

(2011) 04 GAU CK 0048
In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4813 of 2006 with M.C. No. 1434 of 2010

Binod Chandra Sarma & Ors.

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2012) 3 GLT 717

Hon'ble Judges : Amitava Roy, J and I.A.Ansari, J

Bench : Division Bench

Advocate : Advocates appeared for the Petitioners: Mr. N. Dutta, Sr. Advocate Mr. I. Choudhury??Advocates appeared for the Respondent: Mr. B. J. Talukdar, State Counsel, Mr. D. Saikia, Standing Counsel, Finance Department , Mr. S. S. Dey, Standing Counsel, Advocates appearing for Parties

Judgement

Amitava Roy, J.—The petitioners, who are the members of the staff of this Court, at the Principal Seat seek judicial intervention for annulment of the letter No.JDJ(E).63/98/PT. 42 dated 24.07.2006 of the Joint Legal Remembrancer and Joint Secretary to the Government of Assam, Judicial Department and an appropriate writ and/or direction to the respondents, to enhance the special pay of Court Masters to Rs. 225/ per month and dress allowance to Rs. 3000/ per annum, in terms of the decision of the Hon''ble the Chief Justice of this Court.

2. We have heard Mr. N. Dutta, Sr. Advocate assisted by Mr. I. Choudhury, Advocate for the petitioners, Mr. B.J. Talukdar, learned State Counsel for the respondents 1,3 and 4, Mr. D. Saikia, learned Standing Counsel, Finance Department for the respondent No. 2 and Mr. S.S. Dey, learned. Standing Counsel, Gauhati High Court for respondent No.5.

3. The pleaded account of the petitioners" averments would lay the background of their claim. On a proposal mooted by the Gauhati High Court (for short hereafter referred to as the Court) in the year 1998, for upgradation of certain posts of Bench Assistants to that of Court Masters, the Government of Assam vide the communication No. JDJ.63/98/Pt./ 22 dated 4.11.2000 of its Judicial

Department, conveyed the sanction for upgradation of 12 posts of UDA to that of Court Masters in the scale of Rs. 4210/ 10,375/ together with the allowances as admissible under the Rules of this Court. Prior thereto, the Registrar General of this Court while forwarding the proposal for upgradation, had by his letter No. HC.V13/98/2002/Estt. dated 6.6.2000 recommended the pay scale of the Court Masters to be Rs. 5375/ 10,7000/ P.M. Emphasis was laid on the fact that such upgradation, ought to be sanctioned without reducing the existing posts of Superintendents. In the note processed on the administrative side of this Court, the proposed upgradation was sought to be justified to underline the importance of the Court Masters as assistants in the due and smooth administration of judicial proceedings. It was proposed as well that having regard to the responsibilities and the works to be performed, the Court Masters be included in ClassH(D) of ScheduleI, Part (IV) of Gauhati High Court Service Rules, 1967 (for short hereafter referred to as the Rules) with the pay scale at par with the Secretary to the Hon"ble the Chief Justice.

4. According to the petitioner, following the upgradation, they underwent a rigorous selection process and subsequent thereto were appointed as Court Masters on various dates ranging from 21.2.2002 to 2.4.2004. At the time of the proposal for upgradation, the aspects of special pay and dress code of the Court Masters had not been considered. As thereafter, such dress code in the interest of office administration and maintenance of dignity of the Court was prescribed, the Court Masters were allowed a special pay of Rs. 90/ per month and dress allowance of Rs. 500/per annum.

5. Incidentally, the special pay for Bench Assistants (Now Court Masters) and their dress allowance had been sanctioned by the Government of Assam vide letter No. JDJ. 199/98/21 dated 1.6.1999 and letter No. JDJ.18/91/36 dated 1.6.1991. As the rates of special pay and dress allowance with time had become wholly inadequate and meagre, the Court Masters on 24.5.2002, submitted a representation before this Court for enhancement thereof to Rs. 225/ per month and Rs. 3000/ per annum respectively. They followed up their plea with another representation dated 6.1.2003 whereafter this Court affirmed the same following the approval of the Hon"ble the Chief Justice in exercise of His Lordship's power under Article 229 of the Constitution of India. The decision was thereafter conveyed to the Government by the Registrar General of this Court. On a query being made by the Government as to the initial sanction of such pay and allowances, the Registry of this Court forwarded to it the letters dated 1.6.1999 and 1.6.1991 on the subject referred to hereinabove. This was on 6.3.2003.

6. After repeated persuasions, the State Government through the Joint Legal Remembrancer and Joint Secretary to the Government of Assam, Judicial Department, vide the impugned letter dated 24.7.2006 conveyed the sanction of the Governor of Assam, of the enhancement of the dress allowance of the Court Masters by a sum of Rs. 100/. Nothing was mentioned about the special pay. Situated thus, the petitioners have turned to this Court. No affidavit in opposition

has been filed by the respondents.

7. Meanwhile, though initially this petition had been entertained by a Division Bench of this Court, as a Special Bench of five Judges was constituted amongst others to monitor the state as well as the schemes and projects relating to the infrastructure of the subordinate judiciary, the instant proceeding was also made subjudice before it. This was also as meanwhile a comprehensive proposal for revision of pay scales and allowance of the staff of this Court had been forwarded to the State Government for an appropriate decision thereon and the issue was pending thereat. The Special Bench of this Court by order dated 26.3.2007, on a consideration of the pleadings available and after hearing the learned Advocate General, Assam, who apprised it that the issue relating to payment of dress allowances and special pay was under the consideration of the Finance Department of the State, directed it (State Government) to pass appropriate orders granting special pay to the Court Masters @ Rs. 225/ per month and dress allowance @ Rs. 3000/ per annum pending final decision with regard to the pay scale. In passing this order, the Bench took note of the following:

(1) A Committee of Judges of this Court had recommended payment of special pay @ Rs. 225/ per month and dress allowance @ Rs. 3000/ per annum to the Court Masters.

(2) It would take some time for the State Government to decide the question relating to enhancement of pay scale.

(3) The submission of the learned Advocate General, Assam, that having regard to the reasons in endorsement of the recommendations made by Judges Committee for the special pay and allowances, the Court may pass orders as considered expedient.

(4) The report of the Judges Committee and the reasons in support of its recommendations call for such a direction.

8. On 30.8.2007, the learned Advocate General, Assam, apprised the Bench, that the order dated 26.3.2007 of this Court had been complied with. The petitioners, indeed subsequent thereto, started receiving special pay @ Rs. 225/ per month and dress allowance @ Rs. 3000/ per annum w.e.f. September 2009 till February, 2010 whereafter the same was withheld.

9. Being aggrieved, they filed an interim application seeking further orders to direct the respondents to restore the benefit of special pay and dress allowance as before. In M.C. 1434/2010 registered on this application, Finance Department of the State, in its affidavit averred that the sanction for payment of special pay of Rs. 225/ per month and dress allowance @ Rs. 3000/ per annum had been made vide the Government letter No. JDJ(E). 156/2007/37 dated 27.9.2007 and that there had been no instruction from the Finance Department (PRU) Department to discontinue the dress allowance. According to the answering respondent, however, in absence of any provision in the Assam Service (Revision

of Pay) Rules, 2010 (hereafter referred to as the Pay Rules) for special pay to Government employees w.e.f. 1.2.2010, the same has been withheld. The department mentioned that though initially the staff and employees of the Court were not covered by the Rules in view of Rule 2(b)(vi) thereof, in response to a request to that effect made by the Registrar General of this Court vide letter No. HC.V15/2010/535/Estt. dated 19.2.2010 to the Legal Remembrancer and Secretary to the Government of Assam, Judicial Department, proposing grant of revision of pay and other financial benefits as per the provisions thereof, the Government approved the same by its letter No. JDJ(E).316/2008/21 dated 22.3.2010 in conformity with the Rules thus sustaining a parity of pay scales and the allowances of the officers and staff of the Assam Secretariat and the Court. The special pay was thus not sanctioned from February, 2010. The department in particular referred to the O.M. No. FEG.5.2010/1 dated 26.2.2010 of the Finance (Estt. A) Department to this effect.

10. The learned Sr. Counsel for the petitioners has emphatically urged that the initial proposal of the High Court for the special pay and dress allowance claimed by the petitioners and approved by the Hon'ble the Chief Justice of this Court as well as by the order dated 26.3.2007 being binding on the respondents for all intents and purposes, the withholding of special pay is patently illegal, arbitrary and invalid and thus the impugned letter dated 24.7.2006 is liable to be quashed. While admitting that at the intervention of this Court, the dress allowances @ Rs. 3000/per annum has been sanctioned as is evidenced amongst others by the letter No. FPC.19/2006/119 dated 4.11.2010 and noticed in the order dated 11.11.2010 of this Court, the plea for withholding the special pay is wholly frivolous, he urged. It being evident from the letter dated 19.2.2010 of the Registrar General of this Court that the special pay and dress allowance as claimed had been referred to in the statement of pay scale and allowances of the employees of the Court at the Principal Seat appended thereto, the stand of the Finance Department to the contrary is patently untenable and is liable to be rejected, he insisted.

11. Though the other respondents have not offered any response, Mr. Saikia representing the Finance Department of the State has reiterated its pleaded averments.

12. We have extended our studied consideration to the pleadings on record as well as the arguments of the parties. That the issue of enhancement of pay scale of the employees and staff of the High Court, more particularly after the revision thereof effected by the Rules is pending with the State Government is a matter of record.

13. The petitioners' claim for special pay and dress allowance at the rates referred to hereinabove admittedly had been proposed by the Registry being approved by the Hon'ble the Chief Justice. As would be obvious from the order dated 26.3.2007, the direction for payment of special pay and dress allowance was made amongst others on a scrutiny of the report of the Judges Committee to

that effect. In deference to the said order, the State Government had sanctioned the release of the dress allowance. Though there was a brief interruption, the same has presently been restored.

14. A plain reading of the letter No. HC.V.15/2010/535/Estt. dated 19.2.2010 of the Registrar General of this Court would reveal that thereby the State Government was informed about the approval of revision of scales of pay of the officers and staff of the Registry of this Court as per the statement annexed w.e.f. 1.1.2006 by the Chief Justice in accordance with the scales of pay as laid down in the Assam Gazette (Extraordinary) published vide notification dated 4.2.2010 i.e. as per the Pay Rules, maintaining parity thereof with those of the comparable posts in the Assam Civil Secretariat by way of an interim measure while leaving out some anomalies as highlighted by the officers and staff before a High Powered Committee of the Court.

15. Thereby a request was made to the Government to accord necessary approval to the revision of scales of pay and all other financial benefits to the officers and staff of the Registry of this Court as per the Rules as an interim measure and to communicate its approval at an early date.

16. The contents of the letter read as a whole indubitably convey the stand of the Registry of this Court in support of the claim of the petitioners for special pay of Rs. 225/per month as well as dress allowances of Rs. 3000/ per annum. The letter by no means can be read de hors the annexure thereto providing the particulars of the posts and the pay scales of the staff and employees of this Court along with the special pay and allowances referred to therein. The plea of the Finance Department visavis the special pay of Court Masters in the teeth of the cumulative effect of the orders dated 26.3.2007 of this Court, the letter dated 19.2.2010 of the Registry, sanction of the dress allowance at the rate as claimed, the report of the Judges Committee approving the claim of the petitioners to this effect as well as the pendency of the issue of revision of pay scales and other allowances of the staff and the officers of this Court with the Government, cannot be sustained. As it is, the impugned letter dated 24.7.2006 has due to the intervening developments become inconsequential as on date.

17. This petition and the misc. case, on a totality of the considerations as above, are thus closed by making the order dated 26.3.2007 of this Court absolute pending the finalisation of the issue of revision of pay scales and allowances of the staff and the employees of this Court. The State of Assam would, therefore, sanction and release special pay of Rs. 225/ per month to the petitioners on and from the date on which the same has been withheld i.e. 1.2.2010. The disbursement should be made within a period of two months here from. No costs.