
(1987) 03 PAT CK 0047

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 642 of 1986

Bihar Judicial Services Association

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 20-03-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 233, 309, 311

Citation : (1987) PLJR 464

Hon'ble Judges : S.N. Jha, J;N.P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.P. Singh, J.—This application has been filed by the Bihar Judicial Services Association in its representative capacity for quashing a part of notification dated 30th December, 1981, issued by the State of Bihar, revising the pay scale of different categories of the employees of the State Government including the members of the" Bihar Judicial Service, Revision in the pay scale has been made on the basis of the recommendation of the Fourth Pay Revision Committee (hereinafter referred to as "the Pay Revision Committee").

2. The primary grievance which has been made on behalf of the petitioner is in respect of revision of the pay scale of Additional District Judges. According to the petitioner, instead of giving the same scale of pay to the District Judges and the Additional District Judges, as recommended by the Pay Revision Committee, the State Government has arbitrarily lowered the pay scale of the Additional District Judges to bring it in conformity with the pay scale of the Additional District Magistrates. It was alleged that not only the Pay Revision Committee recommended the same pay scale for the District Judges and the Additional District Judges, even the State Government had taken a decision in the year 1979 that for the purpose of scale of pay the Additional District Judges shall be treated at par with the District Judges. As such, according to the petitioner, it was not open to the State Government to fix a lower scale of pay for the

Additional District Judges.

3. It has been pointed out that the District Judges and the Additional District Judges in Bihar like their counterpart in the other parts of India exercise identical judicial power and function they being completely independent of each other in discharge of their respective duties, both being subordinate only to the High Court on the Administrative and Judicial sides. The Law Commission of India in its Fourteenth Report on the Reform of Judicial Administration recommended that there should not be any difference in the pay scales of District Judges and Additional District Judges holding corresponding posts carrying equal responsibility in the following words :-

In our view, it would be convenient to have in the higher judicial service proposed to be designated "State Judicial Service-Class I" only two main designations-namely "District and Sessions Judge" and the "Additional District and Sessions Judge". Particular posts like those of the Chief Presidency Magistrate and others bearing special designations will be borne on the same cadre. As we have suggested elsewhere in the chapter, a uniform scale of pay for all the posts in the State Judicial Service Class I (higher judicial service), it would be desirable that, as far as practicable, all posts corresponding to the posts of Additional District and Sessions Judge should be brought under the two designations we have mentioned. The State Judicial Service Class I would, therefore, according to our recommendation, include all the posts of District Judges, Additional District Judges and corresponding posts like those of Legal Remembrancer and others usually filled by officers of the status of a District Judge... At this stage, we may point out that in a number of States somewhat lower scales of pay have been prescribed for the Additional District Judges and the corresponding posts. The reason apparently is that the State Governments want to have their work done cheaply.... The Civil and Sessions Judges in Uttar Pradesh and Rajasthan, Assistant Judges in Bombay and Additional District Judges elsewhere do practically the same judicial work as a District Judge except that a District Judge has administrative duties. There is, we think, no justification for putting them on a pay scale lower than that of District Judges. We have already recommended that State Judicial Services Class I, should have only one cadre consisting of District Judges and Additional District Judges. If they are to be borne on the same cadre it is only appropriate that they should be put on the same scale of pay. There would appear to be no justification for maintaining a difference in the pay of officers doing substantially the same work. We, therefore, recommend the discontinuance of separate scales of pay for the Additional District Judges and the corresponding post.

4. The Bihar Superior Judicial Service Rules were framed under Article 309 read with Article 233 of the Constitution (hereinafter referred to as "the Rules") contains the provision in respect of appointment and service conditions of the members of the Bihar Superior Judicial Service. Rule 3 of the Rules is as follows :-

3. (1) The strength of the Service and the number and character of the posts

shall be as specified in the schedule to these rules.

(2) The State Government may, from time to time, after consultation with the High Court amend the said schedule.

The schedule referred to in Rule 3 is as follows :-

THE SCHEDULE (Vide Rule 3) Sanctioned strength of the Service

(1) District and Sessions Judges .. 14 (2) Additional District and Sessions Judges .. 9 (3) Registrar, High Court .. 1 (4) Secretary to Government, Law Department .. 1 (5) Additional, Joint or Deputy Secretary to Government, Law Department .. 1 ----- Total .. 26 -----

On a plain reading the Rules treat the District and Sessions Judges, Additional District and Sessions Judges, Registrar of the High Court, Secretary to the Government, Law Department, Additional, Joint or Deputy Secretary to the Government, Law Department as members of the Bihar Superior Judicial Service. In view of Rule 3, the "District and Sessions Judges" are the "Additional District and Sessions Judges" are borne on the same cadre of the service and to that extent it is in tune with the recommendation of the Law Commission made aforesaid. However, for the purpose of scale of pay in the State of Bihar, prior to 1979, the Additional District Judges were being treated separately and getting a lower scale of pay and to that extent the recommendation of the Law Commission aforesaid had not been implemented.

5. It has been stated on behalf of the petitioner that after persistent representations from the petitioner association the State Government took a decision in June 1979 to implement the aforesaid recommendation of the Law Commission in respect of payment of same salary to the Additional District Judges which was payable to the District Judges. That decision was formally notified on 23-6-1979, the relevant part thereof is as follows:-

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The decision aforesaid said that on the recommendation of the Law Commission, for the unification of the pay scale of "District and Sessions Judge" and "Additional District and Sessions Judge" was under consideration of the State Government and after full consideration it has been decided that in order to bring an uniformity in the pay scale of "Additional District and Sessions Judges" and "District and Sessions Judges" both the posts in the Bihar Superior Judicial Service should be brought in the same pay scale of 1,200 to 2,000. The unification decision of the two posts became effective with effect from 1-4-1979. It is an admitted position that thereafter the "District and Sessions Judges" and "Additional District and Sessions Judges" were getting the same scale of pay.

6. The Pay Revision Committee appointed by the State Government submitted its report in May 1981 and while recommending different scales of pay for different categories of the Government employees, recommended the same scale of pay

of Rs. 1,900 to Rs. 2,500 for "Additional District Judges" and "District Judges". The Committee in its recommendation suggested that the scale of pay of Rs. 1,200 to Rs. 2,000 should be replaced by Rs. 1,900 to Rs. 2,500 in respect of Additional District Judges as well as District Judges. If the recommendation of the aforesaid Pay Revision Committee had been accepted, there was no occasion for the petitioner to file the present writ application. However, as already mentioned, by the impugned notification dated 30th December, 1981, the State Government accepted the recommendation for the pay scale of Rs. 1,900 to Rs. 2,500 in respect of District and Sessions Judges but prescribed a lower scale of pay of Rs. 1,575 to Rs. 2,300 for Additional District and Sessions Judges.

7. The relevant part of the notification, while implementing the recommendation of the Pay Revision Committee, says as follows :-

The State Government after carefully considering the recommendations of the Fourth Pay Revision Committee have accepted the Revised scales of pay indicated in Schedule I. Government have further decided that the existing pay scales of various Gazetted and non-Gazetted posts under the State Government should be revised as shown in the enclosed Schedule II.

Schedule II to that notification gives the details of existing pay scale and revised pay scale of different categories of Government employees including those in Judicial Service. From that schedule it appears that whereas the District and Sessions Judges who were getting the scale of pay of Rs. 1,200 to Rs. 2,000 shall get after revision the scale of pay of Rs. 1,900 to Rs. 2,500 the Additional District and Sessions Judges, who were also getting Rs. 1,200 to Rs. 2,000, shall get the scale of pay of Rs. 1,575 to Rs. 2,300 only, i. e., a lower scale of pay than the District and Sessions Judges.

8. Counter affidavit has been filed on behalf of the State, Justifying the lower scale of pay for the Additional District and Sessions Judges it has been stated as follows :

That with regard to the statement made in paragraph no. 4 of the writ application, it, has been stated in paragraph nos. 4 and 5 of this affidavit that the State Government have merged the scale of Additional District Judge into District Judge in the same scale of Rs. 1,200-2,000 on the recommendation of Central Law Commission vide Government order dated 23-6-1979 with effect from 1-4-1979. But it creates anomaly among the equivalent post of Additional District Judge of different State Services, Other State Service Association demanded to raise their scales of pay like Additional District Judge. Services anomaly had arisen due to merger. Under such circumstances, the State Government decided to restore the earlier parity between Additional District Judge and Additional District Magistrate an equivalent post which is on the pattern hierarchy in services.

The stand of the State appears to be that as the Additional District Magistrates started claiming the pay scale of Additional District Judges, for maintaining the

parity of scale between the Additional District Magistrate and the Additional District Judges, the recommendation of the Pay Revision Committee has not been accepted and a lower scale of pay has been prescribed for Additional District Judges. The counsel for the petitioner has rightly pointed out that in the counter affidavit there is no direct or indirect statement that the State Government ever applied its mind on the question whether the decision taken in June, 1979 to merge/unify the posts of Additional District Judges and District Judges for grant of the same scale of pay should be recalled or modified. There is no assertion in the counter affidavit that the said decision has later been revoked or modified; rather from paragraph 2 of the impugned notification dated 30th December, 1981, it appears that it is open to the Additional District and Sessions Judges to opt for old scale of pay of Rs. 1,200 to Rs. 2,000. This scale was given to them by the notification dated 23-6-1979.

9. The learned Advocate General, who appeared for the State, submitted that the effect of notification which is under challenge shall be that the decision taken earlier and notified on 23-6-1979 has been revoked and modified. The learned Advocate General submitted that the separate scale of pay mentioned in Schedule II of the notification for "Additional District and Sessions Judges" has to be read along with the main part of the notification which says that the State Government after carefully considering the recommendation of the Pay Revision Committee has decided that the existing pay scale of various gazetted or non-gazetted posts under State Government should be revised as shown in Schedule II. In my view, it is difficult to accept this contention. Merely by saying that the State Government has carefully considered the recommendation of the Pay Revision Committee and has prescribed a revised scale in Schedule II, it shall not amount to recalling or modifying the earlier decision to unify and merge both the posts for the purpose of pay scale. It need not be pointed out that the aforesaid decision had been taken after fully considering the recommendation of the Law Commission of India. Moreover, in the counter affidavit, as already pointed out, there is no statement that the State Government has revoked the decision notified on 23-6-1979 or modified the same.

10. The reason given for prescribing different scale of pay to the Additional District and Sessions Judges, in the counter affidavit, is to avoid the claim for the same scale of pay by the Additional District Magistrates. I am not able to appreciate as to how merely on a demand having been made by the Additional District Magistrates for the same scale of pay which was being paid to the Additional District and Sessions Judges, the State Government should have prescribed a lower scale of pay for the Additional District and Sessions Judges. The petitioner has annexed a chart showing the pay scales of the Additional District Judges and of the Additional Collectors/District Magistrates from the year 1947 up to 1981-82. It has been rightly pointed out that the scale of pay of Additional District and Sessions Judges was always higher than Additional District Magistrates/Collectors. This fact could not be challenged on behalf of the State. However, it was only pointed out that although the scale of pay of the Additional

District and Sessions Judges was throughout higher than the Additional District Magistrates/Collectors but their initial/starting pay was the same. If the scale of pay of Additional District and Sessions Judges were throughout higher than Additional District Magistrates/Collectors, I find no justification on the part of the State Government in revising the pay scale of Additional District and Sessions Judges only to bring it at par with the Additional District Magistrates/Collectors.

11. On behalf of the State it was urged that it is always open to the State Government to alter unilaterally the service conditions of its employees. Reference in this connection was made to the well-known case of Roshan Lal Tandon Vs. Union of India (UOI), where it was observed as follows :

It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee.

It is true that State Government by Statute or Rule can unilaterally alter the rights and obligations of its employees. But the exercise of that right can be upheld till while doing so there is no violation of Articles 14 16 or 311 of the Constitution. Once while doing so the right of an employee of the State Government under Articles 14 16 or 311 is violated any action taken unilaterally has to be declared as invalid. In the instant case, on the decision by the State Government itself, the "District and Sessions Judges" and the "Additional District and Sessions Judges" have been treated as a class after unification and merger, for payment of same scale of pay, then any separate lower scale of pay for the Additional District and Sessions Judges is bound to attract Articles 14 and 16 of the Constitution. A separate scale of pay for the Additional District and Sessions Judges can be prescribed only if they are treated as a separate class from the District and Sessions Judges. It has been pointed out by Courts that when two equals are treated as unequals there is a discrimination within the meaning of Article 14 of the Constitution. In the case of State of Andhra Pradesh v. Raja Reddy AIR 1957 S C 1452 it was observed as follows :

A statutory provision may offend Article 14 of the Constitution both by finding differences where there are none and by making no difference where there is one.

The same is applicable even in respect of administrative orders and decisions. Once a decision has been taken to treat the Additional District and Sessions Judges at par with the District and Sessions Judges for the purpose of their scale

of pay, it shall amount to discrimination in fixing a lower scale of pay for them.

12. The learned Advocate General submitted that Courts should not interfere with the decision of the State Government in respect of payment of scales of pay to different categories of the employees because the State Government is the final Judge as to what scale of pay should be given to which types of employees. In this connection reference was made to the case of Delhi Veterinary Association Vs. Union of India (UOI) and Others, where it was observed as follows :

We feel that it is not appropriate to deal with the merits of the claim of the Veterinary Assistant Surgeons of Delhi in the course of this order although we feel that prima facie their grievance appears to be a legitimate one. Since any alteration in their pay scale would involve modification of the pay scales of officers in the higher cadres in the same department and in the corresponding cadres in other departments, the work of refixation of the pay scale should not ordinarily be undertaken by the Court at this stage because the Fourth Pay Commission is required to consider the very same question after taking into consideration all the relevant aspects.

13. Reference was also made to the Full Bench judgment of Punjab and Haryana High Court in the case of Jagjit Mohan Singh v, Union of India 1974 (2) SLR 1. I do not understand how the aforesaid judgments help the State. It is true that Courts should not normally interfere with the decision of the State Government in matter of fixation of scale of pay in respect of different categories of its employees, but an application filed on behalf of employees cannot be dismissed, although the Court is satisfied that while fixing or revising the scale of pay a category of the employees, the State Government has discriminated them without any rational basis. The Supreme Court in the case of Delhi Veterinary Association v. Union of India (Supra) simply observed that it was not proper to interfere at that stage because the matter was under consideration of the Pay Revision Committee whom the Supreme Court directed to look into the grievance of the petitioner. Even in the aforesaid judgment of the Punjab and Haryana High Court, the Court interferred with the decision of the State Government and quashed the same while observing as follows :

If an attack is made against the constitutionality of any part of such an order, it has to be adjudicated upon. If any part of the order is found to be unconstitutional, that has to be struck down. If the part of the order which is annulled is severable, the remaining order shall hold the field. If, however, the void part of the order forms its very nucleus and nothing survives after its annulment, the whole of the order goes. In the instant case, it appears to me that in spite of sanctioning the revised scale with effect from February 1, 1968, the rider depriving the appellants of the benefits of recovering the arrears of salary at that rate with effect from the date from which the revised scale has been enforced suffers from invidious discrimination and is hit by Articles 14 and 16 of the Constitution, and is, therefore, liable to be quashed.

14. While conceding that it is open to the State Government to accept the recommendations of the Pay Commission with modification, a Bench of Gujarat High Court in the case of *M. G. Patel v. The State of Gujarat and Ors.* 1981 All I S L J 436 observed :

However, in making the modifications the State Government is bound to apply its mind and take a uniform decision after considering all the relevant elements.

Reference can be made to the cases of *Chandra Shekhar Malo v. State of Karnalaka and Ors.* 1979 All I S L J 156 , *Radha Kanto Chatterjee Vs. The State of West Bengal and Others*, where it was pointed out that any revision or modification of scale of pay should not be done without proper application of mind and in a discriminatory manner.

15. In the instant case, I am of the view that the decision of the State Government notified on 23-6-1979 to merge/unify the posts of Additional District and Sessions Judges with the posts of District and Sessions Judges for the purpose of payment of same scale of pay still stands and it shall not be deemed to have been modified or revoked by the impugned notification dated 30th December, 1981, by only prescribing a separate scale of pay for Additional District and Sessions Judges. If the decision which had been taken by the State Government on the basis of the recommendation of the Law Commission of India, subsists than it was not open to the State Government to treat the Additional District and Sessions Judges as a separate class from District and Sessions Judges for the purpose of payment of a lower scale of pay. Even the Pay Revision Committee treated the Additional District and Sessions Judges and District and Sessions Judges belonging to the same class and recommended the same scale of pay for them. The only justification given on behalf of the State for prescribing a separate scale of pay for Additional District Judges is to satisfy the Additional District Magistrates, who were claiming the same scale of pay. When the scale of pay of Additional District Magistrates admittedly was not the same which was being given to the Additional District Judges since 1947, it has to be held that action on the part of the State is arbitrary. It is well-known that whenever a grievance made that a class of citizen have been discriminated in public employment, the Court has to examine the action on the touch-stone of Articles 14 and 16 of the Constitution. The action of the State can be upheld only if they satisfy that such class of citizen belong to a separate class and the action taken has a nexus with an object to be achieved. In the present case, none of two conditions is fulfilled. After the decision of the State itself, as notified on 23-3-1979, the Additional District Judges have been included in the class of District Judges for purpose of scale of pay, they cannot be treated as a separate class till the decision is in force. The decision to bring their scale of pay at parity with the Additional District Magistrates who were also claiming the scale of pay of Additional District Judges, in my view, has no nexus with any reasonable object which is sought to be achieved. As such while implementing the recommendation of the Pay Revision Committee, it was not open to the State Government to treat

the Additional District and Sessions Judges as a separate class for the purpose of fixing their pay scale. When they have purported to treat them as a separate class, their action violates Articles 14 and 16 of the Constitution which will nullify the decision of the State Government in respect of a separate scale of pay for the Additional District and Sessions Judges.

16. Accordingly, this writ application is allowed. The respondents are directed to treat the Additional District and Sessions Judges at par with the District and Sessions Judges in respect of the scale of pay, in terms of the decision taken by the State Government itself which was notified on 23-64979 and to give them the revised scale of pay as recommended by the Pay Revision Committee. In the circumstances of the case, the parties shall bear their own costs.

S.N. Jha, J.

17. I agree.

1 Matter in Hindi, not printed here-Ed.