

CASE NO.:
Appeal (civil) 1449 of 2000

PETITIONER:
Manmatha Nath Ghosh & Ors.

RESPONDENT:
Baidyanath Mukherjee & Ors.

DATE OF JUDGMENT: 26/04/2005

BENCH:
K.G.Balakrishnan & B.N.Srikrishna

JUDGMENT:
J U D G M E N T

SRIKRISHNA, J.

This appeal by special leave impugns the judgment of the Special Bench of five Judges of the High Court of Calcutta, which allowed two Letters Patent Appeals Nos. APO 601/87 and APO 604/87 and dismissed Appeal No. 187/88 and Writ Petition No. 5497/87. Appeals, APO 601/87 and APO 604/87 arose out of the judgment of a learned Single Judge (Ajit Kumar Sengupta, J.) in Writ Petition No. 1033/84. Appeal No. 187/88 and Writ Petition No. 5497/87 that raised similar issues were also referred to the Full Bench. The Full Bench by a common judgment decided all the matters assigned to it.

In all the Chartered High Courts, which exercise Original Jurisdiction, there has been traditional rivalry between the officers working on the Appellate Side and those working on the Original Side. The case on hand is yet another example of this rivalry resulting in expenditure of judicial time and talent which could have been utilised for better purposes.

Facts:

The appellants before us are officers on the Original Side of the Calcutta High Court designated as Recording Officers (Court). They were traditionally and historically treated as equal in status with Assistant Registrar (Court) on the Appellate Side. Before the First Pay Commission's recommendations, the pay scales applicable to these two categories were the same. Prior to 1961 the pay scale was Rs. 250-400; after 1961 pay revision the pay scale applicable to both the categories was Rs. 500-700 and on and after 24.10.1968 both the categories of officers were placed in the pay scale of Rs. 300-900. The First Pay Commission recommended that the same emoluments be paid to these two categories of officers.

The Recording officers on the Original Side were earlier styled as 'Shorthand Writers'. The High Court on the Original Side maintained that the post of Shorthand Writer on the Original Side was comparable to that of Court Officer on the Appellate Side. Successive Chief Justices reiterated this position and recommended to the State Government that parity be maintained in the emoluments payable to these two categories. The Shorthand Writers on the Original Side of the High Court represented to the Hon'ble Chief Justice by a petition dated 30.5.1972 that their designation be changed from "Shorthand Writer" to "Court Reporting Officer". By an Order of 27.7.1972 the designation of Bench Clerks / Court Officers of the Appellate Side were changed to Assistant Registrars (Appellate Side). Immediately thereafter, on 10.8.1972, the Shorthand Writers petitioned the Chief Justice and requested that they be equated with Assistant Registrars on the Original Side. On 6.12.1972, the Chief Justice constituted a Special Committee of five learned Judges to consider the following:

"(a) The representation of the Assistant Registrars (Court) on the Appellate Side for revision of their scale of pay;
(b) The representation of the Assistant Court Officers on the Appellate Side for revision of their scale of pay and their designation;
(c) The representation of the Shorthand Writers and Interpreters on the Original Side for changing their designations."

The Special Committee considered the matter and by its Report dated 26.4.1973 made the following recommendations:

"(a) The Assistant Registrars (Court), Appellate Side be given the same salary, scale of pay, emoluments and status as those of the Assistant Registrars, Original Side.

(b) The claim of the Assistant Court Officers to be designated as Court Officers be not accepted but their scale of pay of Rs.600-860/- be recommended to the Government for acceptance.

(c) The designation of the Shorthand Writers on the Original Side be changed to "Court Recording Officers".

(d) The designation of the Interpreters on the Original Side be changed to "Court Interpreting Officers".

Recommendations of the Special Committee were considered in a Full Court Meeting held on 22.8.1973 and the Full Court of the High Court passed the following relevant Resolution:

"1. To consider the matter relating to the report of the Special Committee in representation of the Assistant Registrars (Court), Assistant Court Officer, Shorthand Writers and Interpreters for revision of scale of pay and change of designation which was adjourned at the Full Bench Meeting held on 22.6.73 for further discussion.

Resolved that the report of the Special Committee be accepted subject to the following namely-

i) that the Assistant Registrar (Court), Appellate Side be given the same salary, scale of pay, emoluments and status as those to the Assistant Registrar, Original Side in suppression of the previous recommendations sent to the Government more particularly in the letters of the Original Side one dated the 6th January, 1971 and the other dated the 23rd March, 1971 relating to the pay of the Shorthand Writers and Interpreters;

ii) that the scale of pay of Rs. 425-825/- be recommended to the Government for the

Assistant Court Officers for acceptance;
iii) that the designation of the Shorthand Writers on the Original Side be changed to "Recording Officer (Court)"; and
iv) that the designation of the Interpreters on the Original Side be changed to "Interpreting Officer (Court)."

Resolved further that the Recording Officer (Court) and Interpreting Officer (Court) be not treated on par with the Assistant Registrars (Court) on the Appellate Side and they be not equated with the Assistant Registrars on the Original Side and Assistant Registrars (Court) on the Appellate Side or the Assistant Court Officers on the Appellate Side in matters of salary, scales of pay, emoluments and funds."

In 1977 the State Government constituted the Second Pay Commission for revision of the pay scales applicable to Government servants. By a Communication dated 23.3.1978, on behalf of the Chief Justice of Calcutta High Court, the Registrar communicated to the State Government:

" \005 I am directed to say that the court has no objection to the said Pay Commission considering the making its recommendations on the pay structures of all categories of High Court employees, even though no representation is made by the employees, individually or collectively, and kindly note that the findings of the Pay Commission in this regard which may be forwarded by the Government to the Hon'ble the Chief Justice for his Lordship's consideration, would not, by themselves, be binding on the Court."

Sometime in 1981, the Pay Commission made its recommendations with regard to a common scale of pay and special pay to the Recording Officers (Court) on the Original Side and the Assistant Registrars (Court) on the Appellate Side. A copy of the recommendations was forwarded to the High Court for its views.

By a communication dated 22.12.1981 addressed by the Registrar of the High Court to the State Government it was pointed out that the proposed pay scales had upset the position of the Assistant Registrars (Court) as decided by the Full Court. It was pointed out that, according to the Full Court decision dated 22.8.1973, the Assistant Registrars (Court) were superior to those of the Recording Officers (Court), who were the erstwhile Shorthand Writers on the Original Side. An apprehension was expressed that the considered view of the Full Court of the High Court had not been taken into account by the Government, and by prescribing the same pay scale for the Assistant Registrars (Court) and the Recording Officer (Court), "the rank and status of the Assistant Registrar (Court) have been lowered and hence they feel seriously prejudiced." The High Court, therefore, requested the State Government to consider the recommendations made by it in this regard and prescribe appropriate pay scale and the special pay for these categories of officers. Certain recommendations were made with regard to the pay scales of these two categories of officers by the said letter.

As a result of discussions and consultations between the High Court and the State Government, a set of Rules prescribing the pay scales for different categories of High Court employees were brought into force by the Chief Justice and notified in the Official Gazette of 13.4.1982. These Rules were styled as "Calcutta High Court (Appellate Side) Services (Revision of Pay and Allowance) Rules, 1981, Part I". The Rules were brought into force retrospectively with effect from 1.4.1981. The revised pay scale of Assistant Registrar and Special Officer notified in Schedule B was Rs. 660-1600 plus special pay of Rs. 100 per month. By another set of Rules styled as "Calcutta High Court Services (Revision of Pay and Allowance) Rules, 1981, (Original Side), Part I", notified in the Official Gazette of 30.4.1982,

and made operative retrospectively from 1.4.1981, the pay scales of the Original Side employees were revised. The revised pay scale applicable to the Recording Officer (Court) on the Original Side was Rs. 660-1600 plus special pay of Rs. 100 per month.

Despite the Notification of the Rules and prescription of identical pay scale to the two categories of the High Court employees, it appears that the High Court was of the view that certain amount of differentiation was to be maintained and this view was communicated to the State Government by D.O. letter dated 13/16.6.1983 forwarding certain proposals for further revision of the pay scales of certain categories of employees of the High Court on Appellate Side. By its letter dated 19.9.1983, the State Government agreed that in respect of the post of Assistant Registrar (Court) the pay scale should be Rs. 660-1600 plus a special pay of Rs. 150/- per month. Certain other proposals made were not accepted by the State Government.

The Recording Officers moved Writ Petition No. 1033/84 before the High Court praying that the State Government and the High Court be restrained from giving effect to the Government's proposals contained in its letter dated 19.9.1983 and granting an additional special pay of Rs. 50/- per month to the Assistant Registrars (Court) on the Appellate Side, or in the alternative, that they also be given the additional special pay of Rs. 50/- per month. This writ petition was allowed by a learned Single Judge by his judgment dated 14.8.1987. The learned Single Judge directed, "the Senior Recording Officer (Court) and all the Recording Officers (Court) on the Original Side of this Court shall be entitled to the same special pay as admissible to the Assistant Registrars (Court) on the Appellate Side of this Court including the benefits in terms of order No. 24382-J/JIE-56/81(Pt. II) dated 19.9.1983 with effect from 1.4.1981."

Appeal Nos. 601/87 and 604/87 were filed on the Original Side challenging the judgment of the learned Single Judge. As already said, these appeals together with two connected matters were referred to the Special Bench which set aside the judgment of the learned Single Judge and passed consequential orders.

Contentions:

We have been taken through the record by the learned counsel for the appellants. We have also heard the learned counsel on both sides. The crux of the issue is that by the writ petition, the Recording Officers (Court) challenged (i) the correctness of the Full Court's Resolution dated 22.8.1973; (ii) the letter of the High Court dated 22.12.1981; and (iii) the State Government's Order dated 19.9.1983. The efficacy of the challenge to these three shall determine the fate of this appeal.

Learned counsel for the State Government took a neutral attitude and submitted that the State Government had acceded to what it thought was a reasonable and justified recommendation, and that the State would abide by whatever decision of this Court takes in the matter.

Although, in the writ petition before the High Court, the petitioners did seek an injunction to restrain the High Court and the State Government from giving the benefit of additional special pay to the appellants before us, such a prayer does not appear to have been pursued before the learned Single Judge, as seen from the written submissions filed and the judgment itself. The written submissions restricted the relief sought to upgradation of the special pay of Assistant Registrars (Court). The judgment of the learned Single Judge also does not indicate that the relief for an injunction was either pressed or sought. On the other hand, the only relief which appears to have been pressed for, and granted by the learned Single Judge, was the relief of additional fifty rupees to the writ petitioners before him.

We are of the view that the challenge to the Full Court Resolution dated 22.8.1973 must fail for more than one reason. The learned counsel contended that the Full Court Resolution had gone much beyond the

recommendations made by the Special Committee on 26.4.1973. The contention has no merit. The Special Committee was constituted to investigate the matters and express its views. Merely because the Special Committee expressed its views, the Full Court of the High Court was not obliged to accept its recommendations as made. It was perfectly within the competence of the Full Court of the High Court to reject, accept or accept with modification the recommendations made by the Special Committee. The Resolution of the Full Court dated 22.8.1973 specifically goes on record to say that the Recording Officers (Court) and Interpreting Officers (Court) shall not be treated on par with the Assistant Registrars (Court) on the Appellate Side and they be not equated with the Assistant Registrars (Court) on the Original Side and Assistant Registrars (Court) on the Appellate Side or the Assistant Court Officers on the Appellate Side in matters of salary, scales of pay, emoluments and funds. This was a decision arrived at by the High Court on the basis of its intimate knowledge of the job contents of these officers. Merely because designations are changed, the responsibility invested in the incumbent or the calibre of the incumbent to discharge certain duties does not change. We have not been able to appreciate any substantial ground on which the concerned Resolution of the Full Court of the High Court could be impugned. In the face of this Full Court's Resolution, it is not open to the appellants to contend that the concerned two categories of the employees of the High Court must necessarily be treated as identical for all purposes including the question of special pay.

Secondly, the Full Court Resolution was passed in the year 1973. It is not as if the employees concerned were not aware of the Full Court's Resolution or that they did not know the benefits or disadvantages flowing therefrom. In fact, the change of designation of Shorthand Writers on the Original Side to "Recording Officers (Court)" and the change of designation of Interpreters to "Interpreting Officers (Court)" came about only because of this Full Court Resolution. A challenge to this Resolution of 1973 in the year 1984 should fail on that very ground.

Further, the Rules prescribing the pay scale of the officers on the Original Side and the Appellate Side have themselves not been challenged. The only contention urged in this connection is that, despite the Rules having been framed in which the two concerned categories were granted identical pay scale and special pay, it was not open to the High Court or the State Government to increase the special pay of the Assistant Registrars (Court), by an additional amount of Rs. 50/- per month. We are unable to accept the argument that because the Rules prescribed the identical pay scale and special pay to these two concerned categories of employees, it was not open to the High Court to recommend to the State Government or for the State Government to accept payment of an additional fifty rupees special pay only in respect of the employees known as Assistant Registrars (Court) on the Appellate Side.

In our view, it is entirely a matter of the assessment by the High Court as to the equivalence of the work done in the two categories. In a matter like this, the assessment of the quality of work done by the two categories of employees must necessarily be left to the judgment of the employer, which in the present case is the High Court.

The challenge to the Resolution of the Full Court of the High Court and to the Government's Order dated 19.9.1983 also has no merit. The Special Bench judgment under appeal has carefully considered the contentions and pointed out that it is not within the province of the High Court to fix the pay scales of various employees in exercise its powers of judicial review under Article 226 of the Constitution of India. Whatever may have been the grievance, it was not open to the learned Single Judge to direct fixation of pay scales or special pay. The reliance by the Special Bench on the judgment of this Court in *State of U.P. v. J.P. Chaurasia* is apt. This Court observed therein as under:

"The first question regarding entitlement to the pay scale

admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The question of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalent unless it is shown that it was made with extraneous consideration."

We agree with the conclusion of the Special Bench that the court cannot, in the guise of judicial review, usurp the powers conferred by Article 229 of the Constitution and fix a pay scale different from one prescribed in exercise of the said power.

Interestingly, the learned counsel for the appellant submitted that the effort of the appellants before the Court is not to reduce the higher special pay paid to the Assistant Registrars (Court) on the Appellate Side, but to bring about a parity by increase of the special pay admissible to the respondents. In our view, this contention is also unjustified. While we do not think that the higher special pay made admissible to the respondents-employees is unjustified, even if it were so, the appellants cannot succeed in seeking something, which, even according to them, is unjustified.

Conclusion:

Looked at from all points of view, it appears to us that the judgment of the Special Bench cannot be faulted. We see no reason to interfere with the judgment under appeal, nor any merit in this appeal.

Consequently, the appeal is dismissed. However, in the circumstances of the case, there shall be no order as to costs.