A.F.R.

RESERVED

Court No.39

Case :- SPECIAL APPEAL DEFECTIVE No. - 378 of 2016

Appellant :- State Of U.P. And Another
Respondent :- Class IV Employees Association, High Court And 2 Others
Counsel for Appellant :- Sri Yogendra Kumar Srivastava, Sri Vijay Bahadur Singh, A.G.
Counsel for Respondent :- Sri Manish Goyal, Sri Ashish Mishra, Sri Namit Srivastava

Hon'ble Dilip Gupta, J.
Hon'ble Abhai Kumar, J.

(Delivered by Hon. Dilip Gupta, J.)

This Special Appeal has been filed under Chapter VIII, Rule 5 of the Allahabad High Court Rules, 1952 to assail the judgment dated 2 February 2016 of a learned Judge of this Court by which **Writ-A No.61041 of 2012** filed by Class IV Employees' Association of the Allahabad High Court[1] for quashing the order dated 26 July 2012 passed by the State Government, has been allowed. The State Government has, by this order, declined to grant approval to The Allahabad High Court Officers and Staff (Conditions of Service and Conduct) (Amendment) Rules, 2005[2] framed by the Chief Justice of the High Court under Article 229(2) of the Constitution for enhancing the pay-scales of Class IV employees of the High Court to that of their counterparts in the Delhi High Court. The learned Judge has set aside the order dated 26 July 2012 and issued a direction to the State Government to take appropriate

1 Class IV Employees' Association
2 the Amendment Rules

steps to approve the amendments within six weeks. The learned Judge also directed that Class IV employees of the High Court would be entitled to higher pay-scales from the date the amendments were incorporated in the Rules and the arrears of difference of salary would be paid to them within six months from the date the Rules are approved.

The Class IV Employees' Association had earlier filed **Writ-A No.15211 of 1997** for a direction upon the State to grant pay-scales of Rs.975-1660 and Rs.1000-1750 in place of Rs.750-940 and Rs.775-1025 respectively to Class IV employees of the High Court with effect from 1 January 1986. This petition was allowed by a learned Judge of this Court on 6 February 1998 and a direction was issued that Class IV employees would be entitled to the pay-scales claimed by them with effect from 1 July 1994. The State preferred **Special Appeal No.200 of 1998**. It was allowed by judgment dated 5 November 2003. The order passed by the learned Judge was set aside but it was left open to the Chief Justice of the High Court to take a decision regarding grant of higher pay-scales. It was further observed that in case a decision is taken by the Chief Justice, approval should be granted unless a good reason existed for not granting the approval. However, if approval was not to be granted, then in that case there should be exchange of thoughts between the Governor of the State and the Chief Justice of the High Court. The order passed by the Division Bench in the Special Appeal was challenged by Class IV Employees' Association before the Supreme Court in **Civil Appeal No.6878 of 2004**. This Civil Appeal was disposed of on 15 October 2004

in terms of the judgment rendered by the Supreme Court in **State of U.P. Vs. Section Officer Brotherhood & Anr.**[3]. By the said judgment, the Supreme Court set aside the judgment rendered by the High Court granting higher pay-scales to Section Officers, Private Secretaries, Bench Secretaries and Assistant Registrars working in the High Court. The Supreme Court held that the High Court was not justified in issuing a direction to the State Government for granting higher pay-scales since the Chief Justice had not framed any rule for granting higher pay-scales. The Supreme Court, however, made it clear that it would be open to the Chief Justice to constitute a Committee consisting of Judges of the Court for the said purpose and in case the Committee makes a recommendation for enhancement of the scales of pay, the same would be considered by the State Government in its proper perspective and in the light of the observations made in the judgment.

The Chief Justice of the High Court, by order dated 28 November 2004, constituted a Committee of four Judges of the Court. The recommendations made by the said Committee on 23 December 2004 for granting higher pay-scales were approved by the Chief Justice on 24 December 2004. The Registrar General of the High Court sent a letter dated 26 December 2004 to the State Government to take necessary steps. The Rules were also amended in accordance with the recommendations. The Schedule to the Amendment Rules provides that Class IV employees holding promotional and technical posts will be placed in the pay-scale of Rs.3200-4900 and other Class IV employees holding non-technical posts

3 (2004) 8 SCC 286

will be placed in the pay-scale of Rs.3050-4590. The Registrar General of the High Court then sent the draft Amendment Rules to the Principal Secretary (Judicial) & Legal Remembrancer, Government of U.P., Lucknow[4] on 10 November 2005 to obtain the necessary approval from the Governor of the State as contemplated under Article 229(2) of the Constitution.

The State Government, by order dated 28 February 2007, declined to grant approval to the amendments made by the Chief Justice in the Rules. This order of the State was assailed by Class IV Employees' Association in **Writ-A No.19454 of 2007**. The said petition was allowed by a learned Judge by judgment dated 27 May 2009 and a direction was issued to the State to place the draft Amendment Rules framed by the Chief Justice of the High Court under Article 229(2) of the Constitution before the Governor of the State for granting approval. The State felt dissatisfied with the order passed by the learned Judge and filed **Special Appeal No.1487 of 2009**. The State took a stand in the Special Appeal that a decision had already been taken for not granting the approval and though it had been brought on the record, but it had not been considered by the learned Judge. The Special Appeal was dismissed on 18 May 2010 with liberty to the State to file a review application to agitate this issue. However, the State filed **Special Leave Petition No.11965 of 2010** against the said judgment dated 18 May 2010 passed in the Special Appeal. This Special Leave Petition was dismissed on 16 August 2010, but it was left open to the State to file a review application, for which

4 the Principal Secretary

liberty had already been granted by the Division Bench of the High Court.

Thereafter, a review application was filed by the State for review of the judgment dated 27 May 2009. This review application was rejected by order dated 9 March 2011 and a direction was issued to the State to take appropriate action in the light of the judgment rendered on 27 May 2009. The State filed **Special Appeal No.1474** which was dismissed on 19 March 2013 in view of the statement made by the learned Additional Chief Standing Counsel that it had been rendered infructuous. It needs to be stated that during the pendency of the aforesaid Special Appeal No.1474 of 2011, the order dated 26 July 2012 was passed declining to grant approval to the amendments made in the Rules. It is this order dated 26 July 2012 that was assailed in the writ petition out of which the Special Appeal arises.

This, in short, is the history of the litigation between Class IV Employees' Association and the State Government. The litigation started in 1997 when the first writ petition was filed by Class IV Employees' Association claiming a higher pay-scale and even though the Rules had been amended by the Chief Justice of the High Court exercising powers under Article 229(2) of the Constitution in 2005, they have not received the approval.

As noticed above, **Writ Petition No.61041 of 2012** had been allowed by the learned Judge on 2 February 2016 and a direction was issued to the State Government to take appropriate steps for approving

the amendments made in the Rules in 2005 within six weeks. The writ petitioners were also held entitled to the higher pay-scales in terms of the Rules from 2005 and arrears, if any, was directed to be paid within six months after the Rules were approved. The learned Judge noticed that the State had declined to grant approval to the draft Rules for two reasons. The first was that parity that is being maintained by the State between the employees of the High Court and the Secretariat of the State in accordance with what was resolved in All India Chief Justices' Conference held in 1962 would be disturbed if a higher pay-scale was granted to the Class IV employees of the High Court. The second was that grant of higher pay-scale would result in financial burden on the State Exchequer because other employees of the State will start claiming parity. These two reasons did not find favour of the learned Judge. The observations and the directions of the learned Judge in this regard are as follows:

> "What emerges from the above mentioned case is that it is a well-established principle in law that once the rules are framed by the Chief Justice, a high constitutional dignitary, it will only be in exceptional cases that the Governor can reject it.
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> **In the present case, the State has taken only two grounds to reject the rule framed by the Chief Justice: (i) financial implication, and (ii) adverse effect on other employees. Both these grounds have been turned down by the Supreme Court in the case of S.B. Vohra (supra) as not sufficient. From a perusal of the impugned order of the State Government it is evident that no cogent reason has been assigned**. Only a conclusion that it is not possible, has been mentioned. It has been laid down by the Supreme Court while considering the scope of Article 146 and Article 229 of the Constitution that it is a legislative power conferred upon the Chief Justice.

Thus, the recommendations of the Chief Justice should not be rejected except on the cogent reasons. **The chronological events and the facts of this case also indicate that the State has not taken the recommendations of Hon'ble the Chief Justice with due deference**.

Hearing of the present writ petition was adjourned several times by this Court with a hope and trust that the State would arrange a meeting of Hon'ble the Chief Justice and Hon'ble the Chief Minister, so that there should be effective consultation and exchange of views between holder of two high offices. The order-sheet reveals that this Court on 03rd December, 2013 had directed the learned counsel for the State to arrange a meeting between Hon'ble the Chief Justice and Hon'ble the Chief Minister, whenever Hon'ble the Chief Justice sits at Lucknow Bench. For the said purpose, the matter was adjourned.

It is surprising that no steps were taken by the State for a meeting of Hon'ble the Chief Justice and Hon'ble the Chief Minister in spite of the time granted by this Court. The concerned State functionaries are fully aware that Hon'ble the Chief Justice sits at Lucknow Bench in the third week of every month. This schedule is being followed for the last several years by all the Hon'ble Chief Justices but no effort was made by the State Government for the exchange of thoughts between the aforementioned dignitaries. **The aforesaid conduct of the State functionaries indicate that they did not pay proper and due attention to the matter and the issue was taken in routine and mechanical manner by rejecting the proposal of Hon'ble the Chief Justice**.

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….....

Insofar as the stand taken by the State Government that it has accepted the recommendations of the All India Chief Justices' Conference held in 1962 is concerned, it may be stated that much water has flown under the bridges since 1962. There is vast difference in the financial position of the State Government in the year 2015 when compared with the position of 1962.

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For the reasons stated above, I am of the considered view that the principal stand taken by the State in its counter affidavit about the limited resources of the State Government is wholly unacceptable.

….....

The next question is as to what relief the petitioners are entitled for. The petitioners instituted their first writ petition about eighteen years ago in the year 1997. Their writ petition was allowed. In the special appeal, the order of the learned Single Judge was set aside on the ground that it was Hon'ble the Chief Justice who had the authority to take the decision. It was observed by the Division Bench that in case Hon'ble the Chief Justice takes a decision, the same shall be approved by the State Government. It is a well-established law that this Court under Article 226 of the Constitution has very wide discretion to mould the ancillary relief and the petition cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for. Reference may be made to the judgments of the Supreme Court in Charanjit Lal Chowdhury v. The Union of India and others AIR 1951 SC 41, K.S. Rashid and Son v. Income Tax Investigation Commission and others AIR 1954 SC 207, Hindalco Industries Ltd. v. Union of India and others (1994) 2 SCC 594 and M. Sudakar v. V. Manoharan and others (2011) 1 SCC 484.

On a careful consideration of the submissions of the learned counsel on either side and the material on the record, I am of the opinion that the impugned order dated 26th July, 2012 passed by the State Government is unsustainable and it needs to be set aside. It is accordingly set aside. **I further find that the end of justice requires that a direction be issued to the State Government to take appropriate steps to approve the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) (Amendment) Rules, 2005 framed by Hon'ble the Chief Justice within six weeks from today. The petitioners shall be entitled to higher pay scales in terms of the Rules of 2005 and consequential benefits from the year 2005. The arrears of their difference of salary, if any, shall be paid to them within six months after the rules are approved**."

(emphasis supplied)

Sri V.B. Singh, learned Advocate General appearing on behalf of the State made the following the submissions:

i) the learned Judge was not justified in issuing a mandamus that the Amendment Rules should be approved within six weeks from the date of judgment even if the order refusing to grant approval to the Rules had been set aside for the reason that in such circumstances the only direction that could have been issued was for re-consideration of the matter;

ii) the State Government had granted the same pay-scale to Class IV employees of the High Court as was granted to Class IV employees of the Secretariat in accordance with the decision taken in the All India Chief Justices' Conference held in 1962 and, therefore, granting a higher pay-scale to the Class IV employees of the High Court would disturb the parity;

iii) in case the draft Amendment Rules are approved, large number of employees of other establishments of the State may also press for grant of parity, which would result in heavy financial burden on the State;

iv) the Class IV employees of the High Court are not justified in claiming parity with Class IV employees of the Delhi High Court as each State Government is entitled to have its own pay structure depending on its resources;

v) a Committee had been constituted by the State to examine the draft Rules and it is after effective consultation with the High Court that a decision had been taken not to approve the draft Rules; and

vi) the learned Judge was not justified in holding that only conclusion had been recorded by the State Government in the order dated 26 July 2012 without providing reasons as a perusal of the order would reveal that reasons had been indicated.

Sri Shashi Nandan, learned Senior Counsel appearing for Class IV Employees' Association made the following submissions :

i) in terms of the directions issued by the Supreme Court in **Section Officer Brotherhood**, the Chief Justice had constituted a Committee of four Judges. The report submitted by this Committee was accepted by the Chief Justice and the Rules were, accordingly, amended. The order impugned in the writ petition by which the amendments have not been approved is arbitrary and in the teeth of observations made by the Supreme Court;

ii) the order dated 26 July 2012 passed by the State Government clearly fails to take into consideration the observations made in the judgment dated 27 May 2009 rendered in the writ petition that had been filed to assail the earlier order passed by the State Government. In the said judgment the learned Judge, after referring to the report of the Committee constituted by the Chief Justice, held that the nature of work and duties performed by Class IV employees of the High Court are distinct and different from Class IV employees of the State Government;

iii) the order dated 26 July 2012 also does not take into consideration the observations made in the order 9 March 2011 by which the review

application filed by the State against the judgment dated 27 May 2009 was rejected;

iv) consideration of the relevant factors by the Committee of four Judges for recommending that Class IV employees working in the High Court are entitled to higher pay-scales, namely large number of working hours, different nature of duties, performance of no less onerous and arduous duties as their counterparts in the Delhi High Court as also performance of important public duties, as noticed by the learned Judge, could not have been ignored by the State while concluding that not only would the grant of higher pay-scales create anomaly between Class IV employees of the State and Class IV employees of the High Court but also cause financial implications; and

v) to support the contention that the Rules made by the Chief Justice of the High Court under Article 229(2) of the Constitution, insofar as they relate to salary, allowances, leave and pensions etc., should normally be approved by the Governor of the State, reliance was placed upon certain decisions to which reference shall made made.

Sri Ashish Mishra appearing for the High Court has supported the amendments made in the Rules and also placed before the Court the recommendations made by the four Judges Committee and other relevant documents. Learned counsel has also adopted the submissions made by learned Senior Counsel for Class IV Employees' Association.

We have considered the submissions advanced by learned Senior Counsel for the parties.

The Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976[5] have been framed by the Chief Justice of the High Court with respect to the conditions of service of persons serving on the staff attached to the High Court in exercise of powers conferred under Article 229(2) of the Constitution. Rule 4 deals with source of recruitment to Class IV posts. Rule 5 deals with academic qualification, while Rule 7 deals with recruitment by promotion. Rule 36 deals with pay. It provides the scales of pay admissible to persons appointed to the various categories of posts in the establishment, whether in a substantive or officiating capacity or as a temporary measure shall be such, as may be determined by the Chief Justice from time to time with the approval of the Governor of the State. Rule 40(3) provides that if any doubt arises in regard to a particular post in the establishment corresponding to a post in the State Government, the matter will be decided by the Chief Justice.

It is in exercise of powers under Article 229(2) of the Constitution that the Chief Justice, on the recommendations made by the four Judges Committee, amended the 1976 Rules in 2005. The amendments relate to Rules 4, 5, 7, 16 and 36. The amendment proposed in Rule 36 provides that the scales of pay admissible to persons appointed to the various categories of posts in the establishment, whether in a substantive or officiating capacity or as a temporary measure would be as provided in Schedule-I. The pay-scales of Class IV employees holding promotional

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5 the 1976 Rules

and technical posts was increased to Rs.3200-4900 and that of Class IV employees holding non-technical posts to Rs.3050-4590.

In order to appreciate the contentions, it would be necessary for the Court, at this stage, to examine the claim that had been made by Class IV Employees' Association of the High Court for granting a higher pay-scale equivalent to that of Class IV employees of the Delhi High Court.

The pay-scales of Class IV employees of the High Court were initially less than the pay-scales of Class IV employees of the State Secretariat. However, a decision was taken in All India Chief Justices' Conference held in 1962 that there should be parity in the pay-scales of the employees of the High Court and the State Secretariat. It is to give effect to the said resolution that the State issued an order dated 20 March 1968 bringing at par the pay-scale of Class IV employees of the High Court with that of the employees of the Secretariat of the State. The State Government employees, however, raised a demand that they should be placed at par with their counterparts in the Central Government and ultimately the State took a policy decision in 1988 that with effect from 1 January 1986, the State Government employees shall be paid the pay-scale granted by the Central Government on corresponding posts. However, certain difficulties arose to equate the posts and consequently the State constituted an Equivalence Committee. The report of the Equivalence Committee was accepted by the State Government and the pay-scales admissible to the Central Government employees were made admissible to the employees of the State Government holding

corresponding posts with effect from 1 January 1986. Class IV employees were placed in two different categories of pay-scales. The existing pay-scale of Rs.305-390 was revised to Rs.750-940 and that of Rs.315-440 was revised to Rs.775-1025. The employees holding promotional and technical posts were placed in the pay-scale of Rs.775-1025 and those holding non-technical posts were placed in the pay-scale of Rs.750-940.

Class IV Employees' Association of the High Court raised a grievance in 1994 that their counterparts in the Delhi High Court had been placed in a higher pay-scale though both were performing similar nature of work and a representation dated 27 July 1994 was filed before the Chief Justice of the High Court demanding that the pay-scale of Rs.775-1025 should be revised to Rs.1000-1750 and the pay-scale of Rs.750-940 should be revised to Rs.975-1660. The Chief Justice accepted the demand and made a recommendation to the State. The State, however, did not take a decision. Class IV Employees' Association filed **Writ-A No.15211 of 1997** which was allowed by judgment dated 6 February 1998. The respondents were directed to pay salary in the revised pay scale with effect from 1 July 1994. **Special Appeal No.200 of 1998** filed by the State was allowed by judgment dated 5 November 2003. It was, however, left open to the Chief Justice to take a decision with regard to grant of higher pay-scales sought for. It was also observed that the decision to be taken by the Chief Justice would be respected unless the State had a very good reason not to grant approval. It was further observed that if the State was of the view that it would not be possible to

grant approval, then there should be exchange of thoughts between the Governor of the State and the Chief Justice of the High Court. The State, however, was not satisfied with the decision rendered in the aforesaid Special Appeal. It, accordingly, filed Special Leave Petition before the Supreme Court which was converted into **Civil Appeal No.6878 of 2004**.

This Civil Appeal was disposed of by the Supreme Court on 15 October 2004 in terms of the judgment of the Supreme Court in **Section Officer Brotherhood**. This judgment was rendered by the Supreme Court in the Appeal filed by the State against the judgment of the High Court allowing higher pay-scales to Section Officers, Private Secretaries, Bench Secretaries and Assistant Registrars working in the High Court who had claimed higher scale of pay in view of the decisions of the Delhi High Court in **A.K. Gulati Vs. Union of India**[6] and **Madan Lal Vs. Registrar, Delhi High Court**[7].

It would, therefore, be appropriate to refer to the observations made by the Supreme Court in **Section Officer Brotherhood** since Civil Appeal No.6878 of 2004 filed by the State had been disposed of on 15 October 2004 in terms of this judgment :

> "2. **The respondents herein are Section Officers, Private Secretaries, Bench Secretaries and Assistant Registrars working in the High Court of Judicature at Allahabad. They filed several writ petitions praying inter alia for issuance of a writ of or in the nature of mandamus inter alia directing the State of Uttar Pradesh to fix higher scale of pay. Such scales of pay as claimed were purported to be on the basis of scales of pay paid to their counterparts** i.e. Section Officers, Private Secretaries,

6 (1991) 44 DLT 590
7 (1992) 46 DLT 133

Bench Secretaries or Assistant Registrars **of Delhi High Court**. ….....

3. It is not in dispute that the Chief Justice of the High Court of Allahabad in exercise of his power conferred upon him by Article 229 of the Constitution of India made rules known as Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976. The Section Officers, Bench Secretaries Grade I and Private Secretaries are holders of Class II posts referable to Rule 16 of the said Rules. The posts of Deputy Registrar is a Class I post and allegedly Class II officers are entitled to be considered for promotion to Class I post.

4. It is not in dispute that Rule 36 of the Rules provides that the scales of pay admissible to various categories of posts in the establishment of the High Court are to be determined by the Chief Justice from time to time with the approval of the Government of Uttar Pradesh. Rule 40 while conferring power of superintendence and control on the Chief Justice provides that in financial matters, the orders containing modifications or variations relating to the salary etc. shall be made by the Chief Justice with the approval of the Governor. However, sub-rule (3) of Rule 40 postulates that in case of any doubt as regards equivalence of a post of an officer in the High Court vis-a- vis posts in the State Government, the matter should be decided by the Chief Justice.

….....

17. There cannot be any doubt or dispute whatsoever that determination of different scales of pay for different categories of employees would ordinarily fall within the realm of an expert body like the Pay Commission or Pay Committee. **The Chief Justice of a High Court exercises constitutional power in terms of Article 229 of the Constitution of India**. ….....

18. **Such a provision has evidently been made to uphold the independence of the judiciary**.

….....

26. **The Court noticed that fixation of scale of pay in favour of one class of employees has a spiralling effect and in that view of the matter it is important that the matter as regards fixation of scale of pay of officers working in different High Courts must either be examined by an expert body**

like the Pay Commission or any other body and in absence thereof the High Court itself should undertake the task, keeping in view the special constitutional provisions contained in Article 229 of the Constitution of India.

27. **Having regard to the high position and status enjoyed by the Chief Justice, it was observed, his recommendations should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons**.

…….....

31. In this case, the Chief Justice merely forwarded the representation of the respondents dated 15-3-1994 for grant of a higher scale of pay with effect from 1.1.1986 directing the Registry to forward the same to the State Government with recommendations to consider the same on the ground of parity. Such forwarding of recommendations to the State Government did not involve any application of mind on the part of the Chief Justice as was required under Article 229 of the Constitution of India. **The Chief Justice on his own did not arrive at any decision that the jobs performed by the officers concerned were comparable to their counterparts in the Central Secretariat or Delhi High Court. No rule was framed fixing the terms and conditions of service or the scale of pay for different categories of the employees of the High Court**. Only because in the forwarding letter, the State Government was asked to consider the demand of the officers concerned favourably, the same by itself would not mean that the requirements of Article 229 of the Constitution stood complied with. **Unless the Chief Justice of the High Court exercises his constitutional power or acts on the basis of the recommendations of a committee constituted by him for the purpose of fixation of scale of pay and laying down other conditions of service; only forwarding of a representation to the State Government to consider the same favourably without anything more would not amount to exercise of the constitutional jurisdiction under Article 229 of the Constitution**.

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34. We, therefore, are of the opinion that the impugned judgments cannot be sustained which are set aside accordingly. However, this order shall be subject to the rules framed by the Chief Justice in the

> case of the Private Secretaries of the High Court. It will, however be open to the Chief Justice of the Allahabad High Court to frame appropriate rules as has been done in the case of the Private Secretaries or constitute an appropriate committee for the said purpose. **We have no doubt in our mind that if such committee is constituted and any recommendation is made for enhancement of the scale of pay for the concerned officers by the Chief Justice, the same would be considered by the State Government in its proper perspective and in the light of the observations made hereinbefore expeditiously**."
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> (emphasis supplied)

Pursuant to the aforesaid directions of the Supreme Court, the Chief Justice, by order dated 28 November 2004, constituted a Committee of four Judges of the High Court to frame appropriate amendments in the Rules with regard to the pay-scales of the employees of the establishment of the High Court. The said Committee submitted its report on 23 December 2004, both in regard to the Section Officers, Private Secretaries, Bench Secretaries and Assistant Registrars working in the High Court as also Class IV employees. It would be appropriate to reproduce the relevant portions of the report submitted by the four Judges Committee to the Chief Justice in regard to Class IV employees and they are :

> "The source and method of recruitment to Class IV Posts in the establishment of the High Court is given in Rule-4 of the Rules of 1976. The Peon, Farrash, Cooli, Sewak, Bhisti, Sweeper, Mali, Fire Man, Chaukidar and Lift Man are recruited through recruitment for which the qualifications have been laid down in Rule 5. The first and second proviso to Rule4 (a) provides that the service of Sewak shall be terminable without any notice on the recommendation of the Hon'ble Judges concerned. The Sewak is also required vide the second proviso to do domestic work and attend the household chores at the assigned

residence. The post of Jamadar, Daftari, Bundle Lifter and Head Mali are promotional posts for which the sources of promotion are provided in Rule 4(a) to (e) of the Rules of 1976.

The State Government has also sanctioned some other categories of posts namely Electrician, Helper, Dasti Chaukidar, Blind Chair Weaver, Cycle Chaukidar, Cook, Sweeper. They are all in the category of Class IV employees of the category of employees in Rule 4(a) and were serving in the Pay Scale of Rs.75-990. The other categories including promotional posts namely Jamadar, Daftari, Bundle Lifter, Head Mali (Promotional posts), Photocopier-cum-Machine Operator, Telephone Mechanic were serving in the pay scale of Rs.775-1050. The Lift Operator in the pay scale of Rs.800-1150, the Electrician in the pay scale of Rs.825-1200 and Driver in the pay scale of Rs.950-1500. These pay scales were revised in pursuance to the judgement of this Court in Class IV Employees Association High Court of Judicature at Allahabad through its Secretary decided on 6.2.1998 after which all these categories except Driver, Electrician, Lift Operator and Telephone Mechanic were placed in the pay scale of Rs.3200-4900. The Driver, Electrician, Lift Operator and Telephone Mechanic were not parties to the writ petition and thus they continued to get lesser pay scales, whereas the Driver (treated as Class III employees in the State Government) was placed in the pay scale of Rs.3050-4590 which is also applicable to Routine Grade Clerk (initially enrolled as Class III employee R.G.C.). The electrician was given the pay scale of Rs.2750-4400, the Lift Operator Rs.2650-4000 and Telephone Mechanic Rs.2610-3540.

According to the representation made by these employees they are appointed after an interview, by the Registrar General. Their duty hours in the establishment are fixed according to their work. They are, however, required to perform more tedious and onerous duties. Most of the categories of the employees are required to perform duties much beyond the duty hours in accordance with the need of the work. The staff attached to the Hon'ble Judges are required to work for about 12 to 14 hours for which they are not paid any special or additional allowances. All the employees perform their duties diligently without any complaint.

The representation of Class IV employees has also brought to the attention of this Committee to the difference between the work and duty hours of the employees of the Secretariat with which the parity is sought to be drawn. They have laid great stress upon the additional duty hours for which they are not paid any special allowances.

….....

The Class IV employees in various categories in the establishment of the High Court are performing different nature of duties and responsibility. We find that they are required to work for longer hours and attached to Hon'ble Judges. They are also required to serve at their residences for still longer hours.

The Samata Samiti in 1989 found it difficult to equate the post for which no equivalent post was available in Central Government. **We find that Class IV employees of this Court, who are most humble lot and are performing their onerous duties without any complaint, keeping longer hours without any special allowances as paid in the State Secretariat are entitled to the comparability of their posts as found in Delhi High Court**. In Madan Lal Vs. Registrar, Delhi High Court (Writ Petition No.3464/1990) Class IV employees of Delhi High Court were allowed separate pay scales namely Rs.975-1660 and Rs.1000-1750 which are being claimed as matter of parity of the employees of this Court. Their representations were considered by Hon'ble the Chief Justice, which had agreed with them and a report was submitted by the Registrar for seeking approval of the State Government. The Registrar had sent to the State Government in September, 1994 a letter rightly justifying the representation and stating that the employees of this Court are performing no less onerous and arduous duties as their counterparts in Delhi High Court.

The Class IV employees of this Court are performing important duties and jobs which are entrusted to them for maintaining the dignity and standard of the High Court. They are contributing to the smooth functioning of the Court and performing important public duties of dispensation of justice and thus we do not find any justification to deny to them better pay scales comparable to Delhi High Court.

> There, however, appears some anomaly with regard to pay scales. The Routine Grade Clerks are recruited in the pay scales of Rs.3050-4590 which is lower than the pay scale of Rs.3200-4900 which was provided to Class IV employees. In order to maintain a distinction between Class III and Class IV posts in the establishment we find that all the Class IV po0sts except those which are to be filled up by promotion under Rule-4(b) to (e) of the Rules of 1976 and those who are holding which require technical qualifications, posts should be given the pay scales of Rs.3050-4590 and that all promotional posts and the technical posts for which rules provide technical knowledge to be necessary qualification to be placed in the pay scale of Rs.3200-4900. These pay scales, will be most rational, remove the anomalies and improve the efficiency of the Class IV employees in the establishment.
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> RECOMMENDATION
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> We, therefore, having considered all the representations and having perused the records and the judgments of this Court, and Hon'ble Supreme Court, for the reasons stated above, recommend as follows:
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> C. For Class IV employees, we recommend that all Class IV employees irrespective of their categories, except those for whom the recruitment is provided by promotion namely Jamadar, Daftari, Bundle Lifter and Head Mali in Rule 4(b) to (e) of the Rules of 1976, and those who are required to possess technical qualifications for recruitment, should be placed in the pay scale of Rs.3050-4590. The others namely the promotional posts and technical posts be given the pay scale of Rs.3200-4900 with all admissible allowances which they are getting at present in respect of difference categories of post with regard to the nature of duties performed by them."
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> (emphasis supplied)

The recommendations made by the Committee were approved by the Chief Justice on 24 December 2004. Thereafter, two draft Rules known as 'Allahabad High Court Officers and Staff (Conditions of Service and Conduct) (Amendment) Rules, 2005' and 'Allahabad High

Court Bench Secretaries (Conditions of Services) Rules, 2004' were framed. These Rules were forwarded by the Registrar General of the Court to the State Government on 26 December 2004. The State approved the amendments made in the 2004 Rules framed for Bench Secretaries on 8 October 2005 but no decision was taken in regard to the amendments made in the 1976 Rules. It was only when directions were issued by the High Court in a subsequent petition bearing **Writ-A No.27201 of 2006** that the State Government took a decision on 28 February 2007 not to grant approval to the Amendment Rules. This order was assailed by the writ petitioners in **Writ-A No.19454 of 2007**. This petition was allowed by judgment and order dated 27 May 2009. The learned Judge, after referring to various decisions of the Supreme Court, observed as follows:

> "..... The Supreme Court while interpreting the proviso to Article 229(2) of the Constitution has held that the approval was required from the Governor in matters relating to salaries, allowances, leave of pensions etc. **The Supreme Court has further held that the Governor cannot be compelled to grant approval, but, further held that whenever the Chief Justice, who is a very high dignitary of the State, frames such Rules, it should be looked upon with respect and ordinarily, the Rules should be approved unless there are strong and cogent reasons for not approving. The Supreme Court further went on to say that, if approval cannot be granted, the Governor could not straightway refuse to grant such approval, but before doing so, there must be an exchange of thoughts between the State Government and the Chief Justice of the High Court**.
>
> ….....
>
> **The Supreme Court has categorically held that the State Government is only required to grant approval with regard to the salaries, allowances, leave or pension. The State Government, however, cannot refuse to accord**

approval solely on the ground that, if the pay scale is approved, it will cause financial implications. If this ground is allowed to be taken, it will give a handle to the State Government to deny approval on each and every occasion whenever the matter comes up before it with regard to the approval relating to the pay scales, salaries allowances, leave, pension etc. and the High Court would be saddled with a begging bowl in its hands, which was never the intention of the framers of the Constitution. It is apparent that in order to maintain the independence of the judiciary, the framers of the Constitution thought it wise and expedient to make a provision as contained in Clause (3) of Article 229 of the Constitution. **It is not sufficient for the State Government to refuse to grant an approval on the strength of financial constraint**. In Union of India and another vs. S.B.Vohra and others (supra), the Supreme Court has held that financial implications cannot be made a ground to disapprove the Rules. The Supreme Court held:

> "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' Assn. v. Union of India as well as the report of the Shetty Commission."

In High Court Employees Welfare Association, Calcutta and others vs. State of W.B. and others, 2004(1)SCC 334, the Supreme Court held-

> "The Government will have to bear in mind the special nature of the work done in the High Court 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 Supreme Court, in the light of the aforesaid decisions also held, that before refusing to grant approval there should be an exchange of thoughts between the Chief Justice and the State Government. In the present case, the Court finds that a Committee was constituted comprising of officers of the High Court and that of the State Government. A perusal of the minutes of this High Power Committee indicates the narrow mindset of the State Government. **The only hurdle before the State Government appears that the parity granted pursuant to the resolution of the Chief Justices and the Chief Ministers in the year 1962 would be disturbed, in the event a higher pay scale is granted, and that, it would also create financial problems. It is also apparent that the State Government is insisting that the pay scale of the Class-IV employees should be similar to the pay scale of the Class-IV employees of the State Government**.

In my opinion, the contention of the State Government that the pay scale of the Class-IV employees should be at par with the Class-IV employees of the State Government, cannot be accepted. There is nothing in the record of the State Government, which has been produced before the Court, to indicate that the State Government considered the relevant factors which are required for fixation of the pay-scale. There is nothing to indicate that the pay scale fixed by the Chief Justice was arbitrary and that the relevant factors was not considered. The Court has perused the recommendations of the Four Judges Committee and finds that the Committee of Four Judges took into consideration the nature of work discharged by the Class-IV employees of the High Court with that of the Class-IV employees in other departments of the State Government. The Committee found that the Class-IV employees are performing important duties and jobs which are entrusted to them for maintaining the dignity and standard of the High Court. The Committee further found that Class-IV employees are contributing to the smooth functioning of the Court and performing important public duties of dispensation of justice and are performing onerous duties without any complaint and keeping longer hours without any special allowances as paid to the

employees of the State Secretariat. The Committee further found that Class-IV employees are performing different nature of duties and are required to work for longer hours not only in the High Court but at the residence of the Hon'ble Judges. The Committee came to the conclusion that it was difficult to equate the Class-IV posts of the High Court with that of the State Government and found that the employees of the High Court are performing no less onerous and arduous duties as their counter parts in the Delhi High Court.

Consequently, the Court finds that relevant considerations were considered in detail by the Four Judges Committee while recommending a higher pay scale to the Class-IV employees. The nature of work and duties performed by the Class-IV employees were found to be distinct and different from the Class-IV employees of the State Government. **Consequently, the State Government fell in error in insisting that the pay scales of the Class-IV employees should be similar to the pay scale of Class-IV employees of the State Government. The State Government further fell in error in insisting that parity should be maintained. It is settled law that the principle of equal pay for equal work postulates scientific determination of principle of fair comparison. Comparison is made from the work performed by an employee and not by designation.** In the opinion of the Court, comparison by designation is misleading in the present case. **The Court finds from a perusal of the record of the State Government that no attempt was made to ascertain the nature of work performed by a Class-IV employees of the High Court whereas the Four Judges Committee has dwelt the matter in detail and ascertained the nature of work of an employee in each category of staff of the High Court and only thereafter determined the pay structure and recommended the same to the Chief Justice**.

….....

In the light of the aforesaid decision, the Court finds that the State Government was unnecessarily raising frivolous queries which were beyond their jurisdiction. In so far as the Rules relating to salaries, etc. was concerned, the Court finds that no steps whatsoever was taken by the State Government to arrive at a consensus. The State Government was adamant that parity should not be disturbed and that a

> higher pay scale should not be given to the Class-IV employees of the High Court. In the light of the aforesaid, the Court finds that a direction to the State Government to again constitute a Committee and resolve the issue amicably would not lead to any fruitful result. The matter is hanging fire for the last five years and no result can be seen in the near distance. Consequently, remitting the matter again to the State Government for reconsideration does not appear to be a feasible option. A mandamus is a discretionary remedy under Article 226 of the Constitution and can be issued to compel the performance of public duty. The State Government was required to perform a public duty and place the Rules before the Governor for its approval. By placing fetters in raising frivolous objections, the State Government failed to perform its duty. When the authority, which in the present case, is the State Government, does not perform its constitutional duty, the Court could be compelled to intervene in the matter not only to quash an order but also issue a mandamus to that authority.
>
> **In the light of the aforesaid, the impugned order dated 28.2.2007 cannot be sustained and is quashed. The writ petition is allowed and a mandamus is issued to the State Government to place the draft Rules framed by the Chief Justice under Article 229 of the Constitution of India for approval before the Governor**. This exercise is required to be carried out by the State Government as early as possible. In the circumstances of the case, the parties shall bear their own cost."
>
> (emphasis supplied)

It needs to be stated that **Special Appeal No.1487 of 2009** filed by the State against the aforesaid judgment dated 27 May 2009 was dismissed with liberty to the State to file a review application since it was sought to be contended by learned Additional Advocate General that the decision that had been taken by the State had not been considered. The State even filed **Special Leave Petition No.11965 of 2010** which was disposed of on 16 August 2010 with the following observations:

> "Having heard the learned counsel appearing for the petitioner, we do not intend to entertain this Special Leave Petition at this stage, as according to us, the issues which are raised herein could also be effectively taken up in a review application before the learned Single Judge for which the liberty is also granted by the Division Bench of the High Court.
>
> On going through the records, we find that one of the grounds for interference by the learned Single Judge was that the matter was never placed before the Council of Ministers/Hon'ble Chief Minister and also not before the Governor. It is also held by the Single Judge that the State Government rejected the recommendation only on its own accord. It is the submission of the counsel that the aforesaid position is belied and contrary to the original records and affidavits filed. Let all these pleas be taken up by the petitioner herein by filing an appropriate review application for which liberty was also granted by the Division Bench of the Allahabad High Court. Such a review application, if any, could be filed within a period of two weeks and as and when such an application is filed, the application shall be considered on its own merits and shall be disposed of as expeditiously as possible. Proceedings on the contempt petition shall be kept at abeyance, if and when a review is filed.
>
> The Special Leave Petition is disposed of in terms of the aforesaid order."

The State then filed **Review Application No.258275 of 2010** for review of the judgment dated 27 May 2009. One of the main grounds taken in the review application was that recommendation made by the four Judges Committee was not supplied to learned counsel for the respondents but still a finding had been recorded based on the recommendations made by the Committee. The review application was rejected by order dated 9 March 2011. It needs to be stated that only two grounds were pressed by the learned Additional Advocate General in support of the review application and they are as follows:

> "(a) decision infact had been taken by the Chief Minister and there has been misreading of the affidavits and the original records of the State Government, which were produced before the Single Judge. It has wrongly been recorded that the decision has been taken by the Principal Secretary to the Chief Minister. The decision infact has been taken by the Chief Minister.
>
> (b) grant of higher pay-scale to the Class-IV employees working in the establishment of the High Court would create a situation where similar demands could be raised by the Class-IV employees of the State Secretariat and another departments of the State causing undue financial burden upon the State Government. He explains that earlier employees of the High Court had all along been claiming parity with the employees of the State Secretariat. The State Government is maintaining such parity. Class-IV employees working in the establishment of the High Court cannot be provided pay-scale at par with the employees working in the Delhi High Court. The employees working in the Delhi High Court work in different conditions as applicable to the State of Delhi. The living conditions etc. are different in the State of Uttar Pradesh specifically at Allahabad and Lucknow vis-a-vis at New Delhi, therefore, no parity exists. In support of the aforesaid plea, he has placed reliance upon the judgement of the Hon'ble Supreme Court of India in the case of State of U.P. vs. Section Officer Brotherhood & Another reported in (2004) 8 SCC 286."

It will also be appropriate to reproduce the observations made by the learned Judge while rejecting the review application and the same are:

> "**Only ground mentioned in the affidavit and contended before this Court by the State Government for denying the pay-scale as recommended by the Hon'ble The Chief Justice is that it will cause undue financial burden upon the State Government and may unsettle the parity, which is existing between the employees working under the State Government and those who are working in the establishment of the High Court**.
>
> …..
>
> It is with reference to the said direction of the Hon'ble Supreme Court of India that the Four Judges

> Committee was constituted by the Chief Justice of Allahabad High Court. **The Four Judges Committee recommended for grant of higher pay-scale to Class-IV employees working in the establishment of the High Court. In its recommendation, the Committee has taken into consideration relevant factors for arriving at the conclusion that the Class-IV employees working in the establishment of the High Court were entitled to higher pay-scale having regard to larger number of working hours, different nature of duties, performance of no less onerous and arduous duties, as permitted by their counter parts working in the Delhi High Court, as also performance of important public duties of dispensation of justice, contribution to the smooth functioning of the Court, dignity and discipline and confidentiality being maintained. Such consideration by the Four Judges Committee, proposing grant of higher pay-scale to the Class-IV employees working in the establishment of the High Court cannot be brushed aside by the State Government only on a plea that the grant of higher pay-scale would create an anomaly between its Class-IV employee and the Class-IV employees of the High Court and may cause uncalled for financial implications**.
>
> I am of the considered opinion that the reason so disclosed in the decision of the State Government impugned in the writ petition, on the face of it, is unsustainable. Therefore, irrespective of the fact as to whether the decision had been taken by the Chief Minister or by the Principal Secretary only, said decision cannot be legally sustained. Accordingly the decision as communicated under the order of the State Government dated 28th February, 2007 is hereby quashed."
>
> (emphasis supplied)

Special Appeal No.1474 of 2011 was filed by the State against the aforesaid order dated 9 March 2011 rejecting the review application. This Special Appeal was dismissed on 19 March 2013 and the order is reproduced below:

> "Sri Chandra Shekhar Singh, Additional Chief Standing Counsel, State of U.P. has stated that this

> appeal has become infructuous and it should be dismissed as not pressed.
>
> Accordingly, the appeal is dismissed as not pressed."

It transpires that the aforesaid statement was made as the Principal Secretary had issued the office order dated 26 July 2012 conveying the decision not to grant approval to the amendments made in the Rules.

After referring to the earlier orders that had been passed, including the judgment dated 27 May 2009 against which the review application had been rejected on 9 March 2011, the following observations have been made in paragraphs 10, 11 and 12 of the order dated 26 July 2012:

a) Parity was granted by the State Government to the employees of the High Court with that of the Secretariat in accordance with what had been resolved in All India Chief Justices' Conference held in 1962. If the amendments in the 1976 Rules are approved, the parity maintained between the employees of the High Court and the Secretariat would be disturbed and Class IV employees of the other Departments of the State may also make a demand which would have serious financial implications;

b) The State Government has been giving due respect to the recommendations made by the Chief Justice and, as far as possible, has granted approval to the recommendations, taking into consideration the financial position of the State; and

c) The aforesaid considerations were contained in the note placed before the Cabinet. The Cabinet, in its meeting held on 25 July 2012, considered it appropriate not to grant approval to the amendments made

in the 1976 Rules under the proviso to Article 229(2) of the Constitution and on the basis of the recommendations made by the Cabinet, the Governor declined to grant approval to the amendments made in the Rules.

The learned Judge, while setting aside the aforesaid order dated 26 July 2012, noticed that the two grounds for not granting approval to the amendments in the Rules namely, financial implications and adverse effect on the employees of the other Departments, had not been accepted by the Supreme Court in **Union of India & Anr. Vs. S.B. Vohra & Ors.**[8]. The learned Judge also found that no cogent reasons had been assigned and only a conclusion had been drawn. The learned Judge also observed that the State had not taken the recommendations of the Chief Justice with due deference because even though the hearing of the writ petition had been adjourned on several occasions so that the State could arrange a meeting between the Chief Justice and the Chief Minister but no steps were taken by the State for holding such a meeting.

What was strenuously contended by the learned Advocate General for the State is that grant of higher pay-scales to Class IV employees of the High Court would have financial implications because Class IV employees of other Departments of the State will make a similar demand and the parity maintained between Class IV employees of the State and the High Court would be disturbed. These facts had also weighed with the State in not granting approval to the amendments made in the 1976 Rules.

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8 (2004) 2 SCC 150

The order impugned in the writ petition and the submissions made by the learned Advocate General have to be examined in the light of the judgments earlier rendered since, according to the learned Senior Counsel for the respondents, these two grounds had been specifically considered and rejected by the High Court in the judgment rendered on 27 May 2009 and the order dated 9 March 2011 passed in the review application.

The observations made by the learned Judge in the judgment dated 27 May 2009 have been reproduced. The contention of the State that parity has to be maintained in the pay-scales of Class IV employees of the High Court and the Class IV employees of the Secretariat of the State was not accepted. The learned Judge observed that the Committee of four Judges constituted by the Chief Justice had, after examining the nature of work discharged by Class IV employees of the High Court and Class IV employees of the other Departments of the State, found as a fact that Class IV employees of the High Court were performing important duties and jobs entrusted to them for maintaining the dignity and the standard of the High Court; that they were contributing to the smooth functioning of the Court and performing onerous duties without any complaint for longer hours without any special allowance as was paid to the employees of the State Secretariat and that the Class IV employees of the High Court were required to work for longer hours not only in the High Court but also at the residences of the Judges. The learned Judge concluded that relevant considerations had been considered in detail by the four Judges Committee for recommending a higher pay-scale and after recording a

finding that the nature of work and duties performed by Class IV employees of the High Court was distinct and different from that of the employees of the Sate Government, observed that the State fell in error in insisting that the pay-scales of Class IV employees of the High Court should be similar to the pay-scales of Class IV employees of the State Secretariat.

What is also important to note is that in the review application, only two grounds were raised. It was sought to be contended by the learned Additional Advocate General that grant of higher pay-scales to Class IV employees working in the establishment of the High Court would create a situation where a similar demand could be raised by Class IV employees of the State Secretariat and other Departments of the State which would result in financial burden on the State Government and that the parity between the employees of the High Court and the State Secretariat would be disturbed, if a higher pay-scale at par with the employees working in the Delhi High Court was granted. These two contentions were not accepted by the Court while rejecting the review application. After making reference to the recommendations made by the four Judges Committee, the Court observed that approval to the grant of higher pay-scales to Class IV employees of the High Court could not have been refused by the State only on the ground that grant of higher pay-scales would create anomaly between the Class IV employees of the High Court and the State Secretariat and it would result in financial

implications. It would be appropriate to again reproduce what was observed by the learned Judge while rejecting the review application :

> "The Four Judges Committee recommended for grant of higher pay-scale to Class-IV employees working in the establishment of the High Court. In its recommendation, the Committee has taken into consideration relevant factors for arriving at the conclusion that the Class-IV employees working in the establishment of the High Court were entitled to higher pay-scale having regard to larger number of working hours, different nature of duties, performance of no less onerous and arduous duties, as permitted by their counter parts working in the Delhi High Court, as also performance of important public duties of dispensation of justice, contribution to the smooth functioning of the Court, dignity and discipline and confidentiality being maintained. Such consideration by the Four Judges Committee, proposing grant of higher pay-scale to the Class-IV employees working in the establishment of the High Court cannot be brushed aside by the State Government only on a plea that the grant of higher pay-scale would create an anomaly between its Class-IV employee and the Class-IV employees of the High Court and may cause uncalled for financial implications."

The four Judges Committee constituted by the Chief Justice to examine the claim made by Class IV Employees' Association of the High Court for granting a higher pay-scale at par with their counterparts in the Delhi High Court, had very minutely examined every aspect not only vis-a-vis the work performed by Class IV employees of the High Court with that of the State Secretariat but also with that of the Delhi High Court and the Committee found as a fact that the nature of the work performed by the Class IV employees of the High Court to maintain the dignity and standard of the High Court and to contribute to the smooth functioning in the Court was different and distinct. The Committee, therefore, concluded

that Class IV employees of the High Court were entitled to the same pay-scale as was provided by the Delhi High Court to its Class IV employees. The Supreme Court in **Union of India & Anr. Vs. S.B. Vohra & Ors.**[9] emphasised that it is not always helpful to raise issues about financial implications vis-a-vis the effect of grant of a particular scale of pay on the ground that the same would have an adverse effect on other employees of the State and that scale of pay is fixed on certain norms, one of which is the quantum of work undertaken by the officers concerned as well as the extent of efficiency and integrity required to be maintained. In **Supreme Court Employees' Welfare Association Vs. Union of India & Anr.**[10] the Supreme Court observed that the Government must bear in mind that the Chief Justice alone can really appreciate the nature of work done by the employees of the High Court and if the Government does not desire to meet the needs of the High Court, the administration of the High Court will face severe crisis.

At this stage, we also consider it appropriate to refer to the decisions of the Supreme Court that have highlighted the rule making power of the Chief Justice of a High Court under Article 229(2) of the Constitution and the role of the Governor of a State while considering the grant of approval to the Rules made under Article 229(2) relating to salary, allowances, leave or pensions.

In **S.B. Vohra & Ors.** the Supreme Court observed:

> "11. Independence of the High Court is an essential feature for working of the democratic form of the Government in the country. An absolute control,

9 (1999) 3 SCC 217
10 (1989) 4 SCC 187

therefore, has 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 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.

….....

46. **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 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.

….....

48. **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 as well as the report of the Shetty Commission.

….....

51. **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 themselves 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."
>
> (emphasis supplied)

In **Supreme Court Employees' Welfare Association**, the Supreme Court observed:

> "57. So far as the Supreme Court and the High Courts are concerned, the Chief Justice of India and the Chief Justice of the concerned High Court, are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor, as the case may, is required. **It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service**. 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 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 President of India and the Chief Justice of India**.

> ….....
>
> 62. …..... **So, not only that the Chief Justice of India has to apply his mind to the framing of rules, but also the Government has to apply its mind to the question of approval of the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions**. This condition should be fulfilled and should appear to have been so fulfilled from the records of both the Government and the Chief Justice of India. **The application of mind will include exchange of thoughts and views between the Government and the Chief Justice of India and it is highly desirable that there should be a consensus between the two. The rules framed by the Chief Justice of India should normally be accepted by the Government and the question of exchange of thoughts and views will arise only when the Government is not in a position to accept the rules relating to salaries, allowances, leave or pensions**."
>
> (emphasis supplied)

In **M. Gurumoorthy Vs. Accountant General, Assam and Nagaland & Ors.**[11], the Supreme Court observed :

> "11. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointment of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. This was essentially to secure and maintain the independence of the High Courts. The anxiety of the Constitution makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the judges of the High Court nor can the amount of any expenditure so charged be varied even by the Legislature. …....."

11 (1971) 3 SCC 137

The aforesaid judgments of the Supreme Court emphasise that an absolute control has been vested in the High Court over its staff free from interference of the Government subject to the limitations imposed by Article 229(2) of the Constitution and that it is the primary duty of the State to accept the suggestions made by the Chief Justice of the High Court and to differ with the recommendations only in exceptional cases. It has also been emphasised that even in such cases the reason for differing with the opinion of the holder of such high office must be cogent and sufficient and in case of difference of opinion, there should be discussion to iron out the differences. The Chief Justice of the High Court has been placed at a very high pedestal in regard to the framing of the Rules containing the conditions of service.

The Special Appeal filed against the judgment dated 27 May 2009 was dismissed with liberty to file a review application. The review application was also rejected by order dated 9 March 2011. The Special Appeal filed against the order dated 9 March 2011 was also dismissed as not pressed. Thus, the judgments rendered on 27 May 2009 and 9 March 2011 have attained finality. The State Government was, therefore, obliged to take a decision in the light of the observations that had been made in the aforesaid two judgments. However, despite the two reasons given by the State Government for not giving approval to the amendments made in the 1976 Rules by the Chief Justice having been specifically rejected by the High Court in the judgment rendered on 27 May 2009 in Writ-A No.19454 of 2007 as also in the order dated 9 March 2011 rejecting the

review application, the State Government again took the same two pleas in the order dated 26 July 2012. The Committee of four Judges of the Court constituted by the Chief Justice had considered all the relevant aspects and the Chief Justice had accepted the recommendations made by the Committee to amend the Rules. Thus, the State Government not only failed to give due weight required to be given to the recommendations made by the Chief Justice of the High Court, but also ignored the observations and findings recorded on the judicial side by the High Court in the aforesaid two orders which, as noticed above, had attained finality.

The learned Judge was, therefore, justified in setting aside the order dated 26 July 2012.

The issue that would now arise for consideration and which was also raised by the learned Advocate General is as to whether, in such circumstances, a mandamus could have been issued by the learned Judge directing the State to take appropriate steps for approving the Rules framed by the Chief Justice or a direction should have been issued for re-consideration of the matter.

This issue has to be examined in the light of what was observed by the Court in the judgment dated 27 May 2009 while setting aside the order dated 28 February 2007 passed by the State conveying the decision not to grant approval to the amendments made in the 1976 Rules framed by the Chief Justice under Article 229(2) of the Constitution. It was observed that since the State Government was adamant that parity should not be disturbed and that a higher pay-scale should not be given to Class

IV employees of the High Court, a direction to the State Government to again constitute a Committee and resolve the issue amicably may not lead to any fruitful result. It was for this reason that the Court, after setting aside the order dated 28 February 2007, issued a mandamus to the State Government to place the draft Rules framed by the Chief Justice under Article 229(2) of the Constitution for approval before the Governor. The order passed on the review application also categorically rejected these two issues that had been raised by the State. However, as it transpires, the State Government again raised these two objections regarding parity being disturbed and financial implications in its Cabinet meeting and placed its recommendations before the Governor of the State.

The learned Judge in the judgment dated 2 February 2016, out of which the present Special Appeal arises, also noticed that the two grounds taken by the State in the impugned order dated 26 July 2012 were contrary to the decision of the Supreme Court in **S.B. Vohra** and that despite time having been repeatedly granted, no efforts were made by the State Government for holding a meeting between the Chief Justice of the High Court and the Chief Minister of the State. The learned Judge, therefore, concluded that since the Class IV Employees' Association had instituted a writ petition for the first time in 1997 and 18 years had lapsed, the ends of justice would require a direction to be issued to the State Government to take appropriate steps for approving the amendments made in the 1976 Rules framed by the Chief Justice.

The submission of the learned Advocate General is that even if the order declining to grant approval to the amendments made in the 1976 Rules was set aside, the learned Judge should not have issued a direction for granting approval to the amendments made in the 1976 Rules but should have remitted the matter for a fresh consideration. To Support this contention, learned Advocate General has placed reliance on a decision of the Supreme Court in **Comptroller and Auditor-General of India, Gian Prakash, New Delhi & Anr. Vs. K.S. Jagannathan & Anr.**[12] in which the following observations were made by the Supreme Court in paragraph 20 of the judgment:

> "20. 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 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 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 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 exercised its discretion."

12 (1986) 2 SCC 679

Learned Advocate General has also relied on paragraph 52 of the decision in **S.B. Vohra** wherein the Supreme Court observed :

> "52. 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."

It is a fact that it was in 1997 that Class IV Employees' Association had raised a claim for granting higher pay-scales and though the Rules were amended by the Chief Justice under Article 229(2) of the Constitution in 2005 in the light of the recommendations made by the four Judges Committee but they have not been approved as yet. The two grounds mentioned in the impugned order were pressed before the learned Judge and have also been impressed upon in this Special Appeal. The judgment dated 27 May 2009 rendered in the writ petition and the order dated 9 March 2011 passed in the review application have attained finality. A decision could have been taken by the State in the light of the observations and directions contained therein, particularly when the recommendations made by the four Judges Committee had also been referred to in detail in the judgment dated 27 May 2009. The learned Advocate General may, in such circumstances, not be justified in contending that the matter regarding grant of approval to the Amendment

Rules should still have been remitted, but keeping in mind the provisions of Article 229(2) of the Constitution that amendments in the Rules require the prior approval of the Governor of the State as also the observations made by the Supreme Court in the judgments referred to above, we consider it appropriate to modify the judgment dated 2 February 2016 only to the extent that a decision will now be taken for granting approval to the amendments made in the 1976 Rules in accordance with the observations and directions contained in the judgment dated 27 May 2009 and the order 9 March 2011 as also the observations made in this judgment. We hope and trust that the Government would bear in mind that matters relating to nature of work performed by the employees of the High Court can best be appreciated by the Chief Justice of the High Court and when the recommendations made by the four Judge Committee dealing extensively with regard to the nature of work performed by Class IV employees of the High Court have been accepted by the Chief Justice and the Rules have been amended, the Government will, as is expected, respect the views. However, if there is still any doubt, the Government will arrange a meeting between the Chief Justice of the High Court and the Chief Minister of the State for exchange of thoughts and views. Since the Rules were amended in 2005, we expect the Government to take a decision expeditiously and preferably within a period of two months from the date a certified copy of this order is filed before the Chief Secretary of the State. It is also expected that on approval being granted to the Amendment Rules, a decision will also be

taken regarding the date from which the benefits would accrue to the Class IV employees of the High Court.

The Special Appeal stands disposed of with the aforesaid modifications in the judgment dated 2 February 2016.

Date: 27.04.2017
SK

(Dilip Gupta, J.)

(Abhai Kumar, J.)

Court No.39

Civil Misc. Delay Condonation Application No.168637 of 2016

In

Case :- SPECIAL APPEAL DEFECTIVE No. - 378 of 2016

Appellant :- State Of U.P. And Another
Respondent :- Class IV Employees Association, High Court And 2 Others
Counsel for Appellant :- Yogendra Kumar Srivastava,Vijay Bahadur Singh
Counsel for Respondent :- Manish Goyal,Ashish Mishra,C.S.C.,Namit Srivastava

Hon'ble Dilip Gupta, J.
Hon'ble Abhai Kumar, J.

Heard learned counsel for the parties.

In view of the averments made in the affidavit filed in support of the application under Section 5 of the Limitation Act, we are satisfied that the applicants were prevented by sufficient cause from preferring the Special Appeal within the period of limitation.

The application is, accordingly, allowed and the delay in filing the Special Appeal is condoned.

Date: 27.04.2017
SK

(Dilip Gupta, J.)

(Abhai Kumar, J.)