
(1991) 11 CAL CK 0001
In the Calcutta High Court
Case No : Civil Rule 3 (W) of 1990

Rama Shankar Bhar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-11-1991

Acts Referred:

Court Fees Act, 1970 — Section 22

Citation : (1992) 2 ILR (Cal) 546

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Ashish Kumar Roy, for the Appellant; K. Shiv Swaroop, for the Respondent

Final Decision : Allowed

Judgement

Paritosh Kumar Mukherjee, J.—This is a joint writ petition moved on behalf of Rama Shankar Bhar and K. Haneefa for issue of writ in the nature of mandamus directing the Respondents and each one of them to fix the pay of the Petitioners initially in the scale of Rs. 200-3-206-4-234-EB-4-250 with effect from January 1, 1973, in terms of Notification No. 8 dated January 11, 1974, and in accordance with law.

2. It is the case of the writ Petitioners in the present writ petition that both the Petitioners were appointed initially as "Peons" in the office of the District and Sessions Judge, Andaman and Nicobar Islands, by order No. 65 dated September 2, 1968. The copy of the order of initial appointment has been annexed as Annex. "A" to the instant writ petition. By a subsequent order dated October 22, 1969, issued by the District and Sessions Judge, Andaman and Nicobar Islands, the Petitioners were employed for the service and "execution of processes", issued by the Courts, in addition to their own duties as Peons. Copy of the aforesaid order dated October 22, 1969, has been annexed as Annex. "B" to the writ petition.

3. Thereafter, by a subsequent order being order No. 74 dated November 6, 1969, the Petitioners were employed for the service and execution of processes, in accordance with Section 22 of the Court Fees Act, 1970, read with Rule 60 of the Civil Rules and Orders of High Court of Calcutta, in supersession of the earlier office order No. 70 dated October 22, 1969. Copy of the said order dated November 6, 1969, has also been annexed as Annexure C to the writ petition. By a subsequent order No. 56 dated July 19, 1974, issued by the District and Sessions Judge, Andaman and Nicobar Islands, the Petitioner No. 1 was initially appointed as Process Server with immediate effect. The Petitioner No. 1 thereafter joined as Process Server with effect from July 10, 1974, and the Petitioner No. 2 has been discharging his duties and responsibilities as Process Server already since October 22, 1969, both of them have not been extended the prescribed scale of the Process Server, although they have been drawing the pay scale prescribed for the post of "Peons".

4. Sometime in the month of January 1987, the Petitioners came to know that the Government of India under the Central Civil Services (Revised Pay) Amendment Rules, 1974, has provided for a separate scale for Process Server, being Rs. 200 to Rs. 250, whereas the scale enjoyed by the Petitioners was that of the other group "D" staff, i.e. Rs. 196-232. Having learnt such position as aforesaid, the Petitioners started giving verbal representations to the District and Sessions Judge (being Respondent No. IV), who in his turn took up the matter with the Chief Secretary, Andaman and Nicobar Administration.

5. It appears that by the letter No. 12-87/CRT dated January 6, 1987, the District and Sessions Judge recommended the cases of the writ Petitioners before the Chief Secretary, Andaman and Nicobar Islands as follows:

(a) There is one sanctioned post of Process Server for this Judgeship in the seals of Rs. 750-12-870-EB-14-940 applicable to Group "D" staff. This single post of Process Server was sanctioned to somehow establish the process serving establishment long before the separation of judiciary from the executive.

(b) Subsequent to separation of the judiciary from the executive, no attempt was made to increase the number of post of Process Server though a larger process serving establishment became urgently necessary. To somehow pull on the working of the Court, two persons were deployed as the Process Servers.

(c) Subsequently, even the work of the Registrar, High Court, Calcutta, at Port Blair was entrusted to the District and Sessions Judge, without any commensurate arrangement for increasing the strength of the process serving staff. Subsequently, several other newly created Courts were entrusted to the District and Sessions Judge. But the strength of the process servers remained unaltered.

(d) The two persons, namely, Shri K. Haneefa and Shri Rama Shankar Bhar have continued to work in the capacity of the Process Servers. The duties and responsibilities attached to the post of Process Servers are more arduous and

higher than the ordinary group "D" staff in view of the fact that they are required to remain on tour as and when processes are endorsed to remain than for the purpose of service.

(e) With this end in view a separate pay-scale of Rs. 200-3-206-4-234-EB-4-250 was prescribed under the Central Civil Services (Revised Pay) Amendment Rules, 1974.

(f) While the aforesaid two process servers grumbled over scale of pay the fact concerning creation of a new scale for them went un-noticed because the copy of the said Amendment Rules of 1974 was not received by the judgeship, of Andaman District.

(g) Only a few days back it was detected that by the said Amendment Rules of 1974 a separate scale to the Process Server was created. It has also transpired that the 4th Pay Commission has recommended a scale of Rs. 775-1025 against the old scale of Rs. 200-3-206-4-234-EB-4-250.

(h) In view of the responsibilities and duties as provided under the Civil Rules and Orders of the High Court and for the arduous nature of the work attached to the post of the Process Server in the judgeship as compared to other ordinary group "D" employees, it is felt that there is sufficient justification for granting the higher scale as recommended by the 3rd Pay Commission and the consequent pay scale recommended by the 4th Pay Commission.

6. The said recommendations although sent to the Chief Secretary, Andaman and Nicobar Administration, appears to have been considered in a most perfunctory manner by the Respondent authorities and it appears from the communication No. U-14015/2/88-ANL dated February 8, 1991, from Shri Surjit Singh, Desk Officer, Government of India, Ministry of Home Affairs, New Delhi, that the authorities had the occasion to consider the recommendations of the District and Sessions Judge, but since the Process Servers in Andaman and Nicobar Administration were having lower pay scales, the replacement scale, as recommended by the respective Pay Commission were allowed to them and as such there is no justification for their revision of pay scales as represented by them, and the proposal, therefore, has not been agreed to.

7. This writ petition has come up for final hearing after completion of the affidavits which has been affirmed by Kali Sadhan Samajdar working as Assistant Secretary (Confidential Cell), Andaman and Nicobar Administration on June 10, 1991, and no separate affidavit has been filed on behalf of Judgeship of Andaman district.

8. Mr. Ashish Kumar Roy, Advocate appearing at the final hearing of the writ petition having placed the aforesaid facts from the writ petition, have drawn the attention of this Court to the principles laid down by the Hon'ble Supreme Court, in a number of cases, which are referred to hereinbelow:

9. In the case of Randhir Singh Vs. Union of India (UOI) and Others, it was held

that the Government was not entitled to differentiate in pay-scale "as equal pay" should be given for "equal work", following the principles enshrined in the Directive Principles of the State Policy, as contained in Article 39 of the Constitution of India.

10. The said decision has been successively followed in the case of Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, wherein the said view has been reiterated and it has been held that the instructions continued to remain for the Central Government employees till the date of their absorption in the State and were entitled to be treated alike.

11. In the case of Surinder Singh v. Engineer-in-Chief (Supra) it has further been held that the Central Government like all organisations of the State is committed to the Directive Principles of State Policy and Article 39 enshrines the principles of equal pay for equal work. The Central Government, the State Governments and likewise, all public undertakings are expected to function like model and enlightened employers and arguments such as that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a Court of law should ill come from the mouths of State and State undertakings.

12. Thereafter, by a series of decisions of the Supreme Court, the aforesaid principles have been followed by the Supreme Court in the case of State of U.P. v. J.C. Chaurasia AIR 1989 S.C. 19 , AIR 1989 29 (SC) , Grih Kalyan Kendra Workers" Union Vs. Union of India and others,

13. Mr. K. Shiv Swaroop, learned Government Pleader appearing for the Andaman Administration, has referred to the statement made in the affidavit-in-opposition of the Respondents Nos. 1, 2 and 3 in particular the statement made in para 10 of the affidavit, wherein the deponent submitted as follows:

The District and Sessions Judge took up the matter with the Andaman Administration which referred the matter to the Government of India after carefully examining and considering the case in its entirety by letter No. U-14015/2/80-ANI dated 8.2.1990 addressed to the Chief Secretary, A and N. Administration and copy endorsed to the District and Sessions Judge at Port Blair intimated that there is no justification for revision of pay scales on the basis of the representation/proposal sub-mitted to the Government of India in that regard. It is, therefore, not admitted that the recommendationis/proposals/representations were not considered and decided.

14. I have gone through the impugned order communicated by the Desk Officer, Government of India, Ministry of Home Affairs, quoted as aforesaid and I have heard the submissions of both the parties at length and I am of the view that the Respondents authorities had not considered in the light of recommendations of the learned District Judge, Andaman district, in the matter for grant and/or sanction of the scale of Process Server in respect of the present Petitioners who are two in number, in accordance with the law, laid down by the Hon"ble Supreme Court, in the aforesaid decisions.

15. Accordingly, I am of the view that the said impugned order should be quashed and the matter should be remanded back to the Respondent authorities for consideration in the light of the Supreme Court judgments, on the basis of the recommendations given by the District Judge, Andaman and Nicobar Islands, quoted as aforesaid, in the present judgment and create at least "two additional posts" for absorbing the present Petitioners as "Process Servers" and to grant them the benefit of the Third Pay Commission and the subsequent Fourth Pay Commissioner in accordance with law.

16. Such consideration has to be made positively within a period of three months from the communication of the copy of this judgment and the authorities are directed to record detailed reasons, in support of their findings.

17. The writ petition is allowed to the extent indicated above.

18. The Rule is made absolute accordingly.

19. There will be no order as to costs.

20. Let a Xerox copy of the entire judgment be supplied to the learned Advocate for the parties for compliance.

Application allowed; rule made absolute.