
(2001) 04 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 1406 of 1996

Bibhuti Bhusan Mishra and others

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 229(2)

Orissa High Court (Conditions of Service of Staff) Rules, 1963 — Rule 7

Citation : (2001) 92 CLT 18

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Mr. B.R. Sarangi, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The petitioners have prayed for the following reliefs in the writ application :

".....issue a writ in the nature of mandamus or any other suitable writ :

(A) directing the opp. parties 1 and 2 to give effect of the order of upgradation of Superintendent to that of Superintendent Level-I in Annexure-9 with effect from 1-8-1986, the date from which their counterparts in the State Secretariat received it;

(B) directing the opp. parties 1 and 2 to give effect of the order revising the scales of pay of the promotional posts in Annexure-13 from 1-5-89 as per O.R.S P. Rules, 1989-90 and the corresponding existing scales of pay as was recommended by the Hon"ble Chief Justice in Annexure-8 dated 26-9-1987 as O.R.S.P. Rules, 1985 from 1-1-1985 as per Home Department Resolution dated 14-1-1986 in Annexure-11 (since their counterparts in the Secretariat received it from 1-1-1985) ;

(C) directing the opp. parties land 2 to grant the scale of pay of Rs. 1975-2975

for the post of Superintendent Level-I to the petitioners from 1-8-86, the date from which their counterparts in the Secretariat received it ;

(ii) directing the opposite parties 1 and 2 to grant the scale of pay of Rs. 2200-4000 to the petitioners for the period they worked in the promotional posts of Addl. S.R. & O.C., S.R.& O.C, Establishment Officer which were in the inferior scales of pay ;

(iii) directing the opp. parties 1 and 2 to grant the scale of pay of Rs. 3000-4500 to the petitioners for the period they worked in the further promotional post of Assistant Registrar (Judicial) which was in the inferior scale of pay.

And pass such other orders as Your Lordships deem fit and proper".

2. Petitioner No. 1 entered into service as a Lower Division Clerk on 17-3-1958 in the establishment of the High Court. He was promoted to the post of Superintendent on 17-3-1981, to the post of Stamp Reporter & Oath Commissioner on 1-4-1990 and to the post of Assistant Registrar (Judicial) on 1-2-1992. He retired from service on attaining the age of superannuation on 31-1-1993. Petitioner No. 2 entered into service in the High Court establishment in the year 1956 and in due course was promoted to the posts of Superintendent, Additional Stamp Reporter & Oath Commissioner and Establishment Officer. Thereafter he was promoted to the post of Assistant Registrar (Judicial) on 1-11-1993 and retired from service on attaining the age of superannuation on 30-11-1993. Petitioner No. 3 entered into service in the High Court establishment in the year 1959 and thereafter was promoted to different posts and his last promotion was to the post of Assistant Registrar(Judicial) on 1-1-1993 and he retired on attaining the age of superannuation on 30-11-1993.

3. Shri B.R. Sarangi, learned counsel appearing for the the petitioners, submitted that the claim of the petitioners as mentioned in the writ application is based on the resolution of the Government dated 16-2-1949 in Annexure-1. Referring to Annexure-1 Shri Sarangi submitted that clause 2 of the said resolution provides that wherever possible Government have allowed the High Court employees the same scales of pay as are admissible to employees of corresponding ranks in the Secretariat which is the highest office in the province on the Executive side. According to Shri Sarangi, pay fixation of the employees of the High Court has been made pursuant to Annexure-1 and they have been extended the same benefit till today. It is submitted that in exercise of power conferred under clause (2) of Article 229 of the Constitution of India, the Chief Justice of the High Court of Orissa with the approval of Governor of Orissa, so far as the rules relating to salaries, allowances, leave or pension are concerned, has framed the Orissa High Court (Conditions of Service of Staff) Rules, 1963. Rule 7 of the aforesaid Rules provides that in respect of matters regarding the conditions of service of Court servants for which no provision or insufficient provision has been made in the Rules, the rules and orders for the time being in force and applicable to servants holding corresponding posts in the State Government shall regulate the

conditions of service of Court servants subject to such modifications, variations or exceptions, if any, in the said Rules and orders, as the Chief Justice may, from time to time specify. On the basis of the said rule the petitioners claim that they are entitled to the scale of pay applicable to their counter-parts in the State Secretariat in the post of Superintendent, Level-I and in subsequent promotional posts. Referring to Annexure-1 Shri Sarangi further submitted" that the said resolution was considered by this Court and it was held that the eligibility of the High Court employees to get the same scale of pay as is admissible to corresponding rank in the State Secretariat is an acknowledged policy of the State Government since 1949 and in the said letter while the Government did not accept all the suggestions made by Hon'ble Chief Justice of the High Court had allowed the High Court employees same scale of pay as are admissible to the employees of the corresponding rank in the Secretariat which is the highest office in the province on Executive side. This decision of the Government clearly shows that the employees of the High Court are entitled to the same scale of pay as are received by their counterparts in the Secretariat, Therefore, whatever pay revision benefits have been allowed to the staff working in the State Secretariat are also to be allowed to the corresponding ranks in the High Court establishment.

4. A counter affidavit has been filed on behalf of opposite party No. 3 wherein statements have been made with regard to the proposal submitted by the Registry of the High Court from time to time in relation to the revised scales of pay as well as the decision taken by the State Government.

5. Annexure-1 is the letter dated 16-2-49 addressed to the Registrar, Orissa High Court, issued from the Home Department of the State Government. In paragraph 2 of the said letter it is specifically mentioned that Government have allowed the High Court employees the same scale of pay as are admissible to employees of corresponding rank in the Secretariat which is the highest office in the province on the Executive side. According to the said decision the employees of the High Court establishment were allowed the same scales of pay as their counter-parts working in the State Secretariat. While Section Officers, Level-I working in the Secretariat were allowed the scale of pay of Rs. 1975-2975/- with effect from 1-8-1986, the Superintendents. Level-I working in the High Court establishment were allowed the same scale of pay with effect from 18-10-1989. Shri Sarangi submitted that once it is accepted by the State Government that the employees of the High Court shall get the same scale of pay as admissible to their counterparts working in the State Secretariat, no discrimination could have been made in the matter of allowing the scale of pay as has been done after introduction of the 1985 pay revision. If the Section Officers, Level-I working in the Secretariat were allowed the scale of pay of Rs. 1975-2975/- with effect from 1-8-1986, the same benefit should have been extended to the Superintendents, Level-I in the High Court establishment and allowing the said scale of pay to the Superintendents, Level-I working in the High Court establishment from 18-10-1989 is highly discriminatory and therefore, subsequent pay revisions

made in respect of employees of the High Court establishment should have been given effect to from the date when their counter-parts got the benefit working in the State Secretariat. From the records it appears that after introduction of 1985 pay revision, the same was made applicable to High Court employees under Annexure-5. On 23rd April, 1986 the decision of the Government was communicated by upgrading certain posts to Level-I. According to the said decision, a proposal was also submitted by the High Court for upgrading certain posts and considering the said proposal the State Government in its order dated 18-10-1989 communicated its decision upgrading 9 posts of Superintendents out of 28 in the High Court establishment to Level-I in Class II in the scale of pay of Rs. 1975-2975/-. The petitioners submit that once the Government in its letter dated 18-10-1989 agreed to upgrade 8 posts of Superintendents of the High Court establishment to that of Level-I Superintendents in Class II, they should have been allowed the scale of Rs. 1975-2975/- from the date their counter-parts received the said scale working in the State Secretariat. The submission of the learned counsel for petitioner in this regard is fully supported by the decision of Government in its resolution dated 16th February, 1949, Annexure-1. The decision of the State Government in Annexure-9 to allow the said scale with effect from the date the posts are actually filled up runs contrary to the decision taken in Annexure-1. The upgradation as well as the decision to allow the scale of pay should have been with effect from 1-8-1986 when the same benefit was extended to the Secretariat staff working in the same level. Fixation of the date as in Annexure-9 has no reasonable basis. This Court in the decision reported in Bibhuti Bhusan Mohapatra and Others Vs. The State of Orissa and Others, has observed that recommendation of the Hon"ble Chief Justice made in exercise of power under Article 229(2) of the Constitution in respect of conditions of service of the staff of the High Court is not available to be lightly dealt with and should invariably be accepted and approval should generally be granted unless there is very good reason for not according approval. No reasons have been assigned in Annexure-9 as to why such discrimination has been made between the employees of High Court establishment and similarly placed employees working in the State Secretariat.

6. The disparity made between High Court establishment and the establishment of the State Secretariat is available from the following chart :

"In the Secretariat In the High Court

Sr. Head Assistant. Jr. Head Assistant. Sr. Superintendent. Jr. Superintendent.

Rs. 300-390 Rs. 350-400 Rs. 380-500

235-300 300-395 325-395

300-390 350-400 380-500

235-300 300-395 325-395

Section Officer

Superintendent

Rs. 625-960

625-960

Section Officer Level-II

Superintendent Level-II

Rs. 1365-2385

Rs. 1365-2385

w. e. f. 1-1-1985

w. e. f. 1-1-1985

Section Officer Level-I

Superintendent Level-I

Rs. 1975-2975

Rs. 1975-2975

w. e. f. 1-8-1986

w. c. f. 18-10-1989

Scales of pay of promotional posts as per Finance Department Resolution dated 22-8-1985 and Home Department Resolution dated 14-1-1986..

Common cadre Under

S. R. & O. C

Secretary (promotional

Rs. 1600-2500

post from the post of Section Officer Level-I. Rs. 1975-3300

w. e. f. 1-1-1985 Deputy Secretary (OSS) (next promotional post from Under Secretary (OSS) Rs. 2350-3600 w. e. f. 1-1-1985. as per ORSP Rules. 1985 w. e. f. 1-1-1985 whose corresponding Central equivalent scale of pay as per ORSP Rules. 1989-90 Rs. 3000-4500

In the Secretariat

w. e. f. 1-5-1989.

Establishment Officer Rs. 1350-2975

w. e. f. 1-1-1985 Rs. 2200-4000 w. e. f. 18-11-1993 as per ORSP Rules, 1989-90 which is the corresponding Central equivalent of Rs. 1975-3300.

Asst. Registrar (Judicial) Next promotional post from common cadre posts

In the High Court

of S. R. & O. C.. and Establishment Officer Rs. 1975-2975 w. e. f. 1-1-1985 Rs. 3000-4500 w. t. f. 18-11-1993 as per ORSP Rules. 1989-90 which is the corresponding Central equivalent of Rs. 2350-3600.

7. In view of the reasons stated above, I allow the writ application and direct that the pay of the petitioners in the post of Superintendent Level-I shall be refixed in the scale of pay of Rs. 1975-2975/- with effect from 1-8-1986 as has been allowed to the counter-parts working in the State Secretariat and accordingly the subsequent pay revisions shall also be allowed from the dates their counter - parts in the State Secretariat were allowed. The differential pay shall be calculated and paid to the petitioners within a period of six months. Their pension shall also be refixed accordingly and the arrears shall be paid within the said period.

8. Writ application allowed.