

(1989) 09 PAT CK 0041

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9675 of 1988

Shyam Narayan Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-1989

Acts Referred:

Bihar Service Code, 1952 — Rule 42
Constitution of India, 1950 — Article 14, 16

Citation : (1989) 09 PAT CK 0041

Hon'ble Judges : S.S. Hasan, J;S. Hoda, J

Bench : Division Bench

Advocate : Basu Dev Prasad, Sunil Kumar and Anil Kumar, for the Appellant;
J.N. Pandey and Y.V. Giri, for the Respondent

Final Decision : Allowed

Judgement

S.S. Hasan, J.—The Petitioner, who is at present holding the post of Assistant Registrar in the Patna High Court, has filed this application in a representative capacity seeking relief which would not only accrue to the incumbent of the post of Assistant Registrar but to the incumbents of following other posts also who are serving in the High Court (hereinafter to be called as the Members of the Registry of the High Court"):

- (i) Registrar
- (ii) Registrar (Establishment)
- (iii) Registrar (Inspection)
- (iv) Joint Registrar (Judicial)
- (v) Joint Registrar (Establishment)
- (vi) Joint Registrar (Ranchi Bench)
- (vii) Officer-on-Special Duty (Special Cell)

- (viii) Deputy Registrar (Administration)
- (ix) Deputy Registrar-cum-Principal Secretary to the Hon'ble the Chief Justice
- (x) Assistant Registrar (Protocol)
- (xi) Assistant Registrar (Establishment)
- (xii) Assistant Registrar (Administration)
- (xiii) Assistant Registrar (Building)
- (xiv) Assistant Registrar (Judicial), and
- (xv) Assistant Registrar (Ranchi Bench).

2. The point is short and the relief is even shorter. The Petitioner has complained about himself and the members of the registry of the High Court of the violation of Article 14 of the Constitution of India in regard to a particular emolument that is described as "Special Pay" that is being paid in discriminatory manner to the persons working in similar positions with the same extent of duty in the Secretariat but is not being paid to the Petitioner and other members of the registry of the High Court. There are four different categories of officers in the registry of the High Court which may be set out this. In the first category come the Registrar and the Registrar (Establishment) who are not getting Special Pay at all. In the second category comes the Registrar (Inspection) who is not getting Special Pay that is being paid to those are who (sic) placed in the Patna Secretariat. In the third category come Joint Registrar (Judicial), Joint Registrar (Establishment), Joint Registrar (Ranchi Bench), the Officer on Special Duty and the Deputy Registrars of the Patna High Court who are facing the same fate as the Registrar and the Registrar (Establishment), that is to say, they are not getting any "Special Pay" at all though people similarly placed in the Patna Secretariat are being paid Special Pay. It may be stated that all the above member of the registry of the High Court were earlier getting Special Pay. In the fourth category are the Assistant Registrars in whose cases, while Special Pay to persons similarly placed in the Patna Secretariat has been enhanced, the same benefit has not flowed to these officers.

3. Two situations are admitted. Firstly, Special Pay is paid to such persons who are enjoined to perform arduous duty in terms of Rule 42 of the Bihar Service Code and secondly, the members of the registry of the High Court are undoubtedly and admittedly performing such duty that comes within the description of arduous duty as spelt out in the above rule.

This Rule reads as follows:

42. Special Pay means an addition of the nature of pay, to the emolument of a post or of a Government servant, granted in consideration of

(a) the specially arduous nature of the duties ; or

(b) a specific addition to the work in responsibility ; or

(c) the unhealthiness of the locality in which the work is performed.

A chart has been prepared by the Petitioner which has been accepted as correct by the counsel for the State which would indicate that succinctly the anomaly cannot be denied. The chart is being reproduced herein below.

HIGH COURT STATE SECRETARIAT

Officers Pay-Scale Special Pay Earlier Allowed. Now Permissible Officers Pay-Scales Spl. Pay Eariler Available. Now Permissible Per Annex. 6.

Registrar 3000-3500/- 250/- (1) Secretary Spl Secretary 2600-3200/- 250/- 450/-

Registrar (EST) -- Addl. Secretary 2400-3000/-

Registrar (INSP) 2400-3000/ 250/- (2)

Joint Registrar (Upgraded Dy. R.) 1900-2500/- 150/- --(3) Joint Secretary 1900-2500/- 150/- 400/-

Deputy Registrars 1575-2300/- 150/- --(3) Duty Secretary 1575-2300/- 150/- 300/-

Assistant Registrars 1350-2000/- 100/- 100/- Under Secretaries 1350-2000/- 200/- 300/-

(1) Spl. Pay denied because of ceiling of Rs. 3,000/- in case of Registrars, who are senior members of the Bihar Superior Judicial Service. (2) Spl. Pay allowed, vide Govt. Letter No. 367, dt. 13.1.1988 (Annexure 2/B). (3) Spl. Pay denied after up-gradation of these posts, vide Govt. Letter No. 4071 Dt. 7.4.1986 (Annexure 4).

4. I take up the case of the officers of (he first category first. The Registrar and the Registrar (Establishment) are at present being paid their salary in the scale of pay of Rs. 3000/-3500/- and Rs. 2400-3000/-, respectively and in the ultimate calculation they are both getting Rs. 300/- or more. It is stated that they are not being paid Special Pay because of an administrative direction issued by the Finance Department, Government of Bihar vide Finance Department Resolution No. 3/PRC-3/1/F-10770 dated the 30th of December, 1981, that the Special Pay which were then being drawn under the existing orders in respect of the post would continue to be drawn, subject to the sum of pay and Special Pay not exceeding Rs. 3000/- per month. Had the matter rested there, perhaps, it was required to be assailed on some other grounds which are not relevant at the moment. At the present, the action of the Government is assailed on the angle of Article 14 of the Constitution on the ground that the Additional Secretary to the Government in the Patna Secretariat who are all receiving salaries at the basic pay of Rs. 3000/- and more are being paid Special Pay. This fact is not denied and it is also not denied that the Registrar and the Registrar (Establishment) are

at par With the Additional Secretaries in respect of their emoluments etc. If the Additional Secretaries are getting Special Pay, one fails to understand why the Registrars of the High Court and others similarly placed should also not get special pay. The unjustifiability of the action of the State Government is further aggravated by the fact that they have denied the payment of Special Pay to the Registrars whose basic salary is Rs. 3000/- or more but it is being paid to the officers of the same rank, that is, the Additional Secretaries whose basic pay is Rs. 3000/-or even more. Discrimination is, therefore, clear and writ large. This brings me to the second category, that is, Registrar (Inspection). Now, it is true that the Registrar (Inspection) is being given Special Pay @ Rs. 250/- per month but regretfully, he is not being given the same amount i.e. Rs. 450/- per month as is being paid even to his counterpart in the Secretariat, whose Special Pay has recently been enhanced. The discrimination, therefore, is also patent.

5. Coming to the third category, it appears from the chart that their counterparts, similarly placed, that is Joint Secretaries are getting Special Pay which has also now been enhanced but these officers, i.e., Joint Registrars are not being given Special Pay. Earlier, these posts were known to be the posts of "Deputy Registrar" manned by the Subordinate Judges who were getting the Special Pay. When the State Government upgraded those posts to the rank of Additional District and Sessions Judge, it withdrew the Special Pay attached to the post. Much later, these posts were re-designated as the post of "Joint Registrar". It is not disputed, I repeat, that these officers also come within the ambit of Rule 42 of the Bihar Service Code and are thus entitled to receive Special Pay. Strange are (he ways of the Government and it is indeed regretful. that the officers of the High Court should be treated in this stepmotherly fashion. I, therefore, feel that these officers? viz. Registrar, Registrar (Establishment), Registrar (Inspection) and Joint Registrars are entitled to the Special Pay exactly equal to the rate that is being paid to the officers of the Patna Secretariat who are at par with these persons.

6. In the last category, the grievance is only of being deprived of the enhanced Special Pay that is being paid to their counterparts of these members of the registry of the High Court, in the Patna Secretariat. At present, these officers are getting Rs. 100/- per month as Special Pay while those in the Secretariat are getting Rs. 300/- per month. This higher amount is due to the enhancement made recently the benefit of which bus not flowed to the officers of the registry of the High Court. The action of the Government in this regard is also utterly discriminatory, and pathetically intolerable. The total result of the above analysis is that the officers of the registry of the High Court are receiving stepmotherly treatment in comparison to the officers of the Secretariat similarly placed though the work of the members of the registry of the Patna High Court is, if not more then surely not less arduous than those in the Secretariat. That apart, the standard of efficiency, the extent of propriety and all prevailing rectitude of the members of the registry are exemplary which would do credit to any institution. Yet, in utter disregard of the provisions of Article 14 of the Constitution the State

Government is utterly indifferent to a situation that should really have not come to exist had any sense of propriety been shown in the matter. The point taken by the State, to say the least, is utterly untenable and I have really no hesitation in saying that it should never have been raised. In fact, it has enhanced the disregard of Article 14 of the Constitution.

7. It is stated in the counter affidavit that the State Government would be ready to abide by the decision of the Fifth Pay Revision Committee in regard to the persons who should be given Special Pay to the extent it is being paid to others similarly placed in monetary calculation. On the face of it, the offer appears to be charming but the slightest scrutiny of the matter reveals the hollowness of this assurance. Has the Government applied same test in regard to the officers of the Secretariat while paying and calculating Special Pay to its officers? Certainly not. For example, although the report of the Fifth Pay Revision Committee has not seen the light of the day yet officers in the Secretariat equivalent to the members of the registry of the High Court in category 4 are receiving enhanced Special Pay without waiting for the report of the 5th Pay Revision Committee but the officers of the registry of the High Court are being ignored. Similarly, officers equivalent to the officers of the registry belonging to category Nos. 1, 2 and 3, are receiving Special Pay in spite of the absence of the report of the 5th Pay Revision Committee yet the members of the registry of the High Court have to wait sine die for the 5th Pay Revision Committee. Had the Government waited for the report of the 5th Pay Revision Committee while making payments to their own staff in the Secretariat, no body would have any grievance but the discrimination is intolerable and cannot be justified on any basis whatsoever.

8. Further, the counsel for the State relying on a decision of the Supreme Court reported in AIR 1989 SC 19 State of U.P. and Ors. v. J.P. Chaurasia and Ors. submitted that this matter can only be determined by the Pay Revision Committee. I am afraid the ratio of this decision has no application to the present situation. In that decision, the question of Article 14 of the Constitution was never involved. There, it was a question of two sets of officers receiving two different types of salaries. Here, it is not so. The counsel for the Petitioner, however, relied on a decision reported in (1987) 1 Supreme Court Cases 592 M.P. Singh v. Union of India and Ors. The facts of this decision are similar to the facts of the case in hand and not only that, the grounds are also the same on which the Government action is assailed. The relevant passage, I quote, is the following of that decision:

10. From the foregoing discussion it emerges that the Special Pay that was being paid to all the officers in the cadre of Sub-Inspectors. Inspectors and Deputy Superintendent of Police in the Central Investigating Units of the Central Bureau of Investigation has nothing to do with any compensation for which the deputationists may be entitled either on the ground of their richer experience or on the ground of their displacement from the parent department in the various States, but it relates only to the arduous nature of the duties that is being

performed by all of them irrespective of the fact whether they belong to the category of the deputationists" or to the category of the non-deputationists". That being the position, the classification of the officers working in the said cadres into two groups, namely, deputationists and non-deputationists for paying different rates of Special Pay does not pass the test of classification permissible under Articles 14 and 16 of the Constitution of India since it does not bear any rational relation to the object of classification.

11. In these circumstances, it is difficult to accept the stand of the Central Government justifying the discriminatory treatment meted out to the non-deputationists as regards payment, of Special Pay.

9. I, therefore, have no hesitation in holding that the Petitioner and all other members of the registry of the High Court, on whose behalf the Petitioner has filed this application, are being discriminated against by the Government in regard to application of Rule 42 of the Bihar Service Code and they are being treated discriminately against in relation to their counterparts in the Secretariat in this regard on the most specious excuses. One fails to understand while there is so much talk of stagnation of cases and delay in disposal of matters that the State should be so indifferent to the emoluments of those who are really making laudable contributions towards the functions of the High Court. The condition in which these officers are functioning in the High Court are absolutely distressing but instead of the Government looking kindly upon their performances and functions, they are being deprived of what they are entitled to. Finally, it is now well settled by numerous decisions of the Supreme Court which need not be cited that persons must receive equal pay and emoluments for similar work. This situation is now really the law of the land. If two persons even working at different places are doing similar work, they must get equal pay and emoluments. When the members of the registry of the High Court and the members of the Secretariat from the post of Additional Secretary downwards are both performing similar arduous duty though different in nature because of one being in the Secretariat connected with the administration and the other being in the High Court connected with the judiciary yet the nature of the work, extent of efficiency and the existing situation are classified as arduous, there is no reason why there should be no parity and similarity in the emoluments and other allowances.

10. I have, therefore no hesitation in allowing this application and directing the State Government to pay to the following members of the registry of the High Court Special Pay as envisaged under Rule 42 of the Bihar Service Code that is being paid to their counterparts set out above in the Secretariat with effect from the same date, i.e., 1.1.1986 as is being paid to them including the subsequent enhancement, if any:

Post Present Incumbent

1. Registrar Sri Nunumani Prasad Singh.

2. Registrar (Establishment) Sri Naresh Kumar Sinha.
3. Registrar (Inspection) Sri Amar Nath Jha.
4. Joint Registrar (Judicial) Sri Mundrika Prasad
5. Joint Registrar (Establishment) Sri Prabhat Kumar Sinha.
6. Joint Registrar (Ranchi Bench) Sri Jordan Kachhap.
7. Officer on Special duty 8. Deputy Registrar (Administration) Sri Sadanand Mukherjee.
8. Deputy Registrar (Administration) Sri Sitesh Chandra Mitra.
9. Deputy Registrar-cum-Principal Secretary to the Hon''ble the Chief Justice Sri Nagendra Ojha.
10. Assistant Registrar (Protocol) Sri Shyam Narain Sinha.
11. Assistant Registrar (Establishment) Sri Rajendra Prasad Mishra.
12. Assistant Registrar (Administration) Sri Md. F.A. Khan.
13. Assistant Registrar (Buildings) Sri Shashi Shekhar Singh.
14. Assistant Registrar (Judicial) Sri Alakh Kumar Sinha, and
15. Assistant Registrar (Ranchi Bench) Sri Shailendra Kishore Sahay.

This direction must be implemented forthwith and not later than three months from today. I further direct the State Government to ensure that whenever Special Pay or any kind of emoluments are beneficially made to the persons working on the administration side, those who are similarly placed in the High Court either in the registry or in any other capacity should not be deprived of that benefit forcing them to take recourse to the judicial proceeding.

11. In the result, this application is allowed with the above directions. There will be no order as to costs.

S. Hoda, J.

12. I agree.