

A THE HIGH COURT EMPLOYEES WELFARE ASSOCIATION, CALCUTTA
AND ORS.

v.

STATE OF WEST BENGAL AND ORS.

NOVEMBER 18, 2003

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[S. RAJENDRA BABU, D.M. DHARMADHIKARI AND G.P. MATHUR, JJ.]

Constitution of India, 1950:

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Article 229(2)—Draft Calcutta High Court Service Rules—Approval by Governor—High Court employees—Revision of pay scales—Draft Rules approved by Chief Justice forwarded for approval of Governor—State Government not recommending draft rules for approval of Governor—Held, the Governor, under Article 229(2) has the power to refuse grant of approval,

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provided there is "very good reason" for the same—Record reveals sufficient degree of exchange of ideas between the State Government and the Chief Justice but the matter is unresolved due to lack of consensus—The Government will have to bear in mind the special nature of the work done in the High Court of which the Chief Justice and his colleagues alone could really appreciate—Therefore, a special Pay Commission consisting of Judges and

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the Administrators shall be constituted by the Chief Justice in consultation with the Government to make a report and on receipt of such report, the Chief Justice and the Government shall work out an appropriate formula in regard to pay scales to be fixed for High Court employees.

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Supreme Court Employees Welfare Association v. Union of India, [1989] 4 SCC 187; M. Gurumoorthy v. Accountant General, Assam & Nagaland, [1971] 2 SCC 137 and State of A.P. v. T. Gopal Krishnan Murthy, [1976] 2 SCC 883, relied on.

CIVIL APPELLATE JURISDICTION : Writ Petition (C) No. 134 of 1999.

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(Under Article 32 of the Constitution of India).

Ms. Indra Sawhney for the Petitioners.

Tara Chandra Sharma, G.S. Chatterjee and Somnath Mukherjee for the

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Respondents.

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The following Order of the Court was delivered :

The present writ petition seeks to challenge the refusal by the Governor of West Bengal to grant approval to the draft Calcutta High Court Services Rules, 1998 under Article 229(2) of the Constitution.

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The brief fact are as follows:-

In 1995, the Government of West Bengal appointed the 4th Pay Commission, the Terms of Reference of which included the employees of the Calcutta High Court. The High Court employees made a representation to the Chief Justice requesting exercise of his power under Article 229. Accordingly, a Three-Judge Committee was appointed. In the meanwhile, the Government of West Bengal contacted the Registrar of the High Court for information about the employees for the purposes of Pay Commission. The Registrar replied by saying that a Committee has already been set up for his purpose. The Three Judge Committee submitted its report but expressed doubts about the enforceability of their recommendations in light of clause (2) of Article 229.

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Pursuant to a resolution of the Full Court, a Five-Judge Committee was set up. The draft Rules proposed by this Committee was approved by the Chief Justice and was forwarded for approval of the Governor.

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The State Government replied saying that it could not recommend the said Draft Rules for approval of the Governor because:-

- (1) Creation of new posts is not envisaged by Article 229(2).
- (2) High Court employees have already been included in terms of Reference of the 4th Pay Commission with the Court's knowledge and consent.
- (3) It will create unjust inequality and administrative problems.
- (4) Financial inability.

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Hence, the petitioners have filed a writ petition under Article 32 challenging such refusal.

During the pendency of the proceedings, negotiations took place between the two parties. The Chief Justice and the State Government had several

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- A discussions on the matter. However, the State Government expressed reservations on the ground of financial inability.

Hence, this matter is unresolved due to lack of consensus.

- B The purpose and scope of Article 229 (2) has been discussed and explicated by this Court in a number of cases. In *M. Gurumoorthy v. Accountant General, Assam & Nagaland*, [1971] 2 SCC 137, it was held that the Governor's approval must be sought because the finances have to be provided by the Government and to the extent there is any involvement or expenses, the Government has to approve of it. Therefore, the Governor's approval is an exception to the power of Chief Justice contemplated by Article 229. It was further held in *State of A.P. v. T. Gopal Krishnan Murthy*, [1976] 2 SCC 883, that the grant of approval by Governor under Article 229 is not a mere formality.

- D In the case of *Supreme Court Employees Welfare Association v. Union of India*, [1989] 4 SCC 187, it was held that "not only does the Chief Justice have to apply his mind to the framing of the Rules but also the Government has to apply its mind to the question of approval of the Rules framed by the Chief Justice. This condition should be fulfilled and should appear to have been so fulfilled from the records of both the Government and the Chief Justice. The application of mind will include exchange of thoughts and views between the Government and the Chief Justice and it is highly desirable that there should be consensus between the two. The Rules framed by a very high dignitary such as the Chief Justice of India should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted."

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

- H The Government will have to bear in mind the special nature of the work

done in the High Court of which the Chief Justice and his colleagues alone could really appreciate. If the Government does not desire to meet the needs of the High Court, the administration of the High Court will face severe crisis. Hence, a special Pay Commission consisting of Judges and the Administrators shall be constituted by the Chief Justice in consultation with the Government to make a report and on receipt of such report, the Chief Justice and the Government shall thrash out the problem and work out an appropriate formula in regard to pay scales to be fixed for the High Court employees. Let such action be taken within 6 months from today. A
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List this petition after receipt of the report from the High Court or the Government. C

R.P.

Matter is pending