

(1994) 08 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 1683/92

J & K Subordinate Judicial Process Servers Welfare Association	APPELLANT
Vs	
State of J&K and others	RESPONDENT

Date of Decision : 30-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 226, 309
Constitution of Jammu and Kashmir, 1956 — Section 124

Citation : (1994) KashLJ 498 : (1995) SriLJ 220

Hon'ble Judges : S.M.Rizvi, J

Bench : Single Bench

Advocate : R.A.Jan, A.M.Bhat , Advocates appearing for the Parties

Judgement

1. This writ petition has been filed by the President of the Jammu and Kashmir Subordinate Judicial Process Servers Welfare Association on behalf of the members of the said Association to secure the compliance of the respondents with the mandate of the doctrine of equal pay for equal work, as enshrined in Article 39 (d), 14 and 16 of the Constitution of India. It is stated by them that they have been all along subjected to invidious hostile discrimination on account of unreasonable and arbitrary disparity in the pay as against the scale of pay at which process servers of the Excise Department performing the same functions and duties as the process servers of the Judicial Department. According to them they are discharging more arduous duties as being associated with the task of administration of justice than that of the process servers of the Excise Department and even then the Government has given them the lower scale of pay as against the said process servers. It is further stated that the process servers of the Excise Department are being paid in the revised pay scale of Rs. 8001400

whereas they are still in the [SIQ revised pay scale of Rs. 630940.

It is submitted that the processservers of the Judicial Department in the ordinary course perform the same functions and duties as the

processservers in the Excise Department and therefore they must get the same remunerations also. Allegedly they have submitted several

representations to the concerned authorities for the removal of the discriminatory treatment and the High Court has also recommended their case to the Government but it has proved of no avail.

2. In the counter filed by the respondents it is stated that in view of the fact that the petitionerAssociation being neither incorporated by statute nor

permitted by any specific statutory provision to sue or be sued, the petition"" has been brought in the collective capacity, is not maintainable. It is

further stated that the employees of different departments constitute different classes and therefore the processservers of the Judicial department

forms a different class than that of Excise Department. Allegedly the respective duties performed by the two agencies are not factually equal and

same. It is further stated that the process servers of the Judicial Department have all along been treated as orderlies and a conveyance allowance of

Rs. 15/ given to each of them. It is contended that under section 124 of the Constitution of Jammu and Kashmir, it is the exclusive Jurisdiction of

the State to regulate service conditions of the persons appointed by it to public service.

3. I have heard the learned counsel for the parties at length and have gone through the file.

4. It may be stated at the very out set that the PetitionerAssociation comprises of the ProcessServers of the Subordinate Judiciary and the petition

has been filed by their President. There is no legal bar to them to file the petition in a representative capacity. Their cause is common and therefore

a collective petition on behalf of all the employees to agitate their common grievances is maintainable. It is not necessary for them to file individual

petitions where the cause is quite common. In order to invoke the writ jurisdiction for enforcement of a fundamental right, it is not necessary for the

aggrieved persons to be incorporated by statute as is the case in the civil matters.

5. As regards the objection that the ProcessServers of the Judicial Department

constitute a different class than that of the ProcessServers of the Excise Department, there appears no basis for the same. In the schedule to the relevant rules the ProcessServers of the Judicial Department and that of the Excise Department they have been designated as such. The only difference is that the pay scales are different. The ProcessServers of the Excise Department have been shown in the higher pay scale than that of the Judicial Department. Merely saying that they constitute different classes for performing their functions for belonging to the different departments is not sufficient. The respondents were required to show that their work was not equal. Admittedly the work of the ProcessServers whether serving in the Judicial Department or the Excise Department or in any other department is equal. In ordinary course they are required to serve the process issued by the respective authorities for service on the intended person, party or authority, in accomplishment of the task in regard to which the process is issued. In substance the work is the same, i.e., service of Process. In the Judicial Department the ProcessServers are required to serve the summons, warrants and other orders as issued by various courts for service upon the intended persons. In the Excise Department also, the ProcessServers are required to serve the process as issued by the authorities upon the intended persons. The job in substance is equal, i.e. serving of process. As a matter of fact admittedly the job of the ProcessServer of the Judicial Department is much more arduous and energetic. Their job is very much linked with the administration of Justice. True, they form the lowest cadre in the majestic organisation of the Judiciary, a little clog in a giant wheel. But, the glory of our constitution is that it enables him to directly approach the highest court in the state for redress.

6. In (1982) Supreme Court Cases 618 it has been held that the principle of "equal pay for equal work" is not an abstract doctrine but one of substance. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service reasonably sustain the classification of the officers into two grades with different scales of pay. But in cases of unequal scales of pay based on no classification or irrational classification a breach of principle is clearly made out. Equal pay for equal work is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies, by the

enforcement of constitutional rights. Article 14 and 19 guarantee

respectively the fundamental right to equality before the law and equality of opportunity in the matter of public employment.

7. In this view of the matter the second objection of the respondents also falls to the ground.

8. The third objection of the respondents is that the process servers of the Judicial department have all along been treated as orderlies and given a sum of Rs. 15/ each as a conveyance allowance.

9. In this regard the petitioners have placed on the file order No. 309 dated 17.7.1987, issued under the orders of the Chief Justice providing that

all the posts of orderlies shown in the High Court order No.90 dated 1.5.1984 and created hereinafter upto date are declared as the posts of

process servers from the date of the order. It appears that the Chief Justice has declared every post of an orderly as that of the ProcessServer.

It is so because the ProcessServers of the Judicial Department at some times have to perform not only the work of the ProcessServers but that of orderlies as well.

10. As regards the payment of conveyance allowance, as a matter of fact, it is a pittance paid to them. They have to go to far flung area to execute

the court process for which they have to pay the fare from their own pockets. They don't get any T. A or D. A for such duties and are being paid

Rs.15/ per month as conveyance allowance, which really is causing injury [SIC] insult.

For these reasons this objection also is without any force.

11. As regards the objection that it is the pay commission which had fixed the pay scales, and that it is the executive jurisdiction of the State to

regulate the conditions of service of its employees, it is nodoubt undisputed. Admittedly the pay commission constituted by the Government has

fixed the pay scales of the employees and it is the jurisdiction of the State to regulate their conditions of Service. But does it mean that whatever the

pay commission has done or for that matter even the State, it is sacrosanct and not subject to challenge on any ground. Who does not know that

the State is the biggest litigant in the country, and most of its executive actions are challenged, and very often struck down. The question is that if

any executive action of the State violates any Constitutional or legal right of a

person, it is subject to challenge in the court of law. All the actions of the State must conform to the mandate of law, and whenever it infringes the same, it is liable to be quashed by the court. The state is required to regulate the conditions of service of its employees but that is to be done in accordance with law. It cannot discriminate between the same class of employees while regulating the conditions of service. Article 14 of the Constitution of India guarantees equality before the law and Article 16 equality of opportunity in the matters of public employment. Article 226 of the Constitution of India provides the remedy for the enforcement of the fundamental rights. The petitioners have invoked the jurisdiction of the court and asked us to direct the respondents to give them their due, the same as they have given to others like them.

12. As has been stated above the ProcessServers of the Judicial Department are doing equal work as that of the processservers of the Excise Department, rather much more than them, and therefore, they must at least get equal wages also.

13. For these reasons this objection of the respondents is also held as untenable.

14. The last defence taken by the respondents was that the High Court is the employer of the petitioners which has not been arrayed as a respondent and therefore the petition is not maintainable.

15. From the perusal of the file it transpires that the Registrar of the High court has fully recommended the case of the petitioners for raising their pay scale equal to the processservers of the Excise Department. Annexure PC to the writ petition is the letter of the Registrar addressed to the Secretary to Government, law Department, in this regard. The Government has not faithfully and effectively considered the said recommendation of the High Court. The petitioners therefore are not aggrieved of the action of the High Court but of the action of the State Government.

16. The result, therefore, is that I allow this petition and by a writ of mandamus hereby command the respondents to fix the pay scale of the petitioners at par with the processservers of the Excise Department with effect from the date when the latest revision of the pay scales was made by the Government. They are also directed to pay to them the arrears of pay accordingly