
(1997) 08 AHC CK 0113

Allahabad High Court

Case No: C.M.W.P. No. 40089 of 1993

Ramesh Chandra Saxena

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Aug. 8, 1997

Citation: (1997) AWC 426 Supp

Hon'ble Judges: R.A. Sharma, J; Kundan Singh, J

Bench: Division Bench

Advocate: Janardan Dubey, for the Appellant; R.C. Shukla and S.C., for the Respondent

Final Decision: Allowed

Judgement

Kundan Singh, J.

This is a writ petition for issuance of writ of mandamus directing the State Government and Nagar Mahapalika, Kanpur to grant and pay to the Petitioner the scale of Rs. 2,375 to 3,500 and to modify the order dated 18.6.1993 by providing pay scale of Rs. 2,375-3,500 and for the payment of arrears of salary due in the scale of Rs. 2,375-3,500, which is being paid to the Prosecuting Officers of the State Government with effect from 1.1.1986.

2. Two posts of Public Prosecutors in the Nagar Mahapalika, Kanpur were created and the Petitioner was appointed against one of those posts. Subsequently, the Petitioner was selected through Public Service Commission, U.P. (hereinafter referred to as the Commission) and was appointed as permanent Public Prosecutor, Nagar Mahapalika, Kanpur. The Petitioner is drawing the present pay scale of Rs. 1,600-2,660 on the basis of the Government Order dated 18.6.1993, which is Annexure 2 to the writ petition. The Samta Samiti report was submitted whereby the pay parity between the employees of Local Bodies and the State Government was recommended. According to Samta Samiti report, where the qualifications, source of recruitment, selection process, status and nature of work and responsibility of the posts under the State Government and the Local Bodies are similar, the employees of Local Bodies are entitled to the same pay scale which is being given to the

employees of the State Government holding the same or similar posts. A copy of Samta Samiti report has been annexed as Annexure 3 to the writ petition. On the basis of Samta Samiti report, the Petitioner claimed pay scale equal to the pay scale of Public Prosecutor of the State Government, i.e., Rs. 2,375-3,500.

3. The Respondents have filed counter-affidavit contesting the claim of the Petitioner. In paragraph 13 of the counter-affidavit, the Petitioner's claim for parity in pay scale has been disputed on two grounds, viz., (i) The Public Prosecutors of the Local Bodies are not selected through the Commission; and (ii) The Public Prosecutors of the State Government work under Code of Criminal Procedure and Indian Penal Code, whereas the Public Prosecutors of the Local Bodies work under the provisions of the Local Bodies Act.

4. As mentioned hereinbefore, Samta Samiti has laid down the criteria consisting of about six conditions for equation of posts under the State Government and the Local Bodies. In the instant case, as per the counter-affidavit, the Petitioner's claim has been turned down merely on the grounds that the Public Prosecutors of the Local Bodies work under different provisions of law and that they were not selected by the Commission. There is specific plea in the writ petition that the Petitioner was selected through the Commission. Advertisement issued by the Commission some time back inviting applications for the posts of Public Prosecutors in Local Bodies, has also been relied upon in order to demonstrate that Local Body's Public Prosecutors are selected through the Commission. The fact that the Public Prosecutors are selected by the Commission has also not been seriously disputed. Merely because the Petitioner works under Local Bodies Act will not be a ground denying him the pay parity with his counter-parts in the State Government unless the nature of work, responsibility and source of recruitment etc. are absolutely different. It is thus apparent that the Petitioner's claim for the pay parity with the Public Prosecutors under the Government, has been rejected partly on non-existing ground and partly due to non-consideration of the relevant factors laid down by the Samta Samiti. The State Government should, therefore, consider the claim of the Petitioner afresh. In this connection, reference may be made to a decision of Division Bench of this Court in U.P. Labour Enforcement Officers Association and Ors. v. State of U.P. and Anr. 1997 (1) AWC 190.

5. For the reasons given above, the writ petition is partly allowed. The Government of U.P. is directed to decide the question of granting to the Public Prosecutors under the Local Bodies the same pay which is being given to the Public Prosecutors under the State Government in accordance with law within a period of six months from the date of presentation of certified copy of this order. It will be open to the Government to decide the question itself or refer it to a Committee and decide the same after its report.