
(2011) 02 P&H CK 0187
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15833 of 2009 (O and M)

Hari Mohan Dixit and Others

APPELLANT

Vs

Punjab and Haryana High Court and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Constitution of India, 1950 — Article 229(2)

High Court Establishment (Appointment and Conditions of Service) Rules, 1973 — Rule 34(1), 34(1)(A)

Punjab Civil Services Rules, 1988 — Rule 8

Citation : (2011) 162 PLR 731

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Judgement

Surya Kant J.—The Petitioners are working as Clerks on the Establishment of the Punjab & Haryana High Court, Chandigarh. They seek a mandamus to direct the Respondents including the Union of India to grant them the pay-scale of Rs. 13500-34800, at par with the pay-scale of the Clerks working in the Subordinate Courts of the Punjab State and UT Chandigarh which have been granted to them on the acceptance of the recommendations made by the Shetty Pay Commission.

2. Suffice it to observe that before the implementation of the recommendations made by the Shetty Pay Commission, the ministerial staff of the High Court (Clerks) and their counterparts working in the Subordinate Courts of Punjab and UT Chandigarh were in the same pay-scale of Rs. 3120-5160. After the recommendations of the Shetty Pay Commission were given effect, the pay-scale of the Clerks working in the Subordinate Courts of Punjab/UT Chandigarh was enhanced to Rs. 5000-8100 and upon further revision in the pay-scales in the State of Punjab they are now getting the higher pay-scale of Rs. 13500-34800 as against the revised pay scale of Rs. 5910-20200 plus Grade Pay of Rs. 1900/- being drawn by the Clerks working on the Establishment of the Punjab & Haryana High Court.

3. It needs to be emphasized here that the service conditions of the High Court employees are governed by the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 (in short, "the 1973 Rules"), Rules 34 (1) & 34(1)(A) whereof, relevant in the context of the present controversy, read as under:

Pension & other conditions of service

34 (1) In the matters regarding the conditions of service for which no provision or insufficient provision has been made in these rules, the rules and orders for the time being in force and applicable to the Government Servants appointed to corresponding or comparable civil services and posts in connection with the affairs of the Union shall apply to the members of the Establishment of this Court subject to such modifications, variations and exceptions, if any, in the said rule and orders as the Chief Justice may from time to time specify.

Provided that the powers exercisable under the said rules and orders by the competent authority shall be exercisable by the Chief Justice or by such person as he may, by general or special order, direct.

Note (i): In the matter of leave, children's education allowances, reimbursement of tuition fee employees of the High Court shall be governed by the Punjab Civil Services Rules w.e.f. 30th October, 1985. Leave Travel Concession, admissible under the Central Rules shall be deemed to have been extended to the employees w.e.f. 1st November, 1966.

Provided further the scales of pay and dearness and other allowances including Compensatory (City) Allowance and House Rent Allowance granted to the employees of this Court, shall continue to be governed by the rules and orders of the Punjab Government in force on 28th February, 1975.

Provided that it shall be competent for the Chief Justice to revise from time to time scales of pay and allowances of this Court so as to bring them on par with the scales of pay and allowances which may be sanctioned by the Government of Punjab from time to time for the corresponding or comparable categories of employees.

Pay Fixation 34(1)(A) In the matter of fixation of pay in the revised pay scales, the employees of this Court, who have been promoted w.e.f. 13.09.88 onwards shall be governed under Rule 8 of the Punjab Civil Service (Revised Pay) Rules, 1988 and any subsequent instructions issued by the Punjab Government thereunder, from time to time.

(2) Any question arising as to which rule or orders are applicable to the case of any persons serving on the staff attached to the High Court shall be decided by the Chief Justice.

(Emphasis applied)

4. The Petitioners/other Clerks of the High Court accordingly represented to

Hon"ble the Chief Justice for removal of anomaly in their pay-scale(s) and to further revise the same in accordance with Rules 34(1) & 34(1)(A) ibid so as to bring their pay-scales at par with the pay-scale(s) of the Clerks of the Subordinate Courts in Punjab and UT Chandigarh.

5. Their representation was referred to a Committee comprising three Judges of the High Court, who, after an indepth consideration gave a self-explanatory and comprehensive report dated 20.07.2010 recommending as follows:

The recommendations of the Committee are that the existing un-revised pay-scale of Rs. 5000-8100 be granted to the Clerks of this Court with effect from 1st April, 2003, to bring the clerical cadre of this Court at par with that of the Subordinate Courts followed by subsequent revision in the pay-scales undertaken from time to time. Since the clerks are being granted higher pay-scale, all other employees of the High Court, irrespective of their cadre, are also entitled to an additional pay at the rate of 20 per cent of the pay drawn (i.e. pay band pay plus Grade Pay) with effect from 1st January, 2006 after following due procedure as envisaged in the judgment rendered in "Union of India v. S.B. Vohra"s (supra). This additional pay shall be treated as "Pay" for all intents and purposes, including pensionary benefits.

Sd/- Sd/- Sd/- Ashutosh Mohunta Arvind Kumar Kanwaljit Singh Ahluwalia Judge Judge Judge 6. These recommendations were thereafter considered and accepted by the Administrative Committee of the High Court headed by Hon"ble the Chief Justice and were forwarded to the Ministry of Law and Justice, Government of India by the Registrar General of the High Court vide memo dated 02.08.2010 "to obtain necessary approval of the Government of India.....". Since the Union of India has not taken any decision in the matter that the Petitioners have approached this Court.

7. The record reveals that as many as four opportunities including the last opportunity given on the last date of hearing, have been granted to the Union of India to file its reply/affidavit which is still awaited. The High Court has filed its counter-reply acknowledging the anomalous situation and has also placed on record the report of the three-Judges" Committee which stands accepted by Hon"ble the Chief Justice.

8. No sooner did the matter is taken up for hearing today, Shri Karminder Singh, learned Counsel for the High Court referred to the latest communication dated 13.01.2011 received by the Registrar General of the High Court from the Ministry of Law and Justice, Government of India to the following effect:

xxx xxx xxx

1. The undersigned is directed to refer to letter No. 42364/Ex. Cell dated 22.10.2010 on the aforesaid subject and to say that is has been noticed as under:

i. The anomalous situation in the scales of Clerks/Junior Assistants in the Subordinate Courts and the High Court of Punjab & Haryana is stated to has

arisen as a result if implementation of Shetty Commission recommendation which covered the employees of the Subordinate Courts only and excluded the employees of the High Court.

ii. The revision of scales of Delhi High Court was a result of judicial intervention.....

2. It is requested that the detailed justifications for acceptance of the recommendation of the Committee constituted by Hon"ble High Court of Punjab & Haryana with particular reference to (a) scales prevalent in other High Courts for similar posts and (b) the repercussions/demands for similar revision from other employees in the Union/State Government, etc. may be made available enabling further examination of the matter.

9. With reference to the Paras (i) & (2) of the letter dated 13.01.2011, reproduced above, it is pointed out on behalf of the High Court and rightly so that both the queries stood answered comprehensively in the Report of the three-Judges" Committee, a copy whereof has already been sent to the Union Ministry and that re-iteration of the same information would be an exercise in futility and would impede the decision making process.

10. It is a matter of record that the cause of anomaly in the pay-scales of the Clerks/Junior Assistants etc., has been elaborately dealt with by the three-Judges Committee in its report, referred to above. Similarly, "the justification for acceptance of the recommendations of the Committee" lies in Rule 34(1)(A) of the 1973 Rules whereunder the statutory parity in pay scale(s) has been created obligating the competent authority to grant such pay-scale(s) to the employees of the High Court which are at par with their counter-parts in the State of Punjab.

11. So far as the query raised in para (ii) is concerned, the directions issued by the Hon"ble Delhi High Court in S.B. Vohra and Others Vs. Union of India (UOI), or in Mirza Zahid Beg and Ors. v. Union of India and Ors. decided on 2nd May, 2008 are matter of record. S.B. Vohra and other"s case (supra) also pertained to the removal of anomaly in the pay-scales of the employees of the Delhi High Court and a Committee of Judges had submitted its report which was accepted by Hon"ble the then Chief Justice of the Delhi High Court. Consequently, the matter was referred to the Ministry of Law and Justice, Government of India for approval under Article 229(2) of the Constitution which was declined. The aggrieved employees invoked the writ jurisdiction of the Delhi High Court who accepted their claim.

12. The Union of India preferred SLP before the Hon"ble Supreme Court [Union of India (UOI) and Another Vs. S.B. Vohra and Others,] which was dismissed holding that:

xxx xxx xxx

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.

xxx xxx xxx

46. Decisions of this Court, as discussed hereinbefore, 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 only 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.

(Emphasis applied)

xxx xxx xxx

13. I have heard learned Counsel for the parties at some length and gone through the records. There can indeed be no doubt that ordinarily a High Court would not issue a writ of Mandamus to command the Central Government to accept and comply with the recommendations decision taken by the Chief Justice of the High Court in exercise of his powers under Article 229 of the Constitution of India. Such pre-emptory directions in the instant case are neither expedient nor desirable at this stage. However, it does not absolve the Union of India from its solemn duty to consider with utmost priority and decide objectively as to whether or not the anomaly having arisen for the reasons not attributable to the High Court Establishment and fully described in the Report of the three-Judges' Committee duly approved by the Chief Justice of the High Court deserves to be removed by restoring the parity in pay-scale(s) which has been consistently maintained for decades. Such a decision can be taken through the process of mutual discussions etc. as ruled by the Hon'ble Supreme Court in SB Vohra's case (supra).

14. The writ petition is accordingly disposed of with a direction to the Union of India - Respondent No. 3 to consider the recommendations made by the three-Judges' Committee which have been accorded approval by Hon'ble the Chief Justice of the Punjab and Haryana High Court and take an appropriate decision in accordance with law and especially keeping in view the guiding principles reiterated in SB Vohra's case (supra), within a period of four months from the date of receipt of a certified copy of this order. Meanwhile, the High Court may

also send its response to the Memo dated 13.01.2011 received from the Ministry of Law and Justice, within a period of one month from today.

15. Ordered accordingly.

16. Let a copy of this order, under the signature of the Bench Secretary, be handed over to Mr. OS Batalvi, learned Central Government Senior Standing Counsel and Sh. Karminder Singh, learned Counsel for the High Court for information and necessary compliance.