

(2004) 09 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeal No's. 2732 of 1999, 1980 of 2000, 1260 of 2001 and 1528-29 of 2004

State of Uttar Pradesh

APPELLANT

Vs

Section Officer Brotherhood and Another

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 — Rule 16, 36, 40, 40(3)
Constitution of India, 1950 — Article 22(2), 226, 229, 229(2)

Citation : (2004) AIRSCW 5441 : (2004) 4 AWC 3396 Supp : (2005) 1 ESC 44 : (2004) 8 JT 179 : (2004) 8 SCALE 247 : (2004) 8 SCC 286 : (2004) SCC(L&S) 1115 : (2005) 1 SLJ 370 : (2004) 7 Supreme 739 : (2005) 1 UPLBEC 3

Hon'ble Judges : S. B. Sinha, J;N. Santosh Hedge, J

Bench : Division Bench

Advocate : Ravi Prakash Mehrotra and Garvesh Kabra, P.P. Rao and V.J. Francis, in C.A. No. 1260/200, for the Appellant; Tripurari Rai, Vishwajit Singh, Vimla Sinha, Abhishek Chaudhary, Gaurav Bhatia, Gaurav Dhama, Adarsh Upadhyaya, Prashant Kumar and Ashok K. Srivastava, for the Respondent

Final Decision : Disposed Of

Judgement

S.B. Sinha, J.—These appeals arising out of the judgments and orders dated 22.11.1999, 16.11.2000 (as corrected on 11.12.2000), 20.5.2003 and 29.7.1998 passed by the Allahabad High Court in Civil Misc. Writ Petition Nos. 18979 of 1998, 970 of 2000, 30234 of 2001 and 17885 of 1996 respectively involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

FACTS :

2. The Respondents herein are Section Officers, Private Secretaries, Bench Secretaries and Assistant Registrars working in the High Court of Judicature at Allahabad. They filed several writ petitions praying inter alia for issuance of a writ of or in the nature of mandamus inter alia directing the State of Uttar Pradesh to

fix higher scale of pay. Such scales of pay were claimed purported to be on the basis of scales of pay paid to their counterparts i.e. Section Officers, Private Secretaries, Bench Secretaries or Assistant Registrars of Delhi High Court. The Private Secretaries/PAs, Bench Secretaries filed writ petitions bearing No. WP No. 1408/93 and WP No. 26550/95 respectively before the Allahabad High Court which were allowed by judgments and orders dated 21.12.1993 and 1.11.1996. The Special Leave Petitions filed against the said judgments and orders were said to have been dismissed by orders dated 26.3.1996 and 7.7.1997. Both the aforementioned categories of employees there after had been getting the pay-scale of Rs. 3000-4500 with effect from 1.1.1986.

3. It is not in dispute that the Chief Justice of the High Court of Allahabad in exercise of his power conferred upon him by Article 229 of the Constitution of India made rules known as Allahabad High Court Officers and Staff (Conditions of Service & Conduct) Rules, 1976. The Section Officers, Bench Secretaries Grade I and Private Secretaries are holders of Class II posts referable to Rule 16 of the said Rules. The posts of Deputy Registrar is a Class I post and allegedly Class II officers are entitled to be considered for promotion to Class I post.

4. It is not in dispute that Rule 36 of the Rules provides that the scales of pay admissible to various categories of posts in the establishment of the High Court are to be determined by the Chief Justice from time to time with the approval of the Government of Uttar Pradesh. Rule 40 while conferring power of superintendence and control on the Chief Justice provides that in financial matters, the orders containing modifications or variations relating to the salary etc. shall be made by the Chief Justice with the approval of the Governor. However, sub-rule (3) of Rule 40 postulates that in case of any doubt as regards equivalence of a post of an officer in the High Court vis-à-vis posts in the State Government, the matter should be decided by the Chief Justice.

WRIT PROCEEDINGS:

Contention of the Writ Petitioners/Respondents:

5. The contention of the Respondents in the said writ petition appears to be that the State of Uttar Pradesh as a matter of policy adopted in the year 1988 decided to grant central pay scales to the employees of the High Court and, therefore, the Chief Justice has the final say as regard equivalence of the employees of the High Court vis-à-vis the employees of the Central Government and/or Delhi High Court for the purpose of determination of consequent scale of pay applicable thereto.

6. The claim for higher scales of pay for Class II and Class I officers indisputably was made in view of the decisions of Delhi High Court in A.K. Gulati and Anr. v. Union of India and Ors. 1991 (44) DLT 590 and Shri Madan Lal v. Registrar, Delhi High Court and Ors. 1992 (46) DLT 133 .

7. It was further contended that although the posts of Private Secretaries, Court

Masters and the Superintendents of Delhi High Court were found to be of same status and the employees were inter-transferable, such slight difference in the recruitment process of Allahabad High Court would be of no relevance as all the three relevant posts in the High Court of Allahabad form a common feeder cadre for promotion to the post of Class I.

8. Section Officers of the High Court in their writ petition prayed for issuance of a writ of or in the nature of mandamus directing the Appellant herein to fix their salary in the scale of pay of Rs. 3000-4500 with effect from 1.1.1986; whereas Bench Secretaries and Private Secretaries in their writ petitions prayed for fixation of their salary in the scale of pay of Rs. 3000-4500 with effect from 1.1.1996. The Assistant Registrars in their writ petition prayed for issuance of a writ of or in the nature of mandamus directing the Appellant herein to fix their salary in the pay scale of Rs. 10650-15850/- being the next higher pay scale payable for Class I Post.

Contention of the Respondents in the Writ Petitions/Appellant herein:

9. The contention of the Appellant herein was that in view of the resolution adopted in the Chief Justices' Conference held at Bombay in 1962 the staff of the High Court be equated with the corresponding staff of the State Secretariat. The employees of the Allahabad High Court have been granted scales of pay in parity with the corresponding employees/ officers of the U.P. Secretaries in the matter of pay scales and allowances etc. on the recommendations of the Chief Justice of the High Court made in exercise of the powers conferred under Article 22(2) of the Constitution by a government order dated 20 th March, 1968.

10. In view of the resolution adopted in the Chief Justices' Conference in the year 1962, the staff and officers of the Allahabad High Court were being paid the same salaries which were being paid to their counterparts working in the U.P. Secretariat. However, as a higher pay scale was directed to be paid by the High Court on its judicial side in writ petition No. 643 of 1983 (J.P. Upadhyay and Ors. v. State of U.P. and Ors.), the Private Secretaries attached to the Judges of the High Court had been granted the same scale of pay which was being paid to their counterparts of the U.P. Secretariat. Any claim for a higher scale of pay, according to the Appellants, thus, would be contrary to the government order dated 20th March, 1968 which was made in terms of the recommendations of the Chief Justice of the Allahabad High Court in exercise of his power under Article 229 of the Constitution. The Chief Justice of the High Court having not made any recommendation that there is no further need of continuance of the government order dated 20th March, 1968 nor any recommendation had been made for withdrawal thereof, no relief can be granted to the writ petitioners. No decision has been taken by the State Government to grant parity in the matter of pay scales and other conditions of service to the employees of the High Court with the employees of the Delhi High Court nor any such proposal had ever been received by it from the Chief Justice of the Allahabad High Court. Furthermore, no Pay Commission or Pay Committee or any other expert body was ever

constituted for the said purpose. Even the High Court itself had not examined various relevant aspects of the demand of the Respondents. In absence of any recommendation of any Pay Commission or Pay Committee or any other expert body, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue a writ of mandamus.

11. The writ petitioners- Respondents cannot claim any parity as regard conditions of service with the employees of Delhi High Court who are enjoying the benefits of common seniority (Court Master, Superintendent and Private Secretaries) under the rules framed by Delhi High Court under Article 229 of the Constitution of India in terms whereof the said posts have been held to be equated or interchangeable which aspects are absent in the case of the Respondents in terms of 1976 Service Rules. Even the source of recruitment of the posts of Superintendent in Delhi High Court was different inasmuch as the eligibility criteria laid down therefore are as under:

"(a) 26% of the vacant post by promotion on the basis of seniority-cum-merit for joint seniority list of Assistant, Senior Translators, & Proof Reader and Caretaker.

(b) 75% of the vacant post by selection on merit on the basis of written test & interview from the categories of Senior Assistant, Assistant, Senior Translator, Proof Reader, Junior Reader, Personal Assistant to Registrar, Senior Stenographer and Caretaker"; whereas in Allahabad High Court only permanent U.D.As can be promoted as Section Officers and there is no provision for direct recruitment.

HIGH COURT JUDGMENT :

12. The High Court by its impugned judgment, however, issued a writ of or in the nature of mandamus commanding the Appellant to fix the salary of Section Officers of the Allahabad High Court in the same scale of pay as payable to the Superintendent of Delhi High Court with effect from 3rd June, 1994 when the recommendations of the Chief Justice of the Allahabad High Court were allegedly communicated to the State Government. It, however, directed:

"However, it is provided that the scale of pay of the Section Officers along with one half of the arrears (being the difference in the scale of Section Officers of Allahabad High Court and Superintendent of Delhi High Court, shall be paid on 1st January, 2000 but the remaining half of such arrears shall be deposited in the provident fund account of the Section Officers on 1st July, 2000."

13. It was observed:

"The State Government failed to delve into the matter by examining itself, the nature of work, work load and area of functioning of the Section Officers of this Court, which is more onerous, difficult and responsible in comparison to the duties of the superintendent of the Delhi High Court inasmuch as the High Court at Allahabad is much larger in comparison to Delhi High Court."

SUBMISSIONS :

14. Mr. P.P. Rao and Mr. Ravi Prakash Mehrotra, learned counsel appearing on behalf of the State of Uttar Pradesh would submit that the High Court had no jurisdiction to issue a writ of or in the nature of mandamus directing the State to pay such scales of pay to the Superintendents, Private Secretaries and Assistant and Deputy Registrars which are payable to the counterparts of Delhi High Court.

15. The learned counsel would contend that the High Court at best could have directed the State to constitute a Pay Commission or Pay Committee or refer the matter to an expert body.

16. The learned counsel appearing on behalf of the Respondents supported the judgment of the High Court.

ANALYSIS :

17. There cannot be any doubt or dispute whatsoever that determination of different scales of pay for different categories of employees would ordinarily fall within the realm of an expert body like the Pay Commission or Pay Committee. The Chief Justice of a High Court exercises constitutional power in terms of Article 229 of the Constitution of India which reads as under:

"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."

18. Such a provision has evidently been made to uphold the independence of the judiciary.

19. A bare perusal of the aforementioned provision would clearly go to show that laying down the conditions of service applicable in the case of staff and officers of a High Court is within the exclusive domain of the Chief Justice but in case of any financial implication involving therein the approval of the State Governor is

imperative.

20. In *State of Himachal Pradesh Vs. Shri. P.D. Attri and Others*, , it is stated:

"5.The case of the respondents is not based on any constitutional or any other legal provisions when they claim parity with the posts similarly designated in the Punjab and Haryana High Court and their pay scales from the same date. They do not allege any violation of any constitutional provision or any other provision of law. They say it is so because of "accepted policy and common practice" which, according to them, are undisputed. We do not think we can import such vague principles while interpreting the provisions of law. India is a union of States. Each State has its own individualistic way of governance under the Constitution. One State is not bound to follow the rules and regulations applicable to the employees of the other State or if it had adopted the same rules and regulations, it is not bound to follow every change brought in the rules and regulations in the other State"

21. In *State of Maharashtra Vs. Association of Court Stenos., P.A., P.S. and Another*, , Pattanaik, J. (as the learned Chief Justice then was) noticed this Court's earlier decision in *Supreme Court Employees' Welfare Assn. V. Union of India* and stated the law in the following terms:

"On a plain reading of Article 229(2), it is apparent that the Chief Justice is the sole authority for fixing the salaries etc. of the employees of the High Court, subject to the Rules made under the said article. Needless to mention rules made by the Chief Justice will be subject to the provisions of any law made by the legislature of the State. In view of proviso to sub-article (2) of Article 229, any rule relating to the salaries, allowances, leave or pension of the employees of the High Court would require the approval of the governor, before the same can be enforced. The approval of the governor, therefore, is a condition precedent to the validity of the rules made by the Chief Justice and the so-called approval of the Governor is not on his discretion, but being advised by the Government. It would, therefore, be logical to hold that apart from any power conferred by the rules framed under Article 229, the Government cannot fix the salary or authorise any particular pay scale of an employee of the High Court. It is not the case of the employees that the Chief Justice made any rules, providing a particular pay scale for the employees of the Court, in accordance with the constitutional provisions and that has not been accepted by the governor. In the aforesaid premises, it requires consideration as to whether the High Court in its discretionary jurisdiction under Article 226 of the Constitution, can itself examine the nature of work discharged by its employees and issue a mandamus, directing a particular pay scale to be given to such employees. In the judgment under challenge, the Court appears to have applied the principle of "equal pay for equal work" and on an evaluation of the nature of duties discharged by the Court Stenographers, Personal Assistants and Personal Secretaries, has issued the impugned directions. In *Supreme Court Employees' Welfare Assn. V. Union of India* this Court has considered the powers of the Chief Justice of India in relation

to the employees of the Supreme Court in the matter of laying down the service conditions of the employees of the Court, including the grant of pay scale and observed that the Chief Justice of India should frame rules after taking into consideration all relevant factors including the recommendations of the Pay Commission and submit the same to the President of India for his approval. What has been stated in the aforesaid judgment in relation to the Chief Justice of India vis-à-vis the employees of the Supreme Court, should equally apply to the Chief Justice of the High Court vis-à-vis the employees of the High Court. Needless to mention, notwithstanding the constitutional provision that the rules framed by the Chief Justice of a High Court, so far as they relate to salaries and other emoluments are concerned, require the prior approval of the Governor. It is always expected that when the Chief Justice of a High Court makes a rule, providing a particular pay scale for its employees, the same should be ordinarily approved by the Governor, unless there is any justifiable reason, not to approve the same. The aforesaid assumption is on the basis that a high functionary like the Chief Justice, before framing any rules in relation to the service conditions of the employees of the Court and granting any pay scale for them is expected to consider all relevant factors and fixation is made, not on any arbitrary basis."

It was furthermore stated:

"The Court also expressed the view in the aforesaid case that the Chief Justice of India is the appropriate authority to consider the question as to the distinctive nature and personality of the employees of the Supreme Court and before laying down the pay scales of the employees, it may be necessary to ascertain the job contents of various categories of employees and nature of duties which are performed by them. Further, at the time of preparing the rules for prescribing the conditions of service, including the fixation of the pay scales, the Chief Justice of India will consider the representations and suggestions of the different categories of employees of the Supreme Court, also keeping in view the financial liability of the Government. In view of the aforesaid decision of this Court, it is difficult for us to sustain the impugned judgment, whereunder the High Court in exercise of its jurisdiction under Article 226, has issued the mandamus, directing a particular pay scale to be given to the Court Stenographers, Personal Assistants and Personal Secretaries attached to the Hon'ble Judges of the Court."

22. In the instant case, the Chief Justice did not frame any rules except in the case of Private Secretaries. Such rules have only been framed on or about 15th November, 2001. Thus, at the relevant time i.e. when the writ petition was filed and the impugned judgment was passed, there existed no such rule.

23. The jurisdiction of the High Court to exercise its power of judicial review is required to be examined in the aforementioned situation.

24. For our purpose, it is not necessary to refer to a large number of decisions on this question as the matter has been considered by a 3-Judge Bench of this Court in Union of India (UOI) and Another Vs. S.B. Vohra and Others, wherein, one of

us (S.B. Sinha, J.), speaking for the Bench opined that judicial review lies inter alia when public law element is involved and the question as to whether public law remedy enforceable under Article 226 of the Constitution of India is available or not is required to be determined in each case. It was held:

"30. Judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is considered to be the basic feature of the Constitution. The Court in exercise of its power of judicial review would jealously guard the human rights, fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds which could be expended on building hospitals, roads and the like, or overseas aid, or compensating victims of crime.

32. It is not possible to lay down the standard exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not. In other words, exercise of its discretion by the Court will also depend upon the law which governs the field, namely, whether it is a fundamental law or an ordinary law.

33. It is, however, trite that ordinarily the Court will not exercise the power of the statutory authorities. It will at the first instance allow the statutory authorities to perform their own functions and would not usher the said jurisdiction itself."

25. The Court noticed that fixation of scale of pay in favour of one class of employees have a spiralling effect and in that view of the matter it is important that the matter as regard fixation of scale of pay of officers working in different High Courts must either be examined by an expert body like the Pay Commission or any other body and in absence thereof the High Court itself should undertake the task, keeping in view the special constitutional provisions contained in Article 229 of the Constitution of India.

26. Having regard to the high position and status enjoyed by the Chief Justice, it was observed, his recommendations should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons.

27. It was opined:

"52. The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/ State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefore. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the Chief Justice of the High Court and the State are not ad idem, the matter should be discussed and an effort should be made to arrive at a consensus.

53. We are further of the opinion that only in exceptional cases the High Court may interfere on the judicial side, but ordinarily it would not do so. Even if an

occasion arises for the High Court to interfere on its judicial side, the jurisdiction of the High Court should be exercised with care and circumspection."

28. The scope of judicial review has also been considered recently by this Court State of State of U.P. and Another Vs. Johri Mal, wherein it was opined:

"28. The Scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review succinctly put are :

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies. (See *Ira Munn v. State of Illinois*, 1876 (94) US (Supreme Reports) 113)"

29. The High Court in its impugned judgment, however, did not adequately address itself to the said issue.

30. In this case, the Chief Justice merely forwarded the representation of the Respondents dated 15th March, 1994 for grant of a higher scale of pay with effect from 1.1.1986 directing the Registry to forward the same to the State Government with recommendations to consider the same on the ground of parity. Such forwarding of recommendations to the State Government did not involve any application of mind on the part of the Chief Justice as was required under Article 229 of the Constitution of India. The Chief Justice on his own did not arrive at any decision that the jobs performed by the concerned officers were

comparable to their counterparts in the Central Secretariat or Delhi High Court. No rule was framed fixing the terms and conditions of service or the scale of pay for different categories of the employees of the High Court. Only because in the forwarding letter, the State Government was asked to consider the demand of the concerned officers favourably, the same by itself would not mean that the requirements of Article 229 of the Constitution stood complied with. Unless the Chief Justice of the High Court exercises his constitutional power or acts on the basis of the recommendations of a committee constituted by him for the purpose of fixation of scale of pay and laying down other conditions of service; only forwarding of a representation to the State Government to consider the same favourably without anything more would not amount to exercise of the constitutional jurisdiction under Article 229 of the Constitution.

31. In this case, our attention has been drawn to a decision of this Court in Union of India (UOI) Vs. Kishan K. Sharma and Others, wherein this Court despite holding that the High Court was not correct in issuing a writ of or in the nature of mandamus directing the Central Government to pay a scale of Rs. 1640-2900 with effect from 1.1.1986 in favour of the Respondents, did not interfere in the matter considering the same to be old one and having regard to the fact that the direction of the High Court had already acted upon. Such is not the position here.

32. This Court granted stay of the operation of the judgment regarding enhancement in Civil Appeal No. 1260 of 2001 and granted an ad interim stay of the payment of first instalment of arrears which was going to fall on 1.1.2000 in Civil Appeal No. 1980 of 2000.

CONCLUSION :

33. We, therefore, are of the opinion that the impugned judgments cannot be sustained which are set aside accordingly. However, this order shall be subject to the rules framed by the Chief Justice in the case of the Private Secretaries of the High Court. It will, however be open to the Chief Justice of the Allahabad High Court to frame appropriate rules as has been done in the case of the Private Secretaries or constitute an appropriate committee for the said purpose. We have no doubt in our mind that if such committee is constituted and any recommendation is made for enhancement of the scale of pay for the concerned officers by the Chief Justice, the same would be considered by the State Government in its proper perspective and in the light of the observations made hereinbefore expeditiously.

34. For the reasons aforementioned, these appeals are allowed with the aforementioned observations. No Costs.