IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

PRESENT:

The Hon'ble Justice Nishita Mhatre
And
The Hon'ble Justice Tapash Mookherjee

A.P.O. 185 of 2011
W.P. 1630 of 2010

State of West Bengal & Others
... Appellants
vs.
The High Court Employees' Welfare Association & Others
... Respondents

With

G.A. 3594 of 2015
APOT 544 of 2015
C.C. No. 28 of 2012

Hari Krishna Dwivedi, Principal Secretary, Department of Finance, Government of West Bengal
vs.
The High Court Employees' Welfare Association & Another

For the State/Appellants: Mr. Jayanta Kumar Mitra, Ld. A.G.
Mr. Lakshmi Kumar Gupta, Ld. Addl. A.G.
Mr. Joytosh Majumdar
Mr. Pinaki Dhole
Mr. Arindam Mondal

For the High Court Employees' Welfare Associateion/Respondent : Mr. Partha Sarathi Sengupta
Mr. Soumya Majumdar
Mr. Victor Chatterjee

For the Hon'ble High Court : Mr. Siddhartha Banerjee

Heard on : 29.02.2016, 01.03.2016, 29.03.2016 and 30.03.2016

Judgment on : 23.06.2016

Nishita Mhatre, J.:

1. The employees of the High Court at Calcutta have been waiting patiently to have the recommendations of the Special Pay Commission

which were submitted on 24th August, 2010 with regard to their pay allowances and other service conditions, implemented. These recommendations have been tossed to and fro between the State Government and the High Court Administration and have been the subject matter of litigation without any substantial justice being done to the employees. Besides 2 (two) increments which have been given to them after the interim report was submitted on 22nd April, 2009, the employees have got no further benefit pursuant to the recommendations of Special Pay Commission.

2. A Special Pay Commission was appointed in 1996 by the Hon'ble Chief Justice of the Calcutta High Court with only Hon'ble Judges of this High Court as its members for recommending the pay scales and allowances payable to the staff and officers of the High Court. The recommendations made by the Special Pay Commission of 1996 were accepted by the Full Court, and the State Government was requested to agree to pay them. However, the State Government refused to accept these recommendations. This led the respondent, i.e., the High Court Employees' Welfare Association (hereinafter referred to as "Welfare Association") to file a writ petition directly under Article 32 of the Constitution of India before the ***Supreme Court*** being ***Writ Petition (Civil) No. 134 of 1999***. An interim order was passed in this writ petition on 16th November, 2003 where the Supreme Court noted its earlier judgment in the ***Supreme Court Employees' Welfare Association vs. Union of India*** reported in ***(1989) 4 SCC 187.*** The Supreme Court had observed in that judgement: ***"the rules framed by***

a very high dignitary such as the Chief Justice of India should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted." The Supreme Court noted in the case of the Calcutta High Court employees that the primary reason for the Governor to refuse to approve the proposed draft rules containing the recommendations of the Special Pay Commission was the inability of the State to bear the financial burden. The Court observed that there was an exchange of correspondence between the State Government and the Hon'ble Chief Justice. However, there was no meeting point. The Court then observed as under:

> *"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"*

3. The State Government constituted the Fifth Pay Commission in the year 2008 for recommending the pay and allowances for government

employees. The Finance Secretary by his letter dated 1st September, 2008 sought the consent of the High Court for making the recommendations of the Fifth Pay Commission applicable to the High Court employees. The Registrar General of the High Court, by his letter dated 14th November, 2008, conveyed the approval for inclusion of the employees of the High Court on both the Original and the Appellate Side as well as the employees of the High Guest House and of the West Bengal Judicial Academy (hereinafter referred to as "High Court employees") within the terms of reference before the Fifth Pay Commission. Later, the High Court decided to withdraw its employees from the purview of the Fifth Pay Commission and in exercise of its powers under Article 229(2) of the Constitution of India, the Hon'ble Chief Justice of the Calcutta High Court constituted a Special Pay Commission for the High Court Employees. The Special Pay Commission consisted of three Hon'ble Judges of the Calcutta high Court and two Officers of the State Government and their mandate was to recommend the pay structure and allowance for the high court employees in the light of the special nature of work performed by them.

4. By a unanimous decision, interim recommendations were made by the Special Pay Commission. It accepted the pay-band and grade pay which were introduced by the Fifth Pay Commission for the State Government employees. It recommended that the pensionary benefits granted to the State Government employees should apply *mutatis mutandis* to the employees under the zone of consideration of the Special Pay Commission to whom the Calcutta High Court Services

(Revision of Pay and Allowances) Rules, 2007 apply. The Commission also recommended that any subsequent modifications to the West Bengal Services (Revision of Pay and Allowances) Rules, 2009 which came into effect before the publication of the final report of the Commission would apply *mutatis mutandis* to the employees of the High Court for whom the Special Pay Commission was constituted.

5. After several rounds of discussion, the Special Pay Commission submitted its final report to the Hon'ble Chief Justice on 24th August, 2010. There was no unanimity between the members. Three judicial members gave their recommendations separately while the administrative members having differed with the judicial members submitted their own report. Discussions were held between the then Hon'ble Chief Justice and the then Minister of Finance with respect to the report of the Special Pay Commission. The Government informed the High Court by its letter dated 4th November, 2010 that it had decided to grant two additional increments in the form of the High Court allowance to the employees falling within the purview of the Special Pay commission. The Registrar General of the High Court informed the State on 9th November, 2010 that the Hon'ble Chief Justice was dissatisfied with the meagre offer of the State Government and requested it to reconsider the amount proposed to be disbursed to the High Court employees. The State was adamant that no more than the High Court allowance which was offered could be disbursed to the employees considering the dire financial straits that the State Government was required to face.

6. The Welfare Association filed Writ Petition 1630 of 2010 on 22nd December, 2010 for a direction to the State and other authorities to grant higher pay-scales with retrospective effect from 1st January, 2006 in terms of the recommendations made by the judicial members of the Special Pay Commission, 2009.

7. The learned single Judge delivered the impugned judgment on 19th April, 2011. He was of the view that the stand of the State Government, explained by the deponent in the affidavit in opposition, amounted to a desperate attempt on the part of the State to find an "escape route" to avoid meeting the requirement of the High Court without any justifiable reason. The Court then directed that the report made by the three judicial members of the Special Pay Commission should be taken as the basis for further negotiations between the Hon'ble Chief Justice and the Government so that the appropriate rules for payment of salaries of High Court employees could be framed. The learned single Judge found that the letters dated 4th November, 2010 and 15th November, 2010 from the Finance Minister of the State to the High Court frustrated the provisions of Article 229 of the Constitution of India. The State was directed to reconsider the recommendations of the judicial members of the Special Pay Commission in an effective and meaningful manner with consultations with the Hon'ble Chief Justice or any other judge or judges of this Court authorised by the Hon'ble Chief Justice for framing such a fresh set of rules. It was also directed that the dialogue and consultation should commence with the State

Government approaching the Registrar of this Court within two weeks from the order and that the consultations should be concluded as expeditiously as possible so that the Government could approve of the recommendations made.

8. The State has filed the present appeal against the order of the learned single Judge on 16th May, 2011. While admitting the appeal, in the year 2013, the Division Bench of this Court stayed the order of the learned single Judge subject to the payment of two additional increments in the form of High Court allowance. The first increment was directed to be paid by 30th September, 2013 and the second on or before 31st December, 2013. This order was passed on 22nd August, 2013.

9. In the interregnum, as the impugned judgement had not been stayed for a period of almost two years after the appeal was filed, the Welfare Association filed a contempt petition. When the contempt petition came up for hearing, the learned single Judge directed strict compliance of the directions in the judgment and order passed while disposing of the writ petition.

10. In compliance of the direction, discussions were held between the Hon'ble Chief Justice and the Minister of Finance of the State of West Bengal. On 21st August, 2012 the Minister of Finance communicated to the Hon'ble the Chief Justice that the State had agreed to grant two increments in the form of a High Court allowance. Two further orders

were passed by the learned single Judge in the contempt petition, appreciating the gesture of the State Government agreeing to extend some monetary relief to the High Court employees before the Puja vacation of 2012. The order of 11th October, 2012 passed by the learned single Judge recorded that the State Government had decided to disburse two additional increments in the form of High Court allowance together with D.A. and H.R.A. on such increments.

11. By a communication dated 26th November, 2012 the Finance Minister informed the Hon'ble Acting Chief Justice that *"the State was in a veritable debt trap"* and bereft of funds *"to take further financial liabilities"*. In view of the financial stringency, the Minister requested the Hon'ble Chief Justice to accept the Government's goodwill offer of payment of the High Court allowance, i.e., two increments along with dearness allowance and house rent allowance on these increments. This offer was made in full and final settlement of the recommendations of the Special Pay Commission. The Registrar General informed the State that this goodwill gesture was accepted without prejudice to the rights of the parties and subject to the rules which could ultimately be framed regarding disbursement of pay and allowance.

12. On 1st February, 2013, the learned single Judge directed further dialogue between the Hon'ble Chief Justice and the State without any conditions attached. As mentioned earlier the impugned judgement of the learned single judge was stayed subject to disbursement of the high court allowance. Thereafter, unfortunately, the dialogue between the

State and the Hon'ble Chief Justice on the extension of any further financial benefits to the High Court employees has halted. On 11th September, 2013 the Governor of West Bengal directed payment of the High Court allowance at the rate of 6 per cent of the basic pay plus admissible D.A. and H.R.A. However, this allowance was not to be included for calculating pensionary benefits and retiral dues etc. There is no dispute that the amounts directed to be paid by the Division Bench in its interim order continue to be paid till today to the High Court employees.

13. We have heard the parties at length. The learned Advocate General essentially submitted that the salary of the High Court employees has to be fixed in terms of Article 229 of the Constitution of India under which the conditions of service of officers and servants of the High Court are to be fixed either by the Hon'ble Chief Justice or any other Judge or officer authorised by the Hon'ble Chief Justice to make rules for that purpose. The learned Advocate General submitted that the State was not bound to accept the recommendations of the proposals of the High Court or the Pay Commission appointed by the Hon'ble Chief Justice. He urged that rules relating to the salaries, various allowances, leave pay or pension payable to the High Court employees required the approval of the Governor of the State before they could be implemented. According to the learned Counsel, considering the financial straits and the debt with which the State is confronted, it is impossible for the State to grant any further relief to the High Court employees. The High Court allowance granted to the High Court

employees enhanced their salary instead of it being at par with that of the State government employees working in the Secretariat at the same level, urged the learned Counsel. He pointed out that the High Court employees get an additional amount ranging between `770/- to `2,546/- depending on the post that they hold, which is in excess of the gross salary of the Secretariat employees. The learned Advocate General submitted that the entire dispute between the parties can be resolved if the High Court employees accept the interim order passed by the Division Bench while admitting the appeal, as the final relief. He pointed out that the Governor would have no difficulty in approving the High Court allowance as a final settlement between the parties if the rules are framed in that manner. The main thrust of the learned Advocate General's argument was that any increase in the salary of the High Court employees would lead to disastrous repercussions for the State as its employees would seek a higher pay packet, at par with the High Court employees. The learned Counsel took umbrage to the language used by the learned single Judge while dealing with the offer made by the State Government of two additional increments which constituted the High Court allowance. He submitted that the learned single Judge was unnecessarily harsh and caustic while considering the offer of the Government to resolve the dispute. The learned Advocate General drew our attention to the proviso to Article 229(2) under which the Governor of the State has to approve the recommendations made by the Hon'ble Chief Justice or the judges named by him for enhancing the salaries and allowances for the staff and officers of the High Court. The learned Counsel therefore submitted that no directions could be issued

for implementation of the recommendations of the judicial members of the Special Pay Commission.

14. Mr. Partha Sarathi Sengupta, the learned Counsel appearing for the Welfare Association, pointed out that the High Court employees are not insisting on all the benefits which have been recommended by the three judicial members of the Special Pay Commission, at the moment. He submitted that after this long drawn out litigation, the High Court employees would be satisfied if two of their demands are met namely: (i)the two increments which have been disbursed as a High Court allowance are merged in the basic pay of the High Court employees and (ii)the dearness allowance and transport allowance is paid at the rates declared by the Central Government. He submitted that the burden cast on the State would be negligible. According to him, the total additional burden for both the Original and Appellate Sides of the High Court would be `1,79,99,762/- (Rupees one crore seventy nine lakh ninety nine thousand seven hundred sixty two) per month. He submitted that the total allotment of funds which were requested by the High Court for the financial year 2015-16 was `2,81,02,492/- (Rupees two crores eighty one lakh two thousand four hundred ninety two) and therefore, the additional involvement was well within the amount budgeted for by the State. The learned Counsel submitted that when the recommendations have been made in a particular way by the majority of the members of the Special Pay Commission, who happen to be the judicial members, those recommendations must be accepted as those of the Pay Commission. He submitted that the recommendations

made by the judicial members cannot be brushed aside on the ground that the administrative members had not agreed with them, especially when they had been made by the majority of the members of the Special Pay Commission. He then submitted that the Supreme Court had, in its order passed in Writ Petition (Civil) 134 of 1999, acknowledged that it is only the Hon'ble Chief Justice of the High Court and his colleagues who would really appreciate the special nature of the work done by the High Court employees. The Special Pay Commission consisting of Judges and administrators had been set up in consonance with the directions of the Supreme Court in the aforesaid order. He drew our attention to the detailed discussions in the recommendations made by the judicial members of the Special Pay Commission with respect to the nature of work done by each category of employees of the High Court. He pointed out that the administrative members had instead, not accepted the recommendations of the judicial members, without any satisfactory reasons being disclosed. The learned Counsel submitted that there was a glaring disparity in the pay packets of the Calcutta High Court employees and those of the employees of the other High Courts at the same level. He therefore submitted that if the High Court allowance is merged and the D.A. and transport allowance are paid at the Central rates to the High Court employees their hardship would be mitigated to a certain extent after the passage of a number of years of trials and tribulations.

15. It is now necessary to refer to the provision of Law under which the salaries of High Court employees are fixed and Rules are framed for

that purpose. Article 229 of the Constitution of India with which we are concerned in this appeal reads as follows:

> *"**229. Officers and servants and the expenses of High Courts –** (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:*
>
> *Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission*
>
> *(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:*
>
> *Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.*
>
> *(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund."*

16. Before Article 229 was adopted in the Constitution of India, which is equivalent to Article 205 in the Draft Constitution, it was subject to much debate by the founding fathers. Similarly Article 122 of the Draft Constitution which dealt with the officers and staff of the Supreme Court and its expenses was deliberated upon exhaustively before it was approved and adopted in the Constitution as Article 146. Both these Articles in the Draft Constitution stipulated that the Rules made by the Chief Justice of the High Court or by the Chief Justice of India or by a judge or judges deputed by them relating to payment of salaries and allowance to the Officers and staff of the Court concerned should be made with the consensus of the Governor in the case of High Courts and the President of India for the Supreme Court. However an amendment was moved in respect of both these Articles in the Draft Constitution by Dr. B. R. Ambedkar for replacing the word "consensus" in the Draft Articles with "approval" of the Governor or the President as the case may be. There were several members of the Constituent assembly who had apprehensions and misgivings about the amendment. The principle objection was that if there was need for an "approval" the independence of the judiciary would be compromised. Since the Governor and the President were expected to act on the advice of the Government of the day, some members had reservations because a truculent Government could stonewall any suggestions or recommendations made by the Chief Justice. Their fears were sought to be allayed

by other members of the Constituent Assembly who felt that the President or Governor would approve of the recommendations made by the Chief Justice since he holds a high office. Dr. B. R. Ambedkar who had the last word on the motion for amendment urged that the need for the amendment was because it was conceivable that the Chief Justice could fix scales of allowances, pensions and salaries which were very different from those fixed for civil servants who are working in other departments, besides the Judiciary which would lead to a lot of heart burn. He was of the opinion that by using the term "approval" of the President in place of the word "consensus" such an eventuality could be avoided.

17. The Supreme Court in its judgment dated 9th January, 2007 disposed of Writ Petition (Civil) 134 of 1999 filed by the Welfare Association and observed as follows:

> *"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."*

18. The learned Advocate General was at pains to point out that neither the High Court nor its employees could insist on salaries which were better than those paid to their counterparts in the Secretariat. According to him the salaries payable must be decided with consensus of the Hon'ble Chief Justice of the High Court and the State, as the approval of the Governor was essential for the implementation of Article 229(2) of the Constitution of India. He has relied on the judgment of the Supreme Court in the case of ***State of Andhra Pradesh & Anr vs. T. Gopalakrishnan Murthi & Ors*** reported in ***(1976) 2 SCC 883***. The Supreme Court in this judgment has observed that in view of the spirit of Article 229 of the Constitution of India ordinarily and generally the Governor should accord approval as that is expected in the fitness of things. But such approval is not an empty formality. Therefore, the Government may not approve of the recommendations of the High Court. The Court further held that merely because the government was not right in accepting any Chief Justice's view and refusing to accord approval, a writ of mandamus directing the Government to accord approval cannot be issued. In this judgment the Supreme Court noted its earlier view in ***M. Gurumoorthi vs. Assam & Nagaland*** reported in ***(1971) 2 SCC 137*** where the Constitution Bench observed that the Governor's approval must be sought with respect to rules relating to the salaries, leave or pension because the finance has to be provided by the Government and to that extent any involvement of expenses must be approved by the Government.

19. The learned Advocate General has also relied on the judgment in the case of ***C. G. Govindan vs. State of Gujarat & Ors*** reported in ***(1998) 7 SCC 625***. Three civil appeals were decided by this judgment. There was a difference of opinion between the two learned Judges of the Supreme Court with respect to the position in Civil Appeals 401 and 402 of 1997 and therefore, the Court directed that those appeals should be placed before the Hon'ble Chief Justice of India for constituting a larger Bench. The Civil Appeal 400 of 1997 was dismissed. Sujata V. Manohar, J., in her judgment has observed that where the Private Secretaries to the High Court Judges contend that they are entitled to the same pay-scales as are available to the Stenographers Grade I in the State Secretariat, the financial position of the State Government would have to be considered. Wadhwa, J. while agreeing with the view of Sujata Manohar, J. in ***C. G. Govindan's*** case (supra), wrote a dissent with respect to Civil Appeals 401-402 of 1992. The learned judge referred to the judgement in ***Supreme Court Employees' Welfare Association*** (supra) where it has been held as follows:

> *"**55.** On the basis of the principles of law laid down in the above decisions, it is urged by the learned Attorney General that this Court cannot issue a mandate to the President of India to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave and pensions of the officers and servants of the Supreme Court. In other words, the President of India cannot be compelled to grant approval to the proposals of the Registrar General of the Supreme Court, as contained in his letter dated July 22, 1987. There can be no doubt that an authority exercising legislative function cannot be directed to do a particular act.*

Similarly the President of India cannot be directed by the Court to grant approval to the proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India. It is not also the contention of any of the parties that such a direction can be made by the Court.

56. *The real question is how and in what manner the President of India should act after the Chief Justice of India submits to him the rules framed by him relating to the salaries, allowances, leave and pensions of the officers and servants of the Supreme Court. The President of India is the highest dignitary of the State and the Chief Justice of India also is a high dignitary of the State. Upon a comparative study of some other similar provisions of the Constitution, we find that under Article 98(3), the President of India has been empowered to make rules regulating the recruitments and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be. Article 148(5) provides that the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President of India after consultation with the Comptroller and Auditor-General. Similarly, the Governor has been empowered under Article 187(3) to make rules regulating the recruitment, and the conditions of service of persons appointed to the secretarial staff of the Assembly or the Council after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be. Thus, it appears that except in the cases of the officers and servants of the Supreme Court and those of the High Courts, in other cases either the*

President of India or the Governor has been empowered to frame rules.

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 be, 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 straightaway refuse to grant such approval, but before doing there must be exchange of thoughts between the President of India and the Chief Justice of India."*

20. As mentioned earlier, the learned Judges referred these Civil Appeals to the Hon'ble the Chief Justice to place them before a larger Bench. Accordingly these matters were placed before a Bench of three learned Judges of the Supreme Court. By the judgment in ***State of Gujarat & Anr vs. S. S. Murthy & Ors*** reported in ***2000 (5) SLR 300***

the Supreme Court observed that the Chief Justice of the Gujarat High Court should consider the representation of the employees *de novo*.

21. The learned Advocate General then referred to the judgment in the ***State of Maharashtra vs. Association of Court Stenos, P.A., P.S. and Another*** reported in ***(2002) 2 SCC 141*** in which the Court observed that the Hon'ble Chief Justice is the sole authority for fixing the salaries of the employees of the High Court subject to any rules made under Article 229(2) of the Constitution of India. The approval of the Governor is not in his discretion, but as advised by the Government. The Court observed that the Governor cannot fix the salary or other emoluments, in particular the pay-scale of an employee of the High Court. The Court observed thus:

> *"**5.** Under the Constitution of India, appointment of officers and servants of a High Court is required to be made by the Chief Justice of the High Court or such other Judge or officer of the Court as the Chief Justice directs. The Conditions of Service of such officers and servants of the High Court could be governed by a set of rules made by the Chief Justice of the High Court and even the salaries and allowances, leave or pension of such officers could be determined by a set of rules to be framed by the Chief Justice, but so far as it relates to salary and allowances etc., it requires approval of the Governor of the State. This is apparent from the Article 229 of the Constitution. On a plain reading of Article 229(2), it is apparent that the Chief Justice is the sole authority for fixing the salaries etc of the employees of the High Court, subject to the rules made under the said Article. Needless to mention, rules made by the Chief Justice will be subject to the provisions of any law made by the*

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

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

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

The Court also expressed the view in the aforesaid case that the Chief Justice of India is the appropriate authority to consider the question as to the distinctive nature and personality of the employees of the Supreme Court and before laying down the pay scales of the employees, it may be

necessary to ascertain the job contents of various categories of employees and nature of duties which are performed by them. Further, at the time of preparing the rules for prescribing the Conditions of Service, including the fixation of the pay scales, the Chief Justice of India will consider the representations and suggestions of the different categories of employees of the Supreme Court, also keeping in view the financial liability of the Government. In view of the aforesaid decision of this Court, it is difficult for us to sustain the impugned judgment, whereunder the High Court in exercise of its jurisdiction under Article 226, has issued the mandamus, directing a particular pay scale to be given to the Court Stenographers, Personal Assistants and Personal Secretaries attached to the Hon'ble Judges of the Court. In All India Judges' Association vs. Union of India, 1992(1) SCC 119, after a thorough analysis of Articles 233 to 235 of the Constitution, this Court no doubt has issued certain directions, ameliorating the Service Conditions of the Presiding Officers of the Subordinate Courts and also dealt with the appropriate pay scales for such Presiding Officers, but ultimately did not propose to finally examine the propriety of the pay scale nor directed that any particular pay scale should be fixed. It is no doubt true that the doctrine of 'equal pay for equal work' is an equitable principle but it would not be appropriate for the High Court in exercise of its discretionary jurisdiction under Article 226 to examine the nature of work discharged by the staff attached to the Hon'ble Judges of the Court and direct grant of any particular pay scale to such employees, as that would be a matter for the learned Chief Justice within his jurisdiction under Article 229(2) of the Constitution. We, however, hasten to add that this may not be construed as total ouster of jurisdiction of the High Court under Article 226 to examine the nature of duties of an employee and apply the principle of 'equal pay for equal work' in an appropriate case."

(Emphasis supplied)

22. The learned Advocate General also submitted that the merger of the High Court allowance with the basic pay would have a cascading effect as the financial burden on the State would surge exponentially. This is because the pension payable to retired employees would increase; the employees of the State Government would seek the same benefits. He has relied on the judgment in ***State of West Bengal vs. Subhas Kumar Chatterjee & Ors*** reported in ***(2010) 11 SCC 694*** to point out that the State cannot be compelled to accept the recommendations made by the Special Pay Commission.

23. Considering the above parameters enunciated by the Supreme Court regarding fixation of the salaries, pay and allowances of High Court employees, in our opinion, the learned single Judge has not transgressed the boundaries. He has merely directed the State to continue the dialogue with the Hon'ble Chief Justice with the recommendations of the judicial members of the Pay Commission as the bedrock for future discussions. We do not find that the learned single Judge has acted arbitrarily or capriciously while directing the State to reconsider its stand. In fact, as mentioned earlier the employees have reduced their demands at this stage and would be happy, if the two increments that they are drawing today as the High Court allowance are merged in the basic pay. The apprehension of the learned Advocate General that this would have a cascading effect inasmuch as the State Government employees would seek the same benefits is, in our opinion, unjustified. The Special Pay Commission has described in great detail

the nature of the duties performed by the employees of the High Court. They have considered the work load which each category of employees is expected to perform. The Supreme Court has expressed its opinion that the Chief Justice or the Judges of the High Court would be best placed to understand the duties performed by the employees of the High Court at every level. In our opinion, the merger of the increments in the salary of the High Court employees would not cast an over-bearing burden on the State even though the pension of the employees would rise. Rather than shutting out any dialogue as the State has sought to do by insisting that it is only willing to give the High Court allowance consisting of two increments in basic pay, D.A. and H.R.A., the State should have considered whether the merger of these increments could be made after a particular date if not from the date on which they were released as suggested by the employees. This would be a meaningful dialogue. Some statements have been shown to us by the State in support of its submission that it is already paying higher salary to the High Court employees than that which is paid to the Government employees. However, these statements do not reflect what the effect of the merger of the high court allowance with the basic salary would be as proposed by the employees nor do their statements reveal the burden that would be cast on the State if the amount is paid.

24. The learned Advocate General has harped on the additional burden which the State would have to bear in the event the High Court Allowances are merged with the basic pay. With respect to payment of pension, the State has, however, not cared to disclose the projected

burden of pension or the calculations in this regard for reasons best known to it. While refusing to accept any additional burden, there does not appear to be any exercise on the part of the State in ascertaining what would be the burden cast on it or whether it can bear the burden. These are well-recognised principles for fixation of wages or salaries and allowances.

25. After perusing the recommendations, it is evident that the administrative members have acted as mouthpieces of the Government rather than independently considering whether the increase sought by the High Court employees was justified. In fact, their report indicates that it is not their view which has been disclosed but the Government's view. The administrative members of the Commission were expected to decide the reference made to them judicially and judiciously instead of parroting the stance of the Government.

26. It appears to us that the strident opposition of the State to the recommendations made by the judicial members or even the lesser demand made by the High Court employees now is because of the manner in which it was castigated by the learned single Judge for not obeying his orders passed in the contempt petition. The State has not filed any appeal against these orders. However, it is apparent that the orders have ruffled feathers or hurt the ego of some officers in the higher echelons of the State administration. Time is a great healer. We are sure with the passage of time some of the observations made by the learned single Judge would not be a barrier for future discussions. The

time is therefore right for the Hon'ble Chief Justice of the Calcutta High Court to consider accepting the proposals of the High Court employees for merger of the High Court Allowance with the basic pay and/or for payment of the Dearness Allowance and Transport Allowance at the Central rates and recommend the same to the State for approval by the Governor of the State. In fact, the Counsel appearing for the High Court has fairly submitted that the High Court would accept what is best for its employees.

27. The employees would hardly be expected to give good service to the institution if they are not motivated enough by payment of adequate salaries. Employees of many of the High Courts in the country are drawing a higher gross salary than the employees of the Calcutta High Court. If the Hon'ble Chief Justice recognises the need for the merger of the High Court Allowance with the basic pay and for payment of the D.A. and T.A. at the Central rates, the Government should act positively and consider advising the Governor to grant approval to the proposed pay and allowances in view of the observations made by the Supreme Court in several of its aforementioned judgments. When recommendations are made by a high functionary like the Hon'ble Chief Justice of the State, they should normally be accepted by the State unless there are justifiable reasons for rejecting the same. We have not found any such justifiable reasons.

28. While dealing with this appeal, it is necessary for us to be aware of our jurisdiction. It is true that we are sitting in appeal over a

judgement and order passed by the learned single Judge of this Court in exercise of the powers conferred under Article 226 of the Constitution of India. It must be noted that the learned single Judge has not issued a writ of mandamus directing the State to accept the recommendations made by the judicial members of the Special Pay Commission. Instead, the learned single Judge has directed that these recommendations should form the basis of further dialogue between the Hon'ble Chief Justice and the State in order to formulate the rates fixing the pay-scales of the High Court employees. Similarly, it is not for us to issue a writ of mandamus under Article 226 of the Constitution, directing the payment, however strongly we feel that the High Court employees' demands are justified and that the State should accept the same. Under Article 229(2), the Hon'ble Chief Justice would have to prescribe the rules for the conditions of service of the officers and servants of the High Court relating to salaries, allowance, leave or pension in order that they are approved by the Governor. Rather than framing the rules on the basis of the report of the Special Pay Commission, the then Chief Justice of the Calcutta High Court was apparently of the view that the differences between the Government, which spoke through the administrative members of the Special Pay Commission, and the judiciary should be ironed out amicably. We hope that the dialogue between the Hon'ble Chief Justice of this Court and the Government is resumed as expeditiously as possible and preferably within two months from today so that the employees, who have been awaiting their benefits form 2009, see some light at the end of the tunnel.

29. We are not impressed by the argument on behalf of the State that it does not have the financial wherewithal to accord approval to the demands of the High Court employees. This argument, in our view, is untenable. The State has not disclosed the percentage of its budget spent on the judiciary or on the employees who are part of the administration of justice. Moreover the demands of the employees have been pending for almost 10 years. It is strange that the Government still puts forth the same beaten excuse after all these years for not accepting the merger, namely of lack of funds.

30. A vibrant judiciary can only perform to its optimum level if the employees who assist in the administration of justice are not dissatisfied. Their expectation to be paid salary at a reasonable level, in tune with the employees of other High Courts is justified. It is true that the basic salary of the employees of the Calcutta High Court may be higher than the employees of other High Courts, but the gross salary earned by employees of other High Courts is far greater than the amount earned by the Calcutta High Court employees. The government would do well to pay attention to this fact while resuming the dialogue with the learned Chief Justice of this High Court. With the original demands being slashed by the Welfare Association, the employees are now not even trying to match the salaries and benefits available to the employees of other High Courts in the country. Therefore, in our opinion, the demand of the High Court employees is reasonable and justified. However, ultimately this demand can be granted only through negotiations and with the rules being framed by the Hon'ble Chief

Justice for approval of the Governor of the State. We are sure that wiser counsel will prevail and all concerned would strive to ensure that the travails of the High Court employees cease and their demands are met as expeditiously as possible.

31. The appeal and applications filed therein are disposed of accordingly.

32. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.

(Tapash Mookherjee, J.) **(Nishita Mhatre, J.)**