
(1990) 11 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Appeal No. 3462 of 1989

Rohitas Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 43 DLT 99

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : S.C. Gupta, Urmila Narang, L.R. Goel, V.K. Makhija and B.S. Mehta, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) In this writ petition, filed by the Restorers and Lower Division Clerks of this Court, the main prayer is that the respondents should be directed to fix the pay of the petitioners in the revised pay scale of Rs.1350-30-1440-40-1800-EB-50-2200 on the basis of the report given by the Fourth Central Pay Commission.

(2) Briefly stated, the facts are that the petitioners were, prior to 1984 working as Restorers and LDCs. in the pay scale of Rs. 260-400 with effect from 1st January, 1973. One of the Restorers filed a writ petition in this Court being Civil Writ No. 13776/84 titled : Kamla Nand v. Union of India, in which it was inter alia contended that the pay-scale of the Restorers in the High Court of Punjab and Haryana and the High Court of Himachal Pradesh was Rs. 400-600. Seeking to invoke the principle of equal pay for equal work, Kamla Nand sought fixation of his pay in the said higher scale of Rs. 400-600. A Division Bench of this Court vide judgment dated 3rd February 1986 allowed his writ petition and directed that the pay of the Restorers be fixed in the pay-scale of Rs 400-600 with effect from 1st January 1978.

(3) A question then arose as to what were the allowances which would be payable to the said Restorers. A miscellaneous application being C.M. No. 1480/86 was filed and vide order dated 23rd May 1986, it was directed that in addition to the pay-scale of Rs. 400-600 the restorers would be entitled to such allowances which were admissible and payable in Union Territory of Delhi. The effect of this was that on the basis of the pay scale of Rs. 400-600, the Restorers started getting allowances which were payable to employees working in Delhi. The Union of India accepted the correctness of these two orders and no appeal was filed against the Division Bench judgment dated 3rd February 1986 or subsequent order dated 23rd May 1986 relating to the payment of allowances.

(4) The pay scale of the L.D.Cs. used to be the same as that of the Restorers. When the pay of the Restorers was revised, by virtue of the judgment of this Court in Kamla Nand's case, the L.D.Cs. also sought similar relief by filing a writ petition being Civil Writ No. 1865/86 titled : S.K. Sachdeva and others v. Union of India & others. It was, inter alia, contended therein that the L.D.Cs. had equal status of pay and parity with the Restorers and, Therefore, the scale of the L.D.Cs. should also be Rs. 400-600.

(5) Another Division Bench of this Court allowed this writ petition vide its judgment dated 11th November 1986 and directed that the pay-scale of L.D.Cs. should be revised to Rs. 400-600.

(6) The Union of India thereafter filed a SLP to the Supreme Court against the Division Bench Judgment of this Court in S.K. Sachdeva's case. In the Supreme Court it was, inter alia, contended that the pay-scales in the Punjab & Haryana High Court which was the basis for the decision of this Court in Kamla Nand's case was based on 1978 price index while the salary of the staff of this Court was based on the price index of 1973. It was also contended that the total emoluments of the Restorers working in Punjab & Haryana High Court at Chandigarh were less than the total emoluments of the Restorers working in this Court and the differences had arisen on account of higher dearness allowances, city compensatory allowance etc. being payable in Delhi. It was Therefore, sought to be submitted before the Supreme Court that the decision of this Court in Kamla Nand's case and in S.K. Sachdeva's case were incorrect and the principle of equal pay for equal work did not really arise in these cases. The Supreme Court, however, vide its order dated 1st May 1987 dismissed the SLP in limine.

(7) The effect of this was that the question of fixation of pay-scale so far as the Restorers and L.D.Cs. are concerned, in the scale of Rs. 400-600 stood finalised and concluded with the aforesaid order passed by the Supreme Court, dismissing the Special Leave Petition.

(8) We may, at this stage, observe that different categories of officials of this Court had to file separate writ petitions seeking higher pay-scales for various reasons, and practically in all of them, the pay-scales were directed to be

revised. The said decisions pertained to those employees who were in pay scale higher than the petitioners and, Therefore, no reference is being made to them except to note that in Civil Writ No. 240/86, a prayer had been made by Staff Car Drivers of this Court seeking parity with Class Iii post in Punjab & Haryana High Court and the said writ written was also allowed by this Court on 6th February 1987 and no SLP was filed against that order.

(9) The petitioners continued to be paid their salaries in the pay-scale of Rs. 400-600 and were also receiving their allowances payable to employees in Delhi. The Government had, in the meantime, set up Fourth Central Pay Commission, to make recommendations regarding new pay-scales for Central Government employee. The said Commission gave its report in the year 19⁸⁶ and recommended various pay-scales with effect from Its January 1986. The High Court of Delhi was not covered by the terms of reference and as such no recommendations were made with regard to its employees. Following the general revision of pay-scales of the Central Government employees, the Chief Justice of this Court on 8th March 1988 wrote a letter to the Union of India proposing revised pay-scales for different officers and employees of this Court. This new pay-scales, which were proposed, we based on the recommendations of the Fourth Central Pay Commission report. This was for the reason that in the past also, though the Pay Commission's recommendations had, in terms, not been made applicable to High Court employees, nevertheless the Government had acted upon the said Pay Commission's report and revised the pay-scales of the High Court employees. In respect to the petitioners, who were drawing salary in the pay-scale of Rs. 400-600, it was noted by the Chief Justice that the corresponding pay-scale, which had been approved by the Government, on the recommendation of the Fourth Pay Commission report for Central Government employees was Rs. 1350-30-1440-40-1800-EB-50-2200. The Chief Justice recommended the same scale to be paid to these employees, of the High Court.

(10) Vide letter dated 6th December 1988, sanction of the Government was received to the revised pay-scales of various categories of employees. No sanction was however, accorded to the categories of employees, including the petitioners, who were drawing salary in the pro-revised pay-scale of Rs. 400-600. It was settled in this letter that the Government will take a decision with regard to their scales of pay after a decision is taken by the Supreme Court on a application filed for directions for applying Special D.A. formula, to those categories of employees. No orders were also passed with regard to fixation of pay of Junior Stenographers and it was stated in this letter that the question with regard to revision of their pay scale will be considered on the outcome of a judgment by the Supreme Court in a writ petition filed by a Junior Stenographer of Supreme Court.

(11) The Supreme Court delivered its judgment on 24th July 1989 in respect of it own employees who were L.C.D's/Restorers, in Civil Writ No. 801/86, reported as Jt 1989(3) S.C. 189. The Supreme Court did not decide as to what should be

the pay-scale of L.D.Cs. and Restorers as a result of the Fourth Central Pay Commission report, and it also did not go into the correctness of the various judgments and orders passed by this Court. It, however, did observe:

"SO far as the judgments of the Delhi High Court are concerned, they do not infringe the fundamental rights of the employees of the Supreme Court or any of the petitioners, who are the petitioners before us in the Writ Petitions, and so the question of considering whether the judgments of the Delhi High Court are right or wrong does not arise. We do not think that we are called upon to examine the propriety or validity of the judgment of the Delhi High Court"

(12) After the decision of the Supreme Court, a letter was written on 9th August 1989 by some of the petitioners to the Chief Justice of this Court requesting him that the Government should be asked to release the pay-scales in respect of LD.Cs. and Restorers on the basis of the fourth Central Pay Commission report. As far as the Government is concerned, no decision has been taken by them so far. It is for it is reason that the present writ petition has been filed praying for a writ of mandamus directing the respondents to fix the pay-scale of the petitioners on the basis of the Fourth Central Pay Commission report and also to direct them to pay the arrears of salaries.

(13) In the return filed by the respondents, it is not disputed that the salary of the petitioners had been fixed in the pay-scale of Rs. 400-600. The respondents have sought to contend, and this was also submitted before us by Mr. Makhija, that Restorers and L.D.Cs. of the Court were getting more salary than those of the Punjab & Haryana High Court and this Court did not take into consideration the fact that the dearness allowance and other allowances of Punjab & Haryana High Court employees had been merged in the salary with effect from 1st January 1978 and that is why the pay scale of Punjab & Haryana High Court employees of this category was Rs. 400-600. It was submitted that there has been an unintended benefit to the employees of this Court and, Therefore, the petitioners would not be entitled to get their salary fixed in a pay-scale which has been equated with that of Rs. 400-600.

(14) Before dealing with the contentions of the petitioners, we may note that the Government framed Central Civil Services (Revised Pay) Rules, 1986. These rules have been framed pursuant to the Government's acceptance of the Fourth Central Pay Commission Report. The First Schedule to the said Rules indicates the revised scales of posts. These scales have been fixed with reference to the existing scales. A perusal of this Schedule shows that even where some of the existing scales are not identical, nevertheless the same have been bracketed together so as to form a new revised scale. At Serial 13 of the Schedule, there are four existing scales of pay and the revised scale of pay in respect thereof has been given as Rs. 1350-30-1400-40-1800-EB-50- 2200. These four pre-revised scales which have been equated to the revised scale are: (a) Rs. 380-12-440-EB-15-560-EB-20-620 (b) Rs. 380-12-440-EB-15-560-EB-20-640 (c) Rs. 425-15-530-EB-15-560-20-600 (d) Rs. 470-15-560-20-580

(15) It will be seen that there was no existing scale of Rs. 400-600 in which the petitioners were working but because these scales at Serial 13 of the said Schedule were similar to the one in which the petitioners had been placed, that is why the Chief Justice of this Court had recommended that the petitioners should be placed in the revised scale of Rs. 1350-30-1440-40-1800-EB-50-2200.

(16) In our opinion it is not open to the respondent to contend that the petitioners' scale of pay had been wrongly fixed at Rs. 400-600. As already noted, the scale of pay of the petitioners had been fixed as a result of two decisions of this Court in Kamla Nand's case and S.K. Sachdeva's case and the said decisions were approved when the Supreme Court dismissed the SLP filed against the judgment of this Court in S.K. Sachdeva's case. It is not open to the respondents now to challenge the correctness of the said decisions. The point in dispute between the petitioners, who belonged to the category of Restorers and L.D.Cs. and the govt. stood concluded by valid judicial pronouncements. The principle of stare decisis would apply and the said judgments cannot be set at naught in these proceedings.

(17) It is not in dispute that the revised scales have been fixed by the Government on the basis of the pre-revised scales of pay applicable to their employees. The scale of pay of the petitioners having been conclusively fixed at Rs. 400-600, it was imperative for the respondents to fix the petitioners in a corresponding revised pay-scale as per the Fourth Central Pay Commission report. As we have already noted, at Serial No. 13 of the First Schedule, there is reference to four different scale of pay ranging from Rs. 380.00 . being the lowest, and Rs. 640.00 being the highest. The scale of pay in which the petitioners were, was Rs. 400-600 which would clearly fall within the range of Rs. 380-640. The equivalent revised pay scale of this would, Therefore, be Rs. 1350-30-1400-40-1800-EB-50-2200. This is precisely what has been recommended by the Chief Justice of this Court.

(18) We fail to appreciate as to how the writ petition filed by a Junior Clerk of the Supreme Court in the Supreme Court was relevant for deciding the question in issue. As far as the petitioners were concerned, by valid judicial pronouncements which had become final and binding between the parties, the petitioners' salary had been fixed in the pay-scale of Rs. 400-600. This being so the respondents were obliged to determine and fix the corresponding revised scale of the petitioners. It was not, open to the respondents to contend that the salary , which the petitioners will get will be more than the Punjab & Haryana High Court employees. The question as to what the employees of Punjab & Haryana High Court get is of no relevance at the present stage. We have to proceed on the basis that the scale of pay of the petitioners is Rs. 400-600 and that cannot be altered. This being so, the petitioners are entitled to have their case decided on this basis and their revised scale of pay is to be fixed with effect from 1st January 1986.

(19) We may note that in the letter of 6th December 1988 it has been stated by

the Government that the fixation of pay in the revised scale and the grant of increments etc. will be based on the Central Civil Services (Revised Pay) Rules, 1986 and vide the said letter the said Rules shall apply mutates mutants, to the employees of this Court. This being the case, the petitioners would be entitled to have the said Rules applied to them and if their pay has not been revised, they would have a justifiable grievance.

(20) We accordingly issue a writ of mandamus directing the respondents to fix the pay of the petitioners in the revised pay-scale of Rs. 1350-30-1440-40-1800-EB-50-2200 in accordance with the Central Civil Services (Revised Pay) Rules, 1986. This pay should be fixed by the respondents within two months from today and arrears, if any, should be paid to the petitioners within one month thereafter.

(21) There will be no order as to costs.