
(1989) 06 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 400 of 1984

Shri Kamal Kishore

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 229, 229(2), 235, 320(3)
Himachal Pradesh High Court Officers and Servants (Salaries, Leave, Allowances and Pension) Rules, 1971 — Rule 2

Citation : (1989) 2 ShimLC 392

Hon'ble Judges : V.K. Mehrotra, J; Bhawani Singh, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; Indar Singh, General, for the Respondent

Judgement

V.K. Mehrotra, J.—Amongst the members of its staff, the Himachal Pradesh High Court has a category known as "Restorers". It is a post belonging to Class III. It is mentioned at Item No. 10 of the Schedule-1 (A) appended to the Himachal Pradesh High Court Officers and Servants (Salaries, Leave, Allowances and Pension) Rules, 1971, (for brief, "the Rules"). S/Shri Kamal Kishore and Inder Dass are two of the Restorers. They became Restorer with effect from October 25, 1979. Both of them were confirmed in the post of Restorer by an order dated July 19, 1984. Kamal Kishore was confirmed with effect from November 2, 1981. Inder Dass was confirmed with effect from July 13, 1984.

2. The Government of Himachal Pradesh issued Office Memorandum No. FIN (C)-B(97)-9/79 dated November 2, 1979, in which it was said that the State Government has adopted the Punjab Pattern of scales of pay for its employees. The Schedule "A" appended to this Office Memorandum disclosed the existing and revised scales of pay of various posts in Himachal Pradesh with effect from January 1, 1978. In Schedule "B" the Restorers, are mentioned at Item No. 5 under the Heading "Semi Skilled and Operational Staff". Their existing scale of pay has been shown as Rs. 100-160 while the revised scale is shown at Rs.

400-600.

3. Rule 2 of the Rules says, in its proviso, that:

It shall be competent for the Chief Justice to revise from time to time the scales of pay, special pay, selection grades and allowances of the employees of the High Court so as to bring them on par with the scales of pay and allowances which may be sanctioned by the Government of Himachal Pradesh from time to time for the corresponding or comparable categories of the employees of the Himachal Pradesh Civil Secretariat, as shown in Schedule-1 (A).

4. A representation was made by Petitioner Inder Dass to the High Court in June 1984 praying that the category of Restorer be equated with the category of junior scale clerks for purposes of seniority and for release of senior scale as was being given to the junior scale clerks. The basis for the claim, as disclosed in the representation, was that the pay scale of the Restorers and the junior scale clerks was the same, namely, Rs. 400-600. The junior scale clerks were entitled to the release of senior scale in the pay scale of Rs. 510-800. This representation was, however, rejected by the High Court. Both the Restorers thereafter instituted the present writ petition under Article 226 of the Constitution.

5. What is basically averred in this petition is that the State of Himachal Pradesh directed a revision of pay scales to its employees, on the analogy on which they were revised by the Punjab Government on the recommendation of the Pay Commission appointed by it, with effect from January 1, 1978. The Punjab pattern of pay scales had been adopted by the State of Himachal Pradesh for its employees and an order to that effect was issued on November 2, 1979, revising the pay scales with effect January 1, 1978. This is the order contained in the Office Memorandum mentioned above and its copy has been filed as Annexure "C" to the petition.

6. The further averment is that prior to January 1978 the Restorers were in the pay scale of Rs. 100-160 while the clerks were in the grade of Rs. 110-250. Both these categories of pay scales were amalgamated and a scale of Rs. 400-600 has been recommended for clerks as well as for the Restorers. Further, that it appeared from the note in the remarks column in Schedule "B", forming part of Annexure "C" that the cadre strength of clerks will be divided in the ratio of 30: 50 as it stood on January 1, 1978, the date on which the revision of pay scales was ordered. 50% of the Clerks would be designated as senior clerks and their scale will be Rs. 510-800 and the remaining cadre of clerks would remain as junior clerks.

7. The plea in the petition, mainly, is that having regard to the nature of the functions that the Restorers were performing, they were entitled to be equated with the posts of junior clerks for purpose of the grant of senior scale.

8. The State Government has filed a reply in the petition. So has the High Court.

9. Before filing the reply, the question was re-examined in depth by the High

Court in view of the statement which the learned Asstt. Advocate General made before the Court on October 29, 1984. The statement was that in case the High Court made a reference to the State Government, a decision would be taken by the Government within a month. The High Court made a reference to the Government through its letter No. HHC/Admn. 2-26/73-15980 dated December 3, 1984. A copy of the letter has been filed as Annexure "R 2-A" with the reply of the High Court. The letter, in its relevant part, says that:

...The matter relating to equation has been considered again.

The pay scales of the Restorers are identical with that of the clerks. The minimum qualification prescribed under the Rules for the posts of Restorers and the clerks is practically the same. Further, the nature of duties, responsibilities and powers to be exercised by the Restorers, although not identical, are comparable to those of the clerks. There is, therefore, justification in the claim for the equation of the post of Restorer with that of clerk bearing in mind the relevant factors.

In the circumstances, as narrated above, I have been directed to make a reference to the Government for considering the case of Restorers for equation with clerks....

10. The Government, in the reply filed by it, has said that the post of a Restorer cannot be equated with clerks and typists. It says that the post of Restorer falls in the category of semi-skilled staff and no senior grade has been sanctioned for the posts falling in that category. It also says that in Schedule-1 (A) to the Himachal Pradesh High Court Officers and Servants (Salaries, Leave, Allowances and Pension) Rules, 1971, as notified through the High Court Notification dated November 1, 1983, the post of Restorer has been shown equated to that of the Restorer of the Himachal Pradesh Secretariat. The post of Restorer falls in the category of semiskilled worker while that of clerk falls in the category of ministerial staff. As such, there is no occasion for equation of the post of Restorer with that of clerk.

11. What calls for determination, in the first instance, is the question whether the decision about equation of posts in regard to officers and servants of the High Court is to be decided by the High Court or by the State Government? In the present case the High Court has taken the view that the post of Restorer deserves to be equated with that of clerk on account of various factors mentioned by the High Court in the letter dated December 3, 1984 to the Government. The Government does not share the view expressed by the High Court. The Government sent a letter (No. Home B (E)-175/84) dated December 31, 1984, in reply to the reference made by the High Court, on December 3, 1984. A copy of that letter was made available to us at the hearing of the petition. It says that:

...the post of Restorer falls in the category of semi-skilled staff and that of Clerk in Ministerial Establishment as per categories defined by the Finance Department

in Schedule "B" appended to O. M. No. Fin. C (B)(7)-9/79, dated 2-11-1979 relating to the revision of pay scales of various services/posts in Himachal Pradesh with effect from 1-1-1978. The method of recruitment, qualifications etc- as laid down in the High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1975 for the posts of Clerk and Restorer are not identical and categories of both the posts are also different. The proposal has been considered by the Government and it has been decided that there is no justification for equation of the post of Restorer with the clerk/typist....

12. It is true, as urged by the learned Advocate General on behalf of the State of Himachal Pradesh, that the High Court itself made a reference to the State Government for equating the post of Restorers with that of clerks which, according to the submission of the learned Advocate General, conceded the power of deciding the question of equation to the State Government, yet the legal position cannot change on account of the letter sent by the High Court to the State Government- The question will have to be examined, de-hors the erroneous impression on the part of the High Court that it had to refer the question of equation of posts to the State Government.

13. Article 229 of the Constitution may be read at this stage. It says:

229. Officers and servants and the expenses of High Courts.-(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

14. A bare reading of the Article would show that subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of the High Court are to be such as may be prescribed by the Rules made by the Chief Justice. The appointments of the Officers and servants are

also to be made by the Chief Justice. The scope of power of the Chief Justice is no more in doubt. It has been examined by the Supreme Court in several decisions.

15. In *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, the Supreme Court was dealing with the question whether the Chief Justice of the High Court had the power to dismiss the Registrar and Accountant General of the High Court at Calcutta on its original side. The Supreme Court examined the scheme of the Constitution at some length relating to the persons serving in the Government of India or the Government of a State contained in Chapter I of Part XIV of the Constitution as also that relating to the High Courts contained in Chapter V of the Part VII. It came to the conclusion that the officers and the staff of the High Court could not be said to fall within the scope of the phrase "persons serving under the Government of India or the Government of a State" because in respect of them the administrative control is vested in the Chief Justice, who, under the Constitution, has the power of appointment and removal and of making rules relating to conditions of service.

16. A few years later, in *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, a Constitution Bench of the Supreme Court, speaking through Grover J., said that:

...Article 229 confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service.... Article 229 contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service.

These can be prescribed by rules made by him...and that the Governor's approval is to be sought to the extent the rules relate to salaries, leave or pension.

17. In *Baldev Raj Guliani Vs. The Punjab and Haryana High Court and Others*, the Supreme Court said that where the High Court recommends to the Governor the removal or dismissal of a Judicial Officer the recommendation should always be accepted by the Governor and if, in an exceptional case, the Governor is unable to accept the recommendation for certain reasons, those reasons have to be communicated to the High Court to reconsider the matter. The Supreme Court was dealing with the question of removal from service of Appellant Baldev Raj who was a member of the subordinate Judicial Service of Punjab. The case was one where the question of the "control" of the High Court under Article 235 of the Constitution was up for consideration.

18. One of the submissions made before the Supreme Court was that since the Judicial Officer was serving the State in a civil capacity, it was necessary to consult the Public Service Commission under Article 320(3)(c), as had actually

been done in the case by the Governor. The Commission having advised that no case having been made out against the officer, he should be exonerated, the Governor took that view and did not accept the recommendation of the High Court. According to the submission, the course adopted by the Governor was sustainable in view of the Article 320(3)(c) of the Constitution. The Supreme Court said that Judicial Officers undoubtedly held a post in civil capacity but were not serving under the Government of a State. They were entirely under the jurisdiction of the High Court for purposes of control and discipline. It referred to its earlier decision in Pradyat Kumar and reiterated that the High Court staff did not serve under the Government of the Union or the State, they were exclusively under the control of the High Court itself in view of Article 229 of the Constitution.

19. In D.K. Agarwal Vs. High Court of Judicature at Allahabad, , the Supreme Court held that the question whether a member of the Higher Judicial Service should be granted selection grade or the super time scale is a matter exclusively within the administrative jurisdiction of the High Court.

20 The expression "Conditions of service" is an expression of wide import. It means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension, etc. State of Madhya Pradesh and Others Vs. Shardul Singh,

21. In AIR 1989 29 (SC) a three Judge Bench of the Supreme Court, speaking through Jagannatha Shetty, J. said that:

The nature of work and responsibilities of the posts are matters to be evaluated by the management and not for the Court to determine by relying upon the averments in the affidavits of interested parties....

22. The learned Judge referred to the earlier decision of the Court in State of U.P. and Ors. v. J.P. Chaurasia and Ors. AIR 1989 SC 19 and extracted the observations made in paragraph 17 of that judgment. Amongst other observations it was said by the Supreme Court in J. P. Chaurasia that:

...The equation of posts or equation of pay must be left to the Executive Government....

23. In Chaurasia the question of equation of the post of Bench Secretary in the High Court with Section Officers or Private Secretaries of the Judges of the High Court was under consideration. The matter was gone into by the Pay Commission (1971-72) appointed by the State Government. The claim of the Bench Secretaries was not accepted by the Pay Commission. The Supreme Court said that expert bodies like Pay Commission would be the best judge to evaluate the nature of duties and responsibilities of the posts and the Court should normally accept it. It proceeded to say that what applies to the Government and Government servants must equally apply to any management and its employees.

24. These two decisions of the Supreme Court unmistakably lay down that primarily it is for the management to decide upon the equivalence of posts. In

case of the employees of the High Court under the Rule making power of the Chief Justice under Article 229(2) of the Constitution, it is the High Court which is the competent authority to do so. Where, as in the present case, the High Court takes the view that the posts of Restorers deserve to be equated with that of clerks, we feel, it would not be open to the State Government to take the view that they were not equivalent to each other. More so, when we find that in the reference made by it through its letter dated December 3, 1984 (Annexure-R2-A), the High Court has come to this conclusion on the basis of rational principles. Unless the decision by the High Court is shown to be arbitrary or unreasonable or founded upon extraneous considerations, it would not be possible for the High Court on its judicial side as well to interfere with it. To borrow the words of the Supreme Court in Chaurasia:

...The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

25. The learned Advocate General, appearing for the State of Himachal Pradesh, urged with some emphasis that on the pleadings in the present writ petition the question whether the High Court or the Government was competent to take a decision about equivalence of the post of Restorers and that of clerks does not arise for consideration. We were taken through the pleadings of the parties. We were also told that on its own showing the High Court felt that the Government had the power to take a decision in the matter. The High Court had itself made a reference about it to the State Government. We are not impressed by this line of submission. Irrespective of the erroneous impression on the part of the High Court or the absence of pleadings, the determination of the question whether the High Court or the State Government was competent to decide upon the equivalence of two posts, in regard to its officers and servants covered by the provisions of Article 229 of the Constitution, is basic to the determination of the controversy in the present writ petition. An enquiry into it by us cannot be shut out on the plea raised by the learned Advocate General.

26. Another facet of the same submission by the learned Advocate General was that the reference contained in Annexure R2-A was not made by the High Court but was one by its Registrar. To obviate any doubt we called for the original file from the Registrar of the High Court and examined it. We found that the Chief Justice was associated in the matter at every step and the reference contained in Annexure R2-A was made under his directions.

27. The Rules of the year 1971, framed by the Chief Justice, do not equate the Restorers with clerks. There is no doubt about it. These Rules mention at Item No. 10 in Schedule 1 (A) that the post of Restorer on the establishment of the High Court was corresponding/comparable post to that of Restorer in the H. P. Civil Secretariat. The Rules have been made by the Chief Justice, with the approval of the Governor of Himachal Pradesh, under Article 229 of the Constitution. The proviso to Rule 2 enables the Chief Justice to revise the scales of pay etc. of the employees of the High Court "so as to bring them on par with

the scales of pay and allowances which may be sanctioned by the Government of Himachal Pradesh...for the corresponding or comparable categories of the employees of the Himachal Pradesh Civil Secretariat, as shown in Schedule 1 (A)."

28. So long as the Rules equate the post of a Restorer in the High Court with that of Restorer in the Himachal Pradesh Civil Secretariat, it would not be competent for the Chief Justice to exercise powers under this proviso of granting scale of pay etc. to the Restorers of the Court different from the one admissible to the Restorers in the H. P. Civil Secretariat.

29. The decision of the High Court that the post of a Restorer in the High Court was comparable to that of a clerk, taken on its administrative side, cannot override the statutory equivalence of the Restorer with a Restorer in the H. P. Civil Secretariat as mentioned in Schedule 1 (A) of the Rules. The decision of the High Court as communicated to the State Government, through letter dated December 3, 1984 (Annexure R2-A) would have to be followed up by a change in the Rules. Till then, it would not be possible for the High Court to treat the post of a Restorer equivalent to that of a clerk for grant of higher scale of pay.

30. The learned Advocate General brought to our notice certain decisions in support of his plea that no mandamus could issue to the State Government to give its approval to the Rules for giving same scale of pay to the High Court staff as was available to same category of the Civil Secretariat employees except where refusal was found to be ultra vires, mala fide or arbitrary. He drew our attention to the decisions in *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others, The State of Assam v. Bhubhan Chandra Datta and Anr.* AIR 1975 SC 889 , *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, and *State of U.P. and Ors. v. J.P. Chaurasia and Ors.* AIR 1989 SC 19.

31. Shri Rajiv Sharma, appearing for the Petitioners, urged that it was open to the High Court to issue appropriate directions to the State Government in exercise of its power under Article 226 of the Constitution which enabled the High Court to mould the relief appropriately. He placed reliance upon *T.C. Basappa Vs. T. Nagappa and Another*, ; *A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd.*, , *P.J. Irani Vs. The State of Madras*, ; *Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others*, ; *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, ; *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, ; *State of Kerala Vs. Kumari T.P. Roshana and Another*, ; *B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others*, and *State of Rajasthan Vs. Hindustan Sugar Mills Ltd. and Others*, .

32. In the view that we have taken, it is not necessary for us to examine this plea or deal with the decisions aforesaid.

33. In ultimate analysis we feel that it is not possible, in the state of the Rules as

they exist at present, to grant any relief to the Petitioners in this petition. We, therefore, dispose of the petition finally, with the above observations, and leave the parties to bear their own costs.