

UNION OF INDIA AND ORS. ETC.
v.
DELHI JUDICIAL SERVICE ASSN. AND ANR.

FEBRUARY 23, 1995

[K. RAMASWAMY AND N. VENKATCHALA, JJ.]

Service Law—Pay Scale—Delhi Higher Judicial Services Rule—Rr-18, 20 and 21—Selection Grade and Time Scale—Distinction between—Principle of equal pay for equal work—Necessity and validity of.

Service Law—Pay scale—Delhi Higher Judicial Service—Counter parts in Executive Branch—Equation between.

The respondents, Delhi Judicial Officers Association had filed a writ petition for a direction to the Union of India for upgrading their pay scales and refixation of pay in higher scales. The High Court directed refixation of pay scale at Rs. 5600-6700.

The Union of India challenged the High Court judgment and contended that all the officers in the Higher Judicial Service were not entitled to the same scale of pay of Rs. 5900-6700 as directed by the High Court as Rule 18 of the Rules provided for different pay scales for Time Scale, Selection Grade and Super- time Scale judicial officers and the wiping out of this dichotomy as the High Court had done would be insidious to inculcate efficiency.

Allowing the appeal, this Court

HELD : 1.1. The High Court was not right in giving selection grade scale of pay to all the officers on the principle of equal pay for equal work. If that be so the lowest officer in judicial hierarchy would be entitled to the pay of the senior most Super-time scale District Judge as all of them were discharging judicial duty. The marginal difference principle also was inappropriate. Similarity of posts or scale of pay in different services was not relevant. The nature of duty, responsibility and degree of accountability etc. were relevant and germane considerations. Grant of Selection grade, Super-time scale etc. would be akin to a promotion. The result of the impugned direction would wipe out the distinction between the Time

A Scale and Selection grade officers. In fact this distinction was absolutely necessary to inculcate hard work, maintain character, improve efficiency, encourage honesty and integrity and accountability. Such distinctions would not only be necessary in the Higher Judicial Service but in all services under the State and at every stage. Grade-I, Selection or Super time scale officers in Higher Judicial Service was a feeder source for elevation as Judges to the High Courts based on excellent qualities of their service. [299-H, 300-A-E]

B 1.2. It was , therefore, imperative to maintain the distinction between Time Scale officers or Selection or Super-Time Grade officers or Grade-I and Grade-II officers etc. as enjoined in the service conditions of Higher Judicial Services in the respective States. Application of the doctrine of equal pay for equal work which had the effect of destabilising these vitalities was clearly illegal, illogical and inappropriate to award enmass Selection Grade scale pay to all the officers. [300-F-G]

C 2. Selection Grade and the District and Sessions Judge were entitled to the fixation of scale of pay at Rs. 5900-6700 while the officers working in the Time Scale were entitled to a scale of pay of Rs. 5100-6300. [301-F]

D 3. The Delhi Higher Judicial Service Rules were required to be amended. It is left open to the respondent-Association to make a representation to the Fifth Pay Commission for fixation of their scale of pay appropriately, independent of scale of pay to be revised for all the officers working in the executive branch of the governemnt in the Union territory. [301-H, 302-A]

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1549 & 1547 of 1994.

F From the Judgment and Order dated 13.10.93 of the Delhi High Court in W.P. (C) Nos. 4196 & 4194 of 1993.

G N.N. Goswami, H.N. Salve P.P. Rao, P. Parmeshwaran, S.K. Bhatnagar, A. Subba Rao, Wasim Qadri, C.B. Babu, S.N. Terdol, O.P. Saxena, Serva Mitter, R.K. Saini, Rishi Kesh, Rakesh Khanna, T.L. Garg and Ms. A. Subhashini for the appearing parties.

The following Order of the Court was delivered :

H These two appeals are disposed of by a common judgemnt since the

appeals arise from the judgment of the Division Bench of Delhi High Court in C.W.P. No. 4196/83 dated October 13, 1993. The respondent-Delhi Judicial Service Association had filed the writ petition seeking for a writ or order or direction to the appellants to place the Delhi Higher Judicial Service Personnel in the pay scale of Rs. 5900-7300 or to place the District and Sessions Judges in the pay scale of Rs. 7300-7600 and/or to grant the relief w.e.f. 1.1.1986. They also sought for special pay of Rs. 550 p.m. to all officers of Delhi Higher Judicial Service. The High Court in the impugned order directed to refix the salary of the members of the Delhi Higher Judicial Service in the pay scale of Rs. 5900-6700 w.e.f. 1.1.1986 within a period of four months from the date of the judgment and direction to pay the arrears of salary and allowances thereon within a period of two months thereafter. Feeling aggrieved, the Union of India and the Delhi Administration have filed the appeals respectively. The crucial question that arises for decision is whether all the officers of the Delhi Higher Judicial Service are entitled to the pay scale of Rs. 5900-6700 as ordered by the High Court? Admittedly, the Delhi Higher Judicial Service was constituted by Rules made by the Administrator in consultation with the High Court of Delhi exercising the power under proviso to Art. 309 of the Constitution.

Rule 18 of the Rules prescribes scale of pay in Part-IV Pay & Allowances which reads as under :

"18. The pay scale of the service shall be as follows :

- (1) Time Scale - Rs. 1200-2000
- (2) Selection Grade - Rs. 2000-2250
- (3) Super-time Scale - Rs.2500-2750"

Rules 20 provides that "the pay of a promoted officer shall be fixed in the aforesaid time scale in accordance with the financial rules, regulations, orders or directions, applicable from time to time to the members of the I.A.S.". Rule 21 provides the number of selection grade and super-time scale posts shall be as shown in the Schedule. The Schedule adumbrates the one post of District and Sessions Judge, 43 posts of Addl. District & Sessions Judges, 5 posts of Chief Metropolitan Magistrates, 5 posts of Addl. Chief Metropolitan Magistrates and 10 deputation & leave reserve 10% each, total 60 posts.

A	Time Scale posts	:	47
	Selection Grade posts	:	12
	Super-time Scale posts	:	1

- B** The High Court adopted the principle to consider the claims of the Additional District & Sessions Judges working in the time scale for the posts of selection grade that five candidates in the order of seniority would be considered for each post "on the basis of merit." Accordingly the Additional District & Sessions Judges working in time scale are being considered and given selection grade scale of pay on the principle of
- C** "seniority cum merit". From the correspondence placed before us, it would appear that the High Court has been requesting the Union of India to grant revised selection grade pay scales to the officers working in the time scale also. After the 4th Pay Commission, it would appear that Super-time Scale and Selection Grade posts have been fused and the District and Sessions
- D** Judge and the Additional District & Sessions Judges placed in the Selection Grade are being paid their salary in the pay scale of Rs. 5900-6700. Since the correspondence between the Ministry of Law and Justice and the High Court did not yield to the result of awarding the selection grade scale pay to all the Additional District & Sessions Judges and the Chief and
- E** Addl. Metropolitan Magistrates, as mentioned in the Schedule, the above writ petition came to be filed and the High Court found that since all the posts of Additional District & Sessions Judges, Chief and Addl. Metropolitan Magistrates are inter-transferable posts and they discharging the same duties, they are entitled to "equal pay for equal work". The difference of pay between the Chief Justice of the Supreme Court and
- F** Judges of the Supreme Court, Chief Justice and Judges of High Courts is only Rs. 1,000, the same parity be maintained for Selection Grade and Time Scale Additional, District & Sessions Judges. Therefore, all the Additional/District & Sessions Judges, Chief and Additional Metropolitan Magistrates are entitled to the scale of Rs. 5900- 6700. As the above scale was given effect from January 1. 1986, all the officers are equally entitled
- G** from the same date.

Shri N.M. Goswami, the learned Senior counsel for the Union of India contended that the Selection Grade posts are distinct and separate from the Time Scale posts. In view of the admission made in the affidavit

H filed by the Registrar of the High Court that the Addl. Dist. & Sessions

Judges working in time scale are eligible for consideration to the Selection Grade on "seniority- cum-merit", all officers working as Additional District & Sessions Judges or Chief or Additional Metropolitan Magistrates cannot be treated to be Selection Grade officials. The very distinction between Time Scale and Selection Grade scale of pay itself indicates that merit, ability, integrity etc. are criteria to grant selection grade scale of pay and officers found more meritorious etc. alone are entitled for the grant of Selection Grade scale of pay. By the order of the High Court, on the principle of equal pay for equal work, the dichotomy has been wiped out which would have been insidious to the inculcation of efficiency, integrity and honesty in the performance of judicial duty. Therefore, the High Court has committed manifest error in directing to pay the same Selection grade scale of pay to all the officers in the Delhi Higher Judicial Service. We find considerable force in the contention.

Mr. Harish Salve, learned Senior counsel for the Association fairly agreed that the dichotomy between the Time Scale of pay and Selection Grade cannot be wiped out and the distinction is required to be maintained in the interest of the service itself. He contends that the Union of India having given the Scale of pay of Rs. 5900-6700 to Group 'A' officers in the Union Territory, the officers in the Delhi Higher Judicial Service are also entitled to the same scale of pay, since the scale of pay being drawn earlier by the officers are almost same and, therefore, the Government was not right in denying the benefit of scale of pay to them. He also contends that the Delhi Higher Judicial Service cannot be equated with IAS or 'A' grade officers on the executive branch of the Government. This court in *All India Judges' Association v. Union of India & Ors.*, J.T. (1991) 4 SC 285 treated the Judicial Officers distinctively from the officers on the executive branch of the Government and directed to consider higher uniform scale of pay to all the services throughout India. Therefore, they are to be treated separately and given higher scale of pay even over and above the scale of pay of the officers of the executive branch of the Government.

Having given our anxious consideration to the respective contentions, the question arises whether all the officers in the Higher Judicial Service are entitled to the same scale of pay of Rs. 5900-6700 as directed by the High Court. We think that the High Court was not right in giving selection grade scale of pay to all the officers on the principle of equal pay for equal work. If that be so the Dist. Munsif (Junior Civil Judge, Junior Subordinate

A Judge) etc., lowest officer in judicial hierarchy is entitled to the pay of the Senior most super-time scale District Judge as all of them are discharging judicial duty. The marginal difference principle also is equally inappropriate. Similarity of posts or scale of pay in different services are not relevant. The nature of the duty, nature of the responsibility and degree of accountability etc. are relevant and germane considerations. Grant of Selection grade, supertime scale etc. would be akin to a promotion. The result of the impugned direction would wipe out the distinction between the Time Scale and Selection grade officers. The learned counsel for the Union of India, pursuant to our order, has placed before us the service conditions prevailing in the Higher Judicial Service in other States in the country. Except Gujarat which had wiped out the distinction after the judgment in all India Judges Association's case, all other States maintain the distinction between the Grade I and Grade II Higher Judicial officers or Time Scale and Selection Grade or Super-time scales etc. In fact this distinction is absolutely necessary to inculcate hard work, to maintain character, to improve efficiency, to encourage honesty and integrity among the officers and bring accountability. Such distinctions would not only be necessary in the Higher Judicial Service but also, indeed in all services under the State and at every stage. Grade I, Selection or Super- Time scale officers in Higher Judicial service is feeder source for elevation as Judges to the High Courts based on excellent qualities of their service. The faith of the people in the acceptability of judicial verdict arises from impartiality, honesty, character, integrity and exemplary conduct of the Judges. Therefore, honesty, character, integrity and exemplary conduct are necessary imperatives for maintaining the independence of judiciary, the distinction between time scale and selection grade etc. are to be maintained. It is, therefore, imperative to maintain the distinction between Time Scale officers or Selection or Super Time grade etc. officers or Grade I and Grade II officers etc. as enjoined in the service conditions of Higher Judicial Services in the respective States. Application of the doctrine for equal pay for equal work which has the effect destabilising these vitalities is clearly illegal, illogical and inappropriate to award enmass selection grade scale pay to all the officers.

But the question is whether the officers working in the Delhi Higher Judicial Service are not entitled to the higher pay than was being drawn by them. It is seen that the Delhi Higher Judicial Service is linked to their counter part in the executive branch of the Govt. This is peculiar to the

Delhi Higher Judicial Service. So long as the rules are not amended, they get parity. The Central Fourth Pay Commission had recommended for increasing the pay scale to all the officers drawing scale of 1800-2250. Though the Pay Commission recommended for them at Rs. 4100 to 5300, it was revised at Rs. 4500-5700. For the officers drawing the pay scale of Rs. 2000-2500, the Pay Commission recommended Rs. 4500-5700, but the Govt. revised to Rs. 5100-6300. The pay scale of the Selection Grade officers drawing the scale of pay at Rs. 2250-2750, the Pay Commission recommended Rs. 5100-5700 but it was revised to Rs. 5900-6700. Thus it could be seen that the Central Government had revised the scale of pay appropriately. The Time Scale officers had been drawing the scale of pay prior to revision at Rs. 1200-2000. It would appear that the appellant had lumped the officers of Delhi Higher Judicial Service drwing time scale with officers in the first category and directed fixation of their scale of pay accordingly. It would appear to be so from the letter of the Central Law Minister addressed to the Chief Justice of Delhi High Court. In our considered view officers drawing time scale should be considered equally with Group 'A' officers with pre-revised scale of pay at Rs. 2000-2500 which was revised by the Union Government at Rs. 5100-6300. The reason being that the minimum scale of pay having been taken into account, it would be appropriate that the officers drawing the Time Scale should be equally fixed in the revised scales at Rs. 5100-6300. Admittedly, 12 officers and the District and Sessions Judge are drawing Rs. 2250-2750 prior to the revision. They are entitled to the revised scale of pay at Rs. 5900-6700 as ordered by the Government of India. Thus Delhi Higher Judicial officers who have been given Selection Grade and the District and Sessions Judge are entitled to the fixation at revised scale of pay at Rs. 5900-6700 while the officers working in the Time Scale are entitled to scale of pay of Rs. 5100-6300. Since the benefit has been given w.e.f. 1.1.1986, the officers working in the Higher Judicial Service are equally entitled to the arrears from 1.1.1986.

It is true, as rightly pointed out by Shri Harish Salve, that the functioning in the Judicial Service cannot be equated with the officers on the executive branch of the Government in the light of the judgment of this Court, reference of which is made hereinbefore. The Delhi Higher Judicial Service Rules require to be amended and they are to be dealt with separately. The Governor in consultation with the High Court should do the needful. We are informed that even in the reference to the Fifth Pay

- A Commission, the Judicial Officers are tagged together with the officers of the executive branch of the Government. The High Court, therefore, is directed to take appropriate steps to have the rules amended suitably. It may be open to the respondent-Association to make a representation to the Fifth Pay Commission for fixation of their Scale of pay appropriately independent of scale of pay to be revised for all the officers working in the executive branch of the Government in the Union Territory. The appeals are accordingly allowed, but in the circumstances without costs.

- C It is needless to mention that as and when the arrears are paid to judicial officers according to this judgment, it has to be proportionately distributed yearwise for the purpose of assessment of the income-tax. The arrears should be paid within a period of three months from the date of the receipt of this order.

In S.L.P. 12413/94 : The SLP is permitted to be withdrawn and is dismissed as withdrawn.

- D *CA Nos. 1546 & 1548/94* : List on 9.3.1995.

A.G.

Appeal allowed.