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Court : Delhi

Decided On : Nov-04-2003

Reported in : 2004(73)DRJ196; 2004(3)SLJ145(Delhi)

Judge : D.K. Jain and; Madan B. Lokur, JJ.

Acts : Constitution of India - Articles 146, 226 and 229

Appeal No. : CW No. 740/2003

Appellant : C. Subramaniam and ors.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Nishakant Pandey, Adv. for R-1 and ; Viraj R. Datar, Adv. for R-2

Advocate for Pet/Ap. : G.D. Gupta, Sr. Adv. and; Pankaj Kumar, Adv

Judgement :

D.K. Jain, J.

1. By this writ petition under Article 226 of the Constitution of India, Class III and IV employees of this Court seek a direction to the two respondents, namely (i) the Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions and (ii) the Registrar General of this Court, to adopt and implement the

Assured Career Progression Scheme (for short ' ACP Scheme'), notified by the Government of India, vide their Office Memorandum dated 9 August 1999.

2. In the reply affidavit filed on behalf of the High Court, it is stated that upon consideration of the grievance of the petitioners, the Administrative Committee of the High Court had recommended that the ACP Scheme should be adopted and implemented as it had already been implemented in the Supreme Court as also the Subordinate Courts. To work out the modalities, a Screening Committee of Officers was constituted. The Screening Committee reported that till the pay scales, in which financial upgradiation could be given to class IV and III employees who had put in 12 and 24 years of regular service, are decided, their cases cannot be processed. Thereafter, the matter was again considered by a Committee of three Judges. Taking note of the fact that the Supreme Court had implemented the ACP Scheme for its employees, the Committee was of the view that the High Court would be in a position to implement the Scheme on the pattern of Supreme Court only after the government sanctions the pay scales proposed by the High Court. In nut shell, the stand of the High Court is that it would implement the ACP Scheme as soon as sanction of the proposed pay scales is received from the Government.

3. In its affidavit, the first respondent i.e. Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Government of India, has stated that the employees of the High Court enjoy special and different status under the Constitution and essentially it is for the High Court to evolve a suitable promotion scheme/career progression scheme or to adopt the ACP Scheme for its employees. It is averred that the relief, sought by the petitioners in the writ petition, can be considered only by the Administrative Wing of the High Court and the Central Government has no role to play in the matter. As regards the question of revision of the salaries of officers and service conditions of the employees of the High Court, it is pointed out that Bills had been introduced in the Rajya Sabha in the year 1994 to rectify certain anomalies, which had crept in the pay scales of the employees of the Supreme Court and the High Court. The said Bills have since been passed by the Rajya Sabha in March 2001 and the same have been referred to the Lok Sabha for further action.

4. Thus, the short question for consideration is whether the staff of this Court should be deprived of the benefit of ACP Scheme, which their counterparts in the Supreme Court and the Subordinate Courts are already enjoying merely because the Government of India is sitting tight over the proposal of the Chief Justice for sanction of normal replacement scales.

5. We have heard learned counsel for the parties. We have also perused the relevant files of the High Court, summoned by us.

6. To appreciate the rival stands, it would be necessary to take note of a few background facts, which are as follows:

Pursuant to the directions given by a Division Bench of this Court, presided over by Arun Kumar, J. (as his Lordship then was), on 27 August 1998 in CWP No. 1207/92 Chaman Lal Sharma v. Union of India & Ors, the sanction of the President for the revision of pay scales of Librarian, Senior Stenographers, Assistants, Daftries, Ushers and Peons etc., in terms of the 4th Pay Commission's Report, w.e.f. 1 January 1986, was conveyed to this Court on 21 September 1998. The sanction was subject to the outcome of Special Leave Petition. The Special Leave Petition was dismissed by the Supreme Court on 23 September 1998.

On the implementation of the 5th Central Pay Commission report, vide letters dated 22 December 1998 and 26 October 1999, the Ministry of Law and Justice was requested by the High Court to obtain and convey the sanction of the Government for the normal replacement of the pay scales as recommended by the 5th Central Pay Commission in respect of the aforementioned categories of posts, with effect from 1 January 1996. However, without indicating any reason, the Deputy Secretary, Ministry of Law, Justice and Company Affairs , vide his letter dated 22 August 1999 conveyed to the High Court that it was not possible to agree with the said proposal.

Vide his D.O. Letter dated 4 April 2000, the Acting Chief Justice again requested the Minister for Law Justice and Company Affairs to look into the matter personally and issue necessary directions to the concerned departments to issue immediate sanction for normal replacement of pay scales to these categories of posts. In

response thereto, the Union Law Minister vide his letter dated 26 June 2000, informed the Chief Justice that since serious anomalies had crept in to the pay scales of the employees of the Delhi High Court on account of various judgments and orders passed by this Court in writs filed by the employees, the Government had introduced a Bill, namely, the Salaries, Allowances, Leave and Pension of the Officers and Servants of the Delhi High Court Bill, 1994 in the Rajya Sabha and the Bill was at an advanced stage of consideration.

On receipt of the said letter, Hon'ble the Chief Justice Arijit Pasayat (as his Lordship then was) vide his letter dated 11/12 September, 2000, clarifying the stand of the High Court on the issues raised in the Law Minister's letter, again requested the Minister to re-examine the matter, notwithstanding the pendency of the Bill and direct sanction of normal replacement pay scales as requested by this Court vide letter dated 4 April 2000. Since the said letter succinctly explains the position of the High Court, for sake of ready reference, we deem it appropriate to extract hereunder the relevant portion thereof:

'At the very outset, I would like to make it clear that this Court has not recommended any higher pay scales for the posts of Librarian, Assistants/Junior Readers/Care-Takers, Senior Translators, Proof Readers, Daftries, Book Binders and Ushers. A mistaken impression seems to exist that the High Court has been asking for further revision of pay scales to the above categories of employees of this Court. This is factually incorrect. It may be added that all that this Court has recommended was the normal replacement of pay scales of the 4th Central Pay Commission's report, sanctioned vide letter dated 21.09.1998 of the Govt. of India, to the above categories of employees of this Court in terms of the 5th Central Pay Commission Report. To say that Court judgments have created serious anomalies, is not correct. You will appreciate the Court pronouncements rather remove the anomalies.

The above categories of employees filed writ petitions in the High Court which were allowed by the High Court and SLP was dismissed by Supreme Court, in view of the letter dated 21.09.1998 conveying sanction of the pay scales in terms of 4th Pay Commission reports to the above categories of employees. Now that

the 5th Central Pay Commission Report has been implemented in the Delhi High Court, this Court recommended normal replacement pay scales to these categories of employees in pursuance of the implementation of the 5th Central Pay Commission Report. The refusal to grant normal replacement pay scales to the above category of employees would tantamount to depriving them of their legitimate pay which they become entitled to after the 5th Pay Commission Report was accepted by this Court. By not sanctioning replacement scales, they are forced to draw lesser pay than the other posts in this Court which are of equal status and inter-changeable in nature, thus creating an anomalous position. A Central Government employee who was drawing the pay scale of Rs. 3000-4500 has been granted replacement pay scales of Rs. 10000-325-15200 by the 5th Central Pay Commission. Similarly, an employee drawing pay scale of Rs. 2000-3200 has been granted the pay scale of Rs. 6500-200-10500. This is precisely what this Court is asking for and has recommended in respect of the above categories of employees of this Court.

So far as the Bill mentioned in the letter under reference, I am not aware of the same. However, in view of the position as already stated above, these employees should not be deprived of their legitimate dues which they are otherwise entitled to.'

7. We are pained to note that so far the letter of the Chief Justice has not evoked any response from the Government. Unfortunately, the letter has not even been acknowledged. Thus, the issue which we are required to decide is whether, under the given circumstances, we should permit the stalemate to continue till something happens to the Bill, stated to have been passed by the Rajya Sabha, or pass some orders to grant relief to the petitioners in terms of the ACP Scheme.

8. Article 229 of the Constitution deals with the officers & servants and the expenses of the High Courts. Under the said provision the Chief Justice of the High Court is the sole authority in the matter of regulating the conditions of service of the officers of the High Court. Clause (2) of Article 229 empowers the Chief Justice to make rules, prescribing the conditions of service of officers and servants of a High Court. It is obvious that since pay scales involve financial implications,

proviso thereto provides that so far as these rules relate to salaries, allowances, leave or pensions, they would require the Governor's approval. The scope of the powers of the Chief Justice has been the subject matter of some debate between the High Courts and the State Government or the Central Government as the case may be. Almost three decades ago, the Apex Court in State of Andhra Pradesh v. T. Gopalakrishnan Murthi : [1976]1SCR1008 had expressed the hope that in view of the spirit of Article 229, the Government should ordinarily and generally accept and accord approval to the recommendations of the Chief Justice. In the context of the issue before us, we feel that the following observations of the Supreme Court in Supreme Court Employees' Welfare Association v. Union of India , endorsed by the Constitution Bench in State of U.P. And Anr. v. C.L. Aggarwal & Anr. : (1997)IILLJ770SC , deserve to be highlighted:

'So far as the Supreme Court and the High Courts are concerned, the Chief Justice of India and the Chief Justice of the concerned High Court, are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor, as the case may be, is required. It is apparent that the Chief justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is a very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the President of India and the Chief Justice of India .'

9. Though we are conscious of the fact that in Gopalakrishnan Murthi's case (supra) the Supreme Court had observed that non-acceptance of the recommendation of the Chief Justice may not justify the issuance of a writ of mandamus for its acceptance but in Supreme Court Employees' Welfare

Association case (supra) while holding that the recommendations of the Committee of Judges, accepted by the Chief Justice of India, could certainly form a basis for issuing directions regarding payment of revised pay scales to different categories of employees, the Apex Court did exercise power under its writ jurisdiction, though by means of interim orders, in fixing the pay scales of its staff under Article 146 of the Constitution. Provisions of Article 146 are akin to those under Article 229 of the Constitution, applicable to the staff of the High Court.

10. It is also pertinent to note that in A.K. Gulati v. Union of India : 44(1991)DLT590 this Court had directed that a Private Secretary of the Judge be given a pay scale of Rs. 3000-4500, which pay scale was being given to the Private Secretary to the Chief Secretary of Delhi Administration and Secretary to the Government of India. As was expected, the Union of India and the Delhi Administration, not Realizing how much hard labour the Private Secretaries to the High Court Judges were required to put in, as compared to their counterparts in other departments, filed Special Leave Petition in the Supreme Court, but the same was dismissed. Thereafter, a similar Writ petition by the Superintendents and Court Masters of this Court was also allowed. Against the direction in this writ petition, the Union of India filed a Special Leave Petition, which was dismissed on 25 March 1992 in liming by the following order:

' No grounds to interfere. The Special Leave petition is dismissed'

11. It may be of some significance to note here that in Union of India & Ors. v. Amrik Singh & Ors. CA Nos. 4232-4236/95 4232-4236/95), decided on 2 May 1995, the Supreme Court held as follows:

'We have heard learned counsel for the parties on several occasions. It is not necessary to go into the merits of the controversy because we are of the view that the matter regarding the fixation of pay scales of the employees of the Delhi High Court should be considered and decided by the Chief Justice of the High Court. We are not expressing any opinion either way on the various grounds on which the Delhi High Court has allowed these writ petitions.

We, thereforee, set aside the High Court judgments in all these appeals and request the Chief Justice of Delhi High Court to decide the entitlement of pay scales of all these categories after hearing their representatives. The Chief Justice may, if he so desires, constitute a Committee for this purpose. A representative of the Ministry of Finance can also be associated with the Committee. Needless to say that the Committee's function would only be advisory.'

12. Learned Senior counsel appearing for the Union of India in the aforesaid appeals very fairly stated (and it is so recorded by the Supreme Court) that 'the recommendations of the Chief Justice of Delhi High Court shall be duly honoured by the concerned Government'.

13. In the case before us, three successive Chief Justices of this Court have recommended the acceptance of the normal replacement scales pursuant to the recommendations of the 5th Central Pay Commission but to no effect.

14. From the decision rendered by the Apex Court, it would appear that whenever the Courts have felt that the government is unnecessarily ignoring the recommendations of the Chief Justice or is sitting over the proposal without any good reason, the Courts should not hesitate in exercising their extra ordinary powers under the writ jurisdiction to remove the disparities in pay scales.

15. Having considered the matter in the light of the aforementioned precedents and the unfortunate situation as it prevails today, we are of the considered view that this Court must intervene in the matter to end the impasse. We feel that the aforenoted stand of the Central Government is clearly contradictory in terms. On the one hand they have left it to the wisdom of the High Court to implement the ACP Scheme and on the other, they are not granting approval to the recommendations of three successive Chief Justices to bring the scales in line with the recommendations of the 5th Central Pay Commission, with the result that the ACP Scheme cannot be implemented. We fail to understand that once the pay scales recommended by the High Court in terms of 4th Central Pay Commission were sanctioned by the Government in September 1998 and the same have since been implemented, how the Government can now sit over the proposal of the Chief Justice, recommending normal replacement pay scales in respect of the

other categories of employees in pursuance of the 5th Central Pay Commission report, particularly when the recommendations of the 5th Pay Commission and the ACP Scheme based on the revised pay scales have been implemented in respect of the employees in other departments of the Government of India, the Supreme Court and the District Courts. It is significant to note that in Supreme Court Employees' Welfare Association v. Union of India & Anr. : (1993)ILLJ 1094 SC the Apex Court had observed that the pay scales of employees of the Supreme Court were at par with the pay scales of corresponding categories of posts in this Court. The Supreme Court had directed that the pay scales applicable to various posts in this Court be made applicable to the employees of the Supreme Court. Thus, we are constrained to observe that the stand of the Government in the present case is clearly discriminatory and smacks of arbitrariness. We feel that such a situation cannot be allowed to continue any longer otherwise the staff of this Court will be deprived of their legitimate dues under the ACP Scheme, which was formulated as far back as on 9 August 1999 on the basis of the recommendation of the 5th Pay Commission in order to mitigate financial hardship on account of acute stagnation, either in a cadre or in an isolated post, on completion of 12 years and 24 years of regular service of Group B, C and D employees.

16. Consequently, we direct that pending approval by the Government of the revised pay scales of the staff of the High Court, as recommended by the Chief Justice, the ACP Scheme, notified by the Government of India on 9 August 1999, shall be implemented on the basis of the proposed revised pay scales forthwith and the payment, including the arrears, shall be made to the eligible employees within two months from today.

17. The writ petition stands disposed of in the above terms with no order as to costs.

18. To ensure compliance, copies of this order shall be issued dusty to the counsel for the High Court and also to Mr. Nishakant Pandey, learned counsel for the Union of India, for onward transmission to the Ministries concerned, including the Ministry of Finance and Ministry of Law, Justice & Company Affairs for necessary action at their ends.

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