

34. 03.01.2020

Heard Mr. Goutam Mishra, learned Senior Advocate and Amicus Curiae for the petitioner and learned Additional Government Advocate for the State-opposite parties.

2. Additional Affidavit dated 02.01.2020 has been filed on behalf of the State-opposite, stating forth the action taken on the proposal of this Court.

3. The present *suo motu* PIL which has been registered in the year 2014 deals with various issues and one of them is pertaining to reforms in the State Judiciary. As per the decision of the Full Court of this Court dated 02.05.2014 issues relating to appointment of staff in the High Court and the subordinate courts are being taken up from time to time in the present PIL.

3.1. One of the major issues is relating to indifferent attitude and in some cases turning down the proposals/requests for appointment of staff in the Orissa High Court by the State Government. This touches upon the independence of the judiciary in the State of Odisha.

4. Circumstances, which compel us to pass this order, are stated hereunder in a nutshell.

4.1. On 14.07.2010 the High Court requested the State Government to create 25 posts of Data Entry Operators or accord necessary permission for engagement for such persons on contractual basis. Similarly on 14.11.2012 a Committee of Judges recommended for increase in the strength of some existing posts along with creation of some new cadres at par with the State Secretariat Staffing Pattern. Subsequently, on 10.12.2012 the Registrar (Judicial) of this Court communicated to the Principal Secretary to the Government of Odisha for creation of posts/cadres

as recommended by the Committee. Furthermore, on 08.01.2013 the Registrar (Judicial) of this Court communicated to the Principal Secretary to the Government of Odisha for creation of additional posts in different ranks for the maintenance and supervision of New High Court Building. These requests on behalf of the Court were turned down by the Government.

4.2. With the aforesaid backdrop, the Full Court in its meeting dated 02.05.2014 resolved to take up the aforesaid issues on the judicial side. Mr. Goutam Mishra, learned Senior Advocate was appointed as Amicus Curiae to assist the Court in the present matter.

4.3. At this juncture, it would be profitable to take note of the relevant provisions relating to appointments of staff to the High Court. Article 229 of the Constitution of India reads as follows:

"229. Officers and servants and the expenses of High Courts.—(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

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

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances,

leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

{Emphasis Supplied}

4.4. Pursuant to Article 229 of the Constitution of India, the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2015 had been framed. Subsequently, the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2019 has recently been notified.

4.5. As stated earlier the following are some instances of requests of the High Court being turned down by the Government and the said letters are a part of the record.

- (1) Letter No. HOME-HC-CRTNI-0011/2013. 12485 dated 22.3.2014 of the Home Department.*
- (2) Letter No. HOME-HC-CRTNI-0013-2014-17569 dated 7.5.2014 of the Home Department.*
- (3) Letter No. 5784 dated 25.6.2014 issued by the Law Department*
- (4) Letter No. HOME-CRTN 1-0034 -201515619/HS dated 3.5.2016*

4.6. The aforesaid letters are some instances where the Govt. of Odisha had turned down requests of this Court without assigning any cogent reasons and the office of the Governor was also not involved. The materials on record suggest that the Government is equating the High Court with its regular departments and weightage and importance, which ought to have been shown to the requests

and recommendations by this Court, is completely lacking. The stand taken by the Government regarding creation of various additional posts needs to be reconsidered. The High Court cannot be equated with other normal Government offices. The stand taken by the Government would amount to causing hindrance in the justice delivery system. The present matter was taken up recently on various dates to resolve the impasse, but due to the reasons best known to the Government, no remarkable development has yet taken place in spite of assurances given in Court by the State Government.

5. Shri Goutam Mishra, learned Senior Advocate and Amicus Curiae relied upon the decision of the Hon'ble Supreme Court in the case of ***High Court Employees Welfare Assn. Calcutta and others vs. State of W.B. and others***, reported in ***(2004) 1 SCC 334***, wherein in para-11, the Hon'ble Court has held as under:

"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. Hence, a Special Pay Commission consisting of Judges and 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 six months from today."

5.1. He also relied upon para-57 of the decision of Hon'ble Supreme Court in the case of ***Supreme Court Employees Welfare***

Association vs. Union of India and others, reported in ***AIR 1990 SC 334***, which reads as under:

"57. So far as the Supreme Court and the High Courts are concerned, the Chief Justice of India and the Chief justice of the concerned High Court, are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor, as the case may, is required. It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightaway refuse to grant such approval, but before doing there must be exchange of thoughts between the President of India and the Chief Justice of India."

5.2. He also relied upon para-8 of the decision of Hon'ble Supreme Court in the case of ***M. Gurumoorthy vs. The Accountant General, Assam and Nagaland and others***, reported in ***AIR 1971 SC 1850***, which reads as under:

"8. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. This was essentially to secure and maintain the independence of the High Courts. The anxiety of the constitution makers to achieve that object is fully

shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the court at the same level as the salaries and allowances of the judges of the High Court nor can the amount of any expenditure so charged be varied even by the legislature. Clause (1) read with clause (2) of Article 229 confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State legislature but only in respect of conditions of service. In the matter of appointments even the legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the Governor, as noticed in the matter of Rules, is confined only to such rules as relate to salaries, allowances, leave or pension. AR other rules in respect of conditions of service do not require his approval. Even under the Government of India Act the power to make rules relating to the conditions of service of the staff of the High Court vested in the Chief Justice of the Court under Section 242 (4) read with Section 241 of the Government of India Act, 1935. By way of contrast reference may be made to Article 148 relating to the-Comptroller and Auditor General of India. Clause (5) provides :

"Subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General."

6. Having heard learned counsel for the parties and considering the materials available on record as well as the additional affidavit filed on behalf of the State Government, in our considered opinion, the following interim directions are required to be passed:

6.1. In respect of Group-D cadre, it appears from the additional affidavit that the Government has taken step. Therefore, no further order/direction is required to be passed in this regard.

6.2. So far as upgradation of the post of 'Programmer' to the post of 'Assistant Registrar (IT)' is concerned, it is revealed from the affidavit that a Government order has been issued vide Home Department Letter No.57173/Dt. 21.12.2019 for creation of one post of each at Level-11 and Level-12 of the Pay Matrix in the Court's Establishment with a request to intimate the modalities for promotion in the promotional hierarchy. However, there was no such request for creation of such promotional posts from the side of the Court. Furthermore, the letter dated 21.12.2019 (Annexure-B) does not indicate about creation of such posts, rather it suggests that only a decision has been taken by the Government for creation of such promotional hierarchy only on receipt of the modalities from the Court. Since, the Government had been moved for upgradation of the post of Programmer to the post of Assistant Registrar (IT), a direction in this regard is absolutely necessary. Accordingly, the Home Department of the State Government is hereby directed to upgrade the said post of Programmer to the post of Assistant Registrar (IT) in the Court's Establishment, as soon as possible, preferably within six weeks from the date of receipt of a copy of this order.

6.3. Regarding enhancement of remuneration of Research Assistants, it is understood from letter dt. 21.12.2019 (Annexure-C) of the additional affidavit that the Government has accepted the proposal of the Court for enhancement of honorarium from Rs.15,000/- to Rs.30,000/- per month, but with a stipulation that it shall be made applicable only to the Research Assistants to be

selected through fresh recruitment process. The proposal of the Court was pure and simple and it was only to enhance the monthly honorarium of the Research Assistants to Rs.30,000/-. The stipulation of the Government, as appearing from Annexure-C, is not inconsistent with the proposal submitted by the Court. As such, to bring it in tune with the Court's proposal, the Government is further directed to enhance the honorarium of the Research Assistants without any such stipulation and to issue a notification afresh within four weeks from the date of receipt of a copy of this order effective from 01.01.2020.

6.4. The proposal of this Court with regard to engagement of persons under the coterminous basis with the tenure of the Chief Justice and Judges of the Court is awaiting orders of the Government even after receipt of the views from the Finance Department. Already there has been a delayed process. Considering the nature of the proposal, the Government, is thus, directed to expedite the process and issue a notification creating the posts within a period of six weeks from the date of receipt of this order.

6.5. In view of the letter dated 21.12.2019 (Annexure-D) attached to additional affidavit regarding creation of posts of Assistant Editor for ILR, Cuttack Series of High Court, it has been complied with; therefore, no further direction is required to be passed.

6.6. Lastly, for creation of promotional and base level posts in different cadre of the Court's establishment, as recommended vide report of a Committee, it is revealed from the additional affidavit that the matter is under process. Being conscious of the constitutional mandate as envisaged under Article 229 of the Constitution, the proposal of the Chief Justice in the matter of strength of service in

the Court's Establishment shall ordinarily be acceded to. Having regard to the fact that the matter has already been examined threadbare at the Court's level as to the creation of posts, the Government ought to have accepted the same without further delay. Looking into the nature of proposal and its importance in the administration of justice, it is highly essential and expedient that such proposed promotional and base level posts are required to be created at the earliest, preferably within six weeks from the date of receipt of this order.

7. We make it clear that the Government is to submit compliance reports on the above matters within eight weeks hence.

The matter to come up on 16.03.2020.

Certified copy of this order be granted on proper application.

Free copy of this order be supplied to the learned Additional Government Advocate for the State.

.....
(K.S. Jhaveri)
Chief Justice

.....
(K.R. Mohapatra)
Judge