

**(2003) 01 PAT CK 0076**

**Patna High Court**

**Case No:** C.W.J.C. No. 6312 of 1991

Secretariat Press M.  
Staff Union

APPELLANT

Vs

The State of Bihar and  
Others

RESPONDENT

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**Date of Decision:** Jan. 7, 2003

**Final Decision:** Dismissed

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### **Judgement**

S.N. Jha, J.

This writ petition on behalf of the Secretariat Press Ministerial staff Union and the Government Stationery Stores staff Union has been filed seeking direction upon the respondents to treat the members of the petitioner-unions as employees of an office attached to the Secretariat, with further direction that they are entitled to all the benefits admissible in law to the employees of the attached offices of the Secretariat including grant of replacement scales of pay at par.

2. The petition was allowed by a Bench of this Court on 12-2-1998 with a direction to the respondents to treat the members of the petitioner-unions as employees of the offices attached to the Secretariat, and to grant them all consequential benefits for which they were eligible in accordance with rules, from the date of filing of the writ petition. The State of Bihar went in appeal to the Supreme Court vide SLP (Civil) No. 12261 of 1998. The SLP giving rise to civil Appeal No. 2283 of 1999 was allowed on 26-4-2002. The judgment of this Court was set aside and the matter was remitted back for fresh consideration. The Supreme Court clarified that if any monetary benefits have been disbursed to the the writ petitioners pursuant to the impugned judgment of this Court, the same shall not be recovered. This is how the matter came up before this Bench for hearing.

3. It may be stated here that while allowing the writ petition earlier this Court took the view that the question involved in the case was covered by a decision in the case of Sunil Kumar Singh and Ors. v. State of Bihar, CWJC No. 1315 of 1981 decided on 14-12-1982. The petitioners of that case like the petitioners herein were clerks in the Government

Stationery Stores and Secretariat Printing Press, Guljarbagh. They approached this Court for a direction upon the respondents to appoint them as Assistants from the list of successful candidates who had appeared at a competitive examination held in the light of Notification No. 1328 dated 16-7-1979 of the Personnel and Administrative Department of the State Government which provided for appointment of Routine Clerks, Correspondence clerks, Typist etc. working in the Secretariat and its attached offices or Mufassil offices as Assistants on the basis of competitive test, apart from recruitment from open market on the basis of separate competitive test. The concerned petitioners had applied for such appointment against the quota for Routine Clerks, typists etc. The applications were entertained and after scrutiny they were issued admit cards for the examination. Thereafter they sat at the competitive test and their names were mentioned in the list of successful candidates. However, they were not included in the list of appointees on the ground that the offices to which they belonged were not office attached to the Secretariat. This Court held that they were employees of offices attached to the Secretariat and accordingly entitled to appointment. The writ petition was thus allowed and the respondents were directed to appoint them provided their names appear in the list of successful candidates.

4. Allowing the present writ petition earlier the Court took the view that the issue was squarely covered by the above decision. It was observed, "It declares that the Ministerial staff employed in the concerned two organisations under the department of Finance are employed in offices attached to the Secretariat..... The judgment has attained finality and for so many years the concerned assistants have been treated as employed in the attached offices of the Secretariat..... In these circumstances, following the aforesaid judgment, this writ petition is allowed and the respondents are directed to treat the members of the petitioner-Union as employees of offices attached to the Secretariat, and to grant them all consequential benefits....."

5. The Supreme Court took the view that the question involved in the earlier case was different from the one arising in the instant case, and the High Court fell into an error in finding a solution to the contrary with reference to an earlier judgment rendered years back. It would be useful to notice to relevant observations as under :

In CWJC No. 1315/81, the question was whether in terms of the notification dated 16-7-1979 issued by the Department of Personnel, Government of Bihar, to the effect that routine clerks, typists and ministerial staff, Class III working in the Secretariat and its attached offices were entitled to appear in the competitive test for appointment as Assistants in the Secretariat, the petitioners therein who were working as clerks in the two Government Presses at Gulzar Bagh were eligible to appear in the said competitive test. The allied question was whether the petitioners who were issued "admit cards" and allowed to appear in the competitive test and were declared successful, could be denied appointment on the ground that they did not belong to the attached offices of the secretariat ? The question whether the service conditions of the employees of the Government printing Press in regard to the pay-scales and other monetary benefits

should be the same as those applicable to Assistants and other categories of staff in the Secretariat did not arise for consideration at all. The fact that the petitioners in the said writ petition (clerks working in the Government press) were given the opportunity to appear in the competitive test and the respondents not pleading any mistake on their part in doing so was heavily relied upon by the High Court. The High Court also relied on an order dated 5-4-1982 issued by the Finance Department sanctioning advance money for the marriages of the dependents of the staff of the secretariat and its attached offices. In the list appended thereto, office of Superintendent, Secretariat press, Gulzar Bagh and Superintendent, Press and Forms, Gaya, are also mentioned. At best, the said decision can be treated as an authority for the proposition that the clerks working in the two establishments aforementioned who came out successful in the competitive test should not be denied appointment as Assistants in the Secretariat on the ground that they did not belong to the attached offices of the Secretariat and therefore, ineligible to appear for the test.

The Supreme Court also observed that even assuming that the Government Printing Press could be considered as an attached office, the question still remains whether the staff working therein are entitled ipso facto to the benefit of scales of pay and other monetary benefits admissible to the Assistants and/or other categories of ministerial staff in the Secretariat. It stated that even if the High had come to the conclusion that the members of the petitioner-unions were working in the attached offices of the Secretariat, it should have specifically addressed itself to the question as to the specific benefits, if any, they will be entitled to instead of giving a sweeping direction to the Government to grant "consequential benefits for which they are eligible in accordance with rules". Observing further that the High Court over looked the fact that the scope of enquiry in the instant case is much wider than that in the previous case, and the relief granted by the High Court was too wide and general, the Supreme Court remitted the case for fresh consideration. Lastly, the Supreme Court observed that as the matter was going back to the High Court, it would also be appropriate and proper to consider whether in the light of the Joint Cadre Rules of 1992 which came into operation with effect from 30-8-1988 and the schedule of attached offices appended thereto, it would make material difference in reaching the conclusion that the two Government Printing Press are or are not attached offices of the Secretariat in so far as that aspect becomes relevant in the case.

6. The case of the petitioner as stated in the writ petition may briefly be set out as follows. The Bihar Secretariat Press and the Government Stationery Stores are offices attached to the Finance Department in the Secretariat at Patna. The office establishments comprise of different categories of posts, as mentioned in Annexure-1 to the petition, out of which only ministerial staff are entitled for the revised scales of pay on the basis of the offices being attached offices of the Secretariat. The holders of technical posts may not be entitled to the benefits of revised pay scales admissible to the attached offices of the Secretariat. The ministerial staff of both the offices appeared at the limited competitive examination for appointment of Lower Division Assistants in the Secretariat at which only

employees of attached offices of the Secretariat are entitled to appear, and many of them being successful were appointed as Lower Division Assistants. However, some of the clerks were denied such appointment on the ground that the Secretariat Press and Government Stationery Stores were not attached offices of the Secretariat. They came to this Court in CWJC No. 1315 of 1981 taking the plea that the two offices are also attached offices of the Secretariat and therefore, they were eligible for appointment as Lower Division Assistants. The petition was allowed on 14-12-1982. Thereafter, the petitioners made representation to the Government to treat the ministerial employees of the two offices as employees of the Secretariat office and grant them the benefit of the revised scales of pay admissible to the employees to the attached offices. The representation was considered at various levels but to no avail. It has been stated that the government took some decision adverse to the petitioners in the file in the month of December, 1990, but nothing has been communicated to them till date. The petitioners have further stated that in the year 1967 a decision was taken by the State Government to prepare a joint cadre of Assistants, in order of seniority, of different departments of the Secretariat and attached offices thereto but the decision could not be implemented for one reason or the other. Finally Ordinance was promulgated creating a joint cadre of Assistants of the Secretariat and its attached offices but illegally and arbitrarily the members of the petitioner-unions were not included in the joint cadre. The petitioners have referred to different offices which although not situated in the Secretariat are treated as attached offices of the Secretariat. In course of hearing specific mention was made of the offices of the Divisional Commissioners and the Advocate General, Bihar.

7. After the case came back to this Court on remand, the petitioners filed an application vide I.A. No. 3986/2002, seeking amendment of the pleadings and additional relief to the effect that ministerial staff of the Secretariat Printing Press and the Government Stationery Stores stand on the same footing as the office of the Advocate General and the Divisional Commissioners in the matter of procedure of appointment, qualification, nature of job etc. and accordingly, the Ministerial staff of Secretariat Printing Press and Government Stationery Stores may be treated at par with their counterparts of offices of Divisional Commissioners and the Advocate General and included in the list of attached offices of the Secretariat, Department of Finance. In order to substantiate their case of similarity with the offices of the Advocate General and Divisional Commissioners, the petitioners have stated that the qualification for direct recruitment for the post of Clerk in both the offices is matriculate; the source of recruitment is otherwise than through the Bihar Public Service Commission nature of duties is also similar. The petitioners have referred to a resolution of the Personnel and Administrative Reforms Department, dated 27-2-1991, wherein it was stated that the offices of the Divisional Commissioners and the Advocate General do not fulfil the conditions and criteria of attached offices, yet they were declared as attached offices.

8. The case of the respondent-State has been summarised in the remand order of the Supreme Court and may be noticed therefrom as follows. The Government Printing

Press/Stationery Stores are not attached offices of the Secretariat. They are only subordinate offices of the Finance Department. These two establishments are not notified as attached offices. The pay scales, qualification, mode of employment of the clerical staff are entirely different from those existing in the Secretariat Departments. The Government Printing Press- both at Guljarbagh and Gaya - are headed by the Superintendent. The posts in the ministerial cadre belong to the common category of clerks, head clerks, Steno-typist etc. The 4th and 5th Pay Revision Committees while recommending suitable pay-scales for the press employees found them at par with mufasil staff and formulated the pay-scales accordingly. They are governed by different sets of pay scales sanctioned by the Finance Department by the resolutions dated 13-12-1981 and 18-12-1989 on the basis of recommendations of the Pay Revision Committees. The nature of duties performed by the employees of the press does not in any way pertain to policy matters and implementation thereof. Though a joint cadre of Assistants has been constituted in 1988 the Government Press clerks have not been included therein because they are not part of attached offices, The decision in CWJC No. 1315/81 has no application to the present case because the relief sought for therein was quite different.

9. It may be mentioned here that the State of Bihar had filed an affidavit in the Supreme Court further clarifying its stand, pursuant to the order of the Court as follows. The petitioners are to be treated as mufasil clerks. The employees of the Press are governed by the Factories Act and they are getting overtime for the work done beyond the prescribed hours. The posts of Lower Division Clerk and Upper Division Clerk were merged into one from 24-9-1980. The qualification of the mufasil clerks remained matriculation till date. The mode or procedure of recruitment of clerks and other class III staff in the mufasil offices and Assistants in the Secretariat are different. The clerks in mufasil offices had the opportunity of seeking entry into Secretariat Assistants Cadre through competitive examination provided they fulfilled the requisite qualification prior to 1992 when recruitment rules relating to appointment of Assistants of Secretariat were framed. There is no post of clerk in the Secretariat and its attached offices except the routine clerks and typists who are also appointed on the recommendation of the Service Commission. In the Secretariat and its attached offices too there were Lower Division Assistants and Upper Division Assistants but with effect from 1-3-1977 they were merged into one and designated as Assistants. After confirmation they become eligible for promotion as Selection Grade Assistant. The qualification for recruitment as Assistants in the Secretariat and its attached offices is Graduation. The pay scales of the Assistants in the Secretariat and its attached offices and the mufasil staff/Press clerks are different. Their pay scale of Assistants after merger are higher than those of the mufasil and other clerks working in the Government presses. Thus the mufasil clerks and Assistants of Secretariat and its attached offices are different in status having different qualification, mode of recruitment, duties and responsibilities and pay scales.

10. The heart of the petitioners' case, it may be mentioned, lies in their claim of pay scales at par with the ministerial staff of the Secretariat and its attached offices. However,

the Court can hardly issue any direction to give them the same pay scale as admissible to the employees of the Secretariat and its attached offices. In [State of U.P. and Others Vs. J.P. Chaurasia and Others](#), the Supreme Court observed that the matters relating to pay scales should be better left to expert bodies and Courts should refrain from interfering in the matter. It would be useful to quote the relevant observations as under:

The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance, The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best Judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

11. It is not necessary to multiply references on the point. A recent decision of the Supreme Court in the case of State of Haryana v. Haryana Civil Secretariat Personal Staff Association 2002(2) BUR 1688 however, may be noticed. In that case the Personal Assistants of the State Secretariat filed writ petition for a direction to give them the scale of Rs. 2000-3500 besides special pay of Rs. 150 at par with the Personal Assistants working in the Central Secretariat. The claim was allowed by the High court. On appeal by the State the Supreme Court observed that the High Court overlooked the position that the petitioner was claiming parity with the employees having same designation in the Central Secretariat. Such comparison of a section of employees of the State Government with the employees of the Central Secretariat based merely on designation of the post was misconceived. The Court noticed an earlier decision in the case of [Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others](#), in which it was observed that the job evaluation is a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have sometimes found difficult to undertake on account of want of relevant data and scales for evaluating performances of different groups of employees, This involves 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 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) 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. Thus the pay structure is determined keeping in mind several factors like (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 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. The Court observed that 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. The Courts should, therefore, avoid giving declaration granting a particular scale of pay and compelling the Government to implement the same.

12. In view of the law laid down by the Supreme Court it would be difficult for this Court to give any direction to give the same pay scales to the staffs of the Government Press or Government Stationery Stores. As a matter of fact, Counsel for the petitioners Shri Kamal Nayan Choubey, aware of his limitation, did not advance any argument on this point. He submitted that after the earlier judgment of this Court in CWJC No. 1315 of 1981, it was obligatory for the State Government to treat the Government Press and the Government Stationery stores as attached offices. He pointed out that the judgment of this Court was never challenged by the State and the same is therefore, binding on it. It may be recalled that in the remand order the Supreme Court observed that the High Court should consider whether in the light of the Joint Cadre Rules 1992 and the schedule of attached offices therein it would make material difference in reaching the conclusion that the Government Printing Presses are or are not attached offices of the Secretariat. It is clear that the issue as to whether the Government Press or Stationery Stores can be treated as attached offices of the Secretariat, as held by this Court earlier, has been re-opened for consideration, and therefore, the question as to whether it was obligatory for the Government to treat the Government Presses or the Stationery Stores as attached offices does not arise for consideration.

13. The Assistants of the Secretariat and attached offices Joint Cadre Act, 1989 (Bihar Act 9/89) (in short, the Joint Cadre Act") was enacted for creating a joint cadre and a combined gradation list for the Assistants/Selection Grade Assistants, Section Officers, Registrars and Under Secretaries of the Secretariat and its attached offices for confirmation and promotion to higher posts. As the preamble of the Act states, every Department of the State Government in the Secretariat and its attached offices had separate cadre of Assistants and promotion of the Assistants to higher post within the Department/attached offices, used to be made from amongst the Assistants, Section Officers, etc. in the cadre of Assistants of the concerned Department/ attached offices based on the Department/attached offices-wise gradation list. This gave rise to serious anomalies and therefore, on 30-8-1988 the State Government took a policy decision to have a joint cadre with a combined gradation list each for Assistants, Selection Grade Assistants, Section Officers, Registrars and Under Secretaries in the Secretariat Department and its attached offices with effect from the said date i. e. 30-8-1988. The Act

thus was enacted to provide uniform channel of promotion to the Assistants of various Secretariat Departments and attached offices, determine their seniority in the manner prescribed in Section 5 of the Joint Cadre Act read with the Rules. Per se it has nothing to do with the pay scales. The significance of the issue as to whether a particular establishment is "attached office" or not is that if it is treated as an attached office, its employees may be entitled to scale admissible to the employees of the attached offices under the relevant resolution of the State Government pursuant to the pay revisions. The question is can the Court treat particular establishment as an "attached office"? No doubt, this Court in CWJC No. 1315/81 answered the question, in the context of the Government Presses and the Government Stationery Stores, in the affirmative but as observed by the Supreme Court in the remand order, in that case the question was whether in terms of notification dated 16-7-1979 that the routine clerks, Typists and ministerial staff of Class III working in the Secretariat and its attached offices were entitled to appear in the competitive test for appointment as Assistant in Secretariat. The petitioners had been issued admit cards to appear at the competitive test, wherein they were declared successful. However, they were denied appointment on the ground that they did not belong to the attached offices of the Secretariat. The question as to whether the Government Presses or Government Stationery Stores are attached offices was not considered in the context of the service conditions of the employees of these two establishments i.e. the pay scales or other monetary benefits and therefore, the decision in CWJC No. 1315/81 does not amount to adjudication on the point.

14. Coming to the question posed above as to whether the Court can declare a particular establishment as an "attached office" it may be mentioned that the term Secretariat and attached offices has been defined in Rule 2 (ii) of the Joint Cadre Rules 1992 framed u/s 10 of the Joint Cadre Act to mean the Departments under the State Government and the offices attached to the Departments as specified in Schedule I of the Rules. The Government Presses or the Government Stationery Stores do not find place in the schedule and therefore, they cannot be treated to be attached offices. It may be recalled, as pointed out above, that the solitary object of the Joint Cadre Act was to create a joint cadre and combined gradation list of the Assistants etc. in the Secretariat and its attached offices to bring uniformity in matters of promotion. It is not the case of the petitioners that the ministerial staff of the Government Press or the Government Stationery Stores should be treated as members of the Joint Cadre and included in the combined gradation list for the purpose of uniform promotion. All that they want is parity of pay. As stated above, the Joint Cadre Act/Rules does not deal with the pay scales. The pay scales are creatures of Government orders issued from time to time pursuant to the recommendation of the Pay Revision Committees. These Government orders provide different pay scales to different categories of employees even in the Secretariat and its attached offices and mufasil offices. As noticed above, the clerical cadre in the Secretariat and attached offices as well as mufasil offices includes routine clerks, typist etc, in the lower scale of pay than the Assistants/Clerks. Thus even if the claim of the petitioners were allowed, the benefit would not be available to the routine clerks etc. working in the Government Presses or



the Government Stationery Stores because even in the Secretariat and attached offices routine clerks, typists etc. are not members of the Joint Cadre,

15. As submitted on behalf of the State, the whole exercise which the petitioners want this Court to undertake is futile. In terms of the remand order two points arise for consideration - whether after coming into force the Joint Cadre Act/Rules the two organisations continue to be attached offices and secondly, whether the ministerial staff of the Government Press or the Government Stationery Stores are entitled to the same replacement scales as allowed to the Assistants in the Secretariat or its attached offices. Learned Standing Counsel submitted that no argument has been advanced on the second point so far as the first point is concerned, as the Government Presses and Government Stationery Stores do not find place in the schedule of the Joint Cadre Rules, they cannot be treated as such. I find substance in the submission.

16. Though the fact that the Government Press and Stationery Stores are not included in the schedule of the Joint Cadre Rules should be sufficient to reject the claim of the petitioners, even de hors the Joint Cadre Rules/schedule, the employees of the Government Press or the Government Stationery Store cannot claim parity of status with their counterparts of the Secretariat and its attached offices. The nature of duties performed by them are different from those performed in the Secretariat and its attached offices, the qualifications for recruitment and mode of recruitment are also different. Their service conditions are also different. For example- the employees of the Government Press and Government Stationery Store are governed by the Factories Act and they are allowed overtime for the work done beyond prescribed hours whereas there is no such provision with respect to the employees working in the Secretariat and its attached offices.

17. Counsel for the petitioner submitted with reference to the Rules of Executive Business that the Government Press/Government Stationery Stores are integral parts of the Finance Department. They are merely extension of the Secretariat, he submitted. I find no substance in the argument Reference to the Rules of Executive Business is wholly misconceived. The Rules of Executive Business have been framed for allocation of Government business between different Departments and for this purpose the subject of Government Press/Stationery Stores has been assigned to the Finance Department but it does not mean that it becomes part of the Finance Department. It only means that the administrative control vests in the Finance Department. Counsel then referred to Secretariat and submitted that these Instructions are applicable to all Departments of the Secretariat including those amalgamated with the office of the respective heads of the Department and in para 6.87 there is reference to distribution of business, execution of work between the main press at Guljarbagh and the other press at Ranchi. I fail to understand as to how on this basis the Press can be held to be an attached office specially after coming into force of the Joint Cadre Act/Rules. As a matter of fact, while dealing with the Secretariat Instructions, it may be mentioned that para 6.88 thereof itself provides that the working hours and the duties of the press shall be regulated by the

Indian Factories Act, and as such, if any work is to be done on the days the Press is closed or Press is required to work beyond the normal hours, the Finance Department should be consulted. This conclusively shows the applicability of the Indian Factories Act, which fact will alone be sufficient to distinguish the status of the employees of the Government Press/Stationery Stores from their counterparts of the Secretariat and its attached offices.

18. Lastly, Counsel emphasised the fact that the offices of Divisional Commissioners and the Advocate General have been declared as attached offices and not giving similar treatment to the Government Press/Stationery Stores amounts to discrimination. This argument has been pressed to buttress the petitioners' claim of parity in pay scales without directly referring to it. The aspect relating to pay parity has been dealt with above even though no argument was advanced on this point. It has also been stated that the significance of office being an attached office in the context of Joint Cadre Rules is that its employees become members of the Joint Cadre borne on the combined gradation list for the purpose of promotion which does not seem to be the concern of the petitioner. They want the establishment to be declared "attached office" only for the purpose of pay scale and other monetary benefits but, as noted above, no endeavour has been made to substantiate such a claim. In these premises I am of the view that the claim of the petitioners is completely misplaced and no relief can be granted to them.

19. In the result, I do not find any merit in this writ petition which is accordingly dismissed but without any order as to costs.

Manohar Lal Visa, J.

20. I agree.