

(2008) 06 SC CK 0008
In the Supreme Court Of India
Case No : Civil Appeal No. 4104 of 2004

State of Kerala

APPELLANT

Vs

B. Renjith Kumar and Others

RESPONDENT

Date of Decision : 05-06-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 16, 233, 234
General Clauses Act, 1897 — Section 3(17)
Industrial Disputes Act, 1947 — Section 7, 7A, 7A(3)

Citation : (2008) 4 AWC 3567 Supp : (2008) 56 BLJR 2023 : (2008) 118 FLR 322 : (2008) 8 JT 559 : (2008) 3 KLT 33 : (2008) 3 LLJ 853 : (2008) 9 SCALE 557 : (2008) 12 SCC 219 : (2009) 1 SCC(L&S) 142 : (2009) 1 SLJ 187 : (2009) 2 SLR 211 : (2009) 1 UPLBEC 121

Hon'ble Judges : Lokeshwar Singh Pant, J;C. K. Thakker, J

Bench : Division Bench

Advocate : G. Prakash, Adv C.N. Sree Kumar, Prakash R. Nayak and Dushyant Parashar, for the Appellant;

Final Decision : Allowed

Judgement

Lokeshwar Singh Pant, J.—This appeal by the State of Kerala, arises out of the judgment and order dated 5th December, 2003, passed by the High Court of Kerala at Ernakulam in O.P. No. 8947/03(M). By the impugned order, while allowing the writ petition of the respondents herein, directions have been issued that order at Exhibit P8 shall be modified so as to treat the writ petitioners at par with the District Judges in the matter of time scale as well as the selection grade and the needful should be done within three months from the date of the certified copy of the judgment.

2. Facts, in brief leading to the filing of the present appeal are as follows:

The respondents herein were the members of the Bar. In the year 1993, respondent Nos. 1 and 2 were selected and appointed as Presiding Officers of the Industrial Tribunals whereas respondent No. 3 was selected and appointed as

Presiding Officer in the year 1996 in the State of Kerala. They continued to work as such. The claim of the respondents in the writ petition was that prior to the year 1998, the State Government had granted to them pay scales at par with the District Judges. However, when Judicial Officers were granted benefit of revision of pay scales in December, 2001 with retrospective effect from March, 1996, similar benefit was denied to them. The respondents submitted a representation to the State Government seeking extension of the benefit of interim relief in terms of order vide G.O. dated 30.5.1998 granting interim relief at the rate of 35% of pay as on 1.7.1996 to the members of the Subordinate Judiciary in the State. The said representation was decided and rejected vide order dated 15.5.1999. On 25.11.1999, the respondents filed O.P. No. 20490 of 1999 in the High Court seeking direction to the State Government to grant interim relief at par with the District Judges. The said writ petition was allowed, with a direction to the State Government to issue necessary orders in this regard by extending the benefit of interim relief at the rate of 35% (basic pay + D.A.) with effect from 1.1.1996 as directed in Exhibit P4 to the Judicial Officers. It was the case of the respondents before the High Court that the State Government on 18.4.2000 in pursuance of the directions of the High Court sanctioned interim relief to the Presiding Officers of the Industrial Tribunals as well. On 12.1.2001, Government of Kerala vide G.O.(MS) No. 231/2001/Home dated 12.12.2001 decided to grant the scales of pay to the members of Subordinate Judiciary as recommended by the National Judicial Commission (Shetty Commission). The respondents were denied the said benefits of the scales of pay and, accordingly, they submitted representation on 7.1.2002 to the Secretary to the Government, (Labour and Rehabilitation Department) requesting for the grant of same scales of pay as that of the District Judges in the State. A copy of the order dated 4.2.2003 by which revision of pay was allowed to the District Judges was placed on the record of the High Court as Exhibit P8. By the impugned order, the Presiding Officers (Industrial Tribunals) were granted the pay scale of Rs. 16,300-400-18,300/- with effect from March 1, 1997. However, the District Judges had been placed in the scale of Rs. 16,750-400-19,150-420-20,500/-. They also had been granted a selection grade of Rs. 18,750-400-19,150-450- 20,500-500-23,850/-. The respondents complained that the action in treating them differently from the District Judges suffers from the vice of discrimination and arbitrariness. Thus, they sought the intervention of the High Court to quash order - Exhibit P8 of the State Government and further direction to grant same scale of pay as has been sanctioned in the case of District Judges.

3. The writ petition was contested by the State. In the counter affidavit filed on its behalf by the Under Secretary, Department of Finance, it was inter alia stated that in the State of Kerala while the Presiding Officers of the Labour Court are appointed under the provisions of Article 234 of the Constitution of India, the Presiding Officers of Industrial Tribunals are not so appointed under Article 234 of the Constitution of India. Thus, the Presiding Officers of the Industrial Tribunals are not entitled to the same scales of pay as recommended by the National

Judicial Pay Commission (Shetty Commission) for the members of the Higher Judiciary. On these premises, it was claimed that the action of the State Government was legal and valid.

4. Taking note of the contentions and claims and counter claims of the respective parties, the High Court has felt that the mere fact that the Presiding Officers of the Industrial Tribunals are not appointed on the recommendation of the High Court or that they are not under the control of the High Court cannot, by itself, be a good reason and adequate ground for treating them differently over a period of 30 years. Consequently, the High Court issued the afore-noted directions which are in question in this appeal by special leave.

5. Mr. G. Prakash, learned Counsel appearing for the appellant-State of Kerala, contended that the High Court erred in holding that the Presiding Officers of the Industrial Tribunals are entitled to the same revised scales of pay as recommended by the National Judicial Commission (Shetty Commission) for the members of the Higher Judicial Services merely on the assumption that prior to the year 1998 the Presiding Officers of the Industrial Tribunals were getting the same scale at par with the District Judges. He also contended that the services of the Presiding Officers of the Industrial Tribunals cannot be equated with that of the Judicial Officers who are appointed under Articles 233 and 234 of the Constitution of India.

6. Ms. Malini Poduval, learned Counsel appearing on behalf of respondent Nos. 1 to 3 and Mr. C.N. Sreekumar, appearing for C.N. Sasidharan and K. Kanakachandran, who have filed I.A. No. 2 for their impleadment as additional respondents in this appeal in support of the judgment of the High Court, have contended that the claim of the Presiding Officers of the Industrial Tribunals before the High Court was that they be granted scale of pay fixed for District Judges as the duties, functions and volume of work of the Industrial Tribunals are equal to that of District Judges and earlier they were placed in identical pay scales till the revision of pay scale of the Judicial Officers in the year 1998. According to the learned Counsel, the Presiding Officers of the Industrial Tribunal do not claim that they belong to the category of District Judges who are appointed under Article 233 of the Constitution of India. The learned Counsel then contended that the well-reasoned order of the High Court does not suffer from any infirmity or perversity and this Court normally should not interfere in the well-merited order impugned by the appellant-State before this Court while exercising its jurisdiction under Article 136 of the Constitution of India.

7. The Labour Courts and the Industrial Tribunals have been constituted in the State of Kerala under Sections 7 and 7A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act, 1947"). In the present case, we are concerned with the appointments of Presiding Officers of the Industrial Tribunals constituted u/s 7A of the ID Act, 1947 which reads as under:

7A. Tribunals - (1) The appropriate Government may, by notification in the

Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule, [and for performing such other functions as may be assigned to them under this Act].

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

(a) he is, or has been, a Judge of a High Court; or

(aa) he has, for a period of not less than three years, been a District Judge or an Additional Judge

(b) * * * * *

(c) he has for not less than five years been a presiding officer of a Labour Court, constituted under any law for the time being in force;

(d) he holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than ten years.

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

8. By the Industrial Disputes (Kerala Amendment) Act, [Act No. 28 of 1961], in its application to the State of Kerala under Sub-section (3) of Section 7A of the ID Act, 1947 for Clause (a) the following clause has been substituted. The substituted Clause (a) in Sub-section (3) reads as under:

(a) He is or has been a Judicial Officer not below the rank of a District Judge, or is qualified for appointment as a Judge of a High Court; or

9. Thus, in the State of Kerala, in terms of the above substituted Clause (a) in Sub-section (3) of Section 7A of the ID Act, 1947, a judicial officer not below the rank of District Judge is qualified to be appointed as Presiding Officer of the Industrial Tribunal. Indisputably, prior to 1.7.1988 the pay scale of the Presiding Officers of the Industrial Tribunals and District Judges was Rs.2600-3800/-. The District Judges were granted selection grade in the scale of Rs. 3700-4200/-. All the three Industrial Tribunals Services at that time were also placed in the selection grade of Rs. 3700-4200/-. Government of Kerala appointed Pay Commission chaired by Justice T.Chandrashekhara Menon to make recommendations in the matter of revision of pay scales in the case of Government employees. The Commission recommended revised scale of Rs. 3175 - 4605/- to the Industrial Tribunals (Entry Cadre) and Rs. 4435-5285/- to the three Industrial Tribunals who were granted selection grade. The Commission recommended the same scale of pay to the District Judges, Sessions Judges and

selection grade District Judges. The Government of Kerala accepted the above recommendations and revised the pay scales of Industrial Tribunals and District and Sessions Judges as recommended by the Pay Commission with effect from 1.7.1988. In the year, 1993, Government issued G.O. (P) No. 600/93/Fin. dated 08.12.1993 revising the pay scales of State Government employees w.e.f. 01.03.1992. By the said order, the scale of pay of Industrial Tribunals were revised to Rs. 5100-5700/-. In the above pay revision order in respect of District Judges and members of Subordinate Judiciary, it was noted that revised scale will be separately ordered. It was the admitted case of the State Government that later on the Government issued separate order revising the pay scales of District Judges to Rs. 5100-5700/- which is the same scale of pay granted to the Industrial Tribunals. Indisputably, the Government of India based on the recommendations of this Court by resolution dated 21.3.1994 constituted the First National Judicial Pay Commission to go into the question of the pay scales and to recommend uniform scale of pay for the Subordinate Judiciary in the States and Union Territories. Accordingly, National Judicial Pay Commission (Shetty Commission) recommended pay revision to the District Judges and other members of the Subordinate Judiciary in the year 1998. It is not in dispute that the officers who presided over the Labour Courts and those appointed as Presiding Officers of the Industrial Tribunals do decide disputes under the ID Act, 1947. There is no qualitative difference in the nature of functions or duties attached to the categories of posts. This parity having been recognised and accepted by the State Government for more than 30 years, the High Court, in our view, has rightly observed that the mere fact that the Constitution refers to the appointment of District Judges alone cannot, by itself, be a good ground for treating the Presiding Officers of the Industrial Tribunal and the District Judges differently. The High Court held that even the Presiding Officers of the Industrial Tribunals are not outside the ambit of the Constitution as the protection of rules framed under Article 309 as also under Article 311 is available to them. The State Government had granted pay scale at par with that of the District Judges before the recommendations of the pay scales of the District Judges by the Shetty Commission by which District Judges were placed in higher scales which benefit has been denied to the Presiding Officers of Industrial Tribunals merely on the ground that the Presiding Officers of the Industrial Tribunal are not appointed under Article 233 of the Constitution of India nor they are appointed to the Judicial Services of a State under Article 234 of the Constitution. The action of the State Government in treating the officers presiding over the Industrial Tribunal differently from the District Judges in the matter of pay scales on its face is in violation of Article 14 of the Constitution of India. The essential educational and professional qualifications for appointment of the Presiding Officer of the Industrial Tribunals are identical to that of the appointment of District Judge. The High Court in its order dated 25.11.1999 passed in O.P. No. 20490/1999-C filed by the respondents noticed that in the counter affidavit filed by the State Government in the said writ petition, it was stated: "that the duties, functions and scales of pay of the Presiding Officers of the Industrial Tribunals

are equal to that of the District Judges. The request for granting 35% of the interim relief was taken up with the Pay Revision Committee and on the basis of the remarks of the Pay Revision Committee the respondents have informed the Industrial Tribunals that they would continue to get two installments to interim relief and they need not be allowed 35% of the interim relief." On this premise, the High Court in paragraph 6 of its order observed as under:

When the Government admits that the duties, functions and scales of pay of the Industrial Tribunals are equal to that of District Judges, I do not find any justification for not granting the interim relief of 15% granted to the Judicial Officers as per Exhibit P4 to the Petitioners. Anyway, the Government has promised that they will implement the report of the First National Judicial Pay Commission. In Exhibit P4 also it has been stated that the interim relief of 35% granted will be fully adjusted against and included in the package on the final recommendation of the First National Judicial Pay Commission. Therefore, there was no justifiable reason not to apply these principles to the petitioners.

10. The ratio of the judgment in Chandra Mohan Vs. State of U.P. and Others, , relied upon by the appellant-State has no bearing upon the legal proposition and factual situation involved in the case on hand. In the said case, the question before this Court was in regard to the interpretation of the expression, "the service" in Clause (2) of Article 233 of the Constitution. This Court held that the Chapter dealing with "subordinate courts" in which the expression "the service" appears indicates that the service mentioned therein is the service pertaining to courts. That apart, Article 236(2) defines the expression "judicial service" to mean a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge. The expressions "exclusively" and "intended" emphasise the fact that the judicial service consists only of persons intended to fill up the posts of District Judges and other civil judicial posts and that is the exclusive service of judicial officers. In the present case, the respondents' claim before the High Court was confined to equal scale of pay to that of the District Judges. This was based on the fact that the respondents are discharging similar duties and functions in the administration of justice and their scale of pay was equal to that of District Judges till revision of pay scales of the Judicial Officers in the year 1998. The Industrial Tribunals are indisputably judicial tribunals manned by legal professionals who are eligible to be appointed as District Judges or Judges of the High Courts. The Presiding Officers are exercising judicial powers and duties under the ID Act, 1947 and their decisions are subject matter of challenge before the High Court by way of writ petition. The only difference is their source of recruitment.

11. Looking to the nature of duties and functions of these respondents, we are of the opinion that there is no reason to treat them differently. Once these persons are already working for more than three decades discharging the same functions and duties, we see no reason why the same benefit should not be given to the

respondents and other similarly situated Presiding Officers of the Tribunal who are the applicants before us in IA No. 2/2004.

12. In *The State of Maharashtra Vs. Labour Law Practitioners' Association and Others*, , the question before the High Court was whether notification dated 8.3.1979 issued by the State of Maharashtra under the ID Act, 1947 and the Bombay Industrial Relations Act and the amended Section 7 of the ID Act, 1947 insofar as these provisions authorised the appointment of Assistant Commissioners of Labour working as Judges of the Labour Court were void and illegal and contrary to Article 234 of the Constitution. There was also a prayer in the writ petition for a direction to the State of Maharashtra to comply with the provisions of Article 234 of the Constitution while making 1 appointments of judges of the Labour Court. A learned Single Judge of the High Court set aside the notification of 8.3.1997 and also gave a direction to the State of Maharashtra to comply with the provisions of Article 234 of the Constitution while appointing Judges of the Labour Court. Being aggrieved by this judgment and order, the appellant-State of Maharashtra preferred an appeal before Division Bench of the High Court which appeal has been dismissed. Thus the State of Maharashtra filed an appeal before this Court. This Court while dealing with and interpreting the provisions of Articles 233, 234, 235, 236(a) and (b) and Section 3(17) of General Clauses Act, Bombay Industrial Relations Act, 1946 and Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, held: (Para 5 SCC p. 692)

5. There is not much difficulty in holding that the Labour Court performs judicial functions and is a Court. The Labour Court adjudicates upon disputes that, had it not been for the Industrial Disputes Act, the Bombay Industrial Relations Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, would have been within the jurisdiction of the ordinary civil courts to decide, although the ordinary civil courts may not be able to grant all the reliefs that are contemplated by these Acts. The Labour Courts are, therefore, courts and decide disputes that are civil in nature.

In paragraph 6 (see pp. 692-693), it was held:

6. In the case of *Bharat Bank Ltd. v. Employees* AIR [1950] SC 459, this Court considered whether an Industrial Tribunal was a court. It said that one cannot go by mere nomenclature. One has to examine the functions of a Tribunal and how it proceeds to discharge those functions. It held that an Industrial Tribunal had all the trappings of a court and performed functions which cannot but be regarded as judicial. The Court referred to the Rules by which proceedings before the Tribunal were regulated. The Court dwelt on the fact that the powers vested in it are similar to those exercised by civil courts under the CPC when trying a suit. It had the power of ordering discovery, inspection etc. and forcing the attendance of witnesses, compelling production of documents and so on. It gave its decision on the basis of evidence and in accordance with law. Applying the test laid down in the case of *Cooper v. Wilson* [1937] 2 K.B. 309 at p. 340, this

Court said that "a true judicial decision presupposes an existence of dispute between two or more parties and then involves four requisites :- (1) the presentation of their case by the parties; (2) ascertainment of facts by means of evidence adduced by the parties often with the assistance of argument; (3) if the dispute relates to a question of law, submission of legal arguments by the parties; and (4) by decision which disposes of the whole matter by findings on fact and application of law to facts so found, Judged by the same tests, a Labour Court would undoubtedly be a court in the true sense of the term. The question, however, is whether such a court and the presiding officer of such a court can be said to hold a post in the judicial service of the State as defined in Article 236 of the Constitution.

Further paras 10, 11 and 12 (see pp 694-695:

10. The District Judge, therefore, covers a judge of any Principal Civil Court of Original Jurisdiction. With an increase in the numbers of a specialised courts and tribunals which are being set up to deal with specific kinds of civil litigation which would otherwise have been dealt with by the ordinary civil courts, we now have a number of specialised courts exercising different categories of civil original jurisdiction. It can be specialised civil original jurisdiction pertaining to Labour and Industrial disputes specified in the relevant Acts as in the case of Labour and Industrial Courts, or it could be pertaining to recovery of bank debts and so on. The structure of civil courts exercising original jurisdiction is no longer monolithic. The judge of the Principal Civil Court heading the concerned set of courts under him and exercising that jurisdiction can also fall in the category of a "District Judge" by whatever name called. Learned single judge and learned Judges of the Division Bench have, therefore, held that an Industrial Court is a civil court exercising civil original jurisdiction; and the person presiding over it could well be termed as a District Judge. The term "District Judge" should not be confined only to the judge of the Principal Civil Court in the hierarchy of general civil courts. The term would now have to include also the hierarchy of specialised civil courts, such as a hierarchy of Labour Courts and Industrial Courts. The fact that the Chief Presidency Magistrate and the Sessions Judge were also included in the definition of "District" Judge indicates that a wide interpretation is to be given to the expression "District Judge". The extensive definition of a District Judge under Article 236 is indicative of the same.

11. Under Article 236(b) the expression "judicial service" is defined to mean "a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge." Judicial service thus postulates a hierarchy of courts with the District Judge as the head and other judicial officers under him discharging only judicial functions.

12. In the case of Chandra Mohan Vs. State of U.P. and Others, this Court was required to consider the question of eligibility of "judicial officers" for appointment as District Judges under Article 233 of the Constitution. Under the U.P. Higher Judicial Service Rules "Judicial Officers" were eligible for appointment

as District Judges and the expression was meant to cover members of the executive department who discharged some revenue and magisterial duties also. When selection of such persons was challenged, this Court was required to consider and interpret the provisions of Articles 233 to 236 of the Constitution. The procedure for selection under the said Rules was also challenged as violative of Article 233. The Court said that the Governor could not appoint as District Judge persons from services other than the judicial services. A person who is in the police, excise, revenue or such other service cannot be appointed as a District Judge. Dealing with the definition of "judicial service" in Article 236, this Court said that the judicial service consists only of persons intended to fill up the posts of District Judges and other civil judicial posts and that is an exclusive service only consisting of judicial officers. In so interpreting judicial service in contradistinction to executive service where some executive officers may also be performing judicial or quasi-judicial functions, this Court was at pains to emphasise the Constitutional scheme for independence of the judiciary. It said that the acceptance of this (i.e. Government's) position would take us back to pre-independence days and would also cut across the well-knit scheme of the Constitution providing for independence of the judiciary. This Court, therefore, defined judicial service in exclusive terms as consisting only of judicial officers discharging entirely judicial duties. It said that having provided for appointments to that service and having entrusted the control of the said service to the care of the High Court, the makers of the Constitution would not have conferred a blanket power on the Governor to appoint any person from any service as a District Judge."

13. The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the Directive Principles of State Policy in Article 39(d) of the Constitution. Thus, having regard to the Constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed the status of fundamental right. (see *Randhir Singh Vs. Union of India (UOI) and Others*, and *D.S. Nakara and Others Vs. Union of India (UOI)*), In the latest judgment, a two-Judge Bench this Court in the case of *Union of India (UOI) and Others Vs. Dineshan K.K.*, held that if the necessary material on the basis whereof the claim for parity of pay scale is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled the decision of the Central Government denying the benefits of same rank and pay structure to a Radio Mechanic in Assam Rifle as was given to other Central Paramilitary Forces was held to be clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution.

14. Having regard to the well-reasoned judgment of the Division Bench, we are of the view that the impugned judgment warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us by the appellant-State.

15. In the result, for the reasons stated above, we find no merit in this appeal. The appeal is dismissed accordingly. The parties, however, are left to bear their own costs.

16. In view of the above, no orders on the I.A. Nos. 2 & 3 of 2004.