

UNION OF INDIA
v.
KISHAN K. SHARMA AND ORS.

A

JANUARY 5, 2004

[V. N. KHARE, CJ. AND S.B. SINHA, J.]

B

Constitution of India, 1950—Article 226—Judicial review—Writ of mandamus—Extent and scope of—Upgraded pay scale for certain employees of High Court—Recommendation for sanction—Government not sanctioning for a long time—On writ petition High Court directed Central Government to pay the employees the recommended pay scale—Government complied with the direction of the High Court and preferred appeal to Supreme Court—Held, though High Court was not correct in issuing writ of mandamus, in view of the facts that the matter is old and that the High Court's direction has already been acted upon, it is not interfered with.

C

D

Pay scales of respondent-employees of High Court was fixed by High Court, in parity with the pay-scales of their counterparts in Central Government. After further revision of the scales of concerned employees of Central Government, representation was made by High Court to the Central Government to sanction proposed upgraded pay scales of the concerned employees of High Court, in parity with the concerned employees of Central Government, but no action was taken.

E

Respondents filed writ petition on the ground that they stood on a better footing than their counterparts in the Central Government and cannot have any parity with them. High Court issued writ of mandamus directing Central Government to pay salary to the concerned employees of the High Court at upgraded pay scale. Subsequently direction of High Court was acted upon by the Central Government.

F

In appeal to this Court appellant contended that High Court on its judicial side cannot issue a writ of or in the nature of mandamus directing Central Government to pay the respondents a particular scale of pay.

G

Respondents contended that though generally it is not permissible for High Court to issue a writ of mandamus directing a statutory authority to discharge its function in a particular manner, but in the present case it

H

A was permissible as despite recommendations of High Court no order was passed for a long time.

Dismissing the appeal, the Court

B HELD: Although the High Court was not correct in issuing the impugned directions but having regard to the fact that the matter is an old one and the direction of the High Court has already been acted upon, the impugned judgment need not be interfered with. [116-G-H]

Union of India v. S.B. Vohra and Ors., [2004] 2 SCC 150, relied on.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6252 of 1998.

From the Judgment and Order dated 8.8.1996 of the Delhi High Court in C.W.P. No. 1174 of 1994.

D L.N. Rao, R. Venkataramani, Hemant Sharma, Rajeev Sharma, P. Parmeswaran, Maninder Singh, Ms. A. Subhashini, Naresh Kumar and Ashok Panigrahi for the appearing parties.

The Judgment of the Court was delivered by

E S.B. SINHA, J. How far and to what extent a writ of or in the nature of mandamus should be issued directing the Union of India to pay salary to the Officers of the High Court in a particular scale of pay is the question involved in this appeal which arises out of a judgment and order dated 8th August, 1996 passed by the High Court of Delhi in C.W.P. No. 1174/94.

F The respondents herein are Personal Assistants to the Deputy Registrar of the High Court or Junior Stenographers. It is not in dispute that the scales of pay of the officers and employees of the High Court did not fall for consideration by the Pay Commission appointed by the Central Government. The Delhi High Court, however, in the light of the recommendations made by the 4th Pay Commission fixed the scales of pay of the Respondent Nos. G 1 to 6 herein at Rs. 1400 to Rs. 2300 which was similar to those payable to the Personal Assistants of the Joint Secretaries.

H The President of India, however, on representations made by the concerned employees of the Central Government revised the scales of pay of the P.A. to the Deputy Secretaries at Rs. 1640 to Rs. 2900 w.e.f. 1.1.1986 by reason of Office memorandum dated 31st July, 1990. The respondents herein

thereafter filed a representation before the Chief Justice of the High Court who made his recommendations therefor to the Government of India clearly stating that keeping in view the fact that the posts of Joint Registrar and Deputy Registrar in Delhi High Court carry the same scales of pay as prescribed for the posts of Director and Deputy Secretary of the Government of India respectively, the proposed upgraded pay scales to the posts of Personal Assistant to the Deputy Registrar and Junior Stenographers should be sanctioned. No action was, however, taken thereupon.

The Respondent Nos. 1 to 6 herein thereafter filed a writ petition *inter alia* contending that they stand on a better footing than their counterparts in the Central Government both as regard nature of work as also the duties performed by them which involve high degree of efficiency and integrity and responsibilities as compared to the duties of Personal Assistant or Junior Stenographers attached to the Joint Secretaries of the Government of India. The appellant in its counter affidavit filed before the High Court, however, stated that the memorandum dated 31st July, 1990 prescribing revised pay scale of Rs. 1640-2900 was applicable only to the Assistants and Stenographers working in the Ministries/department. It was further stated that the Private Secretaries working in the High Court cannot have any parity of scales of pay with Private Secretaries to the Secretaries to the Government of India. The High Court, however, supported the stand of the writ petitioner-respondents.

A Division bench of the High Court upon considering the materials placed on records and having regard to the nature of duties performed by the Personal Assistants and Stenographers attached to the Joint Registrars *vis-a-vis* those who are attached to the Director or Deputy Secretaries held that the respondents were entitled to the grant of pay scale of Rs. 1640-60-2500-EB-75-2900 observing :

“The mode of appointment for the post of PA to Deputy Registrar and Junior Stenographer is by direct recruitment on the basis of written test and interview. Minimum qualifications prescribed for appointment to the post is graduate with speed not less than 100 wpm in shorthand and 40 wpm in typewriting. The qualification are more than what is prescribed for Personal Assistants and Grade ‘C’ Stenographers in Government of India for whom though the mode of appointment is by direct recruitment on the basis of written test and interview, but minimum qualification is matriculate with speed of not less than 100 wpm in shorthand and 35 wpm in typewriting.”

A Mr. L. Nageshwar Rao, learned Additional Solicitor General, appearing for the Union of India, *inter alia*, submitted that the Division Bench of the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that it on its judicial side cannot issue a writ of or in the nature of *mandamus* directing the Central Government and the Respondents herein to grant the pay scale of Rs.1640-2900 w.e.f. 1.1.1986 in favour of the respondents. The learned counsel would submit that having regard to the provisions contained in Clause 2 of Article 229 of the Constitution of India, the Chief Justice of the High Court may in his wisdom fix the pay scale but therefor approval of the President of India was imperative.

C Mr. Venkataramani, learned senior counsel, appearing on behalf of the private respondents, on the other hand, would at the outset draw our attention to the fact that the impugned judgment has already been implemented by the appellant. The learned counsel pointed out that in this case the writ petitioners were placed in the same scale of pay as that of the Personal Assistants of the Director and/Joint Secretaries and the Central Government had accepted the recommendations made by the High Court in this behalf and in that view of the matter having regard to the office memorandum dated 31st July, 1990 the appellants should have also accepted the recommendations of the High Court when the scales of pay was revised in terms of a Presidential order. The learned counsel submitted that although in a given case it may not be permissible for the High Court to issue a writ of or in the nature of *mandamus* directing a statutory authority to pass an order or direct discharge the statutory function in a particular manner but in this case such an order had to be passed as despite recommendations made by the Chief Justice of the Delhi High Court no order thereupon was passed for a long time.

F The extent and scope of judicial review for the purpose of issuance of writ of or in the nature of *Mandamus* for the grant of scale has been considered by us in *Union of India v. S.B. Vohra and Ors.*, (Civil Appeal No. 2887 of 2001) which is also being disposed of on this day.

G Following the said decision, we are of the opinion, although the High Court was not correct in issuing the impugned directions but having regard to the fact that the matter is an old one and the direction of the High Court has already been acted upon, the impugned judgment need not be interfered with. The appeal is, therefore, dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

H K.K.T.

Appeal dismissed.