

(1980) 12 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Appeal No. 329 of 1980

P.N. Chopra and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-12-1980

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1981) 2 ILR Delhi 102 : (1981) ILR Delhi 102(1)

Hon'ble Judges : Rajinder Sachar, J;O.N. Vohra, J

Bench : Division Bench

Advocate : A.B. Saharia, D.K. Nag, S.M. Babu, D.P. Wadhawa and K.S. Bindra, for the Appellant;

Judgement

Sachar, J.

(1) Seven years" wait to get justice from Delhi Administration by the Staff belonging to the court of justice is the ironic background to the present writ petition.

(2) This is another round of litigation which has been initiated by the Private Secretaries and Readers to the Judges of this court seeking justice from Delhi Administration in the matter of fixation of their pay scales. In spite of the expression to a feeling by this court that there has been improper classification and in-justice done to the Private Secretaries and the Readers and expressing a hope that the administration would consider the matter of classification of the petitioners afresh keeping in view the various relevant factors and considerations, the hope has been belied. It may be mentioned that why in spite of holding that there was improper classification the writ was not granted was because of the peculiar position of clause (b) of Article 226 as it then stood and which gave a limited scope for issuance of the writ by this court. That difficulty no longer stands in the way because of the 44th amendment by which the scope of Article 226 now has been brought to a stage where it was before the 42nd amendment of the Constitution. Subsequent to the judgment given in

Shashi Bhushan Vohra & others v. Union of India and others, 1978(2) Slr 356 ; the Registrar of this court by his letter of 24-7-1978 took up the matter requesting again that the equation of the Private Secretaries and Readers in the matter of pay scales be done at least with the Private Secretary to the Chief Secretary of Delhi Administration. On 7-8-1979 (almost a full year later) the Deputy Secretary, Delhi Administration conveyed the opinion of the Delhi Administration that the proposal did not find favor with the Finance Department. However, a hope was held out that the proposal may again be sent with full justifications in detail. One can only marvel at the naivete shown by the Delhi Administration in having categorically rejected the proposal and still keeping dangling suggestion of a further reconsideration.

(3) The petitioners (Petitioner No. 1 being a Private Secretary and petitioner No. 2 being a Reader) attached to this court apparently were left with no alternative to get justice in the matter of fixation of their pay scales but move this court praying for quashing the decision of the Delhi Administration by which their pay scales have been fixed in the grade of Rs. 550-900, and seeking a mandamus directing the Delhi Administration to grant them higher pay scales on the principles as have been adopted and applied in respect of similarly placed persons in government service .Third Pay Commission was appointed in 1970. The Pay Commission fixed the various scales but did not fix any for the staff of this court because it took the view that under Article 229 of the Constitution the staff of this court was outside the scope of recommendations by the Commission.

(4) As the staff of this court is situate in Delhi which is the Union Territory they were treated as the employees of the Union of India. Their salaries are paid out of the consolidated fund of India .The Government of India by its resolution of 1-11-1973 accepted the recommendations of the Third Pay Commission submitted by its report on 31-3-1963 and decided that the recommendations of the Commission on the matters in respect of the categories of Central Government in Class 2,3 & 4 will be broadly accepted .It may be mentioned that the Private Secretaries and the Readers of this court will fall within Class 2 category. The Pay Commission had recommended that the clerical Supervisors should get the scale of Rs. 550-900, and for Private Secretaries, P.A. instead of Rs. 350-575 it had recommended that the pay scales which was earlier Rs. 350-575 should be revised to Rs. 650-960. The Delhi Administration fixed the pay scales for the Supervisory staff at Rs. 550-900 and also fixed the same grade for the petitioners. This was done notwithstanding the recommendations made by the Chief Justice of this court by communications of 4-5-74 that the petitioners be fitted in the pay scale of Rs. 650-960 that had been recommended for the Reporters in the Delhi Administration and in spite of his having pointed out that the status of the Judges was not lower than that of the Secretaries to the Central Government. Apparently at one stage the Government of India had doubts about the validity of this order as is clear from the communication of 12-9-1974, Annexure "E" to the petition, written to the Chief Secretary, Delhi Administration, requesting that the Delhi Administration should re-examine the

matter. Though Delhi Administration is administered by the President of India, the administration refused to accept the suggestion of the Government of India and stuck to its decision that the scales of the Private Secretaries and the Readers will be Rs. 550-900 which is the scale of the Supervisory staff in Delhi Administration and the Government of India passed the impugned order on 8-8-1975 in that regard. As already mentioned the impugned orders had been earlier challenged in the writ petition and notwithstanding the merits having been found in favor of the Private Secretaries and the Readers, relief could not be given to them. However, when the final refusal was again given in August 1979 the present petitioners who are different from those who had filed the earlier writ petition moved this court for seeking relief.

(5) The matter is in fact a very short one. The petitioners claim that equation of their post with that of the supervisory staff in Delhi Administration is devoid of any rational basis and is arbitrary. Mr. Saharya, the learned counsel for the petitioners who appears has urged that there is no justification for not equating the post of Private Secretary or the Reader to a Judge of this court with at least to the Private Secretary to the Chief Secretary of the Delhi Administration. It is true that each service has vanity of its own but judicial humility and judicial reservation is a part of the tradition of judiciary. We do not wish to enter into the question whether the work done by a Judge of this court or the work done by the Chief Secretary is more onerous and more responsible because that is not the point of dispute. The question only is whether the duties performed by the Private Secretaries and the Readers to the Judges are of less onerous, less confidential and less important nature than that of a private secretary to the Chief Secretary. We are referring only to the duties performed by a Private Secretary to the Chief Secretary for the reason that Mr. Saharya had urged that the petitioners even though they maintain and claim that their work is more confidential, more onerous and more responsible nature than even the Private Secretary to the Chief Secretary of the Delhi Administration, they would be quite content if their post could at least be equated to the Private Secretary to the Chief Secretary. Mr. Bindra sought to urge that the matter is of a subjective nature and as the administration has taken a view that these two posts of the petitioners cannot be compared, this court cannot sit as an appellate forum. It is true that if it could be said that the decision of the respondent is not accepting the equation of the post of a Private Secretary and Readers to the Judge of this court with a Private Secretary to the Chief Secretary of Delhi Administration was one which a reasonable person properly instructed on relevant facts and law could take, this court in the extraordinary jurisdiction "of these writ proceedings may not re-assess that finding. But we fail to find any such conceivable reason either given in the return or even urged by the counsel in support of the decision taken by the respondents 1 and 4. The only reason mentioned is a bald allegation unsupported by any factual or legal data that the job of a Private Secretary to the Chief Secretary of Delhi Administration is more responsible and involves more onerous duties. But this bald allegation is not enough to save the

decision of the Administration from being called arbitrary. It cannot be disputed that the posts of Private Secretaries and Readers in the High Court are very responsible posts requiring a very high level of integrity and confidence apart from the Very high degree of efficiency and accuracy in various matters of functioning, and the promptitude of the disposal of the matters. Considering the stakes involved in the litigations and the burden of confidentiality reposed on these officers it would be difficult to find any other service in Administration which can claim even a close approximation of the responsibilities involved. In the Administration most of the correspondence, the job and the work done by the Private Secretary to the Chief Secretary would be of a routine kind entailing normal correspondence between various offices or even the public. Very little of the work could be of confidential and highly sensitive nature. This cannot be said of the post of Private Secretaries and Readers attached to the Judges of this court because the job of maintaining the secrecy and the confidentiality of the judgments and considering the sanctity of the records the work requires a much higher sense of duty and dedication than any of the comparable level of staff in the Administration. In this connection it may also be noted that in the Punjab and Haryana High Court the Private Secretaries and Readers to the Judges have been equated to the post of Private Secretaries to the Punjab Civil Secretariat, in pursuance of a sanction granted by the President of India as required by Article 223(2), read with Proviso to Article 231(2) of the Constitution as per sanction accorded by the President as conveyed in letter of 23-4-1970. The important thing is that the President had accepted the suggestion of the Chief Justice of Punjab and Haryana High Court to equate their Private Secretaries and Readers with that of the Private Secretaries in the Punjab Civil Secretariat. Surely some Explanation must be given why Delhi Administration which administers the Union Territory on behalf of the President of India should refuse to follow the direction given by the President in the matter of equation of these jobs. None has been forthcoming. One of the ways of comparing the two posts could be by means of some uniform test. Luckily for the petitioners that test has been indicated by the Government of India itself and that is really the reason why the present petitioners felt bold to move this court.

(6) In this connection a reference be made to Annexure I of Memo dated 18-11-1979 on the subject of creation of posts of stenographers in non-Secretariat organisations clarifying that the posts of Stenographers attached to all officers drawing pay in the scales of Rs. 2250-2500 and above may be upgraded to the scale of Rs. 550-900 irrespective of the fact whether they have been declared as Heads of Departments or not. We may mention that prior to the upgrading the posts of Stenographers carried the scale of Rs. 425-700. It is this memorandum which was strongly put forth as an argument for showing discrimination and "arbitrariness in the action of the respondents 1 & 4. The argument was that the Government of India has accepted as a basis" for fixation of the pay of a stenographer in the grade of 558-900, the salary drawn by an officer to whom he is attached, which is from Rs.2250-2500. If that be so the.

question was posed firmly by Mr. Saharya and which was unanswered by Mr. Bindra as to what was the justification for fixing the pay scale of. Rs. 5.50*900 for the Private Secretaries and Readers attached to the Judges who are in the scale of a salary of Rs. 3500 at the same pay scale as is being given to a stenographer attached to an officer getting Rs.2750 at the highest. We find force in this contention and we must hold that we. can find no reason whatsoever as to how the same scale of pay of Rs. 550-900 can be justified to be given to the Private Secretaries and Reader attached to the Judges of this court when in terras of the memorandum of 18-11-1979 the same pay scale is being given to the stenographers attached to the Officers drawing pay up to Rs. 2750. It was not disputed that the Chief Secretary's scale is not higher than that of Rs. 3500. Judging purely, .therefore, by the monetary test which in the pre-sent context of our social set up is usually accepted as a good measure and has also been accepted by the Government of India as a proper one, there is no justification at all. to deny to the petitioners the equation and same pay scale which is being given to the Private Secretary to the Chief Secretary of Delhi" Administration .Denial is s6 arbitrary and so without any justification that it amounts to a denial of equality because even though the Private Secretaries and the Readers may constitute a separate class from the Private Secretary to the Chief Secretary but as equation has to be done in terms of the Pay Commission Report, report and the decision taken by the Government of India the treatment in the matter of pay scales of these two posts so differently cannot be allowed to be done in such arbitrary manner as has been said to be done by respondents 1 & 4. We must, Therefore, conclude that the denial to equate the Private Secretaries and Readers in the matter of pay and other benefits with that of the Private Secretary to the Chief Secretary is an act of discrimination and arbitrariness at the hands of the Delhi Administration as well as Union of India and would violate Articles 14 and 16 of the Constitution and the impugned order fixing the pay scale of the petitioners ata lower scale than that being given to the Private Secretary to the Chief ,Secretary cannot be sustained and must be quashed.

(7) Mr. Bindra had also as a last desperate resort wanted us to postpone the matter because he urged that he had information that there was going to be a high level meeting and the matter maybe sorted out. He was evidently referring to the letter of 29-9-1980 attached as R-3 to the reply (which referred to a letter of 2-5-1980). We have seen that letter and it appears that this argument has been based on some misunderstanding because that letter relates only to the nomination of Superintendents, Rcadars and Private Secretaries of Delhi High Court to Dhani Civil Service. The Registrar of this Court had also asked for this meeting on 13-10-1980 and that is why Mr. Bindra had urged that possibly the matter of pay scale may still be decided in favor of the petitioners.

(8) We, however, called for the information from the Registry and have satisfied ourselves that the letter dated 2-5-1980 related only to the induction of these categories i.e. Private Secretaries, Readers and Superintendents in Dhani Service

and was not relatable to the pay scale which is the subject matter of this writ petition. We may also, however, add that the Delhi Administration has since informed this Court by its letter of 24-11-1980 that the proposal to induct these three categories in the Dhani Service also cannot be adhered to. In that view obviously Mr. Bindra could not even urge that any useful purpose could be served by postponing the hearing. The decision of the Administration rejecting the claim of the petitioners was communicated on 7-8-1979 and there has been no change in the thinking of the respondents 1 & 4. As a result we are quite satisfied that the refusal to equate the Private Secretaries and Readers of this Court with the Private Secretary to the Chief Secretary in the matter of pay scale is so arbitrary as to amount to an act of discrimination. We would, Therefore, in the circumstances quash Annexures "G" and "H" and the latest decision communicated on 7-8-1979 (R-2 filed in reply by the Delhi Administration). A mandamus will, therefore, issue directing the respondents 1 & 4 to equate the posts of Private Secretaries and the Readers of Judges of this court to that of a Private Secretary to the Chief Secretary, Delhi Administration. This will take effect from 1-1-1973 in terms of the decision already taken by the Government of India, as mentioned in their memoranda of 8-8-1975 and 22-8-1975 (Annexures "G" & "H" to the petition) The petitioners had expressed apprehension that for the last 6 or 7 years equation has not been done properly and they were worried that time will take place. Counsel on behalf of the respondents 1 & 4 have very fairly stated that there need be no apprehension and they hoped that equation will be done very expeditiously, possibly within an outside limit of 4 months. The writ petition is, Therefore, allowed as above. No costs.

(9) We have in this writ petition issued a mandamus regarding the cases of Private Secretaries and Readers for the obvious reason that they are the only petitioners before us. We may, however, in this connection note the communication sent by the Chief Justice of this Court as far back as September 1974 in which he had recommended the upgrading of the scales of the Superintendents also. We have no manner of doubt that in view of our Judgment given today the question of giving the same benefit to that class of staff will also receive immediate and sympathetic decision at the hands of the respondents. We are saying this so that our Judgment should not be taken to be in any way having said anything adverse about the claims of the other staff which is not before us in this petition.