

**BSPJ & BVNJ: C.C.C.(Civil) Nos.1241 & 1244/2016**  
**14-07-2017**

**ORDER**

These contempt petitions have been filed by Karnataka High Court Employees' Welfare Association, represented by its President and one of the retired officers of the High Court of Karnataka (hereinafter, referred to as 'High Court') complaining about the willful disobedience of order dated 12/10/2011 passed by the Division Bench of this Court in W.A No.4411/2011. The writ appeal was allowed in the following terms;

*"Accordingly, the appeal is allowed. Consequently, the writ petition is also allowed quashing Annexure-C to the writ petition. The respondents - Government is directed to place the recommendation of the Hon'ble Chief Justice of Karnataka dated 06.10.2004 before the Cabinet at the earliest and to take appropriate decision to implement the recommendation of the Hon'ble Chief Justice of High Court of Karnataka dated 06.10.2004 in the light of the observations made by the Apex Court in the*

*matter of UNION OF INDIA vs. S.B.VOHRA, AIR 2004 SC 1402 as expeditiously as possible."*

The background to the aforesaid direction issued by the Division Bench and the subsequent orders passed in the matter could be briefly stated. W.P.No.2810/2007 and W.P.No.39658/2010 and W.P.No.12993/2011 were filed by retired officers of the High Court assailing order dated 19/10/2006 issued by the Deputy Secretary (Finance -II) to third respondent in writ appeal in so far as it related to the High Court. Further direction was sought to the State Government to consider the recommendation of the Hon'ble Chief Justice of the High Court and take a decision in the matter concerning the pay scales of the employees of the High Court. By order dated 26/04/2011, learned single Judge of this Court disposed of the writ petitions by observing that the issue of fixation of higher pay scales was pending consideration before the Three Judge Committee and therefore at that stage no direction was warranted. In those circumstances complainant No.1 herein filed W.A.No.4411/2011 before the Division Bench

of this Court which, after considering Article 229 of the Constitution allowed the writ appeal in the aforesaid terms.

Subsequently, Review Petition No.63/2012 was filed by the State, which was dismissed by order dated 30/03/2012. Being aggrieved by the said order, the State preferred Special Leave Petitions before the Hon'ble Supreme Court which granted leave and heard Civil Appeal Nos.5914-5915/2012 and dismissed the Civil Appeals by judgment dated 18/11/2015. Subsequently, first complainant herein submitted a representation dated 03/12/2015 to Registrar General of the High Court, ("Registrar General", for the sake of brevity), seeking implementation of judgment of the Division Bench in W.A.No.4411/2011 dated 12/10/2011. The Second complainant also made a representation on 03/12/2015 to Registrar General with a similar request. The Registrar General forwarded the representation dated 03/12/2015 to the Chief Secretary, Government of Karnataka by his communication dated 09/12/2015 with a request to place

the matter before the State Cabinet, so as to take a decision for implementation of the recommendation dated 06/10/2004 made by the Hon'ble Chief Justice of the High Court and the judgment passed in W.A.No.4411/2011 by the Division Bench of this Court. As there was no response, complainants got issued a legal notice dated 29/09/2016 to the respondents herein seeking compliance of recommendation of the Hon'ble Chief Justice, Karnataka, dated 06/10/2004 and for implementation of the directions of the Division Bench as per judgment dated 12/10/2011 passed in W.A.No.4411/2011. In fact earlier, the complainant herein had filed CCC No.153/2012 before this Court which was closed by order dated 16/08/2012 as the Hon'ble Supreme Court had passed an interim order staying the judgment of the Division Bench of this Court dated 12/10/2011.

Counter affidavit and additional counter affidavit along with certain documents have been filed by the Under Secretary to Government, Finance Department and

Additional Chief Secretary to Government, Finance Department, State of Karnataka, to these contempt petitions. In the counter affidavit it has been averred that there has been neither disobedience nor willful disobedience of the order passed by this Court. As there was a delay in compliance of the directions of this Court, unconditional apology has been tendered. While reiterating the facts narrated above, it has been stated that on receipt of the representation, the Department of Finance referred the matter to the learned Advocate General seeking his opinion as to the feasibility of preferring a Review Petition before the Hon'ble Supreme Court, since certain subsequent events had not been brought to the notice of the Hon'ble Supreme Court before the final order was passed on 18/11/2015. The learned Advocate General had given his opinion in the matter. In the mean while, correspondence with regard to the financial implications were also made. Thereafter, on 04/5/2016 letter of the Hon'ble Chief Justice of the High Court dated 06/10/2004 was placed before the Cabinet along with the opinion of

the learned Advocate General, but the Cabinet deferred the consideration of the matter, so as to consider the advice of the learned Advocate General comprehensively in light of the decision of the Hon'ble Supreme Court in the case of ***Union of India and Another vs. S.B. Vohra and Others [(2004) 2 SCC 150]*** (*Vohra's case*). As the consideration of the matter was deferred by the Cabinet with a request to the Law Minister to consider the issues with the concerned authorities, a meeting was convened by the Hon'ble Law Minister in the presence of the learned Advocate General, Principal Secretary to Government, Law Department, Registrar General, High Court of Karnataka and the representatives of the Employees Welfare Association and the matter was discussed in detail and stand of the State Government was communicated.

It is further averred that the High Court Employees Welfare Association sent a representation dated 02/09/2016 through the Office of the Registrar General setting out its reiterated stand. It is averred that having

regard to the observations in *Vohra's* case, there was no disobedience of the order dated 12/10/2011 passed by the Division Bench of this Court, as the Cabinet had deferred consideration of the matter in light of Paragraph No.46 of the judgment in *Vohra's* case; that having examined the issues in light of the deliberations, a Note for consideration of the Cabinet had been preferred which would be considered by the Cabinet, so as to take a suitable decision in the matter. In the circumstances, a plea for dropping the contempt proceedings was made. This affidavit was filed on 29/11/2016.

Subsequently, additional counter affidavit dated 07/01/2017 has been filed by the second respondent stating that a Cabinet Note was preferred and orders of the Cabinet was solicited on the following two points:

*"19. Orders of the Cabinet are solicited on the following as required under item No.25 of the Karnataka Government (Transaction of Business) Rules 1977*

*(a) In view of the orders having been issued by the High Court on 12/8/2007 and 9/7/2012 implementing the recommendations of the 5<sup>th</sup> Pay Commission and of the 2011 Official Pay Committee and in view of the opinion of the learned Advocate General, to recommend to His Excellency the Governor not to approve the proposal of the Hon'ble Chief Justice, Karnataka High Court dated 6.10.2004.*

*Or*

*(b) To extend Central pay to the Officers and the employees of the High Court of Karnataka as per the proposal of the Hon'ble Chief Justice of the Karnataka High Court dated 06/10/2004 and the subsequent decisions of the Hon'ble High Court and Hon'ble Supreme Court."*

The Cabinet by its meeting held on 06/12/2016 approved Paragraph No.19(a) above and recommended the same to the Governor for his approval. Thereafter, a Submission Note was prepared for approval by the Governor of Karnataka. It is further stated in the affidavit that on

16/12/2016 the Governor had approved the decision of the Cabinet; in light of the above, there had been compliance of the judgment of this Court dated 12/10/2011 passed in W.A.No.4411/2011. Hence, there was no disobedience much less willful disobedience of the aforesaid judgment by the respondents. That the delay, if any, in taking the decision was on account of the stay granted by the Hon'ble Supreme Court. Hence, a plea has been made for dropping the contempt proceedings.

Another additional counter affidavit has been filed on 09/02/2017 by the Additional Chief Secretary to Government, Finance Department reiterating what has been stated in the earlier additional counter affidavit and contending that there has been compliance of the direction of the Hon'ble Division Bench in light of the observations made in *Vohra's* case. It is further averred that the employees of the High Court have been extended the benefit of recommendation of the Fifth and Sixth Pay Commissions subsequent to the recommendation of the

Hon'ble Chief Justice dated 06/10/2004. Hence, complainants are estopped from seeking implementation of the recommendation dated 06/10/2004 of the Hon'ble Chief Justice. That, even if the letter of the Hon'ble Chief Justice dated 06/10/2004 was construed to be a recommendation for higher pay scales within the meaning of Article 229 of the Constitution, subsequently by orders dated 30/06/2007 and 09/07/2012 the higher pay scales having been granted to the employees of the High Court, effect of it was nothing but an amendment to the High Court of Karnataka Service (Conditions of Service and Recruitments) Rules, 1973 (hereinafter, referred to as '1973 Rules'). That, in the backdrop of the said amendments, the legal position was, substitution or deemed repeal of the recommendation of the Hon'ble Chief Justice dated 06/10/2004 and therefore the complainants could no longer insist on implementation of the directions of the Division Bench which had been considered by the State Government in accordance with law in light of *Vohra's* case. It is urged that no fault could be

attributed to the State Government or with regard to the procedure adopted by it because there had been merger of recommendations of the Hon'ble Chief Justice of the High Court dated 06/10/2004 with the recommendation made on implementation of the reports of the Fifth and Sixth Pay Commissions. In support of the aforesaid averments, certain documents have been annexed to the additional counter affidavit, which is filed to the affidavit filed by the President of the Karnataka High Court Employees' Welfare Association.

The genesis to the controversy in the instant case is communication dated 06/10/2004 made by the Hon'ble Chief Justice to the Hon'ble Chief Minister, Government of Karnataka, a copy of which is produced at Annexure-A to the Memorandum of Contempt Petition. The said communication though in the form of a letter has been construed to be a recommendation in terms of Article 229 of the Constitution, which deals with the officers of the service and expenses of the High Court. By that letter, the

Hon'ble Chief Justice has recommended extension or implementation of Central Government Pay Scales to the employees of the High Court.

The quintessence of the recommendation is that the employees of the High Court must be extended the benefit of Central Government Pay Scales. Certain reasons have been assigned for making the aforesaid recommendation. It is in light of that recommendation that the writ petitions and writ appeals were filed before this Court by the complainants which were allowed and Special Leave Petitions filed by the State before the Hon'ble Supreme Court, which were converted to Civil Appeals were dismissed. As noted above, the directions issued by this Court in writ appeals have been affirmed by the Hon'ble Supreme Court by its judgment dated 18/11/2015. On that day, the interim stay granted was also vacated. The said judgment has attained finality. In the circumstances, implementation of the judgment of the Division Bench of this Court dated 12/10/2011 were sought by the

complainants and there being no positive response by the respondents, these contempt petitions have been preferred.

Before we summarize the arguments of the learned senior counsel for the complainants and the learned Advocate General for the State, it would be useful to refer to the dictum of the Hon'ble Supreme Court in *Vohra's* case. The controversy therein was with regard to the extent and nature of a writ in the nature of mandamus that could be issued to Union of India vis-à-vis the employees of Delhi High Court which would also include the State Government vis-à-vis the employees of a State High Court, in the matter of their pay scales based on the recommendation made by the Chief Justice of the High Court. *Vohra's case* concerned the employees of the Delhi High Court. The Union of India which was the appellant in that case contended that the High Court could not have issued a writ in the nature of a mandamus directing the Central Government to grant certain pay scales in favour

of the respondents therein. After referring to Article 229 of the Constitution, the Hon'ble Supreme Court observed that Clause (2) of Article 229 of the Constitution empowers the Chief Justice of the High Court to prescribe by Rules, the conditions of service of officers and servants of a High Court. Such rules shall however be subject to (1) the provision of any law made by the legislature of the State; and (2) the approval of the President/Governor of the State so far as it relates to salary, allowances, leave or pensions. It has been further observed as under:-

*"11. Independence of the High Court is an essential feature for working of the democratic form of government in the country. An absolute control, therefore, has been vested in the High Court over its staff which would be free from interference from the Government subject of course to the limitations imposed by the said provision. There cannot be, however, any doubt whatsoever that while exercising such a power the Chief Justice of the High Court would only be bound by the limitation contained in clause*

*(2) of Article 229 of the Constitution of India and the proviso appended thereto. Approval of the President/Governor of the State is, thus, required to be obtained in relation to the rules containing provisions as regards salary, allowances, leave or promotion. It is trite that such approval should ordinarily be granted as a matter of course. "*

In Vohra's case, reference was made to **State of A.P. vs. T.Gopalakrishnan Murthi [(1976)2 SCC 883]**, (*T.Gopalakrishnan's case*) wherein it has been observed that ordinarily and generally approval should be accorded, but approval is not a mere formality and in no case it is open to the Government to refuse to accord their approval. In *T.Gopalakrishnan's case*, the recommendation of the Hon'ble Chief Justice was to equate the pay scales of the High Court Staff with those of equivalent posts in the Secretariat. The concerned Government had not accepted the recommendation of the Chief Justice of the High Court and had refused approval. It is observed that it could not be a ground for issuance of a writ of mandamus directing the

State Government to accord approval. However, observations were made hoping that the State of Andhra Pradesh would give a second thought so as to obliterate the distinction in the matter of pay scales between the High Court and Secretariat Staff.

Reference could also be made to the **Supreme Court Employees Welfare Assn. vs. Union of India [(1989) 4 SCC 187]**, which arose under Article 146(2) of the Constitution dealing with salary, allowances, leave and pensions of the officers and servants of the Supreme Court. In that case, it was observed that "the approval of the President of India regarding salary, allowances, leave and pensions was required as there was involvement of financial liability of the Government. It was observed that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salary, allowances, leave and pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it shall be looked upon with respect

and unless there is very good reason not to grant approval, the approval should always be granted”

Further, reference could be made to **State of Maharashtra vs. Assn. of Court Stenos, PA, PS [(2002) 2 SCC 141]**, wherein it has been observed that *“under proviso to Clause(2) of Article 229, any rule relating to the salary, allowances, leave and pension of the employees of the High Court would require the approval of the Governor, before the same can be enforced. The approval of the Governor, therefore, is a condition precedent to the validity of the rules made by the Chief Justice and the so-called approval of the Governor is not on his discretion, but being advised by the Government”*. Thus, the State Government cannot fix the salary or authorize any particular pay scale of an employee of the High Court. In the aforesaid case, the question was not whether a particular pay scale for the employees of a Court which had been recommended by the Chief Justice had not been accepted by the Government, but the question was whether the High Court in its discretion under Article 226 of

the Constitution could examine the nature of work discharged by its employees and issue a mandamus, directing the particular pay scale to be given to such employees. Hence, it was observed that the Chief Justice must frame rules after taking into consideration all relevant factors including the recommendation of the pay commission and submit the same for approval of the Government. It is further observed that *"it is always expected that when the Chief Justice of a High Court makes a rule, providing particular pay scale to its employees, the same should be ordinarily approved by the Governor, unless there is any justifiable reason not to approve the same"*. This is because a high functionary like the Chief Justice of a High Court, before framing rules in relation to the service condition of the employees of the High Court and granting any pay scale would consider all relevant factors and fixation would be made, not on any arbitrary basis but having regard to all relevant factors.

In ***High Court Welfare Association vs. State of West Bengal [(2004) 1 SCC 334]***, it is observed that the

Government should bear in mind the special nature of the work of the High Court which the Chief Justice and his/her colleagues alone could really appreciate and if the Government does not wish to meet the desire of the High Court, the administration of the High Court will suffer crisis.

After referring to the various dicta, the following observations have been made by the Hon'ble Supreme Court in *Vohra's* case:-

*"46. Decisions of this Court, as discussed hereinafter, 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 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-à-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' Ass. V. Union of India* as well as the report of the Shetty Commission.

51. Having regard to the aforementioned authoritative pronouncements of this Court, there cannot 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.*

*53. We are further of the opinion that only in exceptional cases the High Court may interfere on the judicial side, but ordinarily it would not do so. Even if an occasion arises for the High Court to interfere on its judicial side, the jurisdiction of the High Court should be exercised with care and circumspection."*

In view of the above reasoning, the Hon'ble Supreme Court dismissed the appeal filed by the Union of India in the said case.

In the background of the aforesaid decisions, we have heard learned senior counsel for the complainants and learned Advocate General for the respondents and perused the material on record.

Learned Senior counsel, Sri. Udaya Holla, appearing for the complainants, drew our attention to the judgment of this Court in W.A.No.4411/2011 dated 12/10/2011 and the operative directions given in the said judgment. That this Court had directed the respondent-State to place the recommendation of the Hon'ble Chief Justice of Karnataka dated 06/10/2004 before the Cabinet at the earliest and to take an appropriate decision to implement the said recommendation in light of the observations of Hon'ble Supreme Court in *Vohra's* case as expeditiously as possible. He submitted that the State had filed a Review Petition seeking review of the said judgment but by order dated 30/03/2012 the review petition was dismissed. That the Review Petition was filed to bring to the notice of this Court letter dated 28/08/2006 addressed by the Registrar General to the Chairman, Fifth State Pay Commission. He contended that the Hon'ble Supreme Court by its judgment dated 18/11/2015 has affirmed the directions issued by the Division Bench of this Court and the matter has attained finality. Thereafter, representations were made by the

complainant/petitioners to the Registrar General, for implementation of the directions of this Court. On the said representations, the Registrar General addressed letter dated 03/12/2015 to the Chief Secretary, Government of Karnataka requesting action to be taken in the matter. Subsequently, legal notice was also issued to the respondents on 29/09/2016. It is only thereafter that the matter was placed before the Cabinet and the Cabinet by its Meeting held on 06/12/2016 decided not to approve the proposal of the Hon'ble Chief Justice of the High Court dated 06/10/2004, in view of the order passed by the High Court on 12/08/2007 and 09/08/2007 implementing the recommendation of the Fifth Pay Commission.

Drawing our attention to the Cabinet Note and also the Submission Note, copies of which are annexed to the additional counter affidavits filed by the Additional Chief Secretary, Finance Department, Government of Karnataka, learned senior counsel for the complainants contended that there has been non-compliance of the directions issued by

this Court and that the respondents have committed willful disobedience of the said directions and hence, action may be initiated in these proceedings. Leaned Senior Counsel submitted that the formulation of the points in the Cabinet Note itself shows that the respondents are under the impression that they have an option or choice in the matter, which is not so.

Learned senior counsel submitted that a reading of Paragraph No.19(a) of the Cabinet Note has made it apparent that the implementation of the Fifth Pay Commission recommendations and also the order of 2011 Official Committee to the employees of the High Court would dilute or supersede the recommendation made by the Hon'ble Chief Justice by letter dated 06/10/2004. He contended that the respondents have not considered the directions issued by this Court in the spirit of the judgment of the Hon'ble Supreme Court in *Vohra's* case and therefore suitable action may be taken in these proceedings.

Rebutting the aforesaid contentions, learned Advocate General for the State placed heavy reliance on the observations made by the Hon'ble Supreme Court in *Vohra's* case and also the contents of the counter affidavit and additional counter affidavit filed on behalf of the respondent-State. He submitted that once the Hon'ble Chief Justice had issued a Rule in the year 2007 implementing the recommendation of the Fifth Pay Commission, the earlier recommendation made by the Hon'ble Chief Justice by letter dated 06/10/2004 would no longer survive as it had merged with the Rule of 2007 issued by the Hon'ble Chief Justice. He further urged that in fact the recommendation of the Sixth Pay Commission had also been implemented vis-à-vis the employees of the High Court; that the subsequent developments after the Hon'ble Chief Justice's recommendation by letter dated 06/10/2004 had been considered by the learned single Judge of this Court; in the circumstances, the ratio of the judgment of the Hon'ble Supreme Court in *Vohra's* case had been complied in the instant case and that after considering all the circumstances

which arose in the matter, the State Government took a decision not to approve the recommendation of the Hon'ble Chief Justice dated 06/10/2004; that such an option was available to the State Government as the Division Bench of this Court only directed implementation of the said direction in light of *Vohra's* case. It is his contention that the judgment in *Vohra's* case nowhere stated that the State Government had to necessarily accept the recommendation made by the Hon'ble Chief Justice in the matter of pay scale to be extended to the employees of the High Court and indeed Article 229 of the Constitution was also not to that effect.

Learned Advocate General brought to our notice the fact that the subsequent developments had been taken note of by the State Government while taking a decision in the matter as there had been escalation in the pay scale of the employees of the High Court pursuant to the implementation of the recommendations of the Pay Commissions. The learned Advocate General also submitted that in the year 2006, when the matter concerning the pay scales of the employees of the

High Court was referred to the Fifth Pay Commission, it was on the concurrence of the Hon'ble Chief Justice of this Court. This would also imply that the earlier recommendation made by the then Chief Justice had merged with the order passed in the rule made subsequently in the year 2007 for the implementation of the pay scales pursuant to the recommendation of the Fifth Pay Commission. Therefore, the earlier recommendation of the Hon'ble Chief Justice dated 06/10/2004 would pale into insignificance.

By way of reply, learned senior counsel appearing for the complainants drew our attention to the fact that the aforesaid subsequent developments were in fact, brought to the notice of this Court by way of a review petition, but the review petition was dismissed. It was also brought to the notice of the Hon'ble Supreme Court but the judgment of this Court has been confirmed without any modification. Therefore, the arguments with regard to the subsequent developments cannot be raised at this stage of the matter.

Learned senior counsel, Sri M.S.Rajendra Prasad, also appearing for complainants, has adopted the arguments advanced on behalf of the complainants by learned senior counsel, Sri Udaya Holla.

Having heard learned senior counsel for the parties, the only point that has to be considered at this stage is, as to whether, there has been compliance of the directions issued by the Division Bench of this Court dated 12/10/2011.

The bone of contention between the parties in these contempt petitions revolves on the issue, whether, the respondents have complied with the directions issued by the Division Bench of this Court which have been affirmed by the Hon'ble Supreme Court.

In this context, learned Advocate General has made a two fold submission: firstly, in terms of *Vohra's* case there has been compliance with the direction of the Division Bench of this Court and therefore, the Contempt Petitions would not survive for further consideration. In this regard, reliance has been placed on Article 163 of the Constitution read in light

of Article 229(2) thereof. It is contended that the direction of the Division Bench of this Court is not to implement the recommendation of the Hon'ble Chief Justice dated 06/10/2004 as being a binding rule, but to consider the same and subject to the decision of the State Government for approval of the Governor of the State. That any such approval has to be made on the aid and advice of the Council of Ministers. That the State Cabinet after obtaining opinion from the learned Advocate General has decided not to approve the recommendation made by the Hon'ble Chief Justice by letter dated 06/10/2004. It is thus contended that there has been compliance with the directions of this Court in light of the observations in *Vohra's* case. That the Governor on the basis of the advice of council of Ministers has not approved the recommendation of the Hon'ble Chief Justice. Thus, the matter has been considered by the State Government and therefore, no fault can be found by the complainants.

Secondly, it is contended that the State has implemented the recommendations of the Fifth and Sixth Pay

Commissions vis-à-vis the employees of the High Court. When such implementation has been made by the Hon'ble Chief Justice by issuing a rule in that regard, the earlier recommendation dated 06/10/2004 would pale into insignificance as it has merged with the subsequent rule issued and therefore, the grant of approval pursuant to the directions issued by this Court would not arise.

We note and observe that the aforesaid submission made by the learned Advocate General are similar to what were submitted before this Court in the review petition and similar contentions were raised before the Hon'ble Supreme Court. The said contentions were neither accepted either by the Division Bench of this Court in the review petition nor by the Hon'ble Supreme Court in the civil appeals. Therefore, it is not permissible for this Court at this stage to interpret the judgment in the way put forth on behalf of the State. When the aforesaid circumstances cannot be taken into consideration for the purpose of ascertaining as to whether there has been due compliance with the directions of this

Court by the respondents, we think that the only other point that would remain to be considered is, whether the directions of the Division Bench have been implemented or not as the Hon'ble Supreme Court by dismissing the civil appeals has given its *imprimatur* to the directions issued by this Court. No debate as to whether the Division Bench of this Court could have issued the writ of mandamus be permitted to be reagitated at this stage in these proceedings. Further, in our view the said directions have not been diluted by any event that has occurred, either prior to or, subsequent to the issuance of the said directions by the Division Bench of this Court. The respondents had no option but to comply with those directions particularly, when they have been affirmed by the Hon'ble Supreme Court.

Moreover, the implementation of the recommendation of the Fifth and Sixth Pay Commissions and the consequent increase in the pay scales extended to the employees of the High Court is in the State scales but what the complainants sought in the writ petitions was implementation of the

recommendation of the Hon'ble Chief Justice, which was for extension of Central Government's Pay Scales to the employees of the High Court. The said recommendation of the Hon'ble Chief Justice dated 06/10/2004, in our view, has not merged with the subsequent rules made vis-à-vis the extension of higher pay scales pursuant to the recommendation of the Fifth and Sixth Pay Commissions in the State pay scales. The recommendation of the Hon'ble Chief Justice dated 06/10/2004 has not been diluted nor watered down by any subsequent development or implementation of the recommendations of the Fifth and Sixth Pay Commissions. Further, when the Hon'ble Chief Justice accorded sanction for extension of the revised pay scales in the State pay scale pursuant to the recommendations of the Fifth and Sixth Pay Commissions, it was not in substitution of the recommendation made by recommendation dated 06/10/2004. Rather, it was pending approval of that recommendation, the pay scales were increased in the State scales on the recommendation of the Fifth and Sixth Pay Commissions. Therefore, the Hon'ble Supreme Court while

taking note of the aforesaid facts confirmed the judgment of the Division Bench of this Court. In our view, the implementation of the recommendations of the Fifth and Sixth Pay Commissions has no nexus to the recommendation made by the Hon'ble Chief Justice on 06/10/2004. The said recommendation is for extension of Central Government Pay Scales to the employees of the High Court. At this stage, it is impermissible to go beyond the directions issued by this Court, which have been confirmed by the Hon'ble Supreme Court. Further, there can be no debate at this stage as to whether this Court could have issued writ of mandamus by directing the State to implement the recommendation of the Hon'ble Chief Justice made on 06/10/2004. Neither are those directions diluted nor have they lost their efficacy due to any subsequent development.

It is reiterated that extension or the implementation of the revised pay scales pursuant to the recommendations of the Fifth and Sixth Pay Commissions to the employees of the High Court has no nexus to the recommendation of the

Hon'ble Chief Justice for implementation of the pay scales vide communication dated 06/10/2004. The two pay scales are totally distinct and different from each other.

The dictum of the Hon'ble Supreme Court in *Vohra's* case as well as other judgments clearly indicate that there must be strong reasons for rejecting or not accepting the recommendation made by a high constitutional functionary such as the Chief Justice of the High Court by the State Government. In the instant case, there is no justifiable reason for not implementing the directions of the Division Bench of this Court as approved by the Hon'ble Supreme Court.

In the circumstances, we find that there has been no compliance with the directions issued by this Court dated

12/10/2011, which have been confirmed by the Hon'ble Supreme Court.

Hence, we find that these contempt proceedings cannot be dropped at this stage.

Sd/-  
JUDGE

Sd/-  
JUDGE

*msu/\*mvs*