

CASE NO.:
Appeal (civil) 3518 of 1997

PETITIONER:
STATE OF HARYAKA AND ANR.

RESPONDENT:
HARYANA CIVIL SECRETARIAT PERSONAL STAFF ASSOCIATION

DATE OF JUDGMENT: 10/07/2002

BENCH:
S. KAJENDRA BABU & D.P. MOHAPATRA

JUDGMENT:
JUDGMENT

2002 Supp(1)SCR 118

The Judgment of the Court was delivered by

D.P. MOHAPATRA. J. This appeal filed by the State of Haryana, represented by the Chief Secretary and the Secretary to Government of Haryana, Department of Finance, is directed against the judgment of the Punjab & Haryana High Court dated 13.8.1996 in CWP No. 4206/95 filed by the Haryana Civil Secretariat Personal Staff Association through its General Secretary Shri Ram Mehar Sharma. In the Writ petition the petitioner prayed for a writ in the nature of mandamus directing the respondents to grant the Personal Assistants (for short 'P.A.s') the pay scale of Rs. 2,000-3500 plus Rs. 150/- as special pay which have been given to the P.A.s working in the Central Secretariat for the reason that the State of Haryana had accepted the recommendations made by the Fourth Central Pay Commission with regard to revision of pay scales with effect from 1.1.1986 with all consequential benefits like fixation of pay arrears and other benefits.

The case of the Writ petitioner sans unnecessary details was that prior to 1986 the P.A.s in the Civil Secretariat, Haryana were enjoying higher scale of pay than the P.A.s of the Central Secretariat. On receipt of the Fourth Central Pay Commission Report the Central Government revised the pay scale of P.A.s to Rs.2000-3500 with effect from 1.1.1986. Though the Government of Haryana accepted the recommendations of the Fourth Central Pay Commission and implemented the same in respect of certain categories of employees but in respect of P.A.s in the Civil Secretariat the revised scale of pay was fixed at Rs. 1640-2900 + Rs. 350 as special pay, instead of Rs. 2000-3500. The further case of the petitioner was that in respect of certain categories of employees of different departments of State of Haryana like Education, Police, Transport, Health and Engineering and Technical staff, the State Government revised the scale of pay exactly according to recommendation of the Fourth Central Pay Commission and granted them the scale of Rs. 2000-3500 but in case of the P.A.s the State Government fixed the lower revised scale of Pay denying them parity of pay scale with their counterparts in the Central Government. The Petitioner alleged that the post of P.A. in Civil Secretariat of the State of Haryana is comparable with the post of P.A. in Central Secretariat; they discharge similar duties and responsibilities as those of their counterparts in the Central Secretariat. The petitioner contended that employees like Police Inspectors and some others who were borne on the same scale of pay as P.A. prior to implementation of the Fourth Central Pay Commission Report i.e. Rs. 700-1250, were granted the pay scale of Rs. 2000-3200 whereas the P.A.s were placed in the scale of Rs. 1640-2900 only. Such action on the part of the State Government, the petitioner contended, was arbitrary, discriminatory and irrational. The further case of the petitioner was that on receipt of several representations from the petitioner- association and its members, the State Government referred the matter to the Pay Anomalies Commission headed by the Chief Secretary, which did not accept the claim of

the petitioner but only recommended the Selection Grade of Rs.2000-3200 to the 20% of the posts of P.A.s with the condition of 12 years of service. It was asserted by the petitioner that the P.A.s working in the Civil Secretariat were entitled to get the pay scale of Rs.2000-3500 with effect from 1.1.1986 and the decision taken by the State Government granting the Selection Grade of Rs. 2000-3200 and that too only to those P.A.s who have completed 12 years of services and maximum up to 20% of the posts in cadre is wholly illegal and unjust.

Refuting the allegations made in the writ petition the respondents in their counter affidavit questioned the very basis of the claim laid by the petitioner which was based on the assumption that P.A.s in the State Civil Secretariat were entitled to the same scale of pay granted by the Central Government to P.A.s working in the Central Secretariat. Such comparison for the purpose of claim of parity of pay, the respondents contended, was conceived and was of no avail to the petitioner in the case. According to respondents, though the State Government on principle accepted the report of the Central Pay Commission it did not entitle the members of the petitioner to claim post to post and scale parity of pay. The respondents asserted that considering various relevant aspects which were required to be taken into account for fixation of pay scale the State Government decided to fix the revised scale of Rs. 1640-2900 for P.A.s working in the Civil Secretariat and subsequently on recommendation of Pay Anomalies Commission the State Government decided to grant the Selection Grade pay of Rs. 2000-3200 plus Rs. 150 special pay to P.A.s with 12 years of service and up to 20% of the posts in the cadre. Such administrative decision, the respondents contended, was within the power of the State Government; therefore the decision cannot be said to be arbitrary or irrational. The High Court in the judgment dated 13.8.1995 allowed the writ petition, declared that the P.A.s were entitled to the scale of Rs. 2000-3500 from 1.1.1986 and directed that arrears would be restricted to 38 months from the date of filing of the writ petition i.e. 21st March, 1995 but after fixing the pay notionally from 1.1.1986. The High Court further directed that the selection grade would merge with the revised scale of Rs. 2000-3500 and the State may consider if it would like to grant the special pay to the P.A.s or not. The State Government, feeling aggrieved by the judgment rendered by the High Court, has filed this appeal assailing the judgment.

In the judgment the High Court placed reliance on the principle of 'equal pay for equal work'. It also took note of the principle of law that ordinarily the matter of fixation of pay would be left to be determined by the executive authorities and court would only interfere when it finds that classification is improper or discriminatory. Then the High Court proceeded to consider facts of the case particularly taking note of the position that in case of certain other category of employees the State Government had granted exactly the revised scale of pay, Rs.2000-3500 sanctioned by the Central Government whereas in the case of P.A.s a lower scale was fixed. The High Court appears to have proceeded on the assumption that P.A.s serving in the Civil Secretariat are discharging the duties and responsibilities similar to those of P.A.s in the Central Secretariat for the simple reason that the averment to the effect in the writ petition was not rebutted by the respondents. The High Court observed: "It is true that it is for the government to fix the scales but the same cannot be done by ignoring the equities and the principles of equality". Referring to certain decisions of this Court like *State of West Bengal v. Anwar Ali Sarkar*, [1952] SCR 284, *Randhir Singh v. Union of India and Ors*, [1982] 1 SCC 618, *P. Savita and Ors. v. Union of India Ors.*, [1985] 3 SCR 29, *State of Madhya Pradesh and Anr. v. Pramotion and Ors.*, (1993) 1 Recent Services Judgments 618, *purushotam Ors. v. Union of India and Anr*, AIR (1973) SC 1988, *Haryana State Biologists Association v. The State of Haryana*, (1994) 4 Recent Services Judgments 444, the High Court accepted the case of the writ petitioner, allowed the writ petition and issued the directions as noted earlier.

Shri P.C, Jain, learned senior counsel appearing for the appellants

contended that the High Court has ignored the settled principles, of law in a claim relating to parity of pay and fixation of revised scale of pay; the judgment of the High Court is patently erroneous and should be set aside.

On the other hand, Shri Anup G. Choudhary, learned senior counsel appearing for the respondent supporting the judgment urged that in the context of facts and circumstances of the case the High Court rightly accepted the claim of parity of scale of pay pleaded by the respondent and no interference with the judgment is called for.

From the discussions in the impugned judgment it is clear to us that the High Court has ignored certain settled principles of law for d 'termination of the claim on parity of pay scale by a section of government employees. While making copious reference to the principle of equal pay for equal work and equality in the matter of pay, the High Court overlooked the position that the parity sought by the petitioner in the case was with employees having only the same designation under the Central Government. Such comparison by a section of employees of State Government with employees of Central Government based merely on designation of the posts was misconceived. The High Court also fell into error in assuming that the averment regarding similarity of duties and responsibilities made in the writ petition was un rebutted. The appellants in their counter affidavit have taken the specific stand that no comparison between the two sections of employees is possible since the qualifications prescribed for the P.A.s in the Central Secretariat are different from the P.A.s in the State Civil Secretariat. Even assuming that there was no specific rebuttal of the averment in the writ petition that could not form the basis for grant of parity of scale of pay as claimed by the respondent. The High Court has not made any comparison of the nature of duties and responsibilities, the qualifications for recruitment to the posts of P.A.,s in the State Civil Secretariat with those of P.A,s of the Central Secretariat.

This Court in the case of Secretary, Finance Department v. West Bengal Registration Service Association and Ors., [1993] Supp I SCC 153, dealing with the question of equation of posts and equation of salaries of government employees, made the following observations :

"We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the ask of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/ limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and

grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of the duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice. (emphasis supplied)

It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration :of the State Government courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the government is patently irrational unjust and prejudicial to a section of employees and the government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the government to implement the same. As noted earlier, in the present case 'the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of the employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre,

On the discussions in the foregoing paragraphs, we have no hesitation to hold that the High Court was in error in allowing the writ petition and directing the appellants to grant the scale of Rs. 2000-3500 to the P.A.s

of the State Civil Secretariat with effect from 1,1.1986, The judgment of the High Court is unsustainable, Therefore, the appeal is allowed and the judgment under challenge is set aside. The writ petition filed by the respondent herein is dismissed. There will, however, be no order for costs.

We make it clear that if any of the Personal Assistant(s) serving in the Haryana State Civil Secretariat has/have received any additional emolument in pursuance of the judgment of the High Court under challenge such amount will not be recovered from him/them.

JUDIS