

(1982) 12 DEL CK 0001
In the Delhi High Court
Case No : Civil Writ No. 34981 of 1982

H.L. Vijn and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-12-1982

Acts Referred:

Citation : (1983) ILR Delhi 380

Hon'ble Judges : Rajinder Sachar, J; R.N. Aggarwal, J

Bench : Division Bench

Advocate : A.K. Ganguli, for the Appellant; D.P. Wadhwa and Atul Kumar, for the Respondent

Final Decision : Allowed

Judgement

Sachar, J.—The staff working in Courts including that in High Court is normally a proverbial poor relation in comparison to the Secretariat staff. That possibly may be the reason why inspire of years spent in praying to get justice, nothing has been done necessitating the staff to resort, however, reluctantly to move this Court to get their legitimate dues which should have been given long back.

2. The petitioners before us are the Deputy Registrars of this Court. Their claim in the petition is for payment of special pay. The posts of the Deputy Registrars are filled up either from amongst the members of Delhi Judicial Service or from amongst the Assistant Registrars of this Court by promotion. It is common case that a Deputy Registrar if he is a member of Delhi Judicial Service now gets Rs. 150 per mensem as special pay (it was Rs. 100 per mensem prior to 1-1-1978). However, no special pay is paid to a Deputy Registrar who is not a member of Delhi Judicial Service, At present the petitioners are working as Deputy Registrars. They are not members of Delhi Judicial Service. They are Therefore, not being paid any special pay. This is the grievance that has brought them to this Court.

3. Prior to 31-10-1966 the High Court of Punjab which comprised the area of

present, Punjab, Haryana and some part of Himachal Pradesh had jurisdiction over Delhi. In the High Court of Punjab Deputy Registrars were then paid a special pay of Rs. 100 in addition to their pay. Special pay was however paid only if the Deputy Registrar was a member of the Judicial Service and not otherwise. On 31-10-1966 when the Delhi High Court was constituted under the Delhi High Court Act evidently for some time the same pay scale and same procedure and practices as in erstwhile Punjab High Court continued. The result, was that the Deputy Registrar of this court if he happened to be a person other than a member of the judicial service was not paid any special pay. As new pay scales had to be fixed for staff of Delhi High Court, in exercise of powers under Article 229 of the Constitution, Chief Justice of Delhi High Court took up the matter for fixation of pay scales of various officers and servants of the High Court. The Chief Justice of Delhi High Court sent a letter on 4-5-1974 to the Ministry of Law Justice and Company Affairs recommending various pay scales for the officers and Servants of the High Court. For the concerned office of Deputy Registrar the recommendation was in the following manner:--

Sr. No. Name of the post And classification Existing pay scale with Special pay, if any Proposed scale of pay

2. Deputy registrar Rs. 900-50-1250

(i) for persons other than members of Delhi Judicial Service.

(ii) for members of Delhi Judicial Service grade pay plus special pay of Rs. 100/- per month.

Rs. 1200-50-1600 plus special pay of Rs. 200/- per month.

4. It will be noticed that the recommendation of the Chief Justice was to give special pay both to the members of Delhi Judicial Service and persons other than members of Judicial Service if appointed as Deputy Registrars. Normal courtesy and usual precedents should have resulted in the acceptance of the recommendation of the Chief Justice. Government of India however, chose to take a different view and by a communication from the Chief Secretary of Delhi Administration dated 4-3-1975 conveyed the sanction of the President to the pay scale of Rs. 1200-1600 which had been recommended by the Chief Justice. It also accepted that special pay will be paid to members of Delhi Judicial Service. But instead of recommended special pay of Rs. 200 it allowed a special pay of Rs. 100 only if Deputy Registrar was a member of Delhi Judicial Service. This was presumably because no decision whether to give special pay to the persons other than members of Delhi Judicial Service was communicated by this letter. The High Court however, felt that justice had not been done, and by a letter sent on 14-2-1977 to the Delhi Administration, it requested that the special pay for the post of Deputy Registrar should be Rs. 200 and further that it should be paid both to the members of the Judicial Service and to persons other than members of Judicial Service. This recommendation of the High Court was not accepted by the president and a communication was received dated 21-9-1978 in which the

President was pleased to enhance the special pay of Rs. 100 to Rs. 150 in the case of Deputy Registrars when the post was held by Officers of Delhi Judicial Service only w.e.f. 4-6-1978, The petitioners were thus left out of the benefit of Special Pay. The Chief Justice however, was not convinced of the justification to deny this benefit to persons like the petitioners and again in 1979-80 recommended that special pay be also paid to the persons other than the members of the Judicial Service. It was explained that the Deputy Registrars exercise powers of the High Court in all matters of 43 types in original side, under Rule 3 of Chapter 2 of Delhi High Court Original Side Rules and they were also performing onerous functions. Reminders followed. Central Govt. has however, not approved for payment of any special pay to the Deputy Registrars who are not members of Delhi Judicial Service. That denial is what has brought the present petitioners to this court.

5. The plea of the petitioners is that the Deputy Registrars perform work involving arduous nature of duties as recognised in F.R.9(25), and that as special pay is given when the post of Deputy Registrar is held by a member of Judicial Service there is no rational reason why the petitioners doing similar work should be denied the same. They say that the work done by both categories as Deputy Registrar being the same there is discrimination against them by not giving them the same special pay as to the other category of Deputy Registrar.

6. Mr. Wadhwa, the learned counsel for the respondent however, says that this argument of discrimination is untenable and refers us to *Unikat Sankunni Menon Vs. The State of Rajasthan*, . In that case what happened was that for the post of Deputy Secretary, persons belonging to Rajasthan Civil Service (RCS) and the Rajasthan Administrative Service (RAS) were eligible to be appointed. The post of Assistant Secretaries were shown as belonging to the ordinary time scale of the Rajasthan Secretariat Service (RSS) grade. There were some selection posts for members of RSS which were indicated as posts of Deputy Secretary to the Government. Assistant Secretary and Deputy Secretary were entitled to a special pay of Rs. 50 and Rs. 100 respectively. Later on the grades were revised and under it Assistant Secretary was entitled to a special pay of Rs. 75 but for the post of Deputy Secretary no special pay was admissible. However, in the case of RAS member appointed to the post of Deputy Secretary he was to draw pay of his selection grade and special pay of Rs. 150 per month. There was a note however, that on promotion as Deputy Secretary an officer will receive a minimum of increase of Rs. 150 on his basic pay as Assistant Secretary. A member of the RSS on appointment as Deputy Secretary complained that he was not being given special pay while a member of the RAS was entitled to it and this amounted to discrimination. This plea was negated by the Supreme Court by pointing out that the scale of pay prescribed for the post of Deputy Secretary would be higher than the previous scale even if special pay was admissible and further on promotion as Deputy Secretary every officer of the RSS is to receive a minimum of increase of Rs. 150 on his basic pay as Assistant Secretary, and the subsequent revision in 1961 and 1966 also carried this principle further. The

Supreme Court also negated the grievance by pointing out that the writ petitioner therein came to the post of Deputy Secretary from RSS which is a service distinct and separate from RAS, and that the methods of recruitment, qualification of two services are not identical, and in that context observed that "it is entirely wrong to think that every one, appointed to the same post, is entitled to claim that he must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the Officer is drawn for appointment to that post. No such equality is required either by Article 14 or Article 16 of the Constitution." Another distinction pointed out to reject the claim mentioned by the Court was--"that, under the various Service Rules themselves, a member of the RSS on appointment as Deputy Secretary, is given pay in a grade specially and separately fixed for the posts of Deputy Secretaries, while a member of the RAS is not placed in that grade at all." It should also be noticed that for RSS the post of Deputy Secretary is a selection post, and are normally filled by members of RSS though some posts can be filled up by members of RAS. The challenge was rejected because it was held that Rules, as framed, are thus, based on well-recognised principles for granting salary to members of different services even when they are appointed to the same post." This case is distinguishable because the petitioners do not place their claim on comparison with members of judicial service. The petitioners do not claim that they be given the same pay scale as that of the members of Delhi Judicial Service simply because both work on the posts of Deputy Registrars. They accept that in view of two sources from which appointments can be made to the post of Deputy Registrar it is inherent in it that on being appointed, while members of Delhi Judicial Service will continue to get their own grade of pay unlike the petitioners who will get the grade fixed for the post of Deputy Registrar. Any claim to equation of pay scale and other benefits on this ground is unacceptable. The members of Judicial Service retain their lien on their service even while they are appointed as Deputy Registrars unlike for persons like the petitioners for whom it is a regular channel of promotion. Thus for the same post of Deputy Registrar there are two sources of recruitment and as such allegation of discrimination because of payment of special pay per se only to members of judicial service may not be objectionable. The petitioners realise this and that is why they have not placed their claim to get special pay on this ground of equation with members of judicial service. That is why they do not ask for being paid the same pay scale as is paid to members of Judicial Service. Their claim is only for special pay. In our view any claim by the petitioners to get same pay scale as members of Judicial service would have been ill advised apart from being untenable. The two are distinct services and question of equality as such between them does not arise, because as said the method of recruitment, the qualifications and the nature of duties of the members of DJS are vastly different and distinct from that of the staff of High Court and the question of equation of these two services cannot arise. As a matter of fact the petitioners do not place their claim much on the mere fact that special pay is being paid only to the Deputy Registrars who have come from Delhi Judicial Service as oh the

ground of arbitrariness and which has consequently tainted the said decision of the Government in rejecting their claim to be entitled to special pay. It is this thrust of argument based on the arbitrariness of action of the Central Government which the counsel for the respondent Mr. Wadhwa, with all his strenuous opposition is unable to displace, and cannot offer any convincing answer to the claim for entitlement of the petitioners for special pay, to which in our opinion, they would be entitled. It is well settled that when material shows the decision to have been made in total disregard of all relevant considerations and on non-existing or irrelevant basis, the decision can only be described so arbitrary as to fall foul of Article 14 of the Constitution. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, Therefore, vocative of Article 14, and if it affects any matter relating to public employment, it is also vocative of Article 16. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. (Vide E.P. Royappa Vs. State of Tamil Nadu and Another, . "Wherever, Therefore, there is arbitrariness in State action whether is be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such state action. In fact, the concept of reasonableness and non-arbitrariness pervadas the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution." (Vide Ajay Hesia v. Khalid Mujib, AIR 1978 SC 596) (3).

7. In exercise of the powers vested under Article 229 the Chief Justice of Delhi High Court with the approval of the Administrator framed the Delhi High Court Officers and Servants (Salaries, Leave, Allowances and Pension) Rules, 1970. Salaries of the staff of the Courts are mentioned as specified in the Schedule. The First schedule gives the pay of the Assistant Registrars who apart from their pay are entitled to Rs. 75 as special pay. Similarly for the Deputy Registrars special pay of Rs. 100 was provided for but was restricted to be paid only to the members of the Delhi Judicial Service. There was no post of Joint Registrar in this court prior to 1980. There were however, two posts of Registrars existing in this court in 1980. The Chief Justice by his letter of 11-4-1980 recommended that one of the posts of the Registrar be down-graded to the post of Joint Registrar in the pay-scale of Rs. 1500-2000 with special pay of Rs. 200 per month. This proposal however, was modified later on by the Chief Justice himself in a letter sent on his behalf on 24-5-1980 recommending the pay scale of Joint Registrar to be Rs. 1200-2000 with a special pay of Rs. 150 per month. This recommendation of the Chief Justice was accepted by the Administrator and by the Central Government by their orders of 17-6-1980 and 18-6-1980 respectively.

8. The position in this court, Therefore, is that the Assistant Registrars who are all members of the High Court Staff are entitled to special pay. It may be mentioned that under the Delhi High Court Establishment (Appointment and

Conditions of Service) Rules, 1972 the method of recruitment to the post of Assistant Registrar is from the category of the Court Masters, Private Secretaries, and the, Superintendents of the High Court. Thus no Assistant Registrar can be appointed who is a member of Delhi Judicial Service because the method of appointment does not include the members of Judicial Service unlike the method of appointment to the post of Deputy Registrar which provides for one method by selection from the Delhi Judicial Service. The Joint Registrar of this court is appointed by selection on merit either from the Delhi Higher Judicial Service or by promotion on the basis of seniority-cum-merit from amongst the Deputy Registrars. So a Deputy Registrar even from the High Court Staff when appointed as a Joint Registrar would be entitled to get special pay because while sanctioning special pay to the Joint Registrar as per Government of India's letter of 18-6-1980 no distinction has been made whether the Joint Registrar happens to be from High Court staff or is member of Delhi Higher Judicial Service. A very peculiar position, Therefore, is existing namely that a Deputy Registrar who is Head of the Department, if he happens to be a person other than belonging to the Delhi Judicial Service will not be eligible for special pay, while his junior, an Assistant Registrar will be eligible to get special pay. Special pay in fundamental Rule 9(25) has been defined to mean an addition, of nature of pay to the emoluments of post or of a Government servant granted in consideration of the special arduous nature of duties or specific addition to the work or responsibility. As Assistant Registrars work in the same department under a Deputy Registrar it is sheer arbitrariness to suggest that though the work of the Assistant Registrars is of the type which would entitle them to get special pay the nature of work gets changed into a different kind when handled by the superior officer, the Deputy Registrar. This becomes still more anomalous when the same department may be headed by a Joint Registrar, who is also entitled to special pay. No justification for so isolating the case of Deputy Registrar is made out. Not only that Government has also in the past itself been recognising that the post of a Deputy Registrar in the High Court is of such a type and the work is of such a nature that they should be entitled to special pay. Thus in High Court of Punjab and Haryana the post of Deputy Registrar carried special pay only if it was held by a member of PCS or HCS, Judicial Branch. These rules were approved by the President of India for the obvious reason that the High Court of Punjab and Haryana also covered Union Territory of Chandigarh.

9. A Pay Commission was appointed to determine the pay scales of the Government employees of Punjab. The Chief Justice of Punjab requested the Commission to consider informally the pay structure of the persons serving on the establishment of the High Court. Thereafter the Chief Justice recommended for the adoption of the same scales of pay for High Court Establishment as had been recommended and accepted by the Punjab Government for various categories. In pursuance of that the post of Deputy Registrar in the High Court was equated with that of Under Secretary of Punjab Secretariat. The result was that as the Under Secretary was entitled to special pay, the Deputy Registrars

also on the same analogy became entitled to special pay. Consequently the Chief Justice of Punjab and Haryana and Chandigarh issued the Notification of 8-11-1979 and subsequently on 1-9-1980 providing for the payment of special pay to the Deputy Registrars irrespective of whether it is held by a member of PCS or High Court Staff. Thus High Court of Chandigarh, the rules of which are approved by President make no distinction between a promotee Deputy Registrar and a member of Judicial Service. This fact is accepted by the respondents-- though it is mentioned that expenditure by Central Government is only a small portion. Surely in judging the rationality of principle or resisting the charge of arbitrariness State cannot put forward the reason of expense. Principle of equality and fairness is not to be measured by cash nexus, even in our hard boiled society of commercialism. No Explanation for Central Government discriminating against the Deputy Registrars of High Court of Delhi, a Union Territory as against those in Chandigarh, another Union Territory, is forthcoming. In such circumstances apart from calling such a decision arbitrary, there is no other alternative. As far back as 4-5-1974 the Chief Justice of Delhi High Court wrote to the Minister of Law, Justice and Company Affairs recommending that special pay be given to both categories of Deputy Registrars i.e. promotee officers and those belonging to members of judicial service. Continuously the State has chosen to ignore it. The Chief Justice again wrote on 20-12-1980 to the Administration emphasising that each Deputy Registrar is in charge of specific department. He passes independent orders. That Deputy Registrars are interchangeable and many of them are doing solely judicial work, and also that Deputy Registrar when promoted as Joint Registrar will be entitled to special pay and there is no reason why special pay should not be given to the Deputy Registrars of both categories. The Chief Justice right from the beginning has been recommending for the special pay to be given to Deputy Registrars when held by persons like the petitioners who are not members of the Judicial Service. But the response from the respondents is a deafening silence and a refusal. Now under Article 229(1) of the Constitution conditions of Service of officers of High Court shall be such as prescribed by rules made by the Chief Justice. Constitution thus gives primacy subject to the law made by legislature, to the views of Chief Justice regarding the conditions of service of officers of High Court. And that is as it should be, for who else is better acquainted with the various nuances and requirements of service than the Chief Justice of the Court. So if the Chief Justice as is clear from various communications is of the view that members of the High Court Staff even not belonging to Judicial Service should be granted special pay, this is a view which must normally be accepted by the Administration, It is true that under proviso to Clause (2) of Article 229 it is laid down that if the Rules made under this clause relate to salaries, allowance they shall require the approval of the Governor of the State. So no doubt when the Chief Justice recommends the granting of special pay it cannot be effectuated unless the President gives the approval and that is the reason why the Chief Justice, has had to write for all these years to the Central Government for approving this recommendation. But the mere fact that approval has to be given by the Central

Government does not mean that the view of the Chief Justice of a High Court can be or should be treated to be on par like the recommendation of any official of a bureaucracy in the Secretariat. We are of the view that when recommendation with regard to the conditions of service of an officer of a High Court is made by the Chief Justice, it would be in the fitness of things and in the spirit of Article 229 that ordinarily and normally the said recommendation should be accepted by the Government. This becomes still more important when it is recognised that the sovereignty of the people is reflected in three wings--the Executive, the Legislature and the Judiciary. The Chief Justice is the Head of the Judiciary in the State. When, Therefore, he makes recommendation the inevitable presumption is that it has been made with a full sense of responsibility and circumspection and after having weighed various public interests as well as financial aspects involved. After all the sense of responsibility cannot be said to reside only in the corridors of the State Secretariats. Who better than the Chief Justice can know the nature of the duties performed by various officers in the High Court. It needs to be emphasised that the recommendation of the Chief Justice to grant special pay to members of the "High Court Staff is not a peculiar or an isolated one. As a matter of fact this has a precedent in the grant of special pay to the Deputy Registrar of Punjab and Haryana High Court who are not members of Judicial Service. This aspect is important for the reason that prior to 1966 Delhi was within the jurisdiction of the Punjab High Court. On the re-organisation of Punjab, Delhi High Court was formed w.e.f. 31-10-1966, it would be reasonable, Therefore, to say that the various posts in this court should atleast have a more or less similar pattern of scales of pay and other facilities as are to be found in the Punjab and Haryana High Court. Now the Central Government has chosen to accept that the pay scales including the special pay of a Deputy Register of Punjab and Haryana High Court should be equated with that of an Under Secretary in the State Secretariat who is getting special pay. That is why the President was thus satisfied that the post of Deputy Registrar of the High Court of Punjab and Haryana irrespective of the fact whether it is held by a member of judicial service or by a promotee is entitled also to get special pay. Not only that but the President was also satisfied that the Assistant Registrar of this court are also entitled to be paid special pay even when the post is held by a member of High Court staff and not by member of the Judicial Service. There is a further fact which shows the arbitrariness in denying this claim of special pay to the Deputy Registrars of this Court. Now the Deputy Registrars of this Court have been equated with the Deputy Secretaries of Delhi Administration. It is common case that the Deputy Secretaries in Delhi Administration are getting special pay. No logic or reasoning is forthcoming to show the basis for this distinction, Comparisons are always odious and we would refrain from comparing the respective significance of each job. We do not wish, Therefore, to go into the question whether work of Deputy Registrar is of a higher quality than that of a Deputy Secretary of Delhi Administration or the Under Secretary of the Punjab State Secretariat. But surely no reasonable person can dispute that the work of a Deputy- Registrar of this Court is atleast as arduous, as responsible as atleast

that of a Deputy Secretary in Delhi Administration. We are so presuming though in view of the fact that the Deputy Registrars of this court also have to do not only mere administrative work but also responsible judicial work, the scales, if at all they are to be measured will be very much in favor of the Deputy Registrars of this Court rather than the Deputy Secretary of Delhi Administration. But taking even both the posts on par there is absolutely no justification why the Central Government should have sanctioned the grant of special pay to Deputy Secretaries in Delhi Administration while denying the recommendation of the Chief Justice to grant the same to the Deputy Registrars of this Court. In our view just as the Executive has its own Secretariat, the Judiciary has its own Secretariat and its Secretariat is the High Court staff. It appears to us that there can be no reason for denying the same facilities of special pay and like to the Secretariat of the Judiciary namely the High Court staff as are available to the Secretariat of the Executive, more so as the sovereignty is reflected in three equal instrumentalities--the Executive, Legislature and Judiciary. As a matter of fact long time back the High Court Arrears Committee presided by a former Chief Justice of India had this to say:--

"We were told that the emoluments of officers and staff of the High Courts are in many States much lower than the emoluments of the Secretariat staff performing even comparable functions. The work of the staff of the High Court is often specialised and more complex than that of the Secretariat staff. We recommend that the least that should be done for the staff of the High Court is to bring their scales of pay and allowances on par with the scales prevailing in the State Secretariat.....".

(Vide the report of "The High Courts Arrears Committee, 1972" page 82 para 133).

We respectfully adopt these observations.

10. In that view of the matter it is not at all understandable as to why and on what basis the post of Deputy Registrar even if it is held by a person other than by a member of Judicial Service should not be entitled to receive special pay. The inevitable consequence is that it is arbitrary and unreasonable for the Central Government when it refuses to do justice to the members of the High Court Staff by giving special pay, just as it has sanctioned to its counterparts in the Punjab and Haryana High Courts and Delhi Administration. No one pleads or asks for preferential treatment either to the members of the judicial service or to the staff of the Judicial Courts. What is asked for and insisted on is equality of treatment. Denial of the same treatment is writ large and there is no Explanation, much less any justification for the same.

11. We are, Therefore, of the view that the refusal to accord approval by the Central Government to grant to the promotee Deputy Registrars the same special pay as is being given to the Deputy Registrars who are members of the Judicial Service is arbitrary and discriminatory and unreasonable and amounts to

violation of the principles of equality laid down under Article 14 and 16 of the Constitution.

12. We would, Therefore, allow the writ petition and issue a mandamus and hold that the petitioners are entitled to receive the same special pay as is receivable by Deputy Registrars when belonging to Delhi Judicial Service.

13. We would also issue a mandamus directing the respondent Administration to pay to the petitioners the above special pay from their respective dates of eligibility. Considering that the matter has been pending and remained unresolved since 1974 it is to be hoped that the implementation of our decision and payment of arrears to the petitioners will be made with the greatest of expedition.

The petition is allowed as above. No costs.