



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 186 OF 2023

AND

WRIT PETITION NO. 409 OF 2023

WRIT PETITION NO. 186 OF 2023

1. Mr. Santosh S. Mhamal, son of Shridhar Mhamal, Senior Private Secretary to the Hon'ble Judge, aged 58 years.
2. Ms. Andreza Rodrigues e Pereira, wife of Mr. John Stephen Pereira, Private Secretary to the Hon'ble Judge, aged 55 years.
3. Ms. Niti Haldankar, wife of late Kishor Harmalkar, Private Secretary to the Hon'ble Judge, aged 45 years.
4. Ms. Meena V. Bhoir, wife of Vishal T. Bhoir, Private Secretary to the Hon'ble Judge, aged 44 years.
5. Shri Amrut Tari, son of Shri Nagesh P. Tari, Personal Assistant to the Hon'ble Judge, aged 55 years.
6. Ms. Vinita V. Naik, wife of Vikas D. Naik, Personal Assistant to the Hon'ble Judge, aged 49 years.
7. Ms. Esha Vaigankar, wife of Sainath S. Vaigankar, Personal Assistant to the Hon'ble Judge, aged 45 years.
8. Ms. Maria Suzana Rebello, wife of Joaquim Rodrigues, Personal Assistant to the Hon'ble Judge, aged 52 years.

All Group A Employees of the Hon'ble High Court of Bombay at Goa, Having office at Porvorim, Goa.

... Petitioners

V e r s u s

1. State of Goa, through its Chief Secretary, Secretariat, Porvorim, Goa.

2. The Law Secretary, Law Department, Government of Goa, Porvorim, Goa.

3. The Hon'ble Registrar General, High Court of Bombay, Fort, Mumbai, 403002.

4. The Hon'ble Registrar (Admin), High Court of Bombay at Goa, Porvorim, Goa.

(Above are the registered addresses of the Parties) ... Respondents

AND

WRIT PETITION NO. 409 OF 2023

1. Mr. Hipolito Azavedo, Aged 48 years, Section Officer, High Court of Bombay at Goa.

2. Mr. Ashok Dhargalkar, Aged 60 years, Section Officer, High Court of Bombay at Goa.

3. Mrs. Utkarsha Gauns, Aged 55 years, Section Officer, High Court of Bombay at Goa.

4. Mr. Prashant Parab, Aged 45 years, Section Officer, High Court of Bombay at Goa.

5. Mr. Avinash Parab, Aged 44 years, Section Officer, High Court of Bombay at Goa.

6. Ms. Vianna Dias, Aged 44 years, Section Officer, High Court of Bombay at Goa.

7. Ms. Telma Estebeiro, Aged 48 years, Section Officer, High Court of Bombay at Goa.

8. Mr. Pandurang Parab, Aged 41 years, Section Officer, High Court of Bombay at Goa.

9. Ms. Anissa Monteiro, Aged 45 years, Section Officer, High Court of Bombay at Goa.

10. Ms. Surekha Kumbarjuvekar, Aged 57 years, Section Officer, High Court of Bombay at Goa.

11. Ms. Vilasini Nagvekar, Aged 57 years, Section Officer, High Court of Bombay at Goa.

12. Mr. Xavier D'Souza, Aged 58 years, Section Officer, High Court of Bombay at Goa.

13. Ms. Roshan Shirodkar, Aged 48 years, Section Officer, High Court of Bombay at Goa.

... Petitioners

V e r s u s

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim, Goa. 403521.

2. Secretary (Law), Department of Law and Judiciary, Law (Establishment) Division, Government of Goa, having Office at Secretariat, Porvorim, Goa. 403521.

3. The Registrar (Admn.), High Court of Bombay at Goa. Porvorim-Goa. 403521.

4. The Registrar (Personnel), High Court of Bombay, Appellate Side, Bombay, Personnel

Department, Mumbai. 400032.

5. Registrar General, High Court of Bombay,
Appellate Side, Bombay, Personnel
Department, Mumbai. 400032.

(Registered address)

... Respondents

Mr. Dattaprasad Lawande, Advocate with *Mr. P. Dangui, Mr. Jay Mathew, Mr. Chirag Angle and Mr. S. Sawaikar, Advocates for the Petitioners in Writ Petition No. 186 of 2023.*

Mr. D. D. Zaveri, Advocate with *Mr Nehal Govekar, Advocate for the Petitioners in Writ Petition No. 409 of 2023.*

Ms. Neha Shirodkar, Advocate for the Respondent Nos. 3 and 4 in Writ Petition No. 186 of 2023 and Respondent Nos. 3, 4 and 5 in Writ Petition No. 409 of 2023.

Mr. Devidas Pangam, Advocate General with *Mr. Deep Shirodkar, Additional Government Advocate for Respondent nos. 1 and 2 in Writ Petition No. 186 of 2023.*

Mr. Devidas Pangam, Advocate General with *Ms. Maria Simone Correia, Additional Government Advocate for Respondent nos. 1 and 2 in Writ Petition No. 409 of 2023.*

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.**

RESERVED ON : 26th JULY 2024

PRONOUNCED ON : 30th JULY 2024

JUDGMENT (*Per M. S. Karnik, J.*)

1. Heard Mr. Lawande, learned Counsel appearing for the petitioners in Writ Petition no. 186 of 2023, Mr. Zaveri, learned Counsel appearing for the petitioners in Writ Petition No. 409 of 2023, Mr. Pangam, learned Advocate General appearing for the Respondent nos. 1 and 2 and Ms. Shirodkar, learned Counsel appearing for the High Court of Bombay.

2. The issue involved in both the Writ Petitions is common and hence heard and disposed by a common order.

3. The petitioners in Writ Petition No. 409 of 2023 are the Section Officers. The petitioners in Writ Petition no. 186 of 2023 are Group 'A' employees attached to the High Court of Bombay at Goa.

4. We refer to the facts in Writ Petition no. 186 of 2023.

The petitioner no.1 is presently working as Senior Private Secretary to the Hon'ble Judge of the High Court; the petitioner nos. 2, 3 and 4 are working as Private Secretary/ies to the Hon'ble Judge/s. Likewise, petitioner nos. 5, 6, 7 and 8 are presently working as Personal Assistant/s to the Hon'ble Judge/s, of High Court of Bombay

at Goa. Respondent no.1 is the State of Goa. Respondent no.3 is the High Court of Bombay.

5. The petition is filed with a grievance as regards denial of the benefits/extension of the upgraded pay scales notified vide Notification bearing Ref. No. Rule/B-1509/2022 dated 14th June, 2022, issued by the respondent no.3 to the Secretarial Staff of the High Court of Bombay, which includes these petitioners. The petitioners are aggrieved by the non-consideration/delay on the part of the State of Goa to consider the proposal dated 25.08.2022 of the respondent no. 4- Registrar (Admin) in the matter of upgradation of the pay scales of the Secretarial Staff of the High Court of Bombay at Goa. The petitioners as well as their counterparts i.e. Secretarial Staff, Group 'A' employees of the High Court of Bombay at its Principal seat and its Benches at Nagpur and Aurangabad are appointed under the Appellate Side Service Rules, (*Rules of 2000*, for short), having the same identity who also perform equal identical works/duties/job/responsibilities, etc.

6. The respondent no.3 by Notification dated 14.06.2022, amended the Rules of 2000 thereby upgrading the pay scales of the Secretarial Cadre i.e. Secretary to the Hon'ble Chief Justice, Private Secretary to the Hon'ble Chief Justice and other Hon'ble Judges, Senior Private

Secretary and the Personal Assistants of the Hon'ble Judges in terms of the Schedule-I appended to the said Notification dated 14.06.2022. A perusal of the Notification dated 14.06.2022 would indicate that the proposed amendment intended to insert Rule 3(b)(ii) and Rule 3(b)(iii) after the existing Rule 3(b)(i) of the Rules of 2000. After the amendment of the said Rules of 2000, the petitioners had been legitimately/bonafidely expecting revision of their pay scales in terms of the said amendment. According to the petitioners, it was incumbent upon the State of Goa to implement/execute the said amendment in terms of the law and to consequently make the petitioners and other employees belonging to the Group 'A' eligible to the revised/upgraded pay scales.

7. Prior to the liberation of Goa, Daman and Diu, the highest Court of the then Union Territory was '*The Tribunal de Relecao*' functioning at Panaji. This *Tribunal de Relacao* was abolished when a Court of Judicial Commissioner was established w.e.f. 16.12.1963 under the Goa Daman and Diu (Judicial Commissioner Court) Regulation 1963. On 16.05.1964, by repealing Section 7 of the Goa, Daman & Diu (Administration) Act, 1962, the Goa Daman and Diu, Judicial Commissioner's Court (Declaration as High Court) Act, 1964, was passed by the Parliament which conferred upon the declared Court of Judicial Commissioner as "High Court", vesting in it some powers of

the High Court for the purposes of Article 132/134 of the Constitution of India. In terms of Articles 230 and 231 of the Constitution of India, the Parliament enacted the High Court at Bombay (Extension of Jurisdiction of Goa, to Goa, Daman and Diu) Act, 1981 and extended the jurisdiction of High Court of Bombay to the Union Territory of Goa, Daman and Diu and established a permanent Bench i.e. High Court at Panaji on 30.10.1982. The High Court of Bombay was established as a common High Court for the State of Maharashtra and the Union Territory of Goa, Daman and Diu. Goa attained Statehood on 30.05.1987. The Parliament enacted the Goa Daman and Diu Reorganisation Act, 1987. Under part II of the Reorganisation Act, Section 3 thereof enacted in formation to the State of Goa while Section 4 enacted in formation of Union Territory of Daman and Diu under Section 20 of the Reorganization Act, the High Court of Bombay became a common High Court for the State of Maharashtra and the newly formed State of Goa and for the Union Territories of Dadra and Nagar Haveli and the newly formed Union Territory of Daman and Diu.

8. The Hon'ble Chief Justice in exercise of its powers under Article 229 of the Constitution of India and in super-session of all the existing rules relating to recruitment, promotion, etc, framed the Bombay High Court Rules of 2000, for the regulation of the matters of recruitment

and other conditions of service of the members of the High Court of Judicature at Bombay on its Appellate Side, including officers at Nagpur, Aurangabad and Panaji-Goa. The said Rules were to come into effect from 01.01.2001 and it applies to all persons appointed to service on or before the said date.

9. The Government of Goa vide Order dated 22.03.2007, had opened a separate budget head to disburse salaries and other allowances to the staff of the High Court of Bombay at Goa, which was to take effect/operation from 01.04.2007. By an order dated 10.12.2013 passed by the Hon'ble Chief Justice of Bombay High Court, the Goa Civil Services Rules pertaining to the pay, allowances, pension, etc., were proposed to be formulated, which were to govern the service conditions of the employees attached to the High Court of Bombay at Goa w.e.f. 01.01.2014. As on the date of filing of this petition on 15.03.2023, no Rules had been notified/formulated. The petitioners addressed a representation to the respondent no.3, *inter alia* contending that the Notification dated 14.06.2022 be conveyed to the respondent no.1 so as to enable them to take appropriate steps as regards the applicability of the said notification to the Secretarial Cadre of the High Court of Bombay at Goa. In response to the representation dated 05.05.2022, the petitioners were in receipt of a letter dated 26.08.2022 issued by the respondent no.4 *inter alia*

intimating the petitioners that the representation was considered and the Hon'ble the Chief Justice was pleased to direct the Registry of this Court to move the Government of Goa for upgradation of pay scales and allied subjects pertaining to the Secretarial posts.

10. Suffice it to mention, it is the case of the petitioners that the recommendation made by the Chief Justice for upgradation of pay was not accepted by the State Government and the Rules were notified by the State of Goa which were at variance with those recommended by the Hon'ble Chief Justice. Pursuant to the directions of the Hon'ble Supreme Court, the Rules were notified. Except for the upgradation of pay scale with which the State Government had an issue considering the financial implication, the High Court of Bombay at Goa Officers and the Members of the Staff on the Establishment (Recruitment and Conditions of Service) Rules, 2023, notified was in conformity with the Rules recommended by the Hon'ble Chief Justice. The petitioners pray that having regard to the scope and sweep of the Hon'ble Chief Justice's powers under Article 229 of the Constitution of India, the petitioners are entitled to the upgraded pay scales as recommended by the Hon'ble Chief Justice with retrospective effect and arrears on par with their counterparts working at the Principal seat at Bombay.

11. The petitioners contended that the directions contained in the letter dated 25.08.2022 was that of the Hon'ble Chief Justice of the High Court of Bombay under Article 229 of the Constitution and had to be approved by the respondent nos. 1 and 2. The petitioners contended that the recommendation of respondent no.4 was inline with the Maharashtra Government Resolution dated 19.04.2022 and the respondent nos. 1 and 2 ought to have approved the same and extended the benefit of Maharashtra Government Resolution to the said staff. According to the petitioners, there was no difference in the service conditions of the employees in Mumbai and the employees in Goa. The appointment and the service conditions of the petitioners' counterparts at the Principal Seat and the Benches at Nagpur and Aurangabad are governed by the Bombay High Court Appellate Side Rules, 2000 and have the same identity and also perform equal and identical works/duties and responsibilities, etc., and hence the 2022 amendment has to be applied to the petitioners to provide parity with their counterparts in Maharashtra.

12. Learned Counsel for the petitioners relied on the decisions in **Union of India & anr. vs. S. B. Vohra & Ors.¹, Adeline Rodrigues & Ors. vs. State of Maharashtra & Ors.², State of**

1 (2004) 2 SCC 150

2 2013 (6) Mh.L.J. 14

Rajasthan & Ors. vs. Ramesh Chandra Mundra & Ors.³, M. Gurumoorthy vs. Accountant-General, Assam & Nagaland & Ors.⁴, High Court Employees Welfare Assn. Calcutta & Ors. vs. State of W.B. & Ors.⁵, Y. K. Mehta & Ors. vs. Union of India & anr.⁶, State of Andhra Pradesh & anr. vs. T. Gopalakrishnan Murthi & Ors.⁷, Re:PensionBenefits for Employees Retd. From High Court of Bombay at Goa⁸ and Mr. Sanjay Bhat & ors. vs. State of Goa & Ors.⁹, in support of their submissions.

13. On the other hand, the learned Advocate General invited our attention to the affidavit in reply dated 21.07.2023 filed by the respondent nos. 1 and 2 and also the additional affidavit in reply dated 04.10.2023. It is submitted that pursuant to the order dated 01.05.2023 of the Hon'ble Supreme Court in Writ Petition (Civil) No. 464/2023, wherein it was noted that the Rules were yet to be finalised and had sought the status of the finalization of the Rules, a meeting was convened on 12.05.2023, under the Chairmanship of the Hon'ble Chief Minister regarding finalization of the High Court of Bombay at

3 (2020) 20 SCC 163

4 1971(2) SCC 137

5 (2004) 1 SCC 334

6 1988 (Supp) SCC 750

7 (1976) 2 SCC 883

8 WP(C) no. 464/2023 orders dt. 01.05.2023 & 15.05.2023

9 MCA No.645/2018 in STA No. 3852/2016 order dt.21.12.2018

Goa Officers and the Members of the staff of the Establishment (Recruitment and Conditions of Service) Rules, 2023. The aspect relating to finalization of the Rules was discussed in the meeting and it was resolved that it is not necessary for the respondent-State to implement the same scales which are being implemented for the employees of the High Court of Bombay in the State of Maharashtra, for the following reasons :

“(a) The retirement age of employees in Mumbai is 58 years, unlike Goa, where the same is 60 years.

(b) Conditions/cost of living in Mumbai and Goa are not comparable.

(c) The employees of the High Court in Goa are availing various schemes such as House Building Allowance, allotment of Comunidade plots for construction of house, medical reimbursement, etc., which the State of Goa provides for its employees, which are not available in the State of Maharashtra.

(d) Employees of the High Court in Goa get dearness allowance and pay commission benefits much earlier than the same are provided to the High Court employees in Maharashtra.”

14. According to the learned Advocate General, the State also noted that the upgradation suggested is with retrospective effect from the year 2007 (more than 15 years) and from 2011 for some posts. It was also considered that if such scales are implemented in Goa, then the

same will be at par with Senior Scale Officers in the State of Goa and will have huge financial implications. It was further noted that if the upgradation is agreed to, then it will lead to representations from Junior Scale Officers and Senior Scale Officers at entry level for implementation of higher pay scales, which will have major impact on the State Exchequer. On 15.05.2023, a statement was made on behalf of the State before the Hon'ble Supreme Court in Writ Petition (Civil) no. 464/2023, that a meeting was held on the said issue and that the Rules would be notified within a period of three weeks. The Minutes of the meeting held on 12.05.2023 were put up for Government approval and for notifying the Rules. After the Government approval was obtained, the respondent-State issued Notification dated 01.06.2023 notifying the High Court of Bombay at Goa Officers and the Members of the Staff on the Establishment (Recruitment and Conditions of Service) Rules, 2023, which was published in the Official Gazette dated 03.06.2023.

15. Pursuant to the filing of the affidavit, the petitioners amended the petition praying for quashing and setting aside the decision of the State Government in the letter dated 28.07.2023 and for consequential direction to the State to grant approval to the request made by the respondent no.4 in its letter dated 25.08.2022 and further to grant upgradation of the pay scale of the Secretarial Cadre and Group 'A' and

'B' employees on the establishment of High Court of Bombay at Goa in terms of the Maharashtra Government Resolution dated 19.04.2022.

16. Learned Advocate General submitted that the power vested in the Hon'ble Chief Justice has been made conditional upon approval of such Rules by the Governor. Relying on Article 229 of the Constitution and the proviso thereto, it is submitted that so far as the Rules relating to salaries, allowances, leave or pensions of the officers/servants, the same requires the approval of the Governor of the State. According to learned Advocate General, the State Legislature is empowered to make a law on the subject and the Rules made under Article 229(2) are subject to the provisions of the law made by the Legislature. The Article provides that the administrative expenses of the High Court, including all salaries, allowances and pensions payable shall be charged upon the Consolidated Fund of the State. The learned Advocate General submitted that the purpose behind the requirement of approval of the Governor of the State is because the salaries, allowances, etc., would have financial liabilities and may also have repercussions on the salaries of others. It is submitted that in such matters where the State has examined the aspects relating to the pay scales and has taken a decision, the Courts will ordinarily not pass orders directing the State to grant a particular pay scale to the staff. It is further submitted that the service conditions of the petitioners

including the pay scales of the said staff are governed by the High Court of Bombay at Goa Officers and the Members of the Staff on the Establishment (Recruitment and Conditions of Service) Rules, 2023, which were published in the Official Gazette dated 03.06.2023. Learned Advocate General emphasized that the pay scales are covered by the said Rules, which have been notified, after approval by the State Government. It is submitted that as regards the representation and the demand of the staff for higher pay scales, the matter was examined at the highest level and the Government for valid reasons had taken a decision that upgradation of the pay scales is not possible. It is submitted that the directions in the letter dated 25.08.2022, cannot be said to be directions given by the Hon'ble Chief Justice. According to the learned Advocate General, letter dated 25.08.2022 was only a proposal sent by the Registry and not a direction of the Hon'ble The Chief Justice. Learned Advocate General laid emphasis on the fact that Goa is an independent State. According to him, the petitioners' case is misconceived because the Resolutions of State of Maharashtra cannot be forced upon the State of Goa. It is submitted that no opinion can be formed that there is no difference in the service conditions of Mumbai and in Goa as the position in each State is different. According to the learned Advocate General, the conditions, costs of living, service conditions, facilities and benefits, are different in Goa from the State of Maharashtra. Moreover, the financial position, budget and resources

available in both the States are incomparable. According to the learned Advocate General, the approval of the Governor of the State is not an empty formality as various facts have to be taken into consideration while approving the recommendations of the Hon'ble Chief Justice which has been duly considered by the State Government i.e. only after examining the proposal and taking a conscious decision that the Rules of 2023 are notified by the State of Goa.

17. Learned Advocate General further submitted that the Order dated 10.12.2013 of the Registrar General of the High Court expressly states that the Hon'ble The Chief Justice has decided to make Goa Civil Service Rules and other Rules pertaining to pay, allowances, permission, etc., applicable to the employees working on the Establishment of the High Court of Bombay at Goa w.e.f. 01.01.2014, which recognizes the fact that the position in the State of Goa is different and that the employees in Goa will be governed by a separate set of Rules. It is thus the submission of learned Advocate General that the determination of parity and identity of duties and responsibilities is a complex issue which will not ordinarily be gone into by the Court. Learned Advocate General submitted that it is a settled law that the Court will not direct fixation of particular pay scales in exercise of writ jurisdiction. It is his submission that the petitioners have not brought any material to show wholesale and

wholesome identity in the duties, functions, responsibilities, etc. of the staff in Maharashtra and the staff in Goa. It is urged that to establish wholesale, wholesome and complete identity, is a *sine qua non* when it comes to disparity of pay scales. It is further urged that the petitioners have not provided any data as regards to the ratio of the staff to the number of Judges, the workload in Goa as compared to the State of Maharashtra. It is further submitted that there are some better benefits which are being received by the staff of Goa as compared to those in Maharashtra like that of higher retirement age, which are not available in the State of Maharashtra.

18. The thrust of learned Advocate General's submission is that the conditions of the employees working at the Principal seat is not comparable with those in the State of Goa. The Principle of equal pay for equal work will not apply in the present facts. Hence, the petitioners cannot seek parity with their counterparts in Mumbai. The approval by the Governor is not an empty formality and the same has to be granted after taking into consideration various circumstances peculiar to the State where the petitioners are working. The pay scales of the counterparts of the petitioners at the Principal seat was enhanced and brought at par with the Secretarial Staff working in the State of Maharashtra which cannot be the basis to claim upgradation. The State of Goa is a separate State. The Bombay High Court is

common to the two States and, therefore, any decision of the State of Maharashtra cannot be foisted upon the State of Goa.

19. Learned Advocate General relied upon the decisions in **Steel Authority of India Limited & Ors. vs. Dibyendu Bhattacharya**¹⁰, **Hukum Chand Gupta vs. Director General, Indian Council of Agricultural Research & Ors.**¹¹, **Harbans Lal & Ors. vs. State of Himachal Pradesh & Ors.**¹², **State of Andhra Pradesh & anr. vs. T. Gopalakrishnan Murthi & Ors.** (supra) and **State of H.P. vs. P.D. Atti & Ors.**¹³, in support of his submissions.

20. We have heard learned Counsel at length. At the outset, it would be pertinent to refer to the order passed by the Hon'ble Supreme Court on 24.07.2024. Their Lordships observed thus :

**“IA No 234830 of 2023 In Writ Petition (Civil)
No 464 of 2023**

1. In exercise of the constitutional authority vested in the Chief Justice under Article 229 of the Constitution, the Chief Justice of the High Court of Judicature at Bombay, following the rules framed by the Rules Committee, forwarded the High Court of

10 (2011) 11 SCC 122

11 (2012) 12 SCC 666

12 (1989) 4 SCC 459

13 (1999) 3 SCC 217

Bombay at Goa Officers and the Members of the Staff on the Establishment (Recruitment and Conditions of Service) Rules 2023 to the State government.

2. The Government of Goa issued a notification dated 3 June 2023, notifying certain rules. The rules which have been notified contain a prefatory statement that they have been made by the Chief Justice of the High Court of Judicature at Bombay in exercise of the power conferred under Article 229 of the Constitution. However, the rules are significantly at variance with what was submitted to the Government of Goa under the authority of the Chief Justice.

3. An affidavit has been filed by the Registrar (Legal and Research) before the High Court of Bombay at Goa in pending matters (Writ Petition No 186 of 2023 and Writ Petition No 409 of 2023). The affidavit states that in the guise of complying with the order of this Court, the Government of Goa has framed rules governing the service conditions which were not approved either by the Rules Committee of the High Court or by the Chief Justice.

4. A chart has been tendered on behalf of the High Court indicating the divergence between the rules as approved by the Rules Committee of the High Court and the rules as notified by the Government of Goa.

5. We are apprised of the fact that the above writ petitions (Writ Petition No 186 of 2023 and Writ Petition No 409 of 2023) are due to come up for hearing before the High Court tomorrow (25 July 2024). We are not restraining the High Court from

hearing the petitions and from passing appropriate orders.

6. This Court has taken *suo moto* cognizance of the grievances of former employees of the High Court of Bombay at Goa to whom their terminal dues, including pensionary benefits were not being paid. The rules which have been framed by the Government of Goa would undoubtedly affect the retiral dues of the employees who have served the High Court.

7. The course of action which has been followed by the State Government, *prima facie*, is contrary to the settled position of law and the remit of Article 229 of the Constitution. In this context, the attention of the Government of Goa has to be drawn to the judgment of this Court in ***Union of India and Another vs S B Vohra and Others, (2004) 2 SCC 150***, rendered by a three-Judge Bench of this Court in which it was held:

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

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

8. It is extraordinary that the Government of Goa has purported to notify rules under Article 229 of the Constitution in the name of the Chief Justice though the rules in the form in which they were notified were not recommended by the Chief Justice nor was any consultative exercise conducted pursuant to the recommendation by the Chief Justice.

9. In order to furnish the State Government with an opportunity to rectify what *prima facie* seems to be a clear breach of law laid down by this Court, we direct that the proceedings be listed on 2 August 2024.

10. Mr Abhay Anil Anturkar, counsel appearing on behalf of the Government of Goa shall communicate a copy of this order to the Chief Secretary to the Government of Goa. The Chief Secretary shall file a personal affidavit in these proceedings on the next date of hearing.

11. List the Petition on 2 August 2024.”

(Emphasis supplied)

21. A reading of paragraph 5 of the aforesaid Order indicates that this Court is not restrained from hearing the petitions and from passing appropriate orders.

22. Let us consider the scope and the power of the Hon'ble Chief Justice under Article 229 of the Constitution. In paragraph 7 of the Hon'ble Supreme Court's order, a reference is made to **Union of India & anr. vs. S B Vohra & Ors.** (supra). A reference to the decision in **State of Andhra Pradesh & anr. vs. T. Gopalakrishnan Murthi & Ors.** (supra) is significant. The issue was disparity in the pay scale of High Court employees and the Secretarial Staff of State of Andhra Pradesh. The boundary of law engulfed in proviso 2 of Article 229, is dealt with by Their Lordships. Though Their Lordships did not find it possible to sustain the judgment of the High Court in the facts, however, it was observed that Government will give their second thought to the matter and see whether it is possible in the State of Andhra Pradesh to obliterate the distinction in the matter of pay scales between the High Court and the Secretariat Staff. Their Lordships also observed that there does not seem to be any good and justifiable reason for maintaining the distinction. It is important to note that **State of Andhra Pradesh & anr. vs. T. Gopalakrishnan Murthi & Ors.** (supra) was a case where the Chief Justice of the High Court wanted the High Court staff

to be paid at the scales of pay of equivalent posts in the Secretarial staff of the Government of Andhra Pradesh. The Government did not agree to do so. The concerned employees filed a Writ Petition in the High Court for a writ of mandamus against the Government of Andhra Pradesh directing them to implement the recommendations of the Chief Justice of the High Court made from time to time to fix the pay scales of various categories where the respondents belong in accordance with the pay scales as revised by the State Government in Annexure III of the Andhra Pradesh Secretarial Service.

23. It is pertinent to note that the petitioners in the present case are seeking pay parity with their counterparts at the Principal seat. The petitioners as well as their counterparts at the Principal seat, the Benches at Nagpur and Aurangabad, were appointed in terms of the Rules of 2000. The present is a case where the parity in the working conditions was accepted by the Rule Committee and, thereafter, the recommendation was made by the Hon'ble The Chief Justice to pay to the respondents the same pay scales as their counterparts are receiving at the Principal seat.

24. We are not in agreement with the learned Advocate General that this is a case where the decision of the State of Maharashtra is thrust on the State of Goa. It is just that the counterparts of the petitioners at

the Principal seat were held entitled to pay parity with the Secretarial staff at Mantralaya, consequentially, the recommendation was made by the Hon'ble The Chief Justice under Article 229 of the Constitution for the upgradation of the pay scales of the petitioners, who are discharging the same functions and duties as their counterparts at the Principal seat and its Benches. Thus, the principles of equal pay for equal work was recognised by the Rule Committee whereupon the pay scales of the petitioners were sought to be brought at par with their counterparts on the basis of the recommendations made by the Hon'ble Chief Justice under Article 229 of the Constitution of India.

25. The law is well settled that the recommendations of the Hon'ble Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. The question as regards fixation of a revision of the scale of pay of the High Court being within the exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the said recommendations save and except for good and cogent reasons. We are conscious that the High Court should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered

therefor. We also give due consideration to the submissions of the learned Advocate General that the statutory duties should be allowed to be performed by the statutory authorities at the first instance.

26. In the present case, we find that the Rules ultimately published by the State of Goa, did not include upgradation of pay as per the recommendations of the Hon'ble Chief Justice, which according to the learned Advocate General, was a conscious decision considering all relevant factors. Thus, except for the upgraded pay scale, all other recommendations of the Hon'ble Chief Justice were incorporated in the Rules which were later published by the Government of Goa on 20.05.2024.

27. We must place on record that after hearing the learned Advocate General at length and upon considering the affidavit in reply that was filed on behalf of the High Court, we did express that the matter should be resolved by arriving at a consensus. However, in our opinion, in the facts of the present case, the refusal to accept the recommendations for upgradation of pay is not for strong and adequate reasons. The recommendations made by the Hon'ble Chief Justice should not be treated lightly for ultimately the question as regards fixation of the revised scale of pay of the High Court being within the exclusive domain of the Chief Justice of the High Court, subject to the approval,

the State is expected to accept the said recommendations save and except for good and cogent reasons.

28. The decisions relied upon by the learned Advocate General are distinguishable on facts. This is a case where upon due consideration of all relevant materials, as the petitioners were found to be entitled to the same pay scales as the counterparts at the Principal seat, that the pay parity is applied and accordingly, the recommendations made by the Hon'ble The Chief Justice. This after the Rule Committee had considered the matter. Amongst the staff who are discharging identical duties in all respects, the disparity in the pay scale was sought to be removed. We find that the Hon'ble Chief Justice has made the recommendations to do away with the disparity in the pay scales in respect of the staff working under him. According to us, the Hon'ble Chief Justice is best suited to do so as he knows the factual working conditions of the staff members. In this context, it would be profitable to refer to the decision in the case of **Union of India & anr. vs. S B Vohra & Ors.** (supra), where Their Lordships observed at paragraphs 43, 46, 48 and 51, thus :

“43. In **High Court Employees Welfare Association, Calcutta and others vs. State of West Bengal & Ors. [2003 AIR SCW 6338]**, a Bench of this Court observed:

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

(emphasis supplied)

...

46. Decisions of this Court, as discussed hereinbefore, in no unmistakable terms suggest that it is the primary duty of the Union of India or the State concerned normally to accept the suggestion made by a holder of a high office like a Chief Justice of a High Court and differ with his recommendations only in exceptional cases. The reason for differing with the opinion of the holder of such high office must be cogent and sufficient. Even in case of such difference of opinion, the authorities must discuss amongst themselves and try to iron out the differences. The appellant unfortunately did not perform its own duties.

...

48. It has to be further borne in mind that it is not always helpful to raise the question of financial implications vis-a-vis the effect of grant of a particular scale of pay to the officers of the High Court on the ground that the same would have adverse effect on the other employees of the State. Scale of pay is fixed on certain norms; one of them being the quantum of work undertaken by the officers concerned as well as the extent of efficiency, integrity, etc. required to be maintained by the holder of such office. This aspect of the matter has been highlighted by this Court in the

case of the judicial officers in *All India Judges' Association vs. Union of India & Ors.* [(1992) 1 SCC 119] and [(2002) 4 SCC 247].

(emphasis supplied)

...

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

29. We again remind ourselves of the settled law that in such matter the High Court should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefor.

30. Though much emphasis is placed by the Advocate General that the principles of equal pay for equal work would not be applicable as the working conditions in the State of Maharashtra are bound to differ with that of the State of Goa, even then, independent of the principles of equal pay for equal work, the scope and ambit of Article 229 cannot be overlooked which clearly reveals that the Hon'ble Chief Justice has prerogative powers and it is not open to the State Government to brush aside the recommendations of the Hon'ble Chief Justice under Article 229 of the Constitution of India in a light manner save and except for good and cogent reasons.

31. At this stage, we may refer to the affidavit in reply filed on behalf of the High Court-respondent nos. 3 and 4, affirmed by the Registrar High Court of Bombay. In paragraph 16 of the affidavit in reply, it is stated that the pay scale and other service conditions are approved and incorporated by the Hon'ble Rule Committee and the Hon'ble the then Acting Chief Justice. In paragraph 17 of the affidavit in reply, it is stated that the Hon'ble Chief Justice had, after considering the working conditions and principles of parity, approved the same pay scale to the Secretarial Cadre Staff and Group 'A' and Group 'B' employees working on the establishment of High Court of Bombay at Goa as like the staff working in the High Court of Maharashtra. The same upgraded pay scales were incorporated in the draft Rules as approved by the Hon'ble

Rule Committee and the Hon'ble the then Acting Chief Justice. The respondents say that the contention of the State that the Hon'ble the Chief Justice had not directed to pay upgraded pay scales to the petitioners, was incorrect.

32. In the context of the present petition, we need to make a profitable reference to the decision in **State of Rajasthan & Ors. vs. Ramesh Chandra Mundra & Ors.** (supra). Their Lordships made very significant observations in the context of the proviso to Article 229(2) of the Constitution. In paragraph 21, it is observed thus :

“21. It seems to us that the proviso to Article 229(2) (as also Article 146), does not reflect an architecture of hierarchy. We think that the correct constitutional approach is one of comity between different institutions working under the Constitution. The emphasis is not on the supremacy of one institution or demarcating the boundaries of the other. It is about ensuring institutional integrity of one while respecting the functional domain of the other. These provisions are meant to facilitate a dialogue of governance between high constitutional functionaries. A healthy dialogue, perhaps, even a debate is necessary for an efficient constitutional polity. The constitutional vision is not to draw “*lakshman rekhas*” between constitutional functionaries; its command is for the constitutional functionaries to efficiently coordinate to best achieve constitutional goals. It is this constitutional essence that was ignored when the

request of the learned Chief Justice was not even placed before the Governor.”

33. The Supreme Court then in paragraph 22, made important observations about independence of Judiciary being a part of the basic structure of the Constitution. Paragraphs 22 and 27, which are relevant, read thus :

“22. That independence of judiciary is part of the basic structure of the Constitution is now well entrenched. The Constitution has insulated the judiciary from outside influences both by the executive and legislature. Articles 223 to 234 in Chapter VI in Part VI of the Constitution dealing with the courts below the High Courts also show that the Constitution-makers were equally keen to insulate even subordinate judiciary. Independence of judiciary takes within its sweep independence of the individual Judges in relation to their appointments, tenure, payment of salaries and also non-removal except by way of impeachment. *An integral part of “Independence of judiciary”, as a constitutional value is the “Institutional Independence” i.e. the aspect concerning the financial freedom or autonomy which the judiciary must possess and enjoy.* This effective involvement of the judicial branch in budgeting, staff and infrastructure has also been recognized by the international community.

...

27. Adequate budgeting so as to meet the judiciary's work demands, so as to ensure proper infrastructure and facilities is integral to judicial functioning. In that sense, it is an aspect of judicial independence. That independence of judiciary is part of the basic structure of the Constitution is by now well entrenched. An integral part of "independence of judiciary", as a constitutional value is the "institutional independence" i.e. the aspect concerning the financial freedom or autonomy which the judiciary must possess and enjoy.

(Emphasis supplied)

34. No doubt, in **State of Rajasthan & Ors. vs. Ramesh Chandra Mundra & Ors.** (supra), Their Lordships considered it appropriate to set aside the decision of not accepting the proposal of The Chief Justice and remand the matter back to the State Government for appropriate consideration. However, it is relevant to note that Their Lordships observed that undoubtedly, the State Government if considers necessary, it may hold a meeting with the officers concerned of the Rajasthan High Court as may be appropriate for resolving the issue.

35. Coming to the present case, after hearing the learned Advocate General at length and upon considering the well settled principles of law laid down in the context of Article 229 of the Constitution, we are of the opinion that though we should ordinarily be very slow in issuing

a writ of mandamus, the facts in the present case persuade us to issue a writ of mandamus. This was expressed by us at the conclusion of the hearing. In all fairness to the learned Advocate General, we must record that, on instructions, learned Advocate General submitted that the Government of Goa would accept the decision of this Court including issuance of a writ of mandamus and shall not challenge this decision of the Court. We appreciate the positive approach of the Advocate General, on instructions of the State of Goa. Learned Advocate General, however, submitted that considering the financial position of the State, it will not be possible to agree to the payment of arrears from 2007-2011 as per the recommendations. It was however submitted that the Government of Goa shall accept the recommendations of the Hon'ble Chief Justice as regards the upgradation of the pay scales of the Petitioners.

36. On consideration of all relevant circumstances, as the upgradation suggested by the recommendations of the Hon'ble Chief Justice is with retrospective year from the year 2007 and from 2011 for some posts, at the first blush we were inclined to grant arrears. But we cannot lose sight of the observations made in **M. Gurumoorthy vs. Accountant General, Assam & Nagaland & Ors.** (supra) at page 429 :

“Thus Article 299 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. These can be prescribed by rules made by him. Apart from the special situation contemplated by the proviso to clause (1) the only exception is that the Governor's approval must be sought to the extent the rules relate to salaries, leave or pension. This exception; it is abundantly clear, has to be made because the finances have to be provided by the Government and to the extent there is any involvement of expense the Government has to approve of it.”

37. On the aspect of arrears, learned Advocate General submitted that considering the quantum, the burden on the public exchequer will be huge. We did express that there is no reason to deny the arrears to the petitioners considering that their counterparts at the Principal seat of this Court and its Benches were given the benefit thereof from 2007 and in some posts from 2011. It was the submission of learned Advocate General that the pay be notionally fixed in terms of the recommendations of the Hon'ble Chief Justice and the issue as regards arrears could be remanded to the State Government for appropriate consideration. Learned Advocate General assured that the State

Government would then hold a meeting with the Officers of the Bombay High Court and make every possible endeavour in resolving the issue regarding arrears.

38. We requested the learned Advocate General to look into the matter and seek instructions from the State Government in view of the settled legal position that the correct constitutional approach is one of comity between different institutions working under the Constitution. As held by the Supreme Court the emphasis is not on the supremacy of one institution or demarcating the boundaries of the other. It is also about ensuring institutional integrity of one while respecting the functional domain of the other. These provisions are meant to facilitate a dialogue of governance between high constitutional functionaries.

39. Considering that some of the employees have already retired and the question pertains to total of 30 employees including the Petitioners to whom the recommendations of the Hon'ble Chief Justice apply, we requested the Advocate General to seek instructions from the State Government if the issue could be resolved here itself instead of remanding the matter to the State Government for its consideration. We thus had called upon the Advocate General to use his good offices in ensuring that the matter is resolved. Learned Advocate General responded positively and in deference to our request, on instructions, submitted that

though he will leave the decision as regards the payment of arrears to this Court, which the State would accept, but requested for sufficient time to pay it considering the quantum. According to him, even the pay will have to be re-fixed, which exercise may take some time.

40. We find that if arrears are to be paid to the petitioners, the same benefits also will have to be extended to nine other similarly situated employees who are covered by the recommendations of the Hon'ble Chief Justice. The Registry was called upon to give an approximate indication as regards the quantum of arrears. Learned Counsel for the High Court submitted that on a rough estimation, the arrears will work out to Rs.6,58,60,787/- (Rupees Six Crores Fifty Eight Lakhs Sixty Thousand Seven Hundred and Eighty Seven). Learned Counsel submitted that there may be increase in this amount as the calculations are based on a rough estimation. Learned Counsel for the High Court submitted that the aforesaid approximate financial implication w.e.f. 01.10.2007 to 31.07.2024, is done as per the Rule Committee decision.

41. We find the request of the Advocate General for one year's time to pay the arrears, reasonable. We, accordingly, direct the State Government to re-fix the pay and pay the arrears within a period of one year in terms of the recommendations of the Hon'ble Chief Justice.

42. Now that the State Government has agreed to accept the order passed by this Court, the State will do the needful in complying with the recommendations of the Hon'ble Chief Justice.

43. We dispose of the Writ Petitions in the above terms with no order as to costs.

URMILA
PRAMOD
INGALE

Digitally
signed by
URMILA
PRAMOD
INGALE
Date:
2024.07.30
19:50:47
+0530

VALMIKI MENEZES, J.

M. S. KARNIK, J.