
(2000) 09 AHC CK 0030

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 27277 of 2000

R.P. Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 UPLBEC 2731

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Munna Pandey, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Yog, J.—Petitioner is a member of Higher Judicial Service in State of Uttar Pradesh. He was transferred and appointed as Officer on Special Duty, (for short OSD) Legal Aid and Advice Board, Sonbhadra under order dated 11th October, 1999 (Annexure-1 to the Writ Petition). He got him relieved from Lucknow and submitted joining report at Allahabad on 12th October, 1999. He took over as Officer on Special Duty (Legal Aid) under High Court order whereby his office Head Quarter to be at Allahabad. In para 5 of the petition it is stated that the petitioner is continuously performing his duties as OSD (Legal Aid) both at his Head Quarter at Allahabad and at Sonbhadra vide Government Order dated March 6, 1991 (Annexure-1 to the Writ Petition). Post of Officer on Special Duty (Legal Aid), is created for due discharge of functions of "Legal Aid and Advisory Board" at Sonbhadra for welfare of tribals. It is to be filled by a member of Higher Judicial Services, State of Uttar Pradesh and such an appointment has to be on deputation. This scheme is floated in pursuance to the directions given by Supreme Court in the case of Banwasi Seva Ashram v. State of Uttar Pradesh, vide judgment dated 15th February, 1991. Para 2 of the said Government Order dated March 6, 1991 provides that Officer on Special Duty (Legal Aid) will be entitled to a special allowance equivalent to 30% of basic pay (Rs. 4,500-5,700/-

at that time).

2. This order also categorically mentions that this special allowance is a "compensatory allowance" and it will not be taken into account for any other purposes. Aforesaid order proclaims to have been concurrence of the Finance Department dated March 6, 1991 as well as with Governor's sanction. The said order do not make it necessary for Officer on Special Duty (Legal Aid) to reside at Sonebhadra nor it is a condition precedent for grant of special compensatory allowance of 30% of basic pay and the aforesaid Government Order also do not provide that Officer on Special Duty (Legal Aid) shall be deprived or forfeit any other allowance for which the Judicial Officer is otherwise entitled under relevant Rules/Government Order.

3. In paras 7, 8 and 9 of the Writ Petition, the petitioner contends that he prayed for payment of this special "compensatory allowance admissible to an Officer on Special Duty (Legal Aid) under Government Order dated 6th March, 1991 but he was not paid. He thereafter filed representation dated 30th October, 1999 (with the recommendation of Incharge Chairman, State Legal Aid Tribunal (Mr. Justice Girdhar Malviya) to the Joint Director, Treasury, Annexure-6 to the Writ Petition. The Joint Director (Treasury), Allahabad sent letter dated 18th November, 1999 addressed to the Secretary, U.P. Government sought Clarification (Annexure 7 to the Writ Petition). He referred to G. Original Suit. 12.12.1996. April 1, 1991 under which creation of Presiding Officer of certain Courts (equivalent for Additional District Judges) shall be entitled to Banwasi compensatory special allowance equivalent to 30% of basic pay. Under these orders five Courts of Additional District Judge are said to be created and in addition to them another one Court of Additional District Judge and for them District Judge/District Magistrate of Sonebhadra (erstwhile Mirzapur) are said to be responsible to provide residences to such Presiding Officer.

4. The Joint Director (Treasury), Allahabad sought for clarification on two points. The first point of clarification is whether a Judicial Officer, who has been appointed on the post of "Officer on Special Duty" (Legal Aid) will be entitled to Special Allowance and also house allowance permissible for Allahabad (KAVAL Town).

5. The Joint Director (Treasury), Allahabad apparent lost sight of the fact that the Government Order dated 6th March, 1991 is not dependent upon "actual residence" of the officer at Sonebhadra. Grant of Special Compensatory allowance is not dependent upon any condition except holding post of Officer on Special Duty (Legal Aid) at Sonebhadra. There is no disputed-that petitioner is at present Officer on Special Duty (Legal Aid), Sonebhadra.

6. The second point of clarification is whether compensatory allowance equivalent to 30% of basic pay is to be calculated on as per original pay scale Rs. 4500-5700/- or it has to be given as per basic pay in revised pay scales.

7. In this respect para 2 of Government Order dated 6.3.1991 is absolutely clear

and leaves no scope for doubt. 30% is with reference to pay scale (As may be in force from time to time). It does not restrict the calculation to particular pay scale prevailing in 1991 on (Rs. 4500-5700) only.

8. No clarification is communicated by the Government on the queries made by the Joint Director (Treasury), Allahabad in his letter dated 18th November, 1999 (Annexure 7 to the Writ Petition). Petitioner left, with no option, she approached this Court by means of the present Writ Petition under Article 226, Constitution of India.

9. At admission stage, on 16th June, 2000. Court by stop order granted four weeks" time to the learned Standing Counsel to file Counter Affidavit. Case was listed on 21st August, 2000 and, on the own request of learned Standing Counsel, further time as last opportunity was granted to enable the respondents to file Counter Affidavit, the case was directed to be listed on 4.9.2000 with a direction that no further time on any ground shall be granted in future and the case may be decided finally on that date. The case was on list of 5th September, 2000. It is again on list on 7th September, 2000.

10. Learned Standing Counsel informs that no Counter Affidavit has been filed. He again orally prays for time for filling Counter Affidavit. The Court from the above gathers an impression that earlier opportunities granted by the Court have not been taken seriously and the Respondents, have not moved in an earnest manner to contest the case. The Respondents appears to take things casually and labouring under impression that for request for adjournment on behalf of State, shall be granted even at the "drop of hat" as routine as a matter of course. There is no reasonable explanation for ignoring "stop orders"; and to grant further opportunity to file Counter Affidavit. The Court has no option but to proceed to hear and decide the case as per record before it.

11. Heard Sri Munna Pandey, Advocate, on behalf of the Petitioner and the learned Standing Counsel on behalf of the Respondents. Also perused the record and the relevant Government Orders annexed with the Writ Petition.

12. Grant of Special Allowance equivalent to 30% of the Basic Pay (including revised Basic Pay at a particular time) is without pre-conditions to an Officer on Special Duty (Legal Aid) at Sonebhadra who is required to decide cases of land disputes of the tribals of Sonebhadra. It is not dependent of payment of "House Rent Allowance or on the contingency of non-availability of official residence. It is, a compensatory special allowance for going on deputation as Officer on Special Duty (Legal Aid) to decide tribal"s land dispute cases at Sonebhadra. Petitioner fulfills these conditions.

13. The Government Order dated 6th March, 1991 nowhere mentions that the said special compensatory allowance of 30% of the basic pay (as may be revised and in force in future) shall not be paid, if an Officer on Special Duty gets house rent allowance or if he does not reside at Sonebhadra as his Head Quarter.

14. There is no justification for not making payment of the said "compensatory special allowance". Even otherwise, in the instant case, there is no allegation that the petitioner is claiming "house rent allowance¹ or that he has been with residence at Sonebhadra or at Allahabad. Petitioner in his representation dated 30.10.1999 (recommended by the Chairman) (Annexure-6 to the Writ Petition) categorically submitted that he was not withdrawing House Rent Allowance nor he was occupying Government residence at Allahabad and that he was not given Government vehicle either. And he therefore, claimed special allowance part from HRA Vehicle Allowance. Dress Allowance, Library Allowance etc. as per entitlement available to an officer of Higher Judicial Services in accordance with Rules and Government Orders on the subject.

15. Perusal of the letter of the Joint Director, dated 18th November, 1999 addressed to the Secretary, U.P. Government, Lucknow shows; that the respondent No. 2 had no "valid reason" for seeking clarification when the language of the Government Order dated 6.3.1991 (Annexure-3 to the Writ Petition) is absolutely clear and admits of no ambiguity. The Government Order dated 6.3.1991 clearly mandates that a Judicial Officer when posted on Deputation as the Officer on Special Duty (Legal Aid), Sonebhadra he will be entitled to compensatory special allowance equivalent to 30% of basic pay of such officer, Para 2 clearly refers to "Basic Pay" and to pay scale of 4,500-5,700/- which was in existence in March, 1991 Government Order takes care of revised pay scale and "Basic Pay in the Government Order means and is referable to existing revised pay scales in existence at relevant times.

16. Respondent cannot justify withholding the "special allowance" for any good reason. So long petitioner continues on deputation as Officer on Special Duty (Legal Aid), Sonebhadra he is entitled to compensatory allowance and he must be paid compensatory special allowance equivalent to 30% of his Basic pay in the pay scale of Rs. 4,500-5,700/- and/or may be revised from time to time and whichever basic pay scale be in existence at the relevant time.

17. Government Order dated 6th March, 1991 (Annexure-3 to the Writ Petition) is abundantly clear and admits of no ambiguity. It is unequivocal. There seems to be no plausible reason to seek clarification from the Government in the instant case.

18. Consequently the Court has no option but to hold that the petitioner has been unjustly denied compensatory special allowance to which he is entitled under the Government Order dated 6th March, 1991.

19. Consequently the present Writ Petition deserves to be allowed.

A writ of mandamus is issued, directing the Respondents to pay "Compensatory Special Allowance" to the petitioner in compliance of the Government Order dated 6th March, 1991 equivalent to 30% of the Basic pay (in the pay scale of Rs. 4,500-5,700/- as may be existing in future on revision from time to time) other than house allowance, city allowance, dress allowance, vehicle allowance

etc., which he may be entitled otherwise under any other relevant rule. The petitioner shall be entitled for payment of arrears of special compensatory allowance along with 12% simple interest thereon, which shall be paid within one month of the receipt of the certified copy of this judgment. Amount already paid to the Petitioner, if any, under interim orders of the Court, shall be duly adjusted and accounted for while calculating arrears. Further, the Petitioner shall also be entitled to receive compensatory allowance (special allowance) equivalent to 30% of his present existing basic pay (and as may be revised in future) month by month in accordance with law so long as he holds the post of Officer on Special Duty (Legal Aid), Sonbhadra under Government Order dated 6.3.1991 along with his salary.

Writ allowed.

No order as to cost.