
(1996) 06 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 3634 of 1988 along with Writ Petition No. 1165 of 1992

Maharashtra State Judicial Service Association, Thane and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-06-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (1996) 06 BOM CK 0048

Hon'ble Judges : N.D. Vyas, J;K.G. Shah, J

Bench : Division Bench

Judgement

N.D. Vyas, J.—The question involved in these two petitions being identical, they are disposed of by a common judgment.

2. Writ Petition No.3634 of 1988 which is filed by the Association of the Judicial Officers in the mofussil area, is praying for fixation of pay structure and revision of service conditions of Judicial Officers in the mofussil area of the State of Maharashtra, as to bring them on par with those fixed for and available to the Judicial Officers working as such in Bombay. The petition further prays for refixation the age of superannuation for the said Judicial Officers. However, the said relief was not pressed as it does not survive in view of the decision of the Supreme Court in All India Judges "Association v. Union of India reported in 1991 II CLR S.C. 927 and the decision of the Supreme Court in All India Judges" Association and Others Vs. Union of India and Others, which was a decision in review of the said earlier decision of the Supreme Court. For the sake of brevity, the above decisions are referred to as the All India Judges" case No. 1 and 11 respectively.

3. Writ petition No. 1165 of 1992 which is also filed by the said Association in effect is praying for uniform rules for the Judges of Family Courts in ..the State of Maharashtra regarding conditions of service like uniform pay scales, allowances,

and facilities as their nature of work and responsibilities and functions.

4. The questions which require determination are : Whether the pay scales and service conditions of the Judicial Officers of the mofussil area which are different than those of the Judicial Officers of the City of Bombay have any reasonable basis for such distinction and if not, then why should the principle of "equal pay for equal work" should not be made applicable in this case. Secondly why this principle should not apply in case of Judges of the Family Courts.

5. Mr. Rane, the learned Counsel appearing for the petitioners in both the petitions submitted that the main grievances of the members of the petitioners Association, who are Judicial Officers working as such in the mofussil was in respect of invidious discrimination to which they were subjected in the matter of their pay scales and service conditions as compared to their counterpart working in the City of Bombay. According to him, the discrimination has unjust, irrational, unconstitutional and prejudicial besides being totally against the well established canon of law "equal pay for equal work". It was further submitted by Mr. Rane that the Bombay Judicial Service Recruitment Rule, 1956 ("BJSR Rules" for short) which govern the recruitment, promotion etc. of Judges of both the Junior Branch and Senior Branch give preferential and better treatment to the Judges of Bombay City to the prejudice and disadvantage of the Judges in the mofussil area; that the petitioners were, therefore, challenging the validity, propriety and correctness of the said Rules; that the anomaly in the pay scales of the Judges of the Bombay cadre and Judges in the mofussil area is perpetuated by various Government Resolutions issued from time to time after 1966 and that by the present petition, the petitioners were seeking abolition of the City scales which are specially provided for the Judges of the Bombay cadre treating them as a privileged class. Thus it was the submission of Mr. Rane that the Judicial Officers working in the mofussil area who are doing the same type of work and enjoyed the same powers, yet their pay scales were different. Mr. Rane referred us to the averments made in the petition which gave a detailed analysis of the powers enjoyed and the nature of work handled by the Judicial Officers. For reasons to follow hereinafter it will not become necessary to go through them. Suffice it to say that for the sake of argument we will assume the said averments to be correct.

6. Mr. Rane referred us to the decision of the Supreme Court in All India Judges" case No. 1 (supra) wherein the Supreme Court issued various directions for setting up of All India Judicial Service and for taking steps to bring about uniformity in designation of Judicial Officers and for various purposes in order to bring uniform conditions of service for members of the subordinate judiciary throughout the country. The Supreme Court in the said matter also dealt with the claim for appropriate pay scales and other service conditions. It also dealt with therein the age of superannuation. However, it decided the question of superannuation but in respect of other matters pertaining to service conditions which include pay scale of uniform basis, the Supreme Court gave various

directions. The said decision of the Supreme Court come up for review and the Supreme Court in All India Judges" case No. 11 inter alia held that the judicial service is not service in the sense of "employment" : that the Judges are not employees; that as members of the judiciary, they exercise the sovereign judicial power of the State and that they are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. Referring therein to the recommendations made by the Law Commission in the year 1958, the Supreme Court observed that although the said report made the recommendations in question to further the implementation of the Constitutional mandate to make proper justice available to the people, the mandate has been consistently ignored both by the executive and the legislature. The Supreme Court therein again held that the judiciary in this country is a unified institution judicially though not administratively and hence uniform designation and hierarchy with uniform service conditions are unavoidable necessary consequences. Referring to the directions given by the Supreme Court in the judgment under review, the Supreme Court observed that the directions were essentially for the evolvment of an appropriate national policy by the Government in regard to the judiciary"s condition. The Supreme Court again referring to its earlier decision observed that the service conditions of the judiciary should be identical to those of the members of the other services in the same State. Lastly the Supreme Court in conclusion observed that any clarification that may be required in respect of any matter arising out of the decision in review will have to be sought only from the Supreme Court and from no other Court and further that the proceedings if any, for implementation of directions given in the said judgment shall be filed only in the Supreme Court and no other Court shall entertain them.

7. In view of the above two decisions, we fully agree with Mr. Rane, and the learned Advocate General also cannot have any possible quarrel with the same, that uniform service conditions are necessary not only for Judicial Officers working in the State but also with other such Judicial Officers of other States. The question which remains to be answered is whether the nature of work and other factors required to be taken into consideration, if taken into consideration would result in the Judicial Officers of the mofussil being paid less than the Judicial Officers of the City of Bombay. Mr. Rane painstakingly took us through the details regarding the nature of work and powers enjoyed by the Judicial officers of both the "classes", if we may use the term viz., mofussil Judges and Bombay City Judges. The entire petition is replete with particulars and it is a well researched document. However, the learned Mr. Advocate General on the other hand submitted that BJSR Rules have been framed in consultation with the appropriate authorities and that the distinction is made on sound basis after considering all the factors regarding load of work, the nature of responsibilities etc. He in fact justified the pay scales applicable to the Bombay Judges and submitted that the nature of work, compared with other factors, of the Bombay City Judges was such as to entitle them to higher pay scales.

8. The learned Mr. Advocate General took us through the historical background and submitted that the distinction, or rather classification, which differentiated the City Judges from the Mofussil Judges has been there right throughout since 1869 when the Bombay Civil Courts Act of 1869 came into existence, and this classification has continued to remain despite several Commission appointed on the basis of whose recommendations pay scales have been revised from time to time. He in particular referred us to the report of Badkas Commission which was published on 4th January 1967 on the basis whereof Government Resolutions were passed revising the pay scales. The said report itself inter alia states that the judicial set up in Greater Bombay is different from that in the rest of the State. The said report further gave its recommendations taking into consideration the nature of duties and responsibilities of various Judicial Officers. Despite, revision of pay scales on the basis of recommendations of couple of such Commissions subsequently appointed, the distinction continues to remain.

Thus, according to the learned Mr. Advocate General, looking to the historical back-ground, the nature of work handled by Bombay Judges has been taken into consideration as a result whereof their pay scales have always been higher. He thus joined issues with Mr. Rane and submitted that the nature of work done by Bombay Judges was much different than the Mofussil Judges. In fact he further submitted, relying on the decision of the Supreme Court in the matter of Union of India & Ors. v. Delhi Judicial Service Association & Anr. reported in 1995 I CLR 773 ., that the nature of duty, nature of responsibility, and degree of accountability are relevant and germane considerations and therefore, the distinction challenged by the petitioners was absolutely necessary to inculcate hard work, to maintain character, to improve efficiency, to encourage honesty and integrity among the officers and accountability. The Supreme Court therein also observed that the application of the doctrine of equal pay for equal work which has the effect of destabilising these vitalities is clearly illegal, illogical and inappropriate. He then referred us to a decision of the Supreme Court reported in the matter of Bhagwan Dass & Ors. v. State of Haryana & Ors. reported in 1987 2 CLR 229 . wherein the Supreme Court inter alia held that once the nature and functions and the work of two persons are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work" doctrine, nor the fact that the scheme under which temporary appointments are made is a temporary scheme and the posts are sanctioned on an year to year basis having regard to the temporary nature of the scheme cannot be a factor which could be invoked for violating "equal pay for equal work" doctrine. He next referred us to a decision of the Supreme Court in Randhir Singh Vs. Union of India (UOI) and Others, wherein it was inter alia held that the principle "equal pay for equal work" is deducible from Articles 14 and 16 in the light of preamble and Article 39(d) of the Constitution of India and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same

employer. He next referred us to a decision of the Supreme Court in *State of Madhya Pradesh v. Pramod Bhartiya & Ors.* reported in 1992 2 CLR 942 . wherein the Supreme Court reiterated its earlier view taken in *Randhir Singh Vs. Union of India (UOI) and Others*, .

9. The learned Mr. Advocate General next submitted that a person seeking violation of principle of equal pay for equal work must not only establish that the nature of work is identical but also that there is no reasonable basis to treat them separately and mere similarity in the nature of the work of two groups was not sufficient. In support of this contention he relied on a decision of the Supreme Court in *State of West Bengal & Ors. v. Hari Narayan Bhowal* reported in 1994 1 CLR 985. He also cited a decision of the Supreme Court in *Shyam Babu Verma v. Union of India & Ors.* reported in 1994 1 CLR 747 wherein it was inter alia held that it was open for the State Government to put its employees in the same service in different categories for the propose of the scale of pay according to the qualifications possessed by them and that the nature of work may be more or less the same but the scale of pay may vary based on academic qualification or experience which justifies the classification and that the principle of "equal pay for equal work" should not be applied in a mechanical or casual manner. The Supreme Court further observed that the classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Lastly the learned Advocate General cited another decision of the Supreme Court in *K Vasudevan Nair & Ors. v. Union of India & Ors.* reported 1990 2 CLR 767 wherein it was inter alia held that the finding of expert bodies like Pay Commission should not be lightly interfered with and that it was not possible for the Court to determine the question on the basis of assertions made in the writ petition and counter filed on behalf of the Respondent.

10. The learned Advocate General lastly submitted that fixation of posts and fixation of pay are matters primarily for the Executive Government and expert bodies like Pay Commissions and not for Courts. He relied on the above mentioned decision of the Supreme Court in *Randhir Singh Vs. Union of India (UOI) and Others*, and he also relied on the decision of the Supreme Court in *All India Judges "Association case No. 1* wherein the Supreme Court has in no uncertain terms observed that such matters can be better handled by Pay Commission or Committees in the State which are set up to review the position and in fact inter area gave a direction that as and when Pay Commission/ Committees are set in the State or Union Territories the question of appropriate pay scale of Judicial Officers be specifically referred and considered. The Supreme Court in *All India Judge "case No. II* referring to its earlier direction directing the Pay Commission or Committees to be set up in the State to examine and review pay structure, inter alia observed that in its earlier decision in *All India Judges" case No. I* it found that it was difficult to get into the exercise of fixing appropriate pay scales in the absence of full details, and that in the absence of such data, there was a likelihood of affecting special benefits which

the judicial officers may be getting in some States and, therefore, the Supreme Court declined to direct fixation of any pay scales and instead, the Court directed the Pay Commissions or the Committees to be set up in the States and the Union Territories to separately examine and review the pay structure of judicial officers keeping in view the relevant aspects some of which have been adverted to in the 14th Report of the Law Commission.

11. We have given our anxious consideration to the points raised in these two petitions. We fully agree with Mr. Rane that uniform pay structure and other service conditions should be formulated. As opined by the Supreme Court, in the decisions cited above, in our judgment, whether the nature of work involved is identical or not or whether other factors necessitate laying down different pay structure are questions which have to be determined by a specialised body which has full data available before it. In fact several of the directions given by the Supreme Court in All India Judges' case No. I are being complied with like providing motor vehicles to the Judicial Officers, and others are being implemented. In fact as directed by the Supreme Court, the Central Government has even appointed a Pay Panel for Judiciary headed by Mr. Justice Jagannath Shetty, a retired Judge of the Apex Court. Although we had directed the State Government which was represented by the learned Advocate General to provide us with more details of the said Commission, the learned Advocate General was unable to do so and only a copy of the press cutting of a news item published in Times of India on 24th November 1995 was handed over which indicated the terms of reference of the Commission to include an examination of present structure of emoluments and conditions of service, minimum qualification, age of recruitment, method of recruitment, work method and work environment of Judicial Officers in the State and the Union Territories taking into account the total packet of benefits available to them and to make suitable recommendations to the State Governments. The said Commission had been asked to finalise its recommendations as soon as possible and to forward its report to the State Government/Union Territory Administrations. Unfortunately apart from the said press cutting we do not have any further information. In fact, after arguments were concluded, we adjourned the matters for some time in order to get relevant information regarding this Commission viz., terms of reference etc. The fact remains that as directed by the Supreme Court in All India Judges' case No. I a Commission has been appointed to whom, as it appears from the Press cutting, several questions are referred to for determination. In view of this development, although we heard the matters at length, we do not wish to usurp the work entrusted to it or in any manner interfere with its functioning. We do not wish to enter into a territory which is best left to an expert body especially formed to deal with the work we are called upon to do. Otherwise also it would be improper for us to determine the questions raised as the Supreme Court in its wisdom has directed, which direction has been carried out, of appointing a Commission to look into all the aspects regarding service conditions of the subordinate judiciary in the entire Country. In these circumstances we do not see what relief we can

grant to the petitioners in the matters except giving certain directions. We wish to make it clear that we have not expressed nor we wish to express any opinion on any of the questions raised. We have refrained ourselves, for the reasons mentioned above, from analysing the grievances made.

12. We direct that the State Government and the Union of India (which is party Respondent in Writ Petition No. 1165 of 1992) to forthwith obtain all relevant particulars as to terms of reference, constitution of the Commission etc. and supply the same to the petitioners. Petitioners are also free to approach the said Commission for necessary details and for being heard. The State Government and the Union of India to fully co-operate with the said Commission and further, to forward copies of the petitions to the said Commission for its consideration.

Petitions are thus disposed of with the above directions. No order as to costs.

13. These matters were fixed for judgment today and we were to sign the judgment which was ready. The much awaited Government Resolution has been brought to our notice only today by the Registry of this Court. The said Government Resolution is dated 21st March 1996 and is issued by the Ministry of Law, Justice and Company Affairs. We have made the counsel aware of the said Government Resolution, copies whereof have been given to them. Copy of the said Resolution is taken on record. We see no reason to change the decision to which we have already arrived at and which is as above.