

(1990) 01 PAT CK 0013

In the Patna High Court

Case No : C.W.J. Cases No. 721 and 7677 of 1988

A.K. Ojha

APPELLANT

Vs

Ors. Etc.

RESPONDENT

Date of Decision : 15-01-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 23

Citation : (1990) 38 BLJR 770 : (1993) 3 LLJ 338 : (1990) 2 PLJR 163

Hon'ble Judges : Prabha Shankar Mishra, J; Bhuvaneshwar Prasad, J

Bench : Division Bench

Advocate : Shashi Sekhar Dwivedi and Vijaykumar Sinha, P.C. Gupta, Dharendra Choubey and A. Sima Ali Khan, for the Appellant; J.N. Pandey, A.A.G., Bashisth, Mishra, J.C. to A.A.G. and M.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioners are members of the Bihar Judicial Service. Petitioner No. 1 is a recruit of 19th batch, petitioners 2 and 3 are recruits of 20th batch and petitioners 4 and 5 are recruits of 21st batch. They were all appointed after 12.10.1982. Petitioners in the second case are also members of the Bihar Judicial Service, petitioner No. 11 is the Officiating Secretary of the Bihar Judicial Service Association. Petitioners 2, 3, 4 and 5 are recruits of the 19th batch, petitioners 6, 7, 8 and 9 are recruits of 20th batch and petitioners 10 to 19 are recruits of 21st batch. Petitioners have sued, in a representative capacity, the respondents who have, according to the petitioners, declined to implement the recommendation of the 4th Pay Revision Committee which has worked against the interest of the service and which according to the petitioners amount to denial of equality of opportunity of employment and violation of equal protection of law and equality before it.

2. It is not in dispute that the 4th Pay Revision Committee was appointed by the respondent - State for the purpose of considering and making appropriate revisions of the pay scales of the State Government servants. The Committee,

after extensive consideration, submitted its report in May 1981. It recommended for revisions of pay scales of different services/cadres of State service. It considered the case of judicial services and medical services in Chapter XXXIII of its report and after taking notice of the fact that those recruited in the judicial service or medical service of the State were required to spend longer number of years in getting their respective qualifications recommended that Members of these services were entitled to be treated on preferential basis. It accordingly recommended that at the time of appointment, members of the judicial service as well as the members of the medical service of the State should be given three advance increments in order to make up for the time lost by them in acquiring their respective qualification. The Committee also considered the requirements of other service of the State Government, made various recommendations and recommended the initial scale of pay of Rs. 1000/- to Rs. 1,820/- for all the State services but for judicial and health service it recommended that recruits to these services be allowed three advance increments at the time of their appointments, thus, initial pay payable to each recruit in the judicial service and health service be Rs. 1,050/- as against Rs. 1000/- in the case of other State services. The State Government in its Finance Department, however, accepted the recommendations of Pay Revision Committee vide resolution dated 30.12.1981 with respect to health service but not with respect to judicial services. No reason, however, was given for such differentiation.

3. Eventually since members of other services complained of anomalies and judicial officers also complained of anomalies and denial to them of the scale of pay recommended by the 4th Pay Revision Committee, the State Government appointed a Pay Anomaly Removal Committee headed by Shri K. A. Ramasubramanian. Ramasubramanian's Committee at paragraph 3907.2 reiterated the recommendation of the 4th Pay Revision Committee and recommended for three advance increments for the members of the judicial services. Petitioners have alleged that inspite of such recommendations, as aforementioned, the respondent-State Government has not revised the scale of pay of the petitioners. They have made several representations but without any result.

4. Article 21 of the Constitution is a guarantee to life and liberty. Right to life means something more than survival or animal existence. It includes the right to live with human dignity. It includes all those aspects of life which go to make a man's life meaningful, complete and worth living. It includes in its ambit the right of a person to receive equitable and fair emoluments from his employer. It also includes in its ambit that no unfair, discriminatory or arbitrary treatment be meted by the State to its employees as the State, apart from an employer, is the guardian of all citizens who under the Constitution of India are guaranteed a respectable life. Article 23 of the Constitution is more specific on the point. It states that traffic in human being and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. It has made exception, however, as to the

right of the State to impose compulsory service for public purposes. But such imposition of compulsory service cannot be discriminatory or on grounds of religion, race, caste, creed or class or any of them. Forced Labour is an expression which courts in India have interpreted to mean not only physical force but also on account of legal provisions, social conditions, and conditions of economic deprivation created by the employer. Articles 14 and 16 take into their sweep equality of opportunity of employment and equality before the law and equal protection of law. The rights aforementioned, however, cannot mean equality amongst unequals. Conditions of service which requires a skill for a particular trade or job cannot be equated with that of unskilled services. Practice in medicines and surgery cannot be allowed to one who is not skilled and knowledgeable. Similarly no one who is not judicially trained can be allowed to act as a judicial officer. The Constitution has in Article 50 commanded the State to take steps to separate the judiciary from the executive in the different services of the State. This has, according to the Supreme Court in *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, is a fighting faith of our Constitution. In the words of the Supreme Court, "Now the independence of the judiciary is a fighting faith of our Constitution... and hovering over all these provisions like a brooding omnipresence is Article 50 which lays down, as a Directive Principle of State Policy, that the State shall take steps to separate the judiciary from the executive in the public services of the; State. This provision, occurring in a Chapter which has been described by Granville Austin as "the conscience of the Constitution" and which embodies the social philosophy of the Constitution and its basic underpinnings and values, plainly reveals, without any scope for doubt or debate, the intent of the Constitution-makers to immunise the judiciary from any form of executive control or interference." This approach is not taken in India alone. The Privy Council in the case of *Bribery Commissioner v. Pedrick Ranasinghe* 1965 AC 172 considered a case where certain persons were appointed to constitute a Bribery Tribunal under the Constitution Amendment Act in Ceylon. The Privy Council has said, "The Constitution does not specifically deal with the judicial system which was established in Ceylon by the Charter of Justice of 1833 and is dealt with in certain ordinances, the principal being the Courts Ordinance. Call. The power and jurisdiction of the Courts are therefore not expressly protected by the Constitution. But the importance of securing the independence of judges and of maintaining the dividing line between the judiciary and the executive was appreciated by those who framed the Constitution." It declared the law by which certain persons who were not judicial officers were appointed to constitute the Tribunal *ultra vires*.

5. The above State policy shall not permit the State to take into its judicial service a person who is not trained in judicial work. This separation of judiciary and the executive has been expressed by the specific provisions in the Code of Criminal Procedure, 1973. While in Section 13 thereof there is a provision that the High Court may, if requested by the Central or the State Government so to do, confer upon any person who holds or has held any post under the

Government, all or any of the powers conferred or conferable by or under this Code on a Judicial Magistrate of the 1st Class or of the 2nd Class, in respect to particular cases or to particular class of cases in a local area, not being a metropolitan area, it has been controlled by a proviso thereto which states that no such power shall be conferred on any such person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify. A reference thus to the scheme of the Constitution of India and the various laws enacted by the Legislature including the Parliament will show that judicial services of the State are constituted of judicially trained persons or who in the opinion of the High Court possess such qualification or experience in relation to legal affairs which may justify their inclusion in the service. The Constitution of India has treated the subordinate judiciary as a mechanism fully separated and controlled by the High Court in Articles 232 and 236 of the Constitution of India. Those who constitute subordinate judiciary are recruited under rules framed in consultation with the High Court or in the absence of the rules under such instructions which are issued in consultation with the High Court. Judicial Officers thus constitute a class of such skilled people who cannot be compared with any other State service.

6. Once it is understood that judicial officers constitute a separate class and that they are not like ordinary graduates who qualify for other services of the State of Bihar and the rules of their recruitments are examined closely, it has to be realised that after graduation like any other person and thus qualifying to enter into any State service (other than skilled services like medical and engineering services), to become qualified to enter into the State judicial service one has to acquire the graduation in law (the minimum). Not only that he has to be in practice of law for a period not less than one year.

7. If this special acquisition does not make judicial officers a skilled class of persons who stand a class above the ordinary graduates what else will do. The 4th Pay Revision Committee may not have entered into the details of the discussion as above nonetheless it has taken notice of the loss of time in acquiring the special qualification without which a graduate could enter into other State services but not in the judicial service. It is indeed necessary at this stage to take notice of the importance of the expert Committees which go into the question of fixation of pay of different categories of employees. The Supreme Court in *Purshottam Lal and Others Vs. Union of India (UOI)* and *Another*, considered a case in which a report of a Pay Commission implemented for some but not implemented in respect of certain other posts. One of the arguments before the Supreme Court was that it was open for the Government to accept the recommendation of the Pay Commission or not to accept and while doing so to determine which categories of employees were included in the terms of reference. The Supreme Court has said "we are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to

implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned."

8. We may not have the capacity to judge the adequacy or otherwise of the wages/salaries that the Government may decide to pay to its employees. We are not endeavouring to enter into the adequacy or otherwise of the scales of pay recommended by the 4th Pay Revision Committee or Anomaly Removal Committee. Once, however, it is noticed that the State Government has implemented the recommendations of the 4th Pay Revision Committee with respect to other services, it cannot have any justification not to accept the recommendations of the same very Committee with respect to the judicial services. If there was anything to pause or consider, that also was done when the matter was referred to Pay Anomaly Removal Committee. Once the Pay Anomaly Removal Committee affirmed, all experts joined hands in holding that the judicial officers were entitled to three increments at the initial appointment. Why then the State Government has ignored the recommendations of the 4th Pay Revision Committee and the Pay Anomaly Removal Committee, is a matter which this Court may legitimately consider. We find no reason advanced on behalf of the respondents to justify non-implementation of the recommendations of the 4th Pay Revision Committee and Pay Anomaly Removal Committee in respect of the salary payable to judicial officers. Learned counsel for the State has, however, drawn our attention to a judgment of the Supreme Court reported in *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, . In that case the doctrine of Equal Pay for Equal Work has been considered by the Supreme Court. The Supreme Court has said: "The doctrine of Equal Pay for Equal Work" is not expressly declared a fundamental right under the Constitution. But Article 39(d) read with Articles 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the Constitution indeed enjoins the State that where all things are equal persons holding identical post, performing identical and similar duties under the same employer should not be treated differently in the matter of their pay. The doctrine of "Equal Pay for Equal Work" is not an abstract. It is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of "Equal Pay for Equal Work" is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay. The Supreme Court has said "while considering the question of application of principle of "Equal Pay for Equal Work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If

the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scales but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequals cannot claim equality."

9. Facts of this case are tell tale. They lead to the irresistible conclusion that judicial officers are qualified to be classified as a class and as noticed by the 4th Pay Revision Committee and the Anomaly Removal Committee for a higher starting pay than the members of other services except the technical services like health. Indeed by accepting the recommendations of the 4th Pay Revision Committee to grant a higher scale of pay to the health service employees and not accepting the recommendations with respect to the members of the judicial service the respondent State has discriminated and acted arbitrarily. It has violated Articles 14 and 16 of the Constitution of India. The other case cited at the Bar also supports the above conclusion. In *State of UP. v. J.P. Chaurasia* 1989 L.I.C. 1146, the Supreme Court has pointed out that the Courts should not normally interfere with the opinions of Pay Commission and this refrain should equally apply to the executive State. It should also not normally interfere with the recommendation of Pay Revision Commission/Committee. The Supreme Court has said: "The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of post. If there is any such determination by a Commission or Committee, the Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

10. We have no hesitation on the basis of the authorities aforementioned in holding that the principles rooted in social justice justify a classification as aforementioned and a higher scale of pay to the judicial officers. The Pay Revision Committee has done no harm to any other services by accepting that members of judicial service be given three advance increments at their appointments. They are fitted in the same scale of pay as other services with the only advantage of increments for compensating them for the loss of several years in acquiring the special qualification.

11. The respondent State cannot justify its discrimination to the judicial officers and its not accepting the recommendations of the 4th Pay Revision Committee as well as the Pay Anomaly Removal Committee for them. As a result of our discussion above we conclude-

(a) members of the Bihar Judicial Service constitute a class in themselves;

(b) Judicial officers are a specially skilled class of employees which skill they acquire by acquiring the graduation degree in law (three years course) after graduating like other service employees and being at the Bar for a period not

less than one year;

(c) Recommendations of the Pay Revision Committee are reasonable and, in fact, less than that for which judicial officers qualify for;

(d) by accepting the recommendations of the 4th Pay Revision Committee with respect to other services including health service and not accepting with respect to the judicial officers, the respondent State has violated Articles 21, 23, 14 and 16 of the Constitution of India.

12. It is not in dispute that the 4th Pay Revision Committee's report has been implemented with effect from 1.4.81. Members of the judicial service, therefore, in our view, are entitled to claim implementation of the 4th Pay Revision Committee recommendations with effect from the said date.

13. In the result the two applications are allowed with costs. Respondents are directed to implement the recommendations of the 4th Pay Revision Committee for the members of the petitioners services with effect from 1.4.1981 forthwith.

14. Let a writ in the nature of mandamus accordingly issue. Hearing fee consolidated Rs. 1000/- each case.