

PETITIONER:

C.G. GOVINDAN, STATE OF GUJARAT & ANR.

Vs.

RESPONDENT:

STATE OF GUJARAT & ORS., S.S. MURTHY & ORS.

DATE OF JUDGMENT: 11/08/1998

BENCH:

D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

With
CIVIL APPEAL NOS. 401 AND 402 OF 1997
J U D G M E N T

Mrs. Sujata V. Manohar, J.

Civil Appeal Nos. 401 and 402 of 1997 are filed by the State of Gujarat against a judgment of a Division Bench of the High Court granting to the Private Secretaries to the Hon'ble Judges of the High Court pay-scales of Rs.3000-4500. For the sake of convenience the State of Gujarat is referred to as the appellant and the original petitioners before the High Court are referred to as the respondents. While Civil Appeal No. 400 of 1997 is filed by one C.G. Govindan, a Private Secretary to a Judge of the Gujarat High Court claiming the pay-scale of Rs.3000-4500 from 1.1.1986, which appeal has been dismissed by the same common judgment.

Factual background:

Prior to 1.1.1986, in the Central Secretariat of the Union of India, there were four grades of stenographers-Grade A, B, C and D. Stenographer Grade A was in the pay-scale of Rs.650-1200 while Stenographer Grade B was in the pay-scale of Rs.650-1040. The 4th pay commission recommended (paragraphs 9.39 and 9.42 of the 4th pay Commission Report) that Grades A and B should be merged and a uniform scale of Rs. 2000-3500 should be provided for all posts in Grades A and B combined.

It further recommended, "To provide further satisfactory promotional avenues for the members of the CSSS (Central Secretariat Stenographers Service), we recommend to Government of India and equivalent officers may be upgraded and given the scale of Rs.3000-4500". Pursuant to this recommendation, the Government of India, Ministry of Personnel, Public Grievances and Pensions, by its Office Memorandum dated 7.10.1987 accepted the recommendation of the 4th Central Pay Commission in this regard and upgraded the existing posts of Private Secretaries to Government of India and equivalent officers to the scale of Rs.3000-4500 with immediate effects.

In the State of Gujarat:

In the Secretariat of the Government of Gujarat, prior to 1.1.1986, Stenographers Grade I carried the pay-scale of

Rs.650-1040. Stenographers Grade I-cum-Private secretaries to the High Court Judges also had the pay-scale of Rs.650-1040. On the merger of pay-scales Rs. 650-1200 and Rs.650-1040, the revised pay-scale for them was Rs.2000-3500.

After the Union Government accepted the recommendation of the Fourth Central Pay Commission with regard to the upgradation of the existing posts of Private Secretaries to Secretaries to the Government of India and equivalent officers to the scale of Rs.3000-4500, the Government of the State of Gujarat appointed a committee to examine the representation in that connection made by the Gujarat Sachivalaya and Allied Officers Stenographers Association. The committee came to the conclusion that there was sufficient justification to upgrade certain posts of seniormost Private Secretaries to the scale of Rs.3000-4500 equivalent to the number of officers of the rank of Additional Chief Secretaries and above in the Sachivalaya. Thereafter by its Resolution dated 28.2.1990, the Gujarat State Government decided that 10% of the existing posts of Private Secretaries (English and Gujarati Stenographers Grade I) on the Secretariat cadre in the pay-scale of Rs.2000-3500, may be upgraded as Private Secretaries Class I, and be given the pay-scale of Rs.3000-100-3500-125-4500. These upgraded posts may be filled by promotion from Private Secretaries (Stenographers Grade I) on the basis of seniority-cum-merit. For becoming eligible to this grade, the incumbent must have put in at least 15 years of service as Stenographer Grade I.

Present position:

Under the Resolution of 18th of May, 1991, the revised pay-scales relating to Stenographer Grade I in the Secretariat cadre are as follows:

Designation	Current Pay-scale	Revised Pay-scale	Remarks
Stenographer Grade-I	650-1040	2000-3500	Upgraded the present posts of cadre steno upto 10% administrated by Sachivalaya and General Administration Deptt. into the pay-scale of 3000-4500 of Personal Secretary

Thereafter the High Court of Gujarat at Ahmedabad issued a corrigendum dated 27.11.1991 by which the Hon'ble the Acting Chief Justice of the High Court of Gujarat, in exercise of the powers conferred on him under Article 229 of the constitution, with the approval of the Governor of Gujarat, directed amendment of certain entries in the Schedule to the High Court Notification dated July 3, 1987 thereby revising the existing pay-scales of various officers Gazetted and Non-gazetted. Under the Corrigendum of 27.11.1991 at Item No. 4, Private Secretaries to the Hon'ble Judges and Stenographers Grade I had their Pay-scales revised in the following manner:

Sr. No. in the High Court Notification	Designation	Present pay-scale shown in the High	revised scale	Remarks
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No.A.1308/87
dt.July 3,
1987

Court
dt.July 3,
1987

GAZETTED CLASS -II
OFFICERS

4.	13	Private Secretaries to the Hon'ble Judges & Stenographer Gd.I	2000-60-2300- KB-75-3200- 100-3500	2000-60 2300- KB-75-	10% of the existing post of Stenographers Grade I (Gujarati, English), on the establishment of the High Court, be upgraded as private Secretaries in the pay-scale of Rs.3000-100-3500-125-4500.
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On the date of the writ petition, therefore, the Private Secretaries to the High Court Judges and Stenographers Grade I were in the pay-scale of Rs.2000-3500; 10% of the existing posts of Stenographers Grade I, however, on the establishment of the High Court were upgraded as Private Secretaries in the pay-scale of Rs.3000-100-3500-125-4500. This was also the position of Stenographers Grade I in the sachivalaya and General Administration Department of the Government of Gujarat.

The Private Secretaries to the High Court Judges, however, contend that all Private Secretaries to the High Court Judges irrespective of their length of service, should be put in the pay-scale of Rs.3000-4500. The High Court has accepted the contention and granted the relief.

Constitutional Provision:

Article 229 of the Constitution deals with the officers and servants, and expenses of the High Court. Clause 2 of Article 229 provides that subject to any law made by the legislature, the conditions of service of officers and servants of the High Court shall be such as may be prescribed by rules made by the Chief Justice, provided that in so far as they relate to salaries, allowances, leave or pensions, they will require the approval of the Governor of the State. Therefore, the power of the Chief Justice of a High Court on the administrative side to fix salaries of his staff is not absolute. Presumably, since this would require financial outlay and may have repercussions on the salaries of others, approval of the Governor is expressly required.

The Governor, therefore, has a constitutional right to examine the proposal of the Chief Justice relating to the salary of his staff and to either grant approval or withhold it. Power to grant approval implies the power to withhold it. Of course the power must be exercised reasonably and in public interest. This constitutional methodology for fixing the salary of the High Court staff should not, ordinarily,

be circumvented by the High Court by passing a judicial order which, in effect, directs the State to grant the salary scale desired by the High Court without the approval of the Governor. FA mandamus of this kind should not be issued unless there is a breakdown of the constitutional machinery resulting in grave injustice or public detriment. There can be genuine differences in perception and honest differences of opinion between the Chief Justice and the Governor/State on the question of salaries, allowances or pension of the High Court Staff. It is desirable that such issues are resolved administratively in a reasonable manner by both sides and the provisions of the Constitution in Article 229 are honoured.

The circumstances set out above in the present case do not show any reason for resorting to a mandamus to circumvent Article 229. When the writ petition was filed, the Chief Justice's recommendation to upgrade 10% of the posts had been accepted. And the Chief Justice had not made nay recommendation for granting the upgraded pay-scale to all judges' secretaries.

The principle of equal pay for equal work was also invoked in this connection, presumably as between Private Secretaries of the High Court Judges and Private Secretaries to the Secretaries in the State Secretariat. However, as the original petitioners have themselves pointed out, the work done by the Private secretaries to the Secretaries of the Gujarat Government. There is, therefore, no question of equal work. However, since over the years parity has been maintained between the salary scales drawn by Stenographers Grade I in the State Secretariat and Stenographers Grade I-cum-Private Secretaries in the High Court, any increase in the pay-scales in the State Secretariat would lead to a legitimate expectation of similar increase for the High Court staff. Under the corrigendum of the High Court dated 27.11.1991, this parity has been maintained. As in the State Secretariat, so in the High court also, 10% of the posts of Private Secretaries-cum-Stenographers Grade I were upgraded and Stenographers Grade I with 15 years of service were to be selected for the higher pay-scale of Rs.3000-4500 on the basis of their seniority-cum-merit.

Also this promotional pay-scale has been given to senior stenographers Grade I-cum-Private secretaries to the High Court Judges in order that they may not stagnate in the same grade. What the respondents now desire is more than parity. Rather, they contend that their work is comparable only to the work of Stenographers in the Sachivalaya in the upgraded 10% bracket. At the same time they contend that their work is different and more strenuous. Article 14 has no application here. A general parity between the pay-scales of the High Court and the Secretariat staff has not been disturbed. On the contrary, to give the higher grade of Rs.3000-4500 to all Stenographers Grade I-cum-Private secretaries to the High court Judges, irrespective of the years of service put in by them, would upset this parity and also defeat the very purpose of providing this promotional avenue to a higher pay-scale to those who have put in more than 15 years of service.

This is also not a case where one can apply the doctrine of equal pay for equal work as between the Private secretaries to the Judges inter se. The quality of work put in by a person will also depend upon his experience. Those who have gained the experience of more than 15 years can not be equated with others who do not have such experience.

The original petitioner contended that the 10% upgraded posts in the Gujarat secretariat were occupied by Private

Secretaries to Secretaries, Government of Gujarat, drawing a pay of Rs.8000. Hence all the Private secretaries of the High Court Judges should also have the upgraded pay-scale of Rs.3000-4500. This contention is accepted by the High Court in the impugned judgment. But the pay-scale which, on the basis of recommendation of the Fourth Pay commission, has been granted by the Gujarat State Government, as well as by the High Court of Gujarat to the Stenographers/Private Secretaries, is not correlated with the pay-scale of the officer whose Private Secretaries these persons are. It is a promotional pay-scale given to 10% of those Stenographers Grade I-cum-Private Secretaries who are otherwise in the pay-scale of Rs.2000-3500, to prevent stagnation at the senior level. It may be, that in the Secretariat, by reason of their seniority, those who have completed 15 years of service and are selected on the basis of seniority-cum-merit, may be allotted to senior officers such as the Secretaries to the Government. The same may happen in the High Court. But this does not mean that the higher pay-scale is linked (except in the case of the Chief Justice possibly) to the officers whose Private Secretaries they are. The pay-scale is given to them in their own right, if they are selected for promotion to that pay-scale.

The respondents i.e. the original petitioners placed reliance upon a decision of the Delhi High Court in the case of A.K. Gulati v. Union of India (C.W. No. 289 1991, judgment dated 7.5.1991). The petitioners before the Delhi High Court were also Private Secretaries, but to the Judges of the Delhi High Court. Their original pay-scale for Rs. 775-1200 was revised to Rs.2000-3500. The Private Secretaries contended before the Delhi High Court that the revised pay-scale for Rs.775-1200 should have been Rs.3000-4500. The Delhi High Court on the administrative side contended that the revised pay-scale of Rs.3000-4500 had been granted to the next promotional posts of Assistant Registrars. And hence it could not be granted to the lower post of Private Secretaries. The Delhi High Court, however, held that the pay-scale of Rs.775-1200 when was earlier granted to the Private Secretaries, was the same pay-scale which had been granted to the Private Secretaries to the Secretaries to the Government of India. Since the Government of India Resolution of 13.3.1987 granted to the Private secretaries of Secretaries, Government of India, the higher pay-scale of Rs.3000-4500, the same higher pay-scale should be granted to the Private Secretaries of the High Court Judges. The High Court noted the anomaly created by its own judgement because, as a result of its judgment, the Private Secretaries of the High Court Judges got the same pay-scale which they would get on promotion as Assistant Registrars also. But the High Court did not consider this as a matter of significance; observing in the judgment that the post of Assistant registrar would still be a promotional post for them although they will get the same pay-scale!

This judgment does not help the original petitioners in the present matter. In the first place, originally, the pay-scales of Private Secretaries in the Delhi High Court were higher (Rs.775-1200) than in the Gujarat High Court (Rs.650-1040). There was also a parity between their pay-scales and the pay-scales of Private Secretaries of the Secretaries of the Government of India. On the basis of this parity, the Delhi High Court gave the Higher pay-scale of Rs.3000-4500 to the Private Secretaries of the Delhi High Court Judges.

In the present case, one has to examine the scales given by the State of Gujarat to Stenographers Grade I in the

State Secretariat as compared to the pay-scales given to the Private Secretaries of the Judges of the Gujarat High Court. The State Government has not given a uniform higher pay-scale of Rs.3000-4500 to all Private secretaries of the Secretaries. It has a cadre of Private Secretaries-cum-Stenographers Grade I in the pay-scale of Rs.2000-3500. It has upgraded 10% of these posts in the higher pay-scale of Rs.3000-4500 which are promotional posts. The same has been done in the High Court where also all Private Secretaries to the High Court Judges-cum-Stenographers Grade I are in the pay-scale of Rs.2000-3500. 10% of these posts have been upgraded as promotional posts for Private Secretaries to the High Court Judges-cum-Stenographers Grade I. Therefore, the parity has been maintained. The financial position of a State Government also would be very different from the financial position of the Government of India or of the Delhi Administration. Therefore, when one is considering the pay-scales of Private Secretaries to the Judges of the State High Court, one must look for parity with the pay-scales in the secretariat of that State rather than at the pay-scales granted by the Government of India in the Central Secretariat.

It is pointed out by the original petitioners who are respondents before us, that a special leave petition from the judgement of the Delhi High court was dismissed. This, however, does not carry the matter any further. As against the view taken by the Delhi High court, the Kerala High court in O.P. No. 2716 of 1994 along with other connected cases, by its judgment dated 22nd of March, 1995 dismissed the writ petition filed by the employees of the Kerala High Court asking for parity of their pay-scales with the pay-scales in the Delhi High Court and the Supreme Court of India. Rejecting the submission of the petitioners, the Kerala High Court held that the claim of the petitioners before it to be treated on a par with employees of the Delhi High Court and of the supreme Court was not proper. The Delhi High Court was in Union Territory and the expenditure of the Delhi High Court and the salaries of the staff and Judges were charged on the consolidated fund of the Union of India. While the expenditure on salaries of the staff and Judges of the Kerala High Court was charged on the consolidated fund of the State of Kerala. The High Court rightly held that there can only be parity of treatment as between the High Court employees and the Secretariat employees of the State concerned. It also rightly observed that the principle of equal pay for equal work applies only in cases where both sets of employees work under that same employer and do similar work. It, therefore, held that the Delhi High Court's pay-scales can not be applied to the staff of the Kerala High Court. A special leave petition from this judgment was also dismissed by this Court. It has also been pointed out that a similar special leave petition which came from the Allahabad High Court was withdrawn by the Allahabad High Court as not pressed. The fact, therefore, that the special leave petition from the judgment of the Delhi High Court was dismissed will not be of any assistance to the present respondents (original petitioners).

This Court in the case of Supreme Court Employees' Welfare Association v. Union of India and Anr. (1989(4) SCC 187 at page 206 paragraph 22) has observed that it is a well settled principle of law that when a special leave petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law as envisaged by Article 141 of the Constitution. It,

therefore, follows that when a special leave petition is dismissed simpliciter, it can not be said that there has been a declaration of law by this Court under Article 141 of the Constitution. Referring to this very judgment of the Delhi High Court and dismissal of the special leave petition, it was held that the judgment of the Delhi High Court would not govern the case of the employees of the Supreme Court which was before it. Dealing with the pay-scales demanded by the employees of the Supreme Court, this Court has further observed, (at page 212 paragraph 36) "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". In the above judgment this Court gave certain directions as agreed to by the Chief Justice of India, to the effect that the Chief Justice of India would consider the recommendations of the Fourth pay Commission and frame suitable Rules by making necessary amendments to the existing Rules and forward the same to the President of India for his approval.

This Delhi High Court's judgment, therefore, can not be automatically applied nor can the Court direct that a particular pay-scale be given to its employees. Appropriate Rules would have to be framed by the Chief Justice of the State under Article 229 with the approval of the Governor of the State. In this connection a reference can also be made to the State of Manipur v. Thingujam Brojen Meetei (1996 (9) SCC page 29), where this Court reiterated that a non-speaking order dismissing a special leave petition does not constitute a law laid down by the Supreme Court.

In the present case, there is no challenge to the Rules so framed by the Chief Justice of the Gujarat High Court under Article 229 by issuing the notification of 27.11.1991, with the approval for the Governor. Instead, the original petitioners have sought and obtained a direction from the High Court to abolish the 10% ceiling on posts carrying the higher pay-scale, and have obtained a direction that all the posts in that cadre should have a higher pay-scale. Such a direction was not justified. [(See also in this connection Supreme Court Employees Welfare Association v. Union of India and Anr. (1993 Supp. (3) SCC 727)].

In the State of Andhra Pradesh and Anr. V.T. Gopalakrishnan Murthi and Ors. (1976 (2) SCC 883), this Court dealt with the power of the Chief Justice of the High Court under Article 229 (2). It dealt with a case where the recommendation of the Chief Justice of the High Court for treating the High Court staff at par with the Secretariat staff was not accepted by the Governor. This Court held that the non-acceptance of the recommendation will not justify the issuance of a writ of mandamus for its acceptance.

Attention has also been drawn to a decision of this Court in the State of U.P. and Anr. v. C.L. Agrawal and Anr. (1197 (5) SCC 1). This judgment does not directly apply in the present case since there is no challenge here to the authority of the Chief Justice of the State under Article 229 of the Constitution or to any action of the Chief Justice of the High Court or the approval or non-approval of any recommendation of the Chief Justice of the High Court Article 229.

Learned counsel for the respondents, however, stated in the course of argument that subsequent to the directions

given by the learned Single Judge in the present proceeding, the Chief Justice of the High Court made a recommendation to the Governor for granting the higher pay-scale of Rs.3000-4500 to all the Private Secretaries-cum-Stenographers grade I of the High Court Judges. He further stated that this recommendation has been rejected. Since the recommendation appears to be based on the directions given in the judgment of the learned Single Judge, nothing further is required to be done in that connection in view of this judgment. Needless to add, the Chief Justice of a High Court can always exercise his powers under Article 229 in consonance with the terms thereof.

Civil appeal Nos. 401-402 of 1997 are, therefore allowed. The impugned judgment in these appeals is set aside, and the corrigendum dated 27.11.1991 issued under article 229(2) of the constitution is upheld.

Civil Appeal No.400/1997:

Civil Appeal No.400 of 1997 is by one C.G. Govindan from the same judgment and order of the Division Bench of the Gujarat High Court Dismissing his Letters Patent Appeal No.441 of 1995 before it. The appellant Govindan is also a Private Secretary to a Judge of the Gujarat High Court. He had asked for his placement in the pay-scale of Rs.3000-4500 from 1st of January, 1986 although he was at that time working as Private Secretary in the City Civil Court at Ahmedabad. He came to the High Court has rightly negatived his contention that he should get the benefit of the higher pay-scale for the period prior to his joining the cadre of Private Secretaries in the High Court. The appeal, therefore, of the appellant Govindan for grant to him of the pay-scale of Rs.3000-4500 from 1st of January, 1986 must be dismissed. He will be eligible for the pay-scale of Rs.3000-4500 only after he fulfils the requisite criteria for being upgraded to the higher pay-scale as a Private Secretary to a High Court Judge.

In the premises, appeals of the State of Gujarat are allowed while the appeal of C.G. Govindan is dismissed. There will, however, be no order as to costs.

I regret I am unable to agree with my learned and respected sister Sujata Manohar, J. That appeal filed by the State of Gujarat be allowed.

These are three appeals. Two appeals are by the State of Gujarat aggrieved by the judgment of the Division bench dated October 10, 1996 of the Gujarat High Court upholding the judgment of the single Judge on a writ petition filed by Private Secretaries to the Judges of the High Court where in the single Judge gave the following directions:

"(i) The Chief Justice may consider the anomaly in the matters of pay scales of the Private Secretaries to the High Court Judges and the Private Secretaries attached to the officers drawing pay at Rs.8000/- in the Government Secretariat and keeping in view of the observation made hereinabove, may consider as to what pay scales should be prescribed for the holders of the posts of Private Secretaries to the High Court Judges.

(ii) In case the Chief Justice decides and prescribes that the pay scale of the Private secretaries to the High Court Judges should be the pay scale of Rs.3000-4500 such pay

scale shall be given to all the Private Secretaries to the Judges of the High Court as decided by the Chief Justice in accordance with the provisions of Article 229(2) of the Constitution of India and in accordance with the rules made by the Chief Justice in this behalf."

Third appeal is by one of the Private Secretaries who was earlier working in the City Civil courts at Ahmedabad and came to be appointed as a Private Secretary in the High Court after 1990 and who had sought his placement in the pay scale or Rs.3000-4500 from January 1, 1986. His writ petition was dismissed by the learned single Judge and Letters Patent Appeal was also dismissed by the very impugned judgment dated October 10, 1996.

Appellant has submitted that the High Court wrongly proceeded on the footing that the fourth Central Pay commission had recommended the pay scale of Rs.3000-4500 to Private Secretaries working with the officers drawing pay of Rs.8000/- and that the pay scale of a post could not be dependent upon the pay of the officers with whom the incumbent was attached/working. It was, thus, contended that under no circumstance the pay scale of the Private Secretary could be dependent upon the pay of the Hon'ble Judge with whom the Private Secretary was attached. It was then submitted that the pay scale of Rs.3000-4500 was by way of providing promotional avenues by upgrading the post and that the grant of pay scale of Rs.3000-4500 to all the Private Secretaries of the Hon'ble Judges some of whom might have been newly recruited would create anomalous situation as there would be no distinction between a Private Secretary newly recruited and that who has put in long years of service.

In my view, the approach of the State Government in advancing such a plea is erroneous and a contradiction in terms.

By a Resolution dated October 24, 1986, the Government of Gujarat in the Finance Department decided, in principle, to accept the recommendations of the Fourth Central Pay Commission including its date of effect. On the basis of the recommendations of the Fourth Central Pay Commission which was accepted by the Central Government, it was directed that the posts of Private Secretaries to the Secretary of the Government of India and equivalent officers may be upgraded and given the scale of Rs.3000-4500. On the representation of the Gujarat Sachivalaya and the Allied Officers Stenographers association that the post of Private Secretaries in the pay scale of Rs.3000-4500 as was done in the Central Government be created, the State Government appointed a Committee to examine the representations. The Committee came to the conclusion that there was sufficient justification to upgrade certain posts of senior most Private Secretaries to the scale of Rs.3000-4500 equivalent to the number of officers of the rank of Additional Chief Secretary and above in the Secretariat. Thereafter by a Resolution dated February 28, 1990, the State Government decided that 10% of the existing posts of Private Secretaries cadre may be upgraded in the pay scale of Rs.3000-4500 and that the upgraded posts may be filled up by promotion from Private Secretaries in the lower grade on the basis of seniority-cum-merit with the preimposed eligibility condition of having put in 15 years of service in the lower grade. Result of such decision was that not only the Chief Secretary, Additional Chief Secretary or officers of the

equivalent posts but those lower in rank were also having Private Secretaries attached or working with them in the pay scale of Rs.3000-4500. Based on these recommendations, High Court of Gujarat at Ahmedabad issued a corrigendum dated November 27, 1991 by which the acting Chief Justice in exercise of powers conferred on him under Article 229 of the Constitution with the approval of the Governor of Gujarat directed amendment of relevant entry in the Schedule to the rules relating to the Private Secretaries to the Judges thereby revising their existing pay scales as under:

Sr.No.	Sr.No.in the High Court Noti- fication No.A-1308/87 dt.July 3,1987	Designation	Present Pay- shown in the Court Noti- fication No.A-1308/87, dt.July 3, 1987	Revised pay scale	Remarks

GAZETTED CALSS-II OFFICERS					
4.	13.	Private Secreta- ries to the Hon'ble	2000-60-2300 -EB-75-3200- 100-3500	2000-60 2300-EB- 75-3200- 100-3500	10% of the existing post of Steno- graphers Grade I (Gujarati, English), on the establish- ment of the High Court, be upgraded as private Secretaries in the pay scale of Rs.3000-100 -3500-125- 4500

Reference may be made at this stage to two decisions of this Court in Supreme Court Employees Welfare Association's case. The decision in Supreme Court Employees Welfare Association vs. Union of India & Anr. [1993 Supp. (3) SCC 727] is an off-shoot of its earlier decision in [(1989) 4 SCC 187]. Decision in the second case of Supreme Court Employees' Welfare Association has been given on various interlocutory application filed in the earlier writ petition [W.P. (C) No. 801/86 and W.P. (C) No. 1201/86 reported in [(1989) 4 SCC 187]. In the earlier writ petition the prayer was that the staff of the Supreme Court of India be placed in higher scales of pay than what are admissible to the corresponding Staff working in the Delhi High Court. A direction was also sought that as an interim measure the staff working in the Registry of the Supreme Court be paid the same pay scales as were being paid to the holders of the corresponding posts working in the Registry of the Delhi High Court. On September 25, 1986, this Court passed an interim order saying that pending final disposal of the writ petition the officers and staff of the Supreme Court Registry may be paid the same pay scales and allowances which were then being enjoyed by the officers and the members of the staff of the

High Court of Delhi belonging to the same category with effect from the date from which such scales of pay have been allowed to the officers and the members of the staff of the High Court of Delhi. In the first Supreme Court Employees Welfare Association case it was pointed out that under Article 146(2) of the Constitution, the conditions of service of officers and servants of the Supreme Court have to be prescribed by Rules made by the Chief Justice of India. As such, the urgency of framing such rules was impressed and a direction was given to the parties to maintain status quo as regards the scales of pay and allowances but it was also directed that the interim orders passed by this Court shall continue. Thereafter, it appears that Chief Justice of India constituted a Committee of Judges to go into the question regarding pay scales of the officers and staff of the Supreme Court. The Committee made its recommendations which were accepted by the Chief Justice. These, however, could not take the shape of the Rules till approved by the President. In the meanwhile, it would appear that a writ petition was filed in the Delhi High Court on behalf of the Court Masters, Superintendents and Private Secretaries of the Delhi High Court claiming the pay scales of Rs.3000-4500, w.e.f. January 1, 1986. That writ petition was allowed on November 14, 1991 directing the Union of India to fix the salary of Court Masters, Superintendents and other category of petitioners of that writ application in the pay scale of Rs.3000-4500, w.e.f. January 1, 1986. This Court noticed that a petition for special leave to appeal (C) No. 2594/92 was filed by the Union of India before this Court and that it was dismissed after hearing the parties concerned on March 25, 1992 saying that no ground for interference was made out. On the basis of this decision, various interlocutory applications were filed in Writ Petition (c) No. 801/86 seeking a direction that in view of the order passed by the High Court of Delhi directing payment w.e.f. January 1, 1986 to various categories of employees of the said Court which order has been affirmed by this Court by dismissal of the special leave petition on March 25, 1992, earlier interim orders directing payment of pay scales of staff holding corresponding posts should also be revised till the Rules are framed under Article 146 of the Constitution. This Court allowed such a plea holding that the recommendations of the Committee of Judges which had been accepted by the Chief Justice of India can certainly form basis for issuing interim directions regarding payment of revised pay scales to the holder of different categories of posts within the Registry of this Court w.e.f. January 1, 1986. This Court has thus exercised powers, though by means of interim orders, in fixing pay-scales of staff of the Supreme Court under Article 146 which provisions are similar to those under Article 229 of the Constitution applicable to staff of the High Courts.

So far as parity of the Private Secretaries in the Secretariat and in the Gujarat High Court prior to the acceptance of the Fourth Central Pay Commission is concerned, the corrigendum issued by the Gujarat High Court may be correct. As in the case of Andhra Pradesh High Court (State of Andhra Pradesh Vs. T. Gopalakrishna Murthy) the State of Gujarat is not disputing the existence of parity between the staff of High Court and that working in the Secretariat in the matter of pay-scales. It is, however, not the exact issue involved in the present case. It is also not material in the present controversy as to what was the pay scale drawn by the Private Secretaries to the Judges of the

High Court. When this principle evolved by the State Government of 10% is applied to the Private Secretaries working in the High Court, only 5 Private Secretaries would get benefit of pay scale of Rs.3000-4500. Here it is a case of discrimination. It was in this context that the High Court examined the status of the High Court Judges. The submission of the State Government shows its utter lack of knowledge of the working of Private Secretaries who are attached/working with the Judges of the High Court. Their job is much more arduous. Basis of the upgradation of 10% posts of Private Secretaries in the Secretariat is not the decision of the Central Government upgrading the existing post of Private Secretaries to the Secretaries to the Government of India and equivalent officers. The High Court, therefore, examined, if a Judge of the High Court is holding a post equivalent to that of the Chief Secretary of the State and came to the conclusion that he is holding a higher post even than that of the Chief Secretary in a State. Though, the High Court examined the pay scale of the Chief Secretary and that of a Judge of the High Court, a High Court Judge holds the constitutional post unlike the Chief Secretary and if we see the Warrant of Precedence dated July 19, 1979 issued by the President of India, a High Court Judge ranks higher than the Chief Secretary to the State Government. There is a controversy if the Warrant of Precedence is constitutionally valid inasmuch as in some instances persons holding constitutional posts are shown lower in rank than those appointed under law passed by the Parliament. That, however, is not relevant in the present case as the Warrant of Precedence as it stands today, a High Court Judge finds his place at serial no.17 and a Chief Secretary at serial no.23. Is it not, therefore, paradoxical in such a circumstance, that a Private Secretary to the High Court Judge should be in a lower pay scale than the Private Secretary to an officer even lower in rank than the Chief Secretary. The argument of the State Government that a junior most stenographer when attached to a High Court Judge is again without any basis. Rules can certainly be framed to overcome such a situation if at all it existed. A Private Secretary, who is joining the service after January 1, 1986, will be drawing less pay though in the same pay scale.

This Court in similar circumstance dismissed the appeals of Union of India and Delhi Administration in one case and that of the State of U.P. in another against the decisions of the Delhi High Court and Allahabad High Court respectively granting pay scale of Rs.3000-4500 to Private Secretaries to the Judges of the High Courts. On this, an argument was raised that the special leave petitions in those cases had been dismissed in limine and it could not, therefore, be said that this Court approved the law laid by the High Court of Delhi and Allahabad High Court. Reference was made to a decision of this Court in the State of Manipur vs. Thingujam Brojen Meetei (1996 (9) SCC 29) where it said that the dismissal of a special leave petition by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of acceptance of the correctness of the decision sought to be appealed against and that the effect of such a non-speaking order of dismissal without anything more only means that this Court has decided only that it is not a fit case where the special leave petition should be granted. There is no quarrel with this proposition but the circumstances show that this court upheld the decisions of the High Court of Delhi and Allahabad High Court on merit. Delhi High Court in A.K. Gulati's case allowed the writ petition and directed that

the Private Secretary of the Judge of Delhi High Court be given pay scale of Rs.3000-4500 which pay scale was given to the Private Secretary to the Chief Secretary of Delhi Administration and Secretary to the Government of India. Union of India and the Delhi Administration filed special leave petition no.13229/91 against the order of the High Court which was dismissed on August 26, 1981 by the following Order:

"The Special Leave Petition is dismissed."

Thereafter, Superintendents and Court Masters of the Delhi High Court filed a writ petition in the Delhi High Court claiming parity of pay scale with the Private Secretaries. In the Delhi High Court, posts of Superintendents, Court Masters and Private Secretary are equivalent posts. This writ petition was allowed and against that Union of India filed a special leave petition in this court which was dismissed on March 25, 1992 in limine by the following order:

"No grounds to interfere. The Special Leave Petition is dismissed."

Against the order of the Allahabad High Court granting pay scale of Rs.3000-4500 to the Private Secretaries to the Hon'ble Judges, the High Court of Allahabad also filed a special leave petition in which this Court granted leave (Civil Appeal No.840/95). Special leave petition was also filed by the State of Uttar Pradesh [SLP No.-/95 (CC-294)]. The appeal filed by the Allahabad High Court was dismissed as withdrawn on March 26, 1996 with the following order:

"I.A. No. is allowed."

Learned counsel for the appellant-High Court of Allahabad States on instructions that this appeal is not pressed by the appellant. The appeal is dismissed as withdrawn"

The SLP filed by the State of Uttar Pradesh was dismissed on the same day by the following order:

"Delay condoned."

The High Court of Allahabad has not pressed its appeal, i.e., Civil Appeal No.840/95 against the same judgment. Moreover, in view of the dismissal of the SLP (C) No.13229/1991 decided on 26.8.91 (Union of India and Anr. Vs. Shri A.K. Gulati & Ors.) learned counsel for the petitioner-State of Uttar Pradesh is unable to support this special leave petition. Accordingly, special leave petition is dismissed on merits."

This Court in Supreme Court Employees Welfare Association case [1993 Supp. (3) SCC 727] stated that the special leave to appeal No.2594/92 was dismissed after hearing the parties concerned on March 25, 1991 saying that "No ground for interference was made out". All these lead only to one inference that this Court upheld the decision of the Delhi High Court in A.K. Gulati's case on merit holding that private Secretaries to the Judges of Delhi High Court were entitled to pay scale of 3000-4500.

In State of Andhra Pradesh & Anr. vs. T. Gopalakrishan Murthi & Ors. [(1976) 2 SCC 883.], the Issue concerned the scope of the power of Chief Justice under Article 229 (2) of the Constitution. 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 Secretariat staff of the Government of Andhra Pradesh. The Government did not agree to do so. The respondents who were members of the High Court service belonging to the categories of bench clerks, lower division clerks, typists and certain other categories filed a writ petition in the High Court for a writ of mandamus against the appellants directing them to implement the recommendations of the Chief Justice of the High Court made to the Government from time to time to fix the pay scales of the various categories to which the respondents belonged in accordance with the scales of pay as revised by the State Government in case of corresponding categories detailed in the Andhra Pradesh Secretariat Service. The High Court allowed the writ petition and directed the State Government to give effect to the recommendations of the Chief Justice. Aggrieved, the State Government filed appeal in this Court which was allowed. In this case, a pay Commission was appointed by the government to make recommendations in regard to the revision of pay scales of government employees in the various services. The Pay Commission submitted its report in 1967. In respect of certain categories of the High Court staff, But not all, the Commission recommended to give them the pay scales of their counterparts in the secretariat. This Court observed as under:

"If there is a law made by the Legislature of the State then subject to that law, otherwise without it, the Chief Justice or some other Judge or officer of the Court authorised by the Chief Justice is empowered to make rules laying down the conditions of service of the High Court staff. But if the rules made under clause (2) relate to salaries, allowances, or pension then since in them is involved the question of finance the framing of the rules under clause (2) requires the approval of the Governor - that means the State Government. One should expect in the fitness of things and in view of the spirit of Article 229 that ordinarily and generally the approval should be accorded. But surely it is wrong to say that the approval is a mere formality and in no case it is open to the Government to refuse to accord their approval. On the facts and in the circumstances of this case and in the background of the conditions which are prevalent in other States Government could have been well-advised to accord approval to the suggestion of the Chief Justice, as the suggestion was nothing more than to equate the pay scales of the High Court staff with those of the equivalent post in the Secretariat. That merely because the government is not right in accepting the Chief Justice's view and refusing to accord the approval

is no ground for holding that by a writ of mandamus the Government may be directed to accord the approval. The High Court staff has not always been treated at par with the Secretariat staff in the matters of scales of pay. Chief Justices' conference and with several State Governments. Most of them have acceded to the request of the High Court to bring its staff at par with the Secretariat staff in the matter of pay etc. It is, however, not possible to take the view that merely because the State Government does not see its way to give the required approval it will justify the issuance of a writ of mandamus under Article 226 of the Constitution as if the refusal of the state Government was ultra vires or made mala fide and arbitrary."

It will be seen that in the case from Andhra Pradesh High Court the Claim made by the staff of the High Court was that their pay-scales the fixed in accordance with the pay-scales of the corresponding staff in the Secretariat of the State Government. This Court was of the view that the High Court had not always been treated at par with the secretariat staff in the matter of scales of pay. this is not the issue involved in the present case before us.

Decision of the Kerala High Court in P.S. Sidhan & Anr. vs. The Hon'ble Chief Justice, High Court Kerala & Ors. [O.P. No.2716/94] decided on 22.3.1995 which has been relied on by the appellant is quite distinguishable. This decision was rendered in a number of writ petitions filed by various categories of officers and staff of the High Court of Kerala. In all these writ petitions, the employees of the High court had claimed that they were entitled to be paid salaries as were applicable to the Staff and employees of the Delhi High Court and supreme Court of India inasmuch as the State Government had accepted the principle of parity of treatment between its employees and the employees of the Central Secretariat at Delhi. The Court said:

"The Kerala High Court employees are not entitled to claim parity of treatment with the Delhi High Court employees and Supreme Court employees. They are not employees under the same employer. They are working in different States and in different environments and there is nothing to indicate that the Rules for appointment, recruitment and qualifications are similar and that their duties are also similar."

It is, therefore, apparent that the decision of the Kerala High Court proceeds entirely on different lines. It failed to take notice of the decision of the Allahabad High Court and the Delhi High Court which had attained finality as special leave petitions against those judgments were dismissed by this court on merit. High Court also did not examine the question of arbitrariness, unreasonableness and unfairness in the approach of the State Government. It cannot be said that Private Secretaries of the Judge of the

Kerala High Court or those of High Court of Gujarat perform work which is different than that performed by the Private Secretary to the Judges of Delhi High Court. Judges of the High Courts in all High Courts perform same duties of their office and Private Secretaries attached to them per force perform the same work in every High Court. The contention that financial position of a State does not warrant payment of higher scale of pay to the Private Secretaries of the Judges of the High Court cannot be given any credence without more. A court is to guard itself against such a submission when advanced without any particulars though in first instance it may appear to be attractive. It is stated that a special leave petition against the aforesaid judgment of the Kerala High Court was dismissed by this Court in limine but that is of no consequence insofar as the controversy in the present case before us is concerned.

After judgment dated 9/10th March, 1995 of learned single Judge (M.R. Calla, J.) in writ petition filed by the Private Secretaries to the Judges of Gujarat High Court, Chief Justice of the High Court prepared a detailed note dated June 30, 1995. He took into account the judgment of the Delhi High Court in A.K. Gulati vs. Union of India, which was relied on by the learned single Judge and also the fact that the Union of India had filed a special leave petition in this Court against the aforesaid judgment of the Delhi High Court but the special leave petition was dismissed.

Chief Justice in his note referred to paras 9.39 and 9.42 of Chapter IX of the Report of the fourth Central Pay Commission wherein pay-scale of Rs.2000-3500 for the Stenographers in the posts in Grade "A" and Grade "B" was recommended. It was further recommended as follows:-

"....To provide further satisfactory promotional avenues for the members of CSSS, we recommend that posts of private secretaries to secretaries to Government of India and equivalent officers may be upgraded and given the scale of Rs.3000-4500".

Again, in paragraph 9.42 of the said report of the Fourth Central Pay Commission it is stated that there are stenographers working in other organisations who were not participating in the Central secretariat Stenographers' Scheme but those posts are in comparable grades and it is recommended that stenographers in these organizations may be placed in the same grades of pay as have been recommended for Central Secretariat Stenographers' Scheme.

The Chief Justice noticed that the Government of Gujarat in the Finance Department by resolution dated October 24, 1986 resolved that "therefore, after careful consideration, Government has decided to scrap the report of the Gujarat State Third Pay commission and to accept, in principle, to apply the recommendations of the Fourth Central pay Commission including its date of effect". Then the Chief Justice records as under:-

"The pay of the Hon'ble Judges of the High Court is Rs.8,000/- per month i.e. the same pay as that of the Secretaries to the Govt. of India. The pay of the Private Secretaries who are attached to the Secretaries to the Govt. of India has been fixed in the scale of Rs.3000-4500 and there is no reason

why in the case of the Gujarat High Court only 10% of the posts of the Private Secretaries have been to the pay scale of Rs.3000-4500.

The aforesaid recommendation of the Fourth Central Pay Commission fixing the pay scale of Rs.3000-4500 for the Private Secretaries to the Hon'ble Judges has become applicable to the Delhi High Court in view of the decision given in the case of A.K. Gulati. Therefore, in view of this decision, which has been upheld by the Supreme Court of India, and also in view of the direction given by Mr. Justice Calla vide his judgment dated 9th /10th March 1995 in Special Civil Application Nos. 12921 of 1994 and 3601 of 1994 and keeping in view the recommendations contained in paragraph-9.39 of Chapter IX of the Report of the Fourth Central Pay Commission read with the Resolution dated 24.10.1986 of the Govt. of Gujarat, I decide, as directed in the aforesaid judgment, that the pay-scale of all the Private Secretaries to the Hon'ble Judges of the Gujarat High Court should be that of Rs.3000-4500. Furthermore, as per the direction given in the case of A.K. Gulati the higher pay scale should be effected from 1.1.1986."

It was against the judgment of the learned single Judge State of Gujarat filed Letters Patent Appeal in the High Court, which was dismissed by the Division Bench by judgment dated October 10, 1996 which is impugned.

Meanwhile, when the matter was referred by the Chief Justice, Gujarat High Court to the State Government in terms of aforesaid note, counsel for the State of Gujarat at the time of conclusion of the argument before the Division Bench made the following State which was recorded in the impugned judgment:

"His Excellency the Governor of Gujarat has concurred with the view of the Government that, the Private Secretaries attached to the Judges of the High Court of Gujarat cannot be given the pay scale of Rs.3000-4500 beyond what is permissible under the present rules and the Government Resolution."

From the note of the Chief Justice, Gujarat High Court, it is apparent that independently of the directions issued by the single Judge, he arrived at the conclusion that Private Secretaries to the Judges of his High Court were entitled to pay scale of Rs.3000-4500. The State Government could not by a terse statement through its counsel brush aside the recommendations of the Chief Justice. Such an approach by the State Government is contrary to the observations of the Constitution Bench of this Court in State of U.P. vs. C.L. Agrawal & Anr. [(1997) 5 SCC 1] reaffirming what this Court earlier said in Supreme Court

Employees Welfare Association vs. Union of India [(1989) 4 SCC 187]. In State of U.P. vs. C.L. Agrawal & Anr. [(1997) 5 SCC 1] the Court referred to an earlier passage in its judgment in the case of Supreme Court Employees Welfare Association vs. Union of India [1989] 4 SCC 187] as under:

"There is a passage in the judgment in the case of Supreme Court employees' Association that, in the context of the * before us, deserves to be set out. We endorse what is observed and commend it to the States so that they may deal with proposals made by their Chief Justice with due deference and respect.

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

It has been said that grant of higher pay scale of Rs.3000-4500 was to provide promotional avenues for members of the Secretarial Service. To my mind that is one way of looking at the things. reference may be made to the Office Memorandum dated October 7, 1987, issued by the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training). First para of this office Memorandum is as under:-

The undersigned is directed to say that the recommendation of the Fourth Central Pay Commission that

in the Central Secretariat Stenographer Service the posts of Private Secretary to the Secretaries to Government of India and equivalent officers may be upgraded and given the scale of Rs.3000-4500 was accepted by Government vide the Ministry of Finance's Notification No. F.15(7)/IG/86 dated 13.5.87 13th March, 1987. Accordingly sanction of the President is hereby conveyed to the upgradation of the existing posts of Private Secretary to Secretaries to the Government of India and equivalent officers, to the scale of Rs.3000-4500 with immediate effect.!

Subsequent paragraphs refer to modalities of filling up of these posts of Private Secretaries by selection method on a centralized basis stated to be under consideration. It will be thus seen that only the Private Secretaries attached to the Secretaries to Government of India and equivalent officers were to be given the pay-scale of Rs.3000-4500. In other words, number of posts of Private Secretaries in the scale of Rs.3000-4500 is equal to number of officers of the rank of Secretaries in the Government of India. The fact, therefore, remains that the officer with whom Private Secretary in the scale of Rs.3000-4500 is attached is of the rank of Secretary or equal rank in the Government of India. One cannot, therefore, divorce the officer of the rank of Secretary or equivalent rank to the Private Secretary attached to him. In the present case when the State Government decided to upgrade 10% posts of Private Secretaries in the scale of Rs.3000-4500 the net result was that Chief Secretary, Additional Chief Secretary and officers of equal rank became entitled to Private Secretaries in the scale of Rs.3000-4500. In this context, promotion avenues of a stenographer in the scale of Rs.3000-4500 is only to post him with the officers in the rank of Chief Secretary or equivalent rank in the State. If the whole exercise was merely to provide promotional avenues to the stenographers there was no need to say that posts of Private Secretary to the Secretaries to Government of India and equivalent officers may be upgraded and given the scale Rs.3000-4500. Modality adopted by the State Government is to achieve the same purpose and now Private Secretaries to the Chief secretary, Additional Chief Secretary and officers of equal rank are in the pay scale of Rs.3000-4500. This, in fact, would rather appear to be the motivation behind the script.

The State Government decided to scrap the report of the Gujarat State Third Pay commission and to accept, in principle, the recommendations of the Fourth Central Pay commission. The Committee, which the State Government appointed to examine the representations of the Gujarat Sachivalaya and the Allied Officers Stenographers Association, had found justification to upgrade certain posts of senior most Private Secretaries to the scale of Rs.3000-4500 equivalent to the number of officers of the rank of Additional Chief Secretary and above in the Secretariat. Thereafter, the State Government decided that 10% of the existing+ posts of Private Secretaries cadre may be upgraded in the pay-scale of Rs.3000-4500 with certain riders. The effect of this has been that Private Secretaries

working with the Chief Secretary, Additional Chief Secretary and other officers of the similar rank were given the pay scale of Rs.3000-4500. We have not been given any instance where any such officer has a private secretary in a lower scale of pay. Not only that officers even lower in rank to that of Additional Chief Secretary are having Private Secretaries in the pay-scale of Rs.3000-4500. The result of the decision of the State Government has been the same: that as recommended by the Fourth Central Pay Commission that posts of Private Secretaries to the Secretary to the Government of India and equivalent officers be upgraded and given the scale of Rs.3000-4500 and so also Private Secretaries to the number of officers of the rank of Chief Secretary, Additional Chief Secretary and equivalent officers in the State of Gujarat were given the same pay-scale of Rs.3000-4500. On this basis as well the Chief Justice of the Gujarat High Court rightly, therefore, came to the conclusion that Private Secretaries working/attached with the High Court Judges are entitled to pay-scale of Rs.3000-4500.

Whatever that may be, here I find that the stand of the State Government is a clear case of discrimination with arbitrariness writ large on the face of it. It cannot be allowed to stand otherwise it will amount to putting stamp of approval on what is patent disparity. Private Secretaries to the Judges of the Gujarat High Court are all entitled to pay scale of Rs.3000-4500 w.e.f. January 1, 1986.

In this view of the matter, I would rather dismiss the appeals filed by the State Government with costs. I, however, agree that appeal filed by C.G. Govindan be dismissed.