
(1995) 11 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11409 of 1992

Jaykishor Choudhary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0004

Final Decision : Allowed

Judgement

N. Pandey, J.—This writ application was filed for a direction to the State Government to create 35 posts of Bench Secretaries to the Hon''ble Judges of this Court as also one post of Principal Bench Secretary to the Hon''ble the Chief justice in terms of different letters of this Court sent from time to time to the State Government in this regard.

2. It appears, having regard to specialised nature of job and arduous duty of the Peshkars of the Hon''ble Judges this Court by a letter dated 6.2.1990, requested the State Government for conversion of five posts of Section Officers and 30 posts of Assistants to the post of Bench Secretary in the existing scale of pay of Rs. 3000-4500/- and one post of the Principal Bench Secretary in the scale of Rs. 3700-5000/-. As would appear from the counter affidavit of the High Court, on 6.7.1990 there was a meeting of the Hon''ble the Chief Justice and the Chief Minister wherein the criteria for creation of the posts were considered. Ultimately, when no final decision was taken, on 24.9.1992 and lastly on 1.2.1993 letters were sent by the Hon''ble the Chief Justice emphasising the urgency of creation of the posts but unfortunately when decision was taken, the present writ application was filed.

3. It would be relevant to notice that during tendency of this writ application, on the basis of the recommendation of a High Level Committee the State Government by the notification dated 20th December, created 30 posts of Peshkar Bench Clerk by upgrading equal number of the posts of Assistants in the pay scale of Rs 1800-3330 and five posts in the scale of Rs. 2000-3800.

4. Since a detailed procedure and certain conditions were prescribed regarding mode of appointment, the Petitioners challenged that part of the notification on the ground that the State Government had no jurisdiction to lay down any criteria or to prescribe procedure for filling appointments of the employees of the High Court. Further objection was that while fixing pay scale of the newly created posts, requests of the then Hon'ble Chief Justice made to the Government from time to time were completely overlooked. It [was stated that after having served for ten years, an Assistant would normally get higher scale to the scale which has been fixed for the newly created cadre of Peshkar Bench Clerk. Therefore in fact a qualified and experienced Reshkar having double graduate degree would not like to opt for such post.

5. Further claim of the Petitioners is that having regard to the nature of job of Bench Clerks it was proper for the State Government to give them the scale of Rs. 3000-4500; which has already been prescribed for the Secretaries to the Hon'ble Judges.

6. A counter affidavit as also a supplementary counter affidavit was filed on behalf of the State. It has been fairly admitted that as per the provisions of Article 229 of the Constitution of India, it is the exclusive jurisdiction of the Hon'ble the Chief Justice to lay down conditions of service and fix criteria for filling up the posts of the employees of the High Court. Therefore, the Government would have no objection if any other condition or criterion for filling up the posts are laid down by the Hon'ble the Chief Justice.

7. With respect to the claim for higher scale, however, it has been stated that an assistant after completing 25 years of service gets second time bound promotion in the scale of Rs. 1800-3330. whereas those who would join the newly created cadre will get the pay scale of Rs. 1800-3330 on the date of entry. That apart, they would also get time bound promotions in the newly created cadre including supertime scale of Rs. 3000-4500. Therefore, it would not be possible for the State Government to provide higher scale as claimed by the Petitioners.

8. There cannot be any controversy that under Article 229 of the Constitution, the Chief Justice of High Court has got full jurisdiction to frame rule and lay down any suitable condition for making appointment of its employees. The provisions of sub clause (1) of Article 229 of the Constitution, deals with rules to be made by the Governor regarding appointment of persons, not already attached to the Court and such rule is limited to the Consultation with the State Public Service Commission in appropriate cases but the aforesaid conditions does not put any control over the power of the Chief Justice or his nominee.

9. Sub-clause (2) of Article 229 of the Constitution deals with the conditions of service of officers and servants of the High Court to be prescribed by the rules framed by the Chief Justice, which shall be subject to the provisions of any law made by the legislature of the State. But it has to be remembered that this

proviso only deals with the salaries, allowances etc. which requires approval by the Governor. However, since this issue has already been settled by different decisions of the Supreme Court in the case of *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, as also a Bench decision of this Court in the case of *Shailesh Kumar Singh v. The High Court of Judicature at Patna and Ors.* 1995 (1) PUR 429. That apart, on behalf of the State also a fair stand was taken that power of the Chief Justice or his nominee in this regard is absolute and there cannot be any interference by the executive except to the limited extent as provided under the provisions of Clause (2) of Article 229 of the Constitution.

9. The other grievance of the Petitioners is that the decision of the Government not to grant pay scale suggested by the Chief Justice is unreasonable and arbitrary. As would appear from the perusal of the letter dated February 1, 1993 that the then Hon'ble Chief Justice had suggested that scale of Rs. 3000-4500 for the Bench Secretary and Rs. 3700-5000 for the Principal Bench Secretary be provided. This cannot be ignored that for posting as Peshkar an assistant is required to undertake training for certain period. It would also appear from the counter affidavit filed on behalf of the High Court that a Bench Clerk should not only be a senior person but also sufficiently experienced in the procedural rules and practice of the Court. It has been stated that at the time of establishment of the Court although there was a proposal to have a specialised post of Peshkars but unfortunately, it could not materialise so far. Therefore having regard to such facts, the Court from time to time requested the Government for creation of posts in the pay scale as suggested by the Hon'ble Chief Justice. Therefore, there is no doubt that having regard to the special nature of job and responsibility assigned to the Bench Clerk, the High Court expressed its desire for higher scale for them which would be evident from the letter of the Chief Justice, dated February 1, 1993.

10. In the background of the facts noticed above it would be appropriate for the High Court as well as the Government to consider the claim of the Petitioners for higher scale for the newly created cadre of Bench Clerks Bench Secretaries and to take steps to fill up the posts of newly created cadre without any further delay.

11. In the result with the aforesaid direction this writ application is allowed. But in the circumstances of the case, there shall be no order as to costs.

S.K. Singh, J.

12. I agree