

PETITIONER:
STATE OF RAJASTHAN & ORS.

Vs.

RESPONDENT:
RAJASTHAN JUDICIAL SERVICE OFFICERS ASSOCIATION & ANR.

DATE OF JUDGMENT: 24/05/1999

BENCH:
Sujata V.Manchar, R.C.Lahoti

JUDGMENT:

Mrs. Sujata V. Manohar, J.

Respondent No.1, Rajasthan Judicial Service Officers Association filed a writ petition in the Rajasthan High Court praying that the State of Rajasthan may be directed to provide to the Judicial Officers of the State of Rajasthan a dress allowance of Rs.10,665/- initially and thereafter a kit maintenance allowance of Rs.400/- per month renewable from time to time with all consequential benefits with effect from 1.1.1993. The State Government had, by a notification dated 18.9.1992, provided a dress allowance of Rs.1500/- once in every three years, to the Members of the Rajasthan Judicial Service and the Rajasthan Higher Judicial Service with effect from 1.1.1993. Not being satisfied with this allowance, the said writ petition was filed by the respondents. There was also another factor which led to the filing of the writ petition. In a similar writ petition filed in the Delhi High Court (C.W.P.No.840 of 1992) by the Delhi Judicial Services Association, the Delhi High Court had by its judgment and order dated 18th of November, 1992, directed that an initial lump sum amount of Rs.5,500/- should be paid to all Judicial Officers in Delhi and that there should thereafter be paid every month a sum of Rs.300/- as dress allowance. In view of this judgment of the Delhi High Court, the respondents contended that the allowance granted by the appellant-State by notification dated 18.9.1992 was inadequate. The Rajasthan High Court has directed the appellant-State to pay to all Judicial Officers of the Rajasthan Judicial Service and the Rajasthan Higher Judicial Service a lump sum amount of Rs.8,500/- towards dress allowance and thereafter to pay Rs.300/- per month towards the maintenance of the dress. The High Court also directed the State to consider a revision of these allowances every four years looking to the escalation in prices. The present appeal is filed from the above judgment.

A Judicial Officer is undoubtedly required to dress in the manner prescribed by the relevant Rules of each State in order to maintain the dignity of his office. The reason why a black jacket and bands are prescribed for a Judicial Officer is quite different from the reason why a uniform is prescribed for peons, chaprasis, police constables and so on. The latter have to mix with the public and a uniform identifies them as belonging to a specified group of persons who have authority or duty to act in a certain way or perform certain services. A Judicial Officer presides over

a court and is quite identifiable by reason of the position he occupies in the court. Nevertheless, in order that there may be a certain amount of decorum and dignity associated with this office, he is expected to dress respectably in the manner specified. Bands and gown are an insignia of his office. But whether for this reason the High Court can, on the judicial side, direct the State Government to pay a dress allowance or to specify the exact amounts which the State should pay by way of dress allowance is a matter which we have to examine.

Under Article 235 of the Constitution the High Court is invested with control over District Courts and courts subordinate to it including the posting and promotion of and the grant of leave to all Judicial Officers of the State. Under Article 309, however, recruitment and conditions of service of persons serving, inter alia, as Judicial Officers of the State is to be controlled by appropriate legislation; and until such legislation, the Governor of the State is empowered to make rules regulating the recruitment and conditions of service of Judicial Officers. In the present case, in exercise of its powers under Article 309 the State Government has fixed the salary and allowances of different categories of Judicial Officers in the State of Rajasthan. A dress allowance of Rs.1500/- every three years is one such allowance fixed by the State of Rajasthan.

The respondents contend that this allowance is on the lower side, and should be revised upwards by the High Court on the judicial side by issuing a writ of mandamus. They rely upon a decision of this Court in All India Judges' Association v. Union of India & Ors. ([1992] 1 SCC 119) where this Court gave various directions relating, inter alia, to the age of retirement of Judicial Officers, for providing a working library at the residence of every Judicial Officer, for sumptuary allowance, residential accommodation and a State vehicle for a District Judge. It also recommended an In-service Training Institute being set up at the Central and State or Union Territorial level. It also recommended an All India Judicial Service and a uniformity of designation of Judicial Officers in different States. The directions which were given were based on the perception of this Court that the essential judicial functioning of the Judicial Officers of every State was affected by a lack of certain basic amenities such as residential accommodation, a working library or a vehicle at the level of a District Judge. The retirement age prescribed differently in different States, was also perceived as requiring modification for efficient functioning of the judicial service. But the question of appropriate pay-scales of Judicial Officers, though raised by the petitioners, was not considered by this Court since it took the view that it was not equipped to do so. It left this question to be considered by an appropriate Pay Commission or Committee as and when set up in the States or Union Territories. In dealing with pay-scales, this Court noted that there was a wide variance in the pay structure prevailing in the various States and Union Territories. It was difficult on the basis of the data which was made available to this Court, for it to undertake the exercise of fixing the appropriate pay-scales. The Court, therefore, declined to examine the propriety of the existing pay-scales. The Court did, however, give directions relating to a library for the Judicial Officers since this was directly connected with proper performance of his duties

by a Judicial Officer and a sumptuary allowance looking to the circumstances in which the district judiciary had to function. While considering a review petition in the All India Judges' Association & Ors. v. Union of India & Ors. ([1993] 4 SCC 288) this Court recommended that the service conditions of the Judicial Officers should be laid and reviewed from time to time by an independent commission exclusively constituted for the purpose. And the composition of such commission should reflect an adequate representation of the judiciary on the Commission. This was recommended in lieu of the present practice of entrusting the work of recommending the service conditions of the members of the Subordinate Judiciary to the same Pay Commission which recommends the service conditions of the other services. The Court gave these directions as essentially for the evolution of an appropriate national policy in regard to the judiciary's service conditions.

This Court once again explained why directions regarding uniform pay-scales could not be given by the Court. It said, "There was a wide variance in the pay structure prevailing in different States and Union Territories and in the absence of full details it was not possible to fix appropriate pay-scales and hence a Pay Commission or Committee should be set up to separately examine and review the pay structure of Judicial Officers." Dealing with library allowance it observed, (at page 308), "By the judgment under review this Court had directed a residential office-cum-library allowance to the subordinate judges because law books were the essential tools of a Judicial Officer. It was expected of the State to provide every court with upto date text and commentaries on the relevant statutes and law journals which report decisions of the High Court and the Supreme Court for the use of the judges and since the various State Governments had consistently failed to provide this primary facility to the courts, it became necessary for the court to direct the payment of residential office-cum-library allowance." The Court made it clear that this was essential for proper performance of duties by the Judicial Officers. The direction, however, to give sumptuary allowance to the District Judge was deleted in the review judgment because the Court's attention was drawn to the facility available to the District Judges to incur expenses for official meetings from the funds at the disposal of the court.

In our view, any piecemeal determination of individual allowances which go to form the total pay packet of a judicial officer, by different High Courts by issuing writs of mandamus would go counter to the very purpose of setting up a National Judicial Pay Commission. It would also not be appropriate for any High Court to give directions in its own State regarding a particular allowance without examining the relative conditions of Judicial Officers and the total pay packets which are received by Judicial Officers in other States.

Both these judgments which deal extensively with the service conditions of Judicial Officers and their essential requirements for functioning efficiently as such officers, make no reference to a dress allowance. This Court left the question of pay and allowances to be determined by an appropriate Pay Commission or Committee. We are informed that the first National Judicial Pay Commission which has

been constituted has, as one of its terms of reference, the following:

"(b) To examine the present structure of emoluments and conditions of service of Judicial Officers in the State and Union Territories taking into account the total packet of benefits available to them and make suitable recommendations having regard, among other relevant factors, to the existing relativities in the pay structure between the officers belonging to the Subordinate Judicial Service vis-a-vis other civil servants."

Constitutional discipline also requires that the constitutional provisions must be followed by the High Courts. Article 309 puts the responsibility of deciding appropriate service conditions on the State. The concerned High Courts can play an effective administrative role in fixation of appropriate service conditions of judicial officers when backed by recommendations of an expert Pay Commission in which the judiciary has an important say. In the present case, the appellant- State of Rajasthan has pointed out that there is no uniformity regarding the granting of dress allowance and on kit maintenance allowance admissible to the Judicial Officers in different States. For example, in the States of Madhya Pradesh, Gujarat, Tamil Nadu, Maharashtra, Sikkim, Kerala, Karnataka and Jammu & Kashmir no such allowances are being paid at all. In the States of Punjab and Haryana also no such allowances are being paid although some Judicial Officers have filed a writ petition in the High Court claiming such allowances. In the State of Uttar Pradesh, Judicial Officers who are working in the courts are allowed Rs.300/- per month towards purchase of law books and maintenance of dress. In the State of Orissa, Rs.1500/- as a lump sum amount is given to each Judicial Officer in the rank of Munsiff, SDJM and Sub- Judge once in a block of three years. While in West Bengal Rs.500/- are allowed to the Judicial Officers once in two years. No kit maintenance allowance is being paid to them. In this context, therefore, there was no occasion for the High Court to issue a writ of mandamus in the manner in which it has done. The State of Rajasthan has also pointed out that a number of Judicial Officers are working in non-judicial posts. While so working, they are not required to wear any specified dress.

Whether a separate allowance for dress should or should not be granted also depends upon the total pay packet of the officer, his rank and status in society and whether in the context of his overall emoluments, it is necessary to give him a separate allowance. Employees in Class IV are normally given these allowances because their pay packets are perceived as at the lowest levels. One cannot ipso facto assume that the same logic will apply to Judicial Officers until we have an overall examination of their service conditions and a report from the National Judicial Pay Commission. In the judgments which were cited, this Court felt compelled to intervene only to ensure that proper functioning of the judicial officers was not affected. Unless the concerned service condition can be perceived as seriously affecting proper discharge of judicial duties, the High Court should not issue a mandamus directing the State to pay certain amounts to the judicial officers.

Our attention was also drawn to the observations of

this Court in M.P.Oil Extraction & Anr. v. State of M.P. & Ors. ([1997] 7 SCC 592 at 611 para 41) to the effect that the executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not informed by any reason whatsoever, can be clearly held to be arbitrary thereby offending Article 14 of the Constitution, the Court should not interfere with the policy decision of the executive. In Mallikarjuna Rao & Ors. State of Andhra Pradesh & Ors. ([1990] 2 SCC 707 at pages 713-714) also this Court has observed that the Court should not require the executive to exercise its rule-making power in any specific manner. Neither of these cases, however, deals with service conditions of judicial officers. In the present case, looking to the parameters laid down by the Constitution and all the above decisions, the quantum of dress allowance or Kit maintenance allowance was not required to be determined by the High Court in the manner in which it has done.

The impugned judgment of the High Court, therefore, cannot be sustained. It is, however, pointed out by the appellants that in November, 1998, the State Government has decided to increase the uniform allowance from the existing rate of Rs.1500/- to Rs.3000/- in a block of three years. Learned counsel appearing for the State of Rajasthan has also stated before us that the State will pay the increased allowance as specified in its letter of 20.11.1998 addressed to the Advocate-on-Record by the Principal Secretary to the Government and issued by the Finance Department. The appellants are directed to pay the uniform allowance of Rs.3000/- in a block of three years accordingly.

The appeal is allowed with the above direction. There will, however, be no order as to costs.