
(2011) 02 AHC CK 0209
In the Allahabad High Court
Case No : Writ Petition No. 1809 (SS) of 2007

Pitamber Datt Pandey and others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Constitution of India, 1950 — Article 229(2)

Citation : (2011) 02 AHC CK 0209

Hon'ble Judges : Nirmal Yadav, J

Final Decision : Disposed Of

Judgement

Nirmal Yadav, J.

The brief facts of the present case are that the petitioners are regular employees of Uttarakhand High Court (hereinafter referred to as this Court) working on various posts such as Daftari, Jamadar, Peon, Mali, Farrash Electrician, Sweeper, Carpenter, Chowkidar, Plumber etc. The State of Uttarakhand vide Government Order dated 2nd May 2001 (Annexure1) created the posts for the High Court of Uttarakhand, in view of U.P. Reorganization Act, 2000 vide which a separate High Court for the State of Uttarakhand was established. As per Annexure1 posts mentioned as serial no. 22 to 33 were created having pay scale of `32004900 and no condition was mentioned, if the pay scale granted to the said employees was provisional or likely to be amended in future. The creation of the posts and granting of pay scales to the employees of the High Court was the conscious and independent decision of the State Government. It is worthwhile to mention here that Hon''ble the Chief Justice of the Uttarakhand High Court had constituted a committee under the Chairmanship of Hon''ble Mr. Justice M.C. Jain for the creation of the posts in the establishment of High Court of Uttarakhand. Hon''ble Mr. Justice M.C. Jain submitted his report on 19th March 2001, which was duly accepted by Hon''ble the Chief Justice for creation of 451 posts in different categories. The Registrar General of this Court referred the matter to the State Government vide letter dated 21st March 2001 for appropriate action. The State

Government, after due consideration of the report, issued Government order dated 2nd May 2001.

The petitioners were asked to give their option if they are willing to serve in this Court in the pay scale of `32004900. In view of the pay scale of `32004900 granted to Class IV employees of this Court, petitioners no. 1 to 6 expressed their willingness for their absorption in the establishment of this Court. The petitioners no. 7 to 70 were directly appointed in the establishment of this Court against the posts sanctioned by the State Government. Appointment letters of the some of the petitioners are annexed as Annexures no. 3 to 9 to the writ petition. The petitioners were appointed in the establishment of this Court with the express condition that the pay scale of `32004900 would be admissible to them. It is however, pleaded that the State Government vide Government Order dated 29th July 2005 unilaterally reduced the pay scale of the petitioners (Annexure10) to `32004900 on the ground that the pay scales are being reduced in view of the judgment of Hon''ble Apex Court in Civil Appeal No. 6878 of 2004 arising out of SLP (C) No. 887 of 2004. It is pleaded that reliance placed by the State Government in the above referred judgment of Hon''ble Apex Court is totally misconceived as the said appeal has been disposed of by the Hon''ble Apex Court in the light of the judgment rendered in the case of State of U.P. Vs. Section Officer, brotherhood and others reported in [2004 (8) SCC 286] wherein the Hon''ble Apex Court had left it open to Hon''ble the Chief Justice to frame appropriate rules or constitute a committee for making recommendation about the pay scales and that the same would be considered by the State Government in its proper perspective. The petitioners being aggrieved submitted representation to the Registrar General of this Court (respondent no. 3), which was referred to respondent no. 1. According to the petitioners, Hon''ble the Chief Justice of this Court was pleased to constitute a committee in the month of October 2005 under the Chairmanship of Hon''ble the Senior Judge of this Court. The committee framed the draft rules, which were considered and approved by the Full Court in the month of December 2005. The committee recommended for the grant of pay scale of `32004900 for the posts held by the petitioners, which find mentioned in the draft rules. The report of the committee along with the draft rules were sent by the Registrar General of this Court to the State Government for approval in the month of December 2005.

It is further pleaded by the petitioners that their case is placed on different footing than the employees serving in the Allahabad High Court. The Class IV employees of the Allahabad High Court were granted the pay scale of `32004900 in pursuance of the judgment passed by the Allahabad High Court in writ petition no. 15211 of 1998 wherein in the present case the State Government of Uttarakhand had taken a conscious and independent decision after due consideration of the report submitted by Hon''ble Judge of this Court and approved by Hon''ble the Chief Justice to grant pay scale of `32004900 by creating the posts in the establishment of this Court. Now the State Government cannot unilaterally withdraw the pay scale granted to the petitioners and to

reduce the pay scale relying on the judgment in the case of the employees of the Allahabad High Court. The expert committee had considered all aspects while preparing the report and State Government concurred with the recommendation made by the Hon''ble committee. It is further submitted that Hon''ble the Chief Justice is empowered by clause 2 of Article 229 of the Constitution of India to prescribe by rules the service condition of the officers and servants of the High Court. It is incumbent upon the State Government to consult the High Court before withdrawing the pay scale already granted to the petitioners. It is further pleaded that besides the financial loss the impugned decision taken by the State Government has resulted in the loss of status of the petitioners.

In the counter affidavit filed by the State Government, it has been submitted that Hon''ble the High Court vide its letter number Memo/AdminA/2006 dated 15th January 2006 has sent for approval to the State Government draft rules for different categories of posts in its establishment which was pending consideration of the State Government. It is further pleaded that the pay scale sanctioned to Group D employees in the State of Uttar Pradesh was reduced to `25503200. The association of Class IV employees filed writ petition no. 15211 of 1998 seeking direction to the authorities to enhance their pay scale. The said writ petition was allowed and in compliance of the judgment passed by the Hon''ble High Court pay scale of `32004900 was granted to the Class IV employees working in the Allahabad High Court. Accordingly, the State Government of Uttarakhand also prescribed the same pay scale for Class IV employees to be appointed in the establishment of this Court. It is admitted that the State Government had received a report of the committee from this Court vide letter dated 21st March 2001 whereby pay scale of `32004900 was recommended to be granted to the Class IV employees. It has however, been clarified that the pay scales were granted to the employees of High Court in accordance with the provisions of Section 74 of the U.P. Reorganization Act, 2000 in the absence of any rules governing their service conditions. It is further pleaded that the special appeal filed by the State of U.P. against the judgment November 2003. The SLP was filed by the Class IV association against the said judgment, which was disposed of by the Hon''ble Apex Court in terms of judgment passed in the case of State of U.P. Vs. Section Officer, Brotherhood and others. It is thus pleaded that in view of the judgment of the Hon''ble Apex Court mentioned above the State of U.P. restored the pay scale of `25503200 to the Class IV employees working in the Allahabad High Court. It is further stated that the Registrar General of this Court vide letter no. 2500 dated 5July 2005 informed the State Government that in view of the judgment of the Hon''ble Apex Court in Section Officer brotherhood''s case a committee had been constituted for drafting the rules and after receipt of the report of the committee the rules shall drafted. It was further mentioned that in the meanwhile the Government may take appropriate decision with regard to the pay scale to be given to the Section Officer and Class IV employees. It is submitted that the decision of the government granting the pay scale of `25503200 to the Class IV employees vide impugned letter dated 29July 2005 is

neither unilateral nor arbitrary. However, vide affidavit dated 30 passed by Hon''ble Single Judge in writ petition no. 15211 of 1998 was allowed by the Allahabad High Court vide its judgment dated 5th th th th September 2008 the respondent State submitted that the rules recommended by this Court was under consideration of the State Government, and a decision has been taken for approving the proposed rules along with pay scales. The State Government had also approved the pay scales and the posts in the establishment of this Court as per order issued by the State Government from time to time. However, the pay scales recommended for the Class IV employees were not approved keeping in view the financial condition of the State Government. It is further submitted that the State Government has constituted a pay committee for submitting its recommendation to the State Government regarding the pay revision of all its employees. As and when the recommendations are made by the pay committee all employees of the State including the employees working in the establishment of this Court will get the benefit.

The Registrar General of this Court (respondent no. 3) in its counter affidavit admitted the contents of paragraph 3 of the writ petition only to the extent that the posts mentioned at 23 to 33 were created in the pay scale of ` 32004900. In the counter affidavit filed by respondent no. 3 on 22nd July 2010, it has been stated that in the light of the judgment of the Hon''ble Apex Court in the case of Section Officer brotherhood case (Supra) a committee was constituted with regard to the framing of the rules and pay scales to be given to the employees of the establishment of the High Court. After the committee submitted its report, it was considered by the Full Court on 1st December 2005 and the draft rules were sent to the government for approval. It is further stated that no decision was communicated to this Court with regard to the draft rules, which were sent for the approval to the State Government.

Learned counsel for the petitioners submitted that the service conditions of the employees of this Court are to be governed by the rules framed by Hon''ble the Chief Justice of this Court. Article 229 confers exclusive power not only in the matter of appointment but also with regard to prescribing the conditions of service of officers and servants of the High Court on Hon''ble the Chief Justice. Powers of Hon''ble the Chief Justice are only bound by the limitation contained in clause 2 and proviso appended to Article 229 of the Constitution of India. Approval of the Governor of the State is required to be obtained in relation to the rules containing provisions as regards salary, allowances, leave or pension. However, such approval should ordinarily be granted as a matter of course in order to maintain the independence of the judiciary.

Learned counsel for the petitioners pointed out that this Court had approved the report submitted by Hon''ble Judge of this Court recommending the pay scale of ` 32004900 to the Class IV employees in the establishment of this Court and Hon''ble the Chief Justice had granted its approval and referred the recommendation to the State Government in the month of March 2001. The

State Government after due consideration of the report granted the pay scale of `32004900 at the time of the creation of the posts vide its letter dated 2nd May 2001 at the time of the establishment of this High Court after reorganization. Thus the government cannot retract and withdraw the pay scale granted to the petitioners unilaterally and arbitrarily. Learned counsel for the petitioners further submitted that in the impugned letter dated 24.09.2008 the State Government has refused to approve the pay scales recommended by this Court on the ground of financial constraint which by itself cannot be a valid and cogent reason to withdraw the pay scales already granted by the State Government. In support of his argument, the learned counsel for the petitioners relied upon the decision of the Apex Court in the case of Supreme Court Employees' Welfare Association Etc. Vs. Union of India and another reported in [1989 (4) SCC 187]; Union of India and another Vs. S.B. Vohra and others reported in [2004 (2) SCC 150]; State of U.P. Vs. Section Officer Brotherhood and another and reported in [2004 (8) SCC 286].

On the other hand learned counsel for the respondent State argued that the recommendations made by this Court for the creation of the posts was mainly based on the conditions of service applicable to the employees of Allahabad High Court. It was not an independent recommendation in terms of Article 229 of the Constitution of India. Since the pay scales of Class IV employees in the establishment of Allahabad High Court were restored to `25503200 in view of the judgment passed by the Hon'ble Apex Court in the case of Class IV Employees Association, High Court of Judicature at Allahabad and another Vs. State of U.P. and others, the pay scales of the Class IV employees of this Court were also brought at par with the Class IV employees of Allahabad High Court. It is further argued that as per the communication of the Registrar General, the State Government was authorized to take appropriate decision with regard to the pay scales to be given to Section Officers and Class IV employees of this Court till the rules were framed and thus the action of the State Government in issuing order dated 29th July 2005 was neither unilateral nor arbitrary. It is further argued that while approving the rules forwarded by this Court to the State Government for approval have been approved, except the pay scale recommended for the Class IV employees. The State Government was in difficulty in accepting the recommendation on account of its financial condition. The parity is being maintained between the pay scale of the employees working the High Court with their counter part working the secretariat. In the event of pay scales as recommended by the High Court were granted to Class IV employees of the High Court the similar demands would be made by the employees of the State Secretariat and other government departments. Thus in view of the financial constraint the State Government did not accept the recommendation made by the High Court.

Learned counsel for the respondents further argued that no writ of mandamus can be issued directing the State Government to grant a particular pay scale to any employee. In support of the argument learned counsel for the respondents

referred to the decision in the case of State of Andhra Pradesh and another Vs. T. Gopalakrishnan Murthi and others reported in [1976 (2) SCC 883]; High Court Employees' Welfare Association, Calcutta and others Vs. State of W.B. and others reported in [2007 (3) SCC 637] and State of Bihar and others Vs. Bihar Veterinary Association and others reported in [2008 (11) SCC 60].

On careful consideration of the rival submissions made by learned counsel for the parties and after perusing the material available on record, this Court is of the considered view that the State Government has taken a unilateral and arbitrary decision by withdrawing the pay scale already granted to the petitioners vide government order dated 2nd May 2001. At the time of the establishment of this Court Hon"ble the Chief Justice had constituted a committee for recommendation being made for the creation of the posts and the pay scales relating to the employees of the establishment of this Court. The recommendation, made by the Hon"ble Judge of this Court, was approved by Hon"ble the Chief Justice and were forwarded to the State Government by the Registrar General of this Court. After due consideration the State Government approved the recommendations and created the posts along with the pay scales mentioned against their designation in letter dated 2nd May 2001. The posts mentioned at Sl. No. 23 to 33 relates to Class IV employees and the pay scales of `32004900, is mentioned against these posts. The plea of the respondents that the pay scales of Class IV employees are withdrawn and these employees have been granted the pay scales equivalent to the pay scales of Class IV employees of Allahabad High Court is totally misconceived. The Class IV employees in the establishment of this Court are not borne out of the cadre of the Allahabad High Court. The new High Court was established and the posts were created along with the pay scale by the State Government on the recommendation made by this Court. It has come on the record that this Court while forwarding the draft rules has also recommended the pay scales of its employees. The pay scales recommended for Class IV employees by the High Court along with the rules is also `32004900. Surprisingly, the State Government has accepted the draft rules as well as the pay scales granted to the other employees except the pay scales granted to the Class IV employees. The reason given in the letter dated 24.09.2008 is that the pay scales granted to the Class IV employees is withdrawn on account of financial constraints vis?vis the effect of grant of this pay scale to the High Court employees would have adverse effect on all other employees of the State, is not acceptable. Scale of pay is fixed on certain norms, which may be the quantum of work undertaken by the employee concerned as well as the extent of efficiency and the integrity required to be maintained by such employees. Thus plea as above taken by the respondents is totally without any basis and arbitrary and cannot be accepted.

The Apex Court in the case of S.B. Vohra (Supra) observed as under:

?48. It has to be further borne in mind that it is not always helpful to raise the question of financial implication vis?vis the effect of grant of a particular scale of

pay to the officers of the High Court on the ground that the same would have adverse effect on the other employees of the State. Scale of pay is fixed on certain norms; one of them being the quantum of work undertaken by the officers concerned as well as the extent of efficiency integrity etc. required to be maintained by the holder of such office. This aspect of the matter has been highlighted by this Court in the case of judicial officers in All India Judges' Assn. V. Union of India as well as the report of the Shetty Commission.?

Moreover, on a plain reading of Article 229 of the Constitution, it is clear and apparent that the Chief Justice is the sole authority for the fixation of salary, allowances, leave and pension of the employees of the High Court subject to the rules made under the said Article. Needless to mention here that the rules made by Hon'ble the Chief Justice are subject to the approval by the Governor of the State in view of Article 229 (2) of the Constitution. Though the approval of the Governor is a condition precedent to the validity of the rules made by Hon'ble the Chief Justice but it is also expected that once the Chief Justice in the interest of High Court administration has approved the service conditions of its officers and staff, the State would hardly raise objection to the sanction of the creation of posts or fixation of salary payable to the employees on the recommendations of the Chief Justice. It is therefore, logical to hold that apart from any power conferred by the rules framed under Article 229 the Government cannot fix the salary or authorize any particular pay scale of an employee of the High Court.

The aforesaid assumption is based on the premise that a higher functionary like the Chief Justice before framing any rules in relation to service conditions of the employees of its Court and granting any pay scale for them is expected to consider all relevant factors and the recommendations are not made on any arbitrary basis. It may also be mentioned that government must bear in mind the special nature of working in the establishment of the High Court, which the Chief Justice alone could really appreciate. In the present case, in pursuance of the decision of the Apex Court the Chief Justice constituted a committee of two Hon'ble Judges and that committee after considering all aspects of the matter and considering the duties performed by the Class IV employees recommended the pay scale of `32004900. The report of Hon'ble Committee was duly accepted by the Full Court and on that basis the draft rules were forwarded to the State Government for necessary approval.

The provisions of Article 229 of the Constitution has been a subject of interpretation by the Hon'ble Apex Court in various judgment as in S.B. Vohra's case (Supra), T. Gopalakrishnan Murthi's (Supra) and Supreme Court Employees' Welfare Association's case (Supra). The Apex Court has categorically held as under:

?So far as the Supreme Court and the High Courts are concerned, the Chief Justice of India and the Chief Justice of the concerned High Court, are empowered to frame rules subject this that when the rules are framed by the Chief Justice of India or by the Chief justice of the High Court relating to salaries,

allowances, leave or pensions, the approval of the President of India or the Governor, as the case may be, is required. It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the President of India and the Chief Justice of India.?

In view of the facts placed on record, this Court finds that no record has been placed before this Court by the respondents to indicate that State Government considered the relevant factors before withdrawing the pay scales already granted to the Class IV employees of this Court vide letter dated 2nd May 2001 nor there is anything to suggest or strengthen the plea of the financial constraint submitted by them. On the other hand, the committee of Hon'ble Judges took into consideration the nature of work discharged by the Class IV employees and the responsibility entrusted to them for maintaining the dignity and standard of the High Court. Therefore, plea of the respondents to equate the nature of work of Class IV employees with the other employees of the State Government is not well founded. The respondents have not placed any record to show that any attempt was made by them to ascertain the nature of work performed by a Class IV employee of the High Court. The State Government has also failed to place on record any document to show the financial constraint being suffered by them in case, the recommendations made by the High Court are accepted. In fact the employees of the High Court have to maintain the efficiency and integrity of the High Court and therefore, their work cannot be equated with the other employees. At the cost of repetition it may be mentioned that the fixation of the scale of pay of the High Court staff is within the exclusive domain of the Chief Justice of the High Court, which of course is subject to the approval of the State Government. As discussed above, the State Government is expected to accept the recommendation of the High Court except for good and cogent reasons.

As discussed above, the respondents have failed to place or bring forward any, what to say of good and cogent reasons for withdrawing the pay scales which were already granted by the State Government to the Class IV employees of the High Court vide order dated 2nd May 2001. The plea of the respondents that the pay scales have been withdrawn in view of the judgment passed by Apex Court in the case of Class IV employees association of High Court of Judicature at Allahabad in SLP No. 887 of 2004 is misconceived. In fact at the time of creation of the posts in the newly established High Court no condition was laid that the pay scales are being granted provisionally or subject to the decision of any

judgment or writ petition nor it was mentioned that the pay scales are being granted equal to the pay scale of Class IV employees of the Allahabad High Court and thus respondents cannot be allowed to take this plea for their unilateral and arbitrary decision.

In the present case, the matter has been duly examined by the expert committed appointed by the High Court twice and the State Government itself after accepting the recommendations, granted the pay scales of `32004900 at the time of creation of the posts. Thus, withdrawing the pay scales granted to the Class IV employees after due consideration of the recommendations made by the High Court, the State Government cannot be allowed to take arbitrary decision to withdraw the same. It is true that ordinarily the High Court on the judicial side should not issue writ in the nature of mandamus directing the State to comply with the recommendations made by the High Court but in exceptional cases take the present one the High Court can and should interfere. Thus, this Court is of the view that the decision of the Government in not accepting the recommendations of this Court is hereby quashed.

Thus in view of the above discussion, the order dated 29.07.2005 (Annexure10) is quashed and the order dated 24.09.2008 is directed to be quashed only to the extent that the Government has refused to accept the recommendations of the High Court regarding grant of pay scales to the Class IV employees of this Court and thus, the respondents are directed to give effect to the original order dated 2nd May 2001 granting the pay scales of `32004900 to the Class IV employees of this Court and to grant the arrears to the petitioners from the date the pay scale of `32004900 has been withdrawn.

Accordingly, the writ petition is disposed of in the above terms.