

Registrar, High Court, Original Side Vs Samarendra Nath Bhatta-Charjee and Others

Court: Calcutta High Court

Date of Decision: Sept. 5, 1984

Acts Referred: Constitution of India, 1950 " Article 229, 229(2)

Citation: 89 CWN 305

Hon'ble Judges: P.K. Mukherjee, J; M.M. Dutt, J

Bench: Division Bench

Judgement

M.M. Dutt, J.

These two appeals, one by the Registrar, Original Side of this Court and the other by the State of West Bengal, have been

preferred against the judgment of a learned single Judge of this Court making absolute the Rule Nisi issued on the application of the respondents-

writ petitioners. The writ petitioners, who are 24 in number, were initially appointed Section Writers on the Original Side of this Court. Section

Writers are classified into two groups, namely, Typist Section Writers and Manuscript Section Writers. It appears from the letter dated September

11, 1946 written by the Registrar, Appellate Side, High Court, Calcutta to the Secretary, Judicial Department; Government of Bengal that a

proposal was made for bringing the copyists and typists in civil and criminal courts and in the Registration department under the regular

establishment of Government. In the said letter, the Registrar expressed the view of this Court on the said proposal with regard to the copyists and

typists in civil and criminal courts and on both sides of this Court.

2. The question of the absorption of the copyists and typists in the regular establishment remained at the stage of the proposal till October 23,

1975 when, on that day, by a Memorandum No. 7191F, the Government of West Bengal, Finance Department, Audit Branch, directed that

piece-rate typists and copyists attached to the different civil, criminal, police, and revenue courts might be, brought over to the regular salaried

establishment on certain terms and conditions as specified in the said memorandum. In view of the said Government memorandum dated October

23,1975, the Chief Justice of this Court In exercise of the power vested in him under Article 229(2) of the Constitution of India, made certain

Rules with the approval of the Governor for the purpose of bringing the typists and manuscript section writers attached to the Original Side of this

Court. to its regular salaried establishment. Rule 1 which is similar to paragraph (i) of the terms and conditions of the said memorandum; dated.

October 23, 1975 is as follows :

(i). The Typists and Manuscript Section Writers on their absorption in the regular establishment will be eligible to draw pay to the time scale of Rs.

230-5-275-71/2 365-10-425/- (E. B. after 8th and 16th stages) and other usual benefits viz., leave, pension allowance etc as may be admissible

to the employees of similar categories in the regular establishment on the Original Side.

(ii) Pay to each Typist and the Manuscript Section Writers shall be fixed at the minimum of the scale with the difference between the total minimum

earning as admissible at present and the total emoluments comprising the pay at the minimum of the sanctioned scale and all admissible allowance

thereon in the above mentioned time scale being treated as personal pay to be absorbed in future increments.

3. It was represented to the Government that as the typists and copyists attached to the different courts had been placed at the minimum of the

scale of pay of Rs. 230-425/- irrespective of the length of service, it caused hardship to a section of such typists and copyists. The Government,

after careful consideration of the said fact, by another memorandum dated March 25, 1980 decided that the pay of an employee, viz., typist or

copyist on being absorbed under the regular salaried establishment might be fixed notionally at the stage at which the employee concerned would

have drawn pay in the scale of pay of Rs. 230-425/- had the pay scale (or the corresponding pre-revised scale) been in force on the date on

which he first entered service. The Chief Justice of this Court in his turn directed by a notification dated October 3, 1980 that the provisions of the

said Government memorandum would mutatis mutandis apply to the typists and the manuscript section writers attached to the Original Side of the

Calcutta High Court.

4. By a notification dated March 25, 1981, similar Rules were framed by the Chief Justice under Article 229(2) of the Constitution of India with

the approval of the Governor regulating the conditions of service of Extra-typists of the Appellate Side of the Calcutta High Court. Under Rule (1),

the Extra-Typists on their absorption in the regular establishment will be eligible to draw pay in the time-scale of Rs. 230-425/- and other usual

benefits namely, leave, pension, allowances etc as may be admissible from time to time to the regular Government servants of similar categories.

The pay of each Extra-typists shall be fixed notionally at the stage at which the employee concerned would have drawn pay in the scale of pay of

Rs. 230-425/- had the pay scale or the corresponding prerevised scale been in force on the date on which he first entered service.

5. Up to this stage there was no difficulty and no scope for any dispute. It, however, appears that so far as the typist and manuscript section

writers absorbed in the regular salaried establishment of the High Court are concerned, the Acting Chief Justice notionally fixed their pay in the

corresponding prerevised scale enjoyed by the lower division assistants of the Court as follows :-

Date Fixation made on the basis of Pre-revised scale of salaried

the pre-revised scale of the L. typist

D. Assistants.

1.4.1950 Rs. 80-180/- Rs. 55-130/-

1.4.1961 Rs. 150-250/- Rs. 125.200/-

1.4.1970 Rs. 230-425/- Rs. 230-425/-

But so far as the extra-typists on the Appellate Side were concerned their pay was notionally fixed in the corresponding pre-revised scale of

regular typists on the Appellate Side. The extra-typists on the Appellate Side moved a writ petition in this Court and obtained a Rule Nisi being C.

R. No. 497 (w) of 1982 (Benoy Krishna Ach Sarkar and others v. High Court, Calcutta and others). The said Rule came up for hearing before

Chittatosh Mookerjee J. His lordship by his judgment dated March 29, 1983 expressed the view that there should not remain any discrepancy and

deficiency between the salary of the extra-typists on the Appellate Side and that of the section writers on the Original Side. The respondents were

directed to fix the pay of the extra-typists in accordance with law without making any discrimination in the matter of their notional pay fixation

between the extra-typists on the one hand and the typists brought to the regular establishment of the Original Side, of this Court, on the other.

6. It may be stated here that after the fitment of the typist and manuscript section writers of the Original Side in the pre-revised scale of pay of the

lower division assistants of this Court, such typists and section writers were paid their salary on that basis for a few months. When it came to the

notice of the Government, the Judicial Department, Government of West Bengal by a letter dated May 3, 1983 addressed to the Registrar,

Original Side, High Court, Calcutta requested that steps should be taken for re-fixation of the pay of the typists and manuscript section writers of

the Original Side in the pre-revised scale of the salaried typists in the manner it was re-fixed in respect of the extra-typists on the Appellate Side of

the High Court. In the said letter, reference was made to rule 1(1) of the Rules framed by the Chief Justice by the notification dated August 1,

1979 in respect of the typist and manuscript section writers attached to the Original Side, High Court, Calcutta, already quoted above and rule

1(a) of the Rules framed in respect of the extra-typists on the Appellate Side read with Finance Department memo dated March 25, 1980 on the

basis of which the said Rules were framed. Thereafter, in paragraph 3 of the said letter, it has been stated as follows:

(3). The words ""regular Govt. servants of similar categories"" and ""corresponding pre-revised scale"" are very significant. The words ""regular Govt.

servants on similar categories"" obviously refer to the regular typists on the Appellate Side and Original Side of the Court and not to any other

categories of employees. The words ""corresponding pre-revised scale"" obviously refer to the pre-revised scale for the regular typists and not to

any, pre-revised scale in any other category of employees. Such being the position, the initial fixation of pay for the extra-typists on the Appellate

Side and the typists and manuscript section writers on the Original Side on their absorption in the regular establishment should have been made on

the basis of the pre-revised scale for the typists on both the Appellate Side and Original Side of the High Court.

In paragraph 4 of the said letter, the pre-revised scale of pay for the typists on both the Appellate Side and the Original Side were pointed out as

follows :

On and from Scale of pay

1.4.50 Rs. 55-130/-

1.4.61 Rs. 125-200/-

1.4.71 Rs. 230-425/-

7. Thereafter, some correspondence passed between the Registrar, Original Side of this Court and the Judicial Department of the Government of

West Bengal. Ultimately, however, the Chief Justice agreed to re-fix the pay of the typist and manuscript section writers absorbed in the regular

establishment in the manner suggested by the Government, that is to say, the pay of such employees would be fixed notionally in the corresponding

pre-revised scale of the salaried typists on the Original Side, which will appear from the letter dated September 7, 1983 written by the Registrar,

Original Side of this Court to the Secretary to the Judicial Department, Government of West Bengal. It also appears that the Government is, not

keen on realising the excess payment made to such typists and manuscript section writers as a result of their pay being notionally fixed in the pre-

revised scale of lower division assistants.

8. The writ petitioners who were the typist and manuscript section writers of the Original Side, since absorbed in the regular salaried establishment,

became aggrieved by the decision of the Chief Justice to re-fix their pay as suggested by the Government of West Bengal and as communicated by

the said letter dated September 7, 1983 of the Registrar, Original Side of this Court. Accordingly, they filed the writ petition praying for a writ in

the nature of mandamus commanding the appellants not to proceed with re-fixation of the pay scale of the writ petitioners in terms of the impugned

order and/or letters dated 3rd May, 1983, 1st September, 1983 and 7th September, 1983 and from giving any effect or further effect to the order

of the Chief Justice dated September 7, 1983 on the basis of the said Government letter.

9. The learned Judge made the Rule Nisi absolute on the ground that before the reduction of the pay of the writ petitioners on re-fixation, the writ

petitioners not having been given an opportunity of being heard, the order of reduction and or re-fixation of the Acting Chief Justice was vitiated.

The appellants were directed not to give effect to the impugned orders. Hence, these two appeals, one by the Registrar, Original Side, High Court,

Calcutta and the other by the State of West Bengal.

10. The principal question that is involved in these appeals is whether the Acting Chief Justice had the authority to notionally fix the pay scale of the

typist and the manuscript section writers in the pre-revised scale of pay of lower division assistants of this Court.

11. Mr. Dipankar Gupta, learned Counsel appearing on behalf of the writ petitioners submits that after the Rules were framed under Article 229(2)

of the Constitution of India with the approval of the Governor by the said notification dated August 1, 1979, the question of fitment was absolutely

within the authority of the Acting Chief Justice. At the outset, it may be noticed that the proposal of the Government for bringing the typists and

copyists on the regular salaried establishment related to all copyists and typists in civil and criminal courts and on both sides of the High Court. The

Government memorandum dated October 23, 1975 clearly states that the typists and copyists on their absorption in the regular establishment will

be eligible to draw pay in the time-scale of Rs. 230-425]- and other usual benefits as may be admissible from time to time ""to the regular Govt.

servants of similar categories"". This decision of the Government, as stated in the Government memorandum, relates to the copyists and typists of

different civil, criminal, police and revenue courts. On the basis of the said Government decision, the Chief Justice framed Rules by the notification

dated August 1, 1979 with the approval of the Governor. Rule 1(i) also lays down that the typist and manuscript section writers on their absorption

in the regular establishment will be eligible to draw pay in the time-scale of Rs. 230-425/- and other usual benefits as may be admissible from time

to time to the employees of similar categories in the regular establishment on the Original Side. Prima facie, similar categories of typists and

manuscript section writers are salaried typists on the Original Side of this Court. So far as the extra-typists on the Appellate Side are concerned,

similar categories of employees are salaried typists on the Appellate Side of the Court.

12. In this connection, we may refer to rule 2 of the Rules framed by the notification dated August 1, 1979. It, inter alia, provides that for the

purpose of calculating the folios of work done by a typist or a manuscript section writer, the work of comparing six folios shall be treated to be

equivalent to the work of typing or copying one folio. This shows that a typist section Writer or a manuscript section writer has been equated with

a salaried typist of the Original Side. In view of rule 2, it is very difficult to treat the typist and manuscript section writers in the category of lower

division assistants working on the Original Side of this Court for the purpose of notionally fixing their pay in the pre-revised scale of lower division

assistants. In our opinion, by using the expression "similar categories" in the said Government memorandum dated October 23, 1975 and in the

Rules framed by the notification dated August 1, 1979, it was not meant that the typist and manuscript section writers on the. Original Side should

be treated in the category of lower division assistants for the purpose of their fitment in the pre-revised scale of such lower division assistants. In

the letter dated December 8, 1982 written by the Registrar, Original Side to the Joint Secretary, Judicial Department, Government of West

Bengal, it is pointed out that a typist section writer or a manuscript section writer on the Original Side is required to do such typing, copying or

comparing work, as may be assigned to them. The Government has been sought to be persuaded that as the work of comparing is usually done by

the lower division assistants, the typist and manuscript section writers are considered to be performing the duties of the same nature as lower

division assistants to some extent, and, accordingly, their pay was notionally fixed in the corresponding pre-revised scale enjoyed by the lower

division assistants. In our opinion, it has been rightly pointed out by the Joint Secretary to the Judicial Department in his letter dated May 3, 1983

that incidental work of comparing in addition to their main work of typing or copying does not elevate their status.

13. Our attention has been drawn, to the fact that from 1970 the scales of pay of lower division assistants and typists became the same, namely,

Rs. 230-425/- .It is submitted that as neither in the Government Rule nor in the High Court Rules, it has been specified which of the two pre-

revised scales would be applied, the High Court had to decide the same on an objective basis and, after considering the nature of work performed

by the typist and manuscript section writers, the Acting Chief Justice took the view that the typist and manuscript section writers on the Original

Sides of this Court were of the category of lower division assistants and, as such, their pay should be notionally fixed in the corresponding pre-

revised scale of lower division assistants. We are unable to accept this contention. It may be that the scales of pay of lower division assistants and

of typists became the same from 1970, but that will be no ground to treat the typists and manuscript section writers in the category of

lower/division assistants for the purpose of their fitment in the pre-revised scale of lower division assistants. The expression "similar categories" in

the said Government memorandum and the Rules framed by the Chief Justice by the notifications dated August 1, 1979 and March 25, 1981

undoubtedly refers to the category of salaried typists and not to the lower division assistants on the Appellate and the Original Sides of this Court.

14. It is submitted on behalf of the writ petitioners that after the Rules were framed by the Chief Justice under Article 229(2) of the Constitution of

India with the approval of the State Government it was the Chief Justice who was alone competent to decide the question of fitment. There can be

no doubt with regard to this proposition, but the Chief Justice could not do something which was either not contemplated by the Government

memorandum dated October 23, 1975, or the Rules framed by the Chief Justice dated August 1, 1979 and March 25, 1981. In our opinion in

directing that the pay scale of the typist and the manuscript section writers would be notionally fixed in the pre-revised scale of lower division

assistants or, in other words, by treating them in the category of lower division assistants, the Chief Justice acted beyond the decision as contained

in the Government memo and the said Rules. The Chief Justice, in our view, had no power to confer any additional monetary benefit on the typist

and manuscript section writers. It is submitted on behalf of the writ petitioners that under the proviso to clause (2) of Article 229 of the Constitution

the rules made under clause (2) of Article 229 shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the

Governor of the State and not any decision of the Chief Justice with regard to the fitment. There can be no doubt that the question of fitment is a

question of implementation of the rules. But if, in implementing the rules, any financial benefit is conferred on the employees which is not provided

for in the rules, such conferment will be ultra vires Article 229 (2) and also such Rules framed with the approval of the Governor. In other words,

the proviso to Article 229 (2) of the Constitution contemplates the approval of the Governor in case of any financial liability of the State. By

notionally fixing the pay of the typist and manuscript section writers in the pre-revised pay scale of lower division assistants, a financial liability has

been imposed on the State Government without its approval. Therefore, the order of the Acting Chief Justice directing fitment of the typist and

manuscript section writers in the pre-revised scale of the lower division assistants was illegal and invalid. The Acting Chief Justice, ultimately,

realised the position and corrected the mistake by the impugned order dated September 7, 1983 directing re-fixation in the pre-revised scale of

salaried typists on the Original Side of this Court. If this decision had not been taken by the Acting Chief Justice it would, in our opinion, have been

discriminatory so far as the extra-typists of the Appellate Side of this Court and copyists and typists of different other courts are concerned.

15. Next, we may come to the question of natural justice. The learned Judge has made the Rule Nisi absolute, on the ground that the writ

petitioners were not given an opportunity of being heard before the Chief Justice passed the impugned order as suggested by the Government.

There can be no doubt that the authority that has power to grant any benefit is required to comply with the rules of natural justice before he takes

any decision to cancel or withdraw any benefit already granted by it So far as the Chief Justice is concerned, it has already been held that he had

no authority to grant any additional financial benefit to the writ petitioners and as such, it would be useless for him to hear the writ petitioners

alerted the benefits that was granted by the Acting Chief Justice to the writ petitioners was though mistake granted in excess of his power or

authority under Article 229(2) of the Constitution of India In such a case therefore there could not be any question of giving the writ petitioners a

hearing by the Acting Chief Justice before he passed the impugned order for the Simple reason that the Acting Chief Justice had no power to grant

any additional financial benefit even if after hearing the writ petitioner he took the view in their favour In our view therefore the remarried Judge was

not justified in making the "Rule absolute on the ground of non-compliance by the Acting Chief Justice with the rubles of natural justice No other

point has, been urged in these appeals on behalf of any party. For reasons aforesaid the judgment the learned Judge is set aside and both the

appeals are allowed. The Rule Nisi is discharged. There will, however be no order as to costs.

Paritosh Mukherjee, J.

I agree.