice, including sentencing and detention of individuals) and those which were more appropriate for decision by democratically elected and accountable bodies. If the courts step outside the area of their institutional competence, government may react by getting Parliament to legislate to oust the jurisdiction of the courts altogether. Such a step would undermine the rule of law. Government and public opinion may come to question the legitimacy of the judges exercising judicial review against Ministers and thus undermine the authority of the courts and the rule of law."

It is not possible to lay down the standard exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not. In other words, exercise of its discretion by the Court will also depend upon the law which governs the field, namely, whether it is a fundamental law or an ordinary law.

It is, however, trite that ordinarily the Court will not exercise the power of the statutory authorities. It will at the first instance allow the statutory authorities to perform their own functions and would not usher the said jurisdiction itself.

In *State of West Bengal and Ors.* v. *Nuruddin Mallic and Ors.,* [1998] 8 SCC 143 this Court declined a suggestion that the Court itself examined and decided the question in issue stating:

"28....Instead of sending any reply, the management filed the writ petition in the High Court, leading to passing of the impugned orders. Thus, till this date the appellant-authorities have not yet exercised their discretion. Submission for the respondents was that this Court

A itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. We have no hesitation to decline such a suggestion. The courts can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter."

B

It was further observed :

"30....As we have held above, without the statutory authority applying its mind for their approval and the impugned order not adjudicating the issue in question how could the impugned orders be sustained"

C

JURISDICTION OF THE CHIEF JUSTICE

The Chief Justice of the High Court in this case was not bound to accept that the posts of Assistant Registrar and Court Masters should be merged. The question as regard merger of the two posts was within the exclusive domain of the Chief Justice. Whether the post of Assistant Registrar should be a promotional post or not, thus, could not fall for decision of the Central Government.

D

In *Tarsem Singh and Anr.* v. *State of Punjab and Ors.*, [1994] 5 SCC 392, this Court held :

E

"Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher possession, grade or honour. Opting to come to a lower pay scale or lower post cannot be considered a promotion, it is rather a demotion. A Superintendent in the Labour Department who is holding a higher pay scale and higher status cannot seek promotion to the post of Labour Inspector which post is lower in grade and status. Since a ministerial employee-under rule 8(1)(a)(i)-can be appointed as Labour Inspector only by the process of promotion, a Superintendent who is in a higher pay scale, cannot seek promotion to the post of Labour Inspector and as such is not eligible for the same under rule 8(1)(a)(i). Even otherwise it is difficult to comprehend why a person drawing a higher pay scale and enjoying a better status as a civil servant should hanker for a post which is carrying lesser pay and is comparatively of lower status."

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If the nature of duties performed by the Assistant Registrars had been more onerous than the Court Masters, a higher scale of pay was required to be fixed. The Appellant, therefore, took a stand before the High Court which was patently unsustainable.

Furthermore, merger of the cadres must be made in terms of the statutory rules. For the said purpose, an order is required to be passed. Conjectures or surmises in such a situation had no role to play.

In view of the aforementioned decision, the Chief Justice was entitled to hold the opinion that hierarchy of the posts was required to be maintained in respect whereof the necessary scales of pay could be directed to be revised.

In *State of U.P.* v. *C.M. Agarwal,* [1997] 5 SCC 1, a Constitution Bench of this Court categorically held that the Chief Justice of a High Court has the power to create posts.

In *High Court of Judicature for Rajasthan* v. *Ramesh Chand Paliwal and Anr.,* [1998] 3 SCC 72, a Division bench of this Court inter alia held that the Chief Justice has the requisite power to revise the scales of pay subject of course to the approval granted in this behalf by the Governor. This Court in no certain terms observed :

> "We again reiterate the hope and feel that once the Chief Justice, in the interest of High Court administration, has taken a progressive step specially to ameliorate the service conditions of the officers and staff working under him, the State government would hardly raise any objection to the sanction of creation of posts or fixation of salary payable for that post or the recommendation for revision of scale of pay if the scale of pay of the equivalent post in the Government has been revised."

In *State of Maharashtra* v. *Association of Court Stenos. PA, PS and Anr.,* [2002] 2 SCC 141, this Court interpreted the provisions Article 229 and proviso appended thereto in the following terms :

> "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

A 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, B 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, C 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 D 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 *Supreme Court Employees' Welfare Asson.* v. *Union of India* this E 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 recommendations of the Pay Commission and F 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. *Needless to mention, notwithstanding the* G *constitutional provision that the rules framed by the Chief Justice of a High Court, so far as they relate 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* H *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."

[Emphasis supplied]

In *High Court Employees Welfare Association, Calcutta and Ors.* v. *State of West Bengal and Ors.*, (2003) AIR SCW 6338 a Bench of this Court observed:

"The Government will have to bear in mind the special nature of the work done in the High Court of which the Chief Justice and his colleagues alone could really appreciate. If the Government does not desire to meet the needs of the High Court, the administration of the High Court will face severe crisis."

THE APPELLANT'S DUTY:

In this case, the appellants admittedly have failed and/or neglected to perform a constitutional duty.

In *P.N. Chopra* (Supra) Rajindar Sachar, J. (as the learned Chief Justice then was) held:

"As a result we are quite satisfied that the refusal to equate the Private Secretaries and Readers of this Court with the Private Secretary to the Chief Secretary in the matter of pay scale is so arbitrary as to amount to an act of discrimination. We would, therefore, in the circumstances quash Annexures 'G' and 'H' and the latest decision communicated on 7.8.1979 (R-2 filed in reply by the Delhi Administration). A mandamus will, therefore, issue directing the respondents 1 & 4 to equate the posts of Private Secretaries and the Readers of Judges of this court to that of a Private Secretary to the Chief Secretary, Delhi Administration. This will take effect from 1.1.1973 in terms of the decision already taken by the Government of India, as mentioned in their memoranda of 8.8.1975 and 22.8.1975 (Annexures 'G' & 'H'— to the petition."

Decisions of this Court, as discussed hereinbefore, in no unmistakable terms suggest that it is the primary duty of the Union of India or the concerned State normally to accept the suggestion made by a holder of a high office like

A a Chief Justice of a High Court and differ with his recommendations only in exceptional cases. The reason for differing with the opinion of the holder of such high office must be cogent and sufficient. Even in case of such difference of opinion, the authorities must discuss amongst themselves and try to iron out the differences. The appellant unfortunately did not perform its own duties.

B

In a matter of this nature the Appellant, with a view to show that its action is reasonable, was bound to perform its duties within a reasonable time. Reasonableness being the core of Article 14 of the Constitution of India would imply that the constitutional duties be performed within a reasonable time so as to satisfy the test of reasonableness adumbrated under Article 14 of the Constitution of India.

C

It has to be further borne in mind that it is not always helpful to raise the question of financial implications *vis-a-vis* the effect of grant of a particular scale of pay to the officers of the High Court on the ground that the same would have adverse effect on the other employees of the State. Scale of pay is fixed on certain norms; one of them being the quantum of work undertaken by the officers concerned as well as the extent of efficiency, integrity, etc. required to be maintained by the holder of such office. This aspect of the matter has been highlighted by this Court in the case of the judicial officers in *All India Judges' Association* v. *Union of India and Ors.*, [1992] 1 SCC 119 and [2002] 4 SCC 247 as well as the report of the Shetty Commission.

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CONCLUSION

The matter as regard fixation of scale of pay of the officers working in the different High Courts must either be examined by an expert body like Pay Commission or any other body but in absence of constitution of any such expert body the High Court itself is to undertake the task keeping in view the special constitutional provisions existing in this behalf in terms of Article 229 of the Constitution of India.

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We agree with the submission of the Learned Addl. Solicitor General to the effect that the decision of the High Court had been rendered having its origin in A.K. Gulati (CW.289/91) which had a spiraling effect particularly in the case of Assistant Registrars. That was more a reason why a competent authority of the appellant should have taken immediate steps in holding a meeting with the Chief Justice or an authorized officer of the High Court.

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Having regard to the aforementioned authoritative pronouncements of this Court there cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. In this case the appellants even addressed itself on the recommendations made by the High Court. They could not have treated the matter lightly. It is unfortunate that the recommendations made by a high functionary like the Chief Justice were not promptly attended to and the private respondents had to file a writ petition. The question as regard fixation of a revision of the scale of pay of the High Court being within exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons.

The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/ State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefor. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the Chief Justice of the High Court and the State are not ad idem, the matter should be discussed and an effort should be made to arrive at a consensus.

We are further of the opinion that only in exceptional cases the High Court may interfere on the judicial side, but ordinarily it would not do so. Even if an occasion arises for the High Court to interfere on its judicial side, the jurisdiction of the High Court should be exercised with care and circumspection.

As the matter has been pending for a long time and keeping in view the fact and the situation obtaining herein, namely, the officers holding the post of Private Secretaries to the Judges have been given a particular scale of pay, we are of the opinion that it is not a fit case wherein this Court should exercise its discretionary jurisdiction.

This appeal is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

V.S.S. Appeal dismissed.