

CASE NO.:
Writ Petition (civil) 134 of 1999

PETITIONER:
High Court Employees' Welfare Association, Calcutta & Ors.

RESPONDENT:
State of West Bengal & Ors.

DATE OF JUDGMENT: 09/01/2007

BENCH:
K. G. Balakrishnan, G. P. Mathur & R. V. Raveendran

JUDGMENT:
J U D G M E N T

R.V. RAVEENDRAN, J.

The Government of West Bengal appointed the Fourth Pay Commission in the year 1995. With the concurrence of the High Court, the State Government included the Calcutta High Court employees in the reference. Subsequently, on the representation of the employees of the Calcutta High Court, the Chief Justice of the High Court appointed a Three Judges Committee to examine the feasibility of making pay rules for them in exercise of powers under Article 229 of the Constitution of India. After examining the said committee's report, the Full Court resolved to constitute a Committee of five-Judges to advise the Chief Justice in framing the relevant rules. The five-Judge Committee examined the matter in detail and made two sets of draft Rules - the Calcutta High Court Services (Conditions of Service & Recruitment) Rules, 1998 and the Calcutta High Court Services (Revision of Pay & Allowances) Rules, 1998. The Chief Justice approved the said two sets of Rules (for short the 'draft Service Rules' and 'draft Pay Rules') and sent them to the State Government for approval of the Governor under the proviso to Article 229(2).

2. The State Government sent a reply dated 21.11.1998 expressing its inability to recommend the two Draft Rules for approval of the Governor, for the following four reasons :

(a) Creation of new posts by the Chief Justice, proposed under the draft Service Rules, was not contemplated under Article 229.

(b) The terms of reference to the Fourth Pay Commission included the High Court employees. The report of the said Pay Commission had already been received by the Government on 31.5.1998.

(c) Approval of the draft Pay Rules for the High Court employees will result in treating them on a basis different from other Government employees and that will create unjust inequality, apart from administrative problems to the State Government.

(d) The State was unable to bear the financial burden that would arise if the two sets of rules were introduced.

3. The High Court in its letter dated 21.12.1998 expressed the view that such rejection was not proper and against the spirit of Article 229. This brought forth a reply dated 11.1.1999 from the Chief Secretary (second respondent) to the Registrar of the High Court, pointing that on three earlier occasions (in the years 1971, 1981 and 1990), the High Court employees were included in the reference to the State Pay Commissions with the

concurrence of the High Court and the recommendations of the said Pay Commissions were fully implemented in the case of High Court employees also. The letter further stated that the State's decision not to recommend the draft Rules for approval of the Governor was in conformity with the constitutional provisions. Being aggrieved, the petitioner, an association of High Court employees, filed this petition challenging the refusal by the State Government, to approve the draft Service Rules and draft Pay Rules. The petitioner sought the following reliefs : (i) a declaration that the first respondent has acted arbitrarily, irrationally and in a discriminatory manner and its communications dated 21.11.1998 and 11.1.1999 are unconstitutional, null and void; (ii) a direction to the State Government to recommend to the Governor, approval of the said Rules under Article 229(2); and (iii) a declaration that the first respondent and/or the Governor should grant approval to the draft Service Rules and draft Pay Rules.

4. On hearing the petition, this Court made an order dated 18.11.2003 directing the constitution of a Special Pay Commission. The operative portion of the said order is extracted below :

"In the instant case, the primary reason for refusal of grant of approval by the Governor has been the Government's claim of inability to bear the financial burden imposed by the draft rules. The Governor, under Article 229(2) has the power to refuse grant of approval, provided there is "very good reason" for the same. It cannot be said that there has been no exchange of views between the Chief Justice and the State Government. The correspondence between the State Government and the Chief Justice commencing from 21.11.1998 reveal sufficient degree of exchange of ideas. During the negotiation between the Government and the Chief Justice, both sides expressed their respective views on the matter. However there is no meeting point.

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. Hence, a special Pay Commission consisting of Judges and the Administrators shall be constituted by the Chief Justice in consultation with the Government to make a report and on receipt of such report, the Chief Justice and the Government shall thrash out the problem and work out an appropriate formula in regard to pay scales to be fixed for the High Court employees. Let such action be taken within 6 months from today.

List the petition after receipt of the report from the High Court or the Government."

5. In pursuance of it, a Special Pay Commission consisting of five members \026 three Judges representing the High Court and two Principal Secretaries representing the State Government - was constituted by the Chief Justice. The Committee, after a detailed consideration, submitted its Report dated 30.8.2004 consisting of 16 recommendations. As the dispute has now narrowed down to a single issue, as we will presently point out, we extract below only those portions of the report relevant to the issue :

"The Special Pay Commission constituted by the Hon'ble Chief Justice has tried to approach the problems which have surfaced during the process of fixation of pay scales of the employees of the High Court keeping in mind the stand of financial inability expressed by the State Government and the work pattern and special needs of the High Court administration.

In order to reach a meeting point, the Commission as a matter of policy agreed that the scales of pay as suggested by the State Government on the recommendation of the Fourth Pay Commission be accepted with effect from 1st January, 1996, with certain alterations on account of the onerous nature of the jobs performed by the High Court employees in comparison

to their counterparts in the State Government and the higher entry level qualifications prescribed for the same nomenclature of jobs. It was also proposed that in some cases the benefit allowed at the Entry Level be allowed in the senior/promotional post at the time of fixation of pay in the revised scale.

. . . \005\005\005\005... .

The Committee accordingly recommended as follows :

1. The Scales of Pay as suggested by the State Government on the basis of the recommendations made by the Fourth Pay Commission be accepted in most cases with higher initial benefits for the different categories of staff of the Calcutta High Court, both on the Original and Appellate Sides as recommended by the Special Pay Commission and set out in the chart hereto annexed.

2. Such higher initial benefits will in certain cases be by way of merger of the Special Pay enjoyed at present by the incumbent in the revised scale of pay together with additional Special Allowance or by way of suitable increments/boosters with effect from 1st January, 1996.

(3 to 12. Recommendations relating specific categories of posts omitted as not relevant)

13. In most of the other categories the Pay Commission recommends that pay be fixed in the revised scale with a higher initial start two stages above the entry point. Existing employees may be placed in the corresponding revised scale/(s) at two higher stages in the scale by way of fitment.

14. [omitted as not relevant]

15. All other benefits under the promotion policy statement, fitment in the revised scales, career advancement scheme, special pay and allowance, medical benefits, leave travel concession etc., being extended to the employees of the State Government, be extended mutatis mutandis to all staff of the High Court as well.

16. An Anomalies Committee be constituted by the Hon'ble Chief Justice to remove any anomalies that may surface in giving effect to and implementing the recommendations which are accepted.

The Pay Commission has prepared a chart setting out the different posts available in the High Court up to the post of Deputy Registrar which is equivalent in rank to a Deputy Secretary in the government establishment and the recommended emoluments applicable to the different categories of staff, both in the pre-revised scales and the revised scales with effect from 1st January, 1996. The chart also contains the reasons for such recommendations and is annexed to and forms part of this report."

[Emphasis supplied]

The chart enclosed to the report listed 65 categories of posts. The two representatives of the State Government however added the following note of dissent :

"In respect of Serial Nos.31 to 49, 64 and 65 the view of the Members representing the State Government is that pay in respect of the said posts should be re-fixed in the corresponding revised scale without any higher initial start, but with Special Allowance of Rs.200/- per month for the posts at Serial Nos. 31 and 32, Special Allowance of Rs.100/- per month for posts at Serial Nos.33 to 39 and Special Allowance of Rs.75/- per month for posts at Serial Nos. 40 to 49, 64 and 65."

Serial Nos.31 to 49 in the chart related to the posts of U.D. Assistant, Court Clerk, LD Assistant, Salary Typist, Extra Typist (regular), Telephone Operator, Driver, Muharir Grade I, Muharir Grade II, Bank Clerk, Record Arranger, Daftry, Jamadar, Senior Mali, Group D (Regular) \026 Peon/Orderly/Borkondaz/Cleaner/Night Guard, Farash, Mali, Visthi, Sweeper, respectively. Sl. No.64 referred to Grade I Peon/Durwan/Burkandaz and Sl.No.65 referred to Grade I Visthi/Sweeper).

6. The said report was filed before this Court. The petitioner and the High Court filed their respective affidavits on 16.11.2004 and 17.1.2005 praying that the note of dissent by the two State representatives on the Committee be ignored, and the recommendations of the Special Pay Commission be accepted in toto. The State Government, however, filed an affidavit dated 20.12.2004 praying that the recommendations made by the Special Pay Commission in its report dated 30.8.2004 be modified in the light of its suggestions and submissions (made in the said affidavit). With reference to para 13 of the recommendations of the Special Pay Commission, the State submitted thus :

"With reference to 13th recommendation made by the Special Pay Commission, I submit that it was suggested that with higher start at 3rd/4th/5th stage in different posts at the entry level as well as for senior/promotional posts at the time of fixation of pay in the revised scale, imply allowing a secondary/new scale of pay for all the employees irrespective of any speciality or specific reason. That will be against all norms of pay scale determination and fixation of pay at the entry level as well as fixation of pay on promotion."

7. When the matter came up on 11.2.2005, this Court adjourned the case to enable the Chief Justice and the concerned Ministers of Finance and Law to meet and work out a satisfactory solution based on the recommendations of the Special Pay Commission. Accordingly, a meeting was held between the Chief Justice and the Ministers in charge of the Finance and Law Departments on 13th and 18th April, 2005. After detailed deliberations/discussions, all the pending issues were sorted out unanimously as recorded in para Nos.1 to 11 of the of the meeting (duly signed by the Chief Justice and the two Ministers) are extracted below : "After detailed deliberations on the recommendations of the Special Pay Commission in respect of each of the posts shown in Chart A appended to the report of the Special Pay Commission, it was unanimously agreed that\026

1. In respect of the posts at serial numbers 1, 2, 4, 5, 7-9, 11-30, 50-53, 56-63, the recommendations of the Special Pay Commission would be accepted.

2. In respect of the posts at serial numbers 31-49, 64 and 65, the recommendations of majority members of the Special Pay Commission would be accepted.

3. In respect of the post at serial number 3 (Officer-on-Special Duty), the same scale of pay and special allowance as applicable to the post of Assistant Registrar, High Court would be prescribed.

4. In respect of the post at serial number 6 (Assistant Registrar), pay would be fixed in the revised scale of pay of Rs.8,000-Rs.13,500 with higher initial start at Rs.9,100/- and, in addition, a special allowance of Rs.200/- would be allowed.

5. In respect of the post at serial number 10 (Stamp Reporter/Additional Stamp Reporter), the recommendations of the Special Pay Commission would be accepted with the modification that no additional increment for law degree would be allowed.

6. In respect of the post at serial number 21(A) (Technical Assistant in Judges' Library), pay would be fixed in the corresponding revised scale (Rs.4,500-Rs.9,700) with higher initial start at Rs.4,800/-.

7. In respect of the post at serial number 54 (Typist Grade-I), pay would be fixed in the corresponding revised scale of pay (Rs.4,000-Rs.8,500) with higher initial start at Rs.4,125 and, in addition, a special allowance of Rs.100/- would be allowed.

8. In respect of post at serial number 55 (Shorthand-Typist), pay would be fixed in the corresponding revised scale of pay (Rs.4,000-Rs.8,850) with higher initial start at Rs.4,550/-.

9. The fixation of pay of the existing employees of the High Court in the revised scales would be done in accordance with the principles laid down in Rule 7 of the West Bengal Services (Revision of Pay and Allowances) Rules, 1998. A copy of the rules is enclosed.

10. Subject to para 9, other recommendations of the Special Pay Commission would be accepted."

11. These decision would form the basis of the Calcutta High Court Services (Revision of Pay and Allowances) Rules to be framed in accordance with Article 229(2) of the Constitution of India and the proviso thereunder."

8. When this case came up before this Court on 2.5.2005, the parties reported that all the outstanding issues had been sorted out as per the decisions taken at the joint meeting held on 13/18.4.2005. A joint request was made by all the parties for adjourning the matter till July, 2005 to enable them make necessary changes in the draft Pay Rules.

9. The High Court modified the draft Pay Rules in accordance with the decisions taken at the meeting Minutes dated 13/18.4.2005. The draft of the rules so modified, titled 'Calcutta High Court (Appellate Side & Original Side) Services (Revision of Pay & Allowance) Rules, 1998 (for short 'modified draft Pay Rules') was forwarded to the State Government. The State Government by letter dated 22.6.2005 objected to the second para of Rule 4 and sought its deletion. Another objection was also raised, which was subsequently sorted out.

10. Rule 4 of the modified draft Pay Rules, is extracted below :

"4. Fixation of initial pay in the revised scale:- The principles of fixation of initial pay in the revised scale as laid down in rule 7 of the West Bengal Services (Revision of Pay & Allowances) Rules, 1998 shall apply mutatis mutandis to the Officers and staff of the High Court on its Appellate Side and Original Side.

After fixation of pay in the corresponding revised scale of pay following the principles of rule 7 of West Bengal Services (Revision of Pay & Allowances) Rules, 1998, existing employees shall be placed at two stages higher in the revised scale(s).

Note: The expression 'Existing employees' shall mean the employees on the Appellate side and Original Side of High Court who were in Court's service on 31.12.1995 and who did not retire from Court's service on 31.12.1995 and who did not retire from Court's service in the afternoon of that date."

(emphasis supplied)

Rule 7 of the West Bengal Services (Revision of Pay and Allowances)

Rules, 1998 (for short 'State Pay Rules') referred to in Rule 4 of the modified draft Pay Rules, to the extent relevant for our purpose, is extracted below :

"7. Fixation of initial pay in the revised scales of pay :- (1) The initial pay of a Government employee who elects to draw pay in the revised scale of pay from any date between the 1st January, 1996 and the 1st January, 1997, or who is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised scale of pay on and from the 1st January, 1996, shall, unless in any case the Governor by special order directs otherwise, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien, or would have held a lien had his lien not been suspended, and in respect of his pay in the officiating post held by him in the following manner, namely :-

(i) an amount representing 40 per cent of the basic pay in the existing scale including stagnation increments, if any, shall be added to the existing emoluments of the employee;

(ii) after the existing emoluments have been so increased, the pay shall be fixed in the revised scale at the stage next above the amount thus computed;

Provided that \026

(a) if the minimum of the revised scale is higher than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;

(b) if the amount so arrived at is higher than the maximum of the revised pay scale, the pay shall be fixed at the maximum of the revised scale, the balance remaining as personal pay to be adjusted against stagnation increment as and when it becomes due:

provided further that subject to the other provisions contained elsewhere in these rules, the personal pay so determined and remaining after absorption of a portion of it in stagnation increments, shall be treated as an element of basic pay for the purpose of fixation of pay on promotion/appointment of the Government employee to higher post or advancement to higher scale.

Explanation \026 For the purpose of this clause the term "existing emoluments' shall mean the existing emoluments as defined in clause (b) of sub-rule (1) of rule 3;"

11. The Registrar-General sent a reply dated 24.6.2005 stating that the second para of Rule 4 was in terms of the decisions arrived at the meeting Minutes dated 13/18.4.2005. In its reply dated 6.7.2005, the State Government denied the same, observing thus :

"It is submitted that there was no decision to allow two additional increments to the existing employees after fixation of pay in the revised scales in accordance with the principles laid down in Rule 7 of the West Bengal Services (Revision of Pay & Allowances) Rules, 1998.

It is also submitted that keeping in view the observations of the Hon'ble Supreme Court regarding the special nature of work done in the High Court, it was agreed to grant higher initial start in most of the revised scales of pay and also Special allowance with pay for some of the posts. Employees of the State Government are not entitled to such benefits."

In its subsequent letter dated 27.7.2005, the State Government further clarified its stand thus :

"\005. during discussion in the meeting between the Hon'ble Chief Justice of the High Court at Calcutta and the Minister-in-Charge of Finance and Judicial Departments (referred to as joint meeting) held on April 13, and

April 18, 2005, the Finance Minister made it clear that no additional increments could be allowed to the existing employees after fixation of pay in the revised scales. However, in view of the observations of the Hon'ble Supreme Court of India regarding the special nature of work in the High Court, it was agreed to grant higher initial start in most of the revised scales of pay and also special allowance in addition to pay for some of the posts.

It is submitted that the fact that fixation of pay of the existing employees of the High Court in the revised scales would be done in accordance with the principles laid down in Rule 7 of the West Bengal Services (Revision of Pay & Allowance) Rules, 1998 was made clear in paragraphs 9 and 10 of the of the joint meeting. To emphasize that para 13 of the recommendations of the Special Pay Commission regarding fixation of pay of existing employees would be modified in terms of para 9 of the of the joint meeting, the phrase, "subject to para 9", was used in para 10 of the of the joint meeting. It is also submitted that in all cases of revision of pay and allowances, the maximum advantage accrues to the new recruits joining on or after the date of effect of the the revised scales of pay. This is a general feature of pay revision."

Parties have thereafter filed their affidavits before this Court reiterating their respective stands. They have not been able to arrive at a consensus by mutual discussions, on this issue.

12. In view of the developments during the pendency of this petition, the petitioner made a request during arguments that the relief sought in the writ petition may be suitably moulded by reading the prayer in the writ petition as one seeking a direction to the State Government to recommend the modified draft Pay Rules (instead of the draft Pay Rules earlier made) to the Governor for approval under Article 229(2). We permitted the petitioner to file a formal application for modification of the prayer as the learned counsel for the State and the High Court had no objection for such formal amendment. Such an application for amendment of prayer was filed on 13.9.2006 and was represented after curing defects on 20.11.2006. The said application for amendment is allowed.

13. It is not in dispute that when the Chief Justice and the Ministers met on 13/18.4.2005, the second part of recommendation No.13 of the Special Pay Commission, that the existing employees of the High Court should be given two increments, on fixation of pay in the corresponding revised scale of pay, was also discussed and a decision was taken on the recommendation. The agreed Minutes of the meeting, duly signed, includes a decision on the said recommendation. While the State Government contends that the agreed decision was not to accept the recommendation, the High Court contends to the contrary. Though the State and the High Court had thus joined issue on this recommendation, during the hearing, they fairly conceded that as the Minutes of the meeting dated 13/18.4.2005 were consensual, a decision on the controversy would now necessarily depend upon the interpretation of the Minutes. The arguments by counsel was restricted to this issue. Neither side made even an insinuation that the other side was making an incorrect statement. The controversy arises on account of different perceptions of the meaning of what has been recorded in the Minutes. Therefore the only question that arises for our consideration is :

"Whether the second para of Rule 4 of the modified draft Pay Rules (which requires the existing employees of the High Court to be placed at two stages higher in the revised scale) is in accordance with the of the Minutes of the meeting dated 13/18.4.2005 ?"

To find an answer, the recommendations of the Special Pay Commission, the correspondence and exchange of views in regard to points of disagreement and the decisions arrived at the meeting Minutes dated 13/18.4.2005, will

have to be examined. The intent and purpose of Art. 229(2) and the observations of this Court made on 18.11.2003 when directing the Constitution of Special Pay Commission, also will have to be kept in view.

The Constitutional Provision

14. Before considering the rival contentions, we may refer to Article 229(2) and some of the decisions of this Court which have considered its scope. Clause (2) of Article 229, reads thus:

"(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State."

In *State of Andhra Pradesh vs. T. Gopalakrishnan Murthi* [1976 (2) SCC 883], this Court held :

"\005the Chief Justice or some other Judge or officer of the Court authorised by the Chief Justice is empowered to make rules laying down the conditions of service of the High Court staff. But if the Rules made under Clause (2) relate to salaries, allowances, or pensions then since in them is involved the question of finance the framing of the rules under Clause (2) requires the approval of the Governor\027that means the State Government. 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\005.. It is, however, not possible to take the view that merely because the State Government does not see its way to give the required approval it will justify the issuance of a writ of mandamus under Article 226 of the Constitution as if the refusal, of the State Government was ultra vires or made mala fide and arbitrarily."

In *Supreme Court Employees Welfare Association v. Union of India* [1989 (4) SCC 187], this Court observed that the Chief Justice has to apply his mind to the framing of the Rules and the Government has to apply its mind to the question of approval of the Rules framed by the Chief Justice relating to salaries and allowances. The application of mind will include exchange of thoughts and views between the Government and the Chief Justice and it is highly desirable that there should be consensus between the two. The Rules framed by a high dignitary such as the Chief Justice should normally be accepted by the Government. Unless there is very good reason not to grant approval, the approval should always be granted.

This Court in *C.G. Govindan vs. State of Gujarat* [1998 (7) SCC 625], stated thus :

"\005.. the power of the Chief Justice of a High Court on the administrative side to fix salaries of his staff is not absolute. Presumably, since this would require financial outlay and may have repercussions on the salaries of others, approval of the Governor is expressly required.

The Governor, therefore, has a constitutional right to examine the proposal of the Chief Justice relating to the salary of his staff and to either grant approval or withhold it. Power to grant approval implies the power to withhold it. Of course the power must be exercised reasonably and in public interest. This constitutional methodology for fixing the salary of the High Court staff should not, ordinarily, be circumvented by the High Court by passing a judicial order which, in effect, directs the State to grant the salary scale desired by the High Court without the approval of the Governor. A mandamus of this kind should not be issued unless there is a breakdown of the constitutional machinery resulting in grave injustice or public detriment. There can be genuine differences in perception and

honest differences of opinion between the Chief Justice and the Governor/State on the question of salaries, allowances or pension of the High Court staff. It is desirable that such issues are resolved administratively in a reasonable manner by both sides and the provisions of the Constitution in Article 229 are honoured."

In Union of India vs. S. B. Vohra [2004 (2) SCC 150], this Court observed :

"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."

Contentions :

15. We will next refer to the contentions. The petitioners contended thus :

15.1) The Special Pay Commission has examined the issue of pay revision by keeping in view the financial difficulties expressed by the State Government as also the work patterns and special needs of the High Court administration. To reach a meeting point, the Special Pay Commission, accepted the revised scales of pay suggested by the state government, on the recommendations of the Fourth Pay Commission, with effect from 1.1.1996, with certain alterations on account of the onerous and different nature of chores/work performed by the High Court employees and higher entry level qualifications prescribed for some High Court posts, when compared to similar posts under the State Government. The alterations/additional benefits recommended by the Special Pay Commission are :

- (i) Merger of special pay with the existing pay, for purpose of fitment under the revised pay scale plus grant of additional special allowance/increments to certain categories of employees.
- (ii) Higher pay scale (instead of corresponding revised pay scale) to certain categories of employees.
- (iii) A higher initial start of two stages above the entry point to certain categories.
- (iv) Placement of the existing employees in the corresponding revised scales of pay, at two higher stages, by way of fitment.

The recommendations were consensual in nature. Though the State had some reservations about some recommendation, they were all sorted out as per the Minutes dated 13/18.4.2005. Para 1 of the Minutes dated 13/18.4.2005 confirmed the acceptance of the recommendations of the Special pay commission in regard to posts at Sr. Nos. 1, 2, 4, 5, 7 to 9, 11 to 30, 50 to 53, 56 to 63. Para 2 of the Minutes confirmed the acceptance of the recommendations of the majority members of the Special Pay Commission, in regard to posts at Sl.Nos. 31-49, 64 and 65. In regard to the posts at Sr. Nos. 3, 6, 10, 21A, 54 & 55, the recommendations of the Special Pay Commission were accepted with some modifications as detailed in paras 3 to 8 of the Minutes. Thus there was agreement in regard to all the posts enumerated at Sl. Nos.1 to 65 of the chart annexed to the report of Special Pay Commission vide paras 1 to 8 of the Minutes. No modification was suggested in regard to recommendation No. 13 of the Special Pay Commission relating to existing employees in the Minutes dated 13/18.4.2005. Therefore the recommendation for placing existing employees at two higher stages in the revised scale of pay, by way of fitment

was accepted by the State.

15.2) Where a higher pay scale is granted or where the special pay is merged with basic pay for fitment in the revised scale with grant of special allowance, all employees - both newly recruited employees as well as the existing employees - are benefited. But where the benefit extended to any category of post is only a higher initial start by two stages at entry point, then new recruits will be benefited and the existing employees in that category of post will not get any benefit. If the interpretation of the State is accepted, then the benefit of revised pay scales with higher initial start of two stages at entry point is extended to new recruits in posts at Sl.Nos. 31 to 49, 64 and 65, without making a corresponding provision for existing employees in those categories of posts. This would lead to discrimination among the employees holding the same posts, that is those who are appointed on or after the date when the Rules came into force (new recruits) and those who joined service earlier (existing employees).

15.3) If the benefit of second part of recommendation No. 13 made by the Special Pay Commission is not given to the existing employees, the majority of the employees of the High Court will end up not having any relief at all.

15.4) Rule 7 of State Pay Rules relates to fixation of initial pay of new recruits. It does not apply to fixation of revised pay of existing employees by fitment in the revised scale. The purpose of Paras 9 and 10 of the Minutes was merely to apply the principles of Rule 7 of the State Pay Rules to existing employees. Paras 9 and 10 of the Minutes cannot be read as rejecting the second part of recommendation No. 13 relating existing employees.

16. On the other hand, the State Government has put forth the following contentions:

16.1) The State Government has all along made it clear that it cannot agree for placing the existing employees of the High Court at two higher stages in the corresponding revised scales. This was reiterated at the meeting on 13/18.4.2005. Para 2 of the minutes amounts to consent for the first part of recommendation No. 13. Para 9 clearly states that the fixation of pay of existing employees of the High Court in the revised scales will be as per the principles laid down in rule 7 of the State Pay Rules. Rule 7 of the State Pay Rules does not provide for grant of any additional increments to existing employees after fixation of initial pay in the revised pay scale. It is evident from para 9 of the Minutes that the second part of recommendation No.13 of the Special Pay Commission relating to existing employees, was not agreed.

16.2) Para 10 of the Minutes dated 13/18.4.2005 begins with the words 'subject to para 9', followed by the words "other recommendations of Special Pay Commission would be accepted". In Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram [1986 (4) SCC 447], it was held that the expression 'notwithstanding' is in contradistinction to the phrase 'subject to'; and the term 'subject to' conveys the idea of a provision yielding place to another provision to which it is made subject. Therefore, the effect of Para 10 of the Minutes dated 13/18.4.2005 is that the second part of recommendation No. 13 of the Special Pay Commission regarding existing employees, was superseded by, or yielded to para 9 of Minutes dated 13/18.4.2005. The use of the words 'other recommendations' after the words 'subject to para 9' would show that what are accepted from out of Special Pay Commission's recommendations are those, which are not covered by para 9 or which are not contrary to para 9; and Para 9 provided only for re-fixation in terms of clause 7 and not for grant of two higher stages in regard to existing employees. If the intention was to give the existing employees the benefit of two higher stages as per the second part of recommendation No.13 of the Special Pay Commission, then it would have been clearly spelt out in para 9, or the words 'notwithstanding para 9' would have been used in para 10 instead of 'subject to para 9'. It was not done.

Therefore the second part of recommendation No. 13 of the Special Pay Commission to the effect that 'existing employees may be placed in the corresponding revised pay scales at two higher stages in the scale of pay by way of fitment' was not accepted.

16.3) If all the existing employees are to be given two higher stages in the scale of pay after fixing the pay in the revised scale, then it would mean that employees of the High Court falling in the categories mentioned in Sr. Nos. 1 to 9, 11, 13, 14, 15, 17, 18, 19, 21, 23, 24, 25, 26, 31, 50, 51 and 54 who have been given either the benefit of higher scale of pay, or special allowance, or merger of special pay with special allowance, will also be entitled to two further increments after fitment in the revised scale and that would amount to granting double benefits to those categories of employees, which was neither intended nor permissible.

16.4) Rule 7 of State Pay Rules shows that it applies only to existing employees and not to new recruits. Therefore there is no logic in the contention of the petitioner that Rule 7 of State Pay Rules applies only to new recruits and not to existing employees, and the purpose of Paras 9 and 10 of the Minutes dated 13/18.4.2005 was only to make the principles of Rule 7 of State Pay Rules applicable to existing employees of the High Court. In fact Rule 7 of the State Pay Rules applies only to existing employees and not to new recruits.

17. The learned counsel for the High Court broadly supported the submissions of the petitioner-Association. He also submitted that there was no basis for the apprehension expressed by the State that if the second part of recommendation No. 13 of Special Pay Commission relating to existing employees, is accepted, it will lead to conferring double benefits to employees falling under categories at Sl.Nos. 1 to 9, 11, 13 to 15, 17 to 19, 21, 23 to 26, 31, 50, 51 and 54. He submitted that second part of recommendation No.13 of the Special Pay Commission was to give the benefit of two higher stages, only to the existing employees in those categories of posts referred in the first part of the recommendation, that is categories to whom no special benefit has been granted. He submitted that second part of recommendation No. 13 would apply to only existing employees in the posts at Sl.Nos.10, 12, 16, 20, 22, 27 to 30, 32 to 49, 52, 53, 55 to 65.

Effect of Paras 9 and 10 of the Minutes

18. On a careful consideration of the matter, we find that the claim and contentions of the petitioner Association is based on the erroneous premises that Rule 7 of the State Pay Rules applies only to new recruits and not to existing employees. To support its contention that Para 9 of the Minutes does not amount to rejection of second part of recommendation No. 13, the petitioner has tried to offer an alternative reason for the introduction of Para 9 in the Minutes. The petitioner contends that Rule 7 of State Pay Rules does not apply to existing employees, and the purpose of Para 9 of the minutes is only to make the principle contained in Rule 7 of State Pay Rules applicable to existing employees.

19. A revision of pay scales, has to be followed by fitment in the revised pay scales, in the case of all employees who are receiving pay under the old pay scales. Such fitment in the revised pay scales will have to ensure pay protection, so that the total emoluments are not reduced on fitment in the revised pay scales. The problem of fitment is noticed in Samaraditya Pal's 'Service Law' (Second Edition, Page 277) thus :

"A pay scale has different stages. It starts with what is normally known as initial pay and ends with a ceiling. Each stage in the scale is represented by what is commonly referred to as basic pay. The emoluments which an employee takes home is not only the basic pay at a particular stage but also other admissible allowances viz. dearness allowance, house rent allowance etc. When the existing pay scale (Rs.1,000-100-1,500-200-

5,000) is revised (Rs.2,000-200-3,000-400-10,000) the question of fitment arises in this form. At which stage of the new pay scale is an employee who is at the stage of Rs.1,300 in the existing scale and is drawing a total emolument of Rs.3,000 (including all allowances) on the day immediately preceding the date on which the revised pay scale becomes effective to be fitted?"

Therefore, a formula or principle of fitment is provided either in the pay revision Rules, or by a separate order. Such a formula or principle for fitment is not required in the case of new recruits as they start at the lowest stage of the applicable pay scale or at such stage as stated in the terms of appointment. Rule 7 of the State Pay Rules relating to fixation of initial pay in the revised scale of pay thus applies only to existing employees who have been extended the benefit of a revised pay scale. The words 'fixation of initial pay' in Rule 7 of State Pay Rules, refers to the first pay fixed in the revised scale, on fitment. Therefore the contention of the petitioner that Rule 7 of State Pay Rules is intended to apply only to new recruits and the sole purpose of paras 9 and 10 of Minutes is to apply the principle of Rule 7 of State Pay Rules to existing employees is untenable.

20. The second wrong assumption made by the petitioner-Association is that in addition to getting the benefit of revised pay scales, each employee of the High Court should get a special benefit either as a special allowance or as higher pay-scale or a higher initial start or placement at a higher stage. What is overlooked is revision of pay scales is itself the main relief and is a substantial benefit. When the modified draft Pay Rules come into effect, all the employees of the High Court will be entitled to the benefit of revised scales of pay. Therefore everyone gets relief. The grievance that unless the existing employees get the benefit of being placed at two higher stages or some special allowance, they are not getting any relief, is therefore unfounded. Wherever a post carries onerous responsibilities, or special functions, the Special Pay Commission has taken note and provided, in addition to the benefit of revised pay scale, either special allowance or a higher initial start or even a higher pay scale and all such recommendations have been accepted by the State Government.

21. The contention of the petitioner that when the Rules relating to pay extend the benefit of revised pay scale with a higher initial start at entry point for any category of post, the existing employees in such category should also be given a corresponding benefit of higher stages after fitment in the revised scale of pay, to avoid discrimination, is also not tenable. There is no question of discrimination when a revised pay scale with a higher initial start is made applicable to a category of post, under the Rules, as even existing employees get the benefit of the revised pay scales by re fixation of their pay.

22. We also find no basis for the assumption that all categories of employees in the High Court are discharging more onerous functions than their counterparts in the State Government, and all High Court employees without exception, should therefore receive a higher pay than their counterparts in the State, even in the absence of any general or special reasons. Determination of parity or disparity in duties and responsibilities is a complex issue and we do not propose to enter upon it. Suffice it to say that the Special Pay Commission has identified the posts which require additional benefits and additional relief has accordingly been granted to them. What has not been agreed is a general stepping up of pay for all existing employees.

23. When the Special Pay Commission recommended that the existing employees may be placed at two higher stages in the revised pay scale by way of fitment, the State Government categorically stated that it was not agreeable to accept the recommendation. The said issue was discussed at the meeting on 13/18.4.2005 between the Chief Justice and the Ministers for Finance and Law. The pay scales applicable to the 65 categories of posts mentioned in the Schedule to the draft Pay Rules, were agreed upon, with

changes wherever necessary, as per paras 1 to 8 of the Minutes. The question of fixation of pay of existing employees was then specifically dealt with in para 9 of the Minutes by providing that the fixation of pay of the existing employees in the revised scales would be done in accordance with the principles laid down in Rule 7 of the State Pay Rules. Para 9 does not provide that after such fitment, the pay of the existing employees should be hiked by two higher stages. Nor does Rule 7 of the State Pay Rules provides for it. This means that the second part of recommendation No. 13 in the Special Pay Commission Report in regard to existing employees, was not accepted. This is further made clear by para 10 of the Minutes which states that subject to para 9 other recommendations of the Special Pay Commission, would be accepted. That is, any recommendation of the Special Pay Commission dealing with existing employees, will yield to para 9 of the Minutes. Paras 9 and 10 are clear, unambiguous and do not give room for any doubt. There is therefore no need to subject them to any special interpretative process. The effect is all the recommendations of the Special Pay Commission have been accepted subject to the changes indicated in paras 1 to 8, and para 9 of the Minutes dated 13/18.4.2005.

24. We are therefore of the view that the second para of Rule 4 of the modified draft pay rules is not in consonance with what has been agreed upon by the State Government and the Chief Justice at the meeting on 13/18.4.2005, and requires to be deleted.

25. The petitioner contended that the State Government's refusal is arbitrary. It is submitted that the Special Pay Commission has considered the matter in detail and made the recommendations and that the Chief Justice who is the Authority to make the Rules relating to pay of High Court employees has approved all the recommendations of the Special Pay Commission. It is contended that the role of the State Government is limited to approving the rules made by the Chief Justice in so far as it relates to salaries and allowances; and there is no justification for the State to disagree with Para 2 of Rule 4 made by the Chief Justice on the recommendation of the Special Pay Commission. Though the power to make rules in regard to pay and allowances of the High Court employees is vested in the Chief Justice subject to any law made by the Parliament, the Constitution has advisedly made the power of the Chief Justice to make such rules conditional upon approval of such rules by the Governor of the State, that is the State Government. The requirement of approval under the proviso Clause 2 of Article 229 is not a mere formality. We find that the State has approved all provisions except one clause. It has expressed its inability to agree to para 2 of Rule 4 as it provides for a general increase in pay of all existing employees by two stages, after fixation of pay in the revised pay scale. The non-approval is in consonance with the Minutes of the meeting dated 13/18.4.2005 between the Chief Justice and the Ministers representing the State. But for the unfortunate misunderstanding relating to second para of Rule 4 of the modified draft Pay Rules, the High Court and the State Government have shown understanding of each other's problems and by exchange of views and discussions, sorted out the outstanding issues, thereby maintaining the high constitutional traditions. Therefore there is no need for any interference.

26. As all issues have now been sorted out, the State Government will, as agreed by it, now forward the modified draft Pay Rules, excluding the second para of Rule 4, to the Governor for his approval. In view of the assurance made on behalf of the State Government to give approval to the modified draft Pay Rules we find no need to issue any mandamus. As the matter has been pending for long, we are sure that the State will act with expedition so that the modified draft Rules will come into force without any delay and the employees of the High Court will get all their dues in accordance with the said Rules. With these observations, the writ petition is disposed of.