

**(1990) 04 CAL CK 0035**

**Calcutta High Court**

**Case No:** Civil Order No. 8747 (W) of 1989

Shankar Prasad Panda

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** April 17, 1990

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 32, 39

**Citation:** (1995) 2 ILR (Cal) 556

**Hon'ble Judges:** Paritosh K. Mukherjee, J

**Bench:** Single Bench

**Advocate:** Phalguni Sarkar, Arnalesh Roy and Kinkar Chandra Basu, for the Appellant; Dipak Prakash Kundu and Smritikana Mukherjee, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Paritosh K. Mukherjee, J.

The present writ petition has been moved by Shankar Prasad Panda challenging an order passed by Shri S.K. Phaujdar, learned District Judge, "Midnapore, dated July 1, 1988, which is Annex. E to the writ petition, whereby the said authority refused to grant any financial benefit to the writ Petitioner, on the basis of the Government Order No. 1575-F dated February 20, 1988, relating to enhancement of the pay scale of the writ Petitioner in terms of judgment in Civil Rule No. 5139 (W) of 1981, as, according to the said authority, the writ Petitioner, being "an additional clerk" attached to the Judicial Magistrate's Court, Jhargram, was not a party to the writ petition and so he was not entitled to get the benefit under the said Government Order.

2. Earlier, by judgment dated September 24, 1986, Sudhir Ranjan Roy J. of this Court allowed the writ petition, being C.R. No. 5139(W) of 1981, filed on behalf of the West Bengal Process Servers Central Association and others, in presence of the Respondents and came to the following finding, which is, inter alia, set out herein

below:

(a) The Petitioners, being West Bengal Process Servers Central Association and its members, claimed that they are "process servers" appointed to execute processes and execute different writs including writs of attachment, delivery of possession and sale proclamation.

(b) In the City Civil and Sessions Court at Calcutta and Presidency Small Causes Court at Calcutta there are "summons bailiffs" and, according to the Petitioners, "summons bailiffs" have been given in 1981 Revision of Pay and Allowances Rules the same pay scale as "process servers".

(c) According to the Petitioners, disparity of pay scale of "process servers" and "seal bailiffs" was highly arbitrary since they perform the same nature of duties and, as such, they should be treated at par with the "seal bailiffs" in the matter of fixation of pay.

(d) According to the learned Judge, so far as the "process servers" are concerned, although they are doing the same combined work of summons and seal bailiffs since besides serving ordinary processes, they also perform special duties including service of Writs and sale proclamation and the work of process server is much heavier than the work performed by the seal bailiffs.

(e) Applying the doctrine of "equal pay for equal work", the second pay commission appointed by the Government of West Bengal accepted on principle the same, but unfortunately had not considered the representation of the process servers and treated them at par with "bailiff, but equated them with daftaries, pumpmen, malis, etc. and fixed their salaries accordingly.

(f) Incidentally the learned Judge pointed out that the Petitioner would be entitled to protection of "equal pay for equal work" and the Respondents have discriminated the "process\* servers" with the "seal bailiffs", which was arbitrary and without any basis and issued a writ in the nature of mandamus to treat the "process servers" at par with "seal bailiffs" serving in the City Civil and Sessions Court at Calcutta and Presidency Small Causes Court, Calcutta, and to give them the same pay scale within a period of 120 days from the said date of the judgment.

3. The State Government did not prefer any appeal against the said judgment and decided to implement the contents of the said order by issue of Government order.

4. Pursuant to the said Government order, the writ Petitioner who has ultimately been promoted as "additional clerk" at Judicial Magistrate's Court, Jhargram, sent a representation to the District Judge, Midnapore, and, inter alia, made the following prayers, which are set out herein below:

That in the year 1980, I was promoted to the post of process server vide your Process Serving Establishment Order No. 19 dated 20.5.80 and posted under the

establishment of Munsif, Jhargram, and joined on 30.5.80.

That I came to know from G.O. No. 1575-F dated 20.2.88 that pay scale of process servers has been enhanced and scale of process servers has been fixed from Rs. 300-10-400-15-565-20-685 with effect from 1.4.81. As I worked as process server for the period from 30.5.80 to 4.3.85. I am entitled to get the pay in the scale of Rs. 300-10-400-15-565-20-685 with usual yearly increments.

5. It appears that the learned District Judge, Midnapore, by his communication dated July 1, 1988, was pleased to reject the said representation holding, *inter alia*, that as the writ Petitioner was not a party in the writ petition moved on behalf of the West Bengal Process Servers Central Association and working as additional clerk, Judicial Magistrate's Court, Jhargram, so he was not entitled to the benefit of the Government order.

6. Mr. Phalguni Sarkar, learned Advocate appearing at the final hearing of the writ petition, submits, in the first place, that although by the aforesaid judgment dated September 24, 1986, in C.R. No. 5139(W) of 1981, moved on behalf of the West Bengal Process Servers Central Association, this Court having directed the Respondents to treat "all the process servers" at par with the "seal bailiffs" and not to discriminate any further, and in view of the subsequent Government Order having been issued, being G.O. No. 1575-F dated February 20, 1988, there was no room for disallowing the claim of the writ Petitioner for awarding advance scale of pay on the basis of the said judgment.

7. In the second place, he submitted, the State Government not having preferred any appeal against the said judgment and having condescended to issue Government order for extending the benefit to avoid further discrimination, whether or not the present writ Petitioner is a party in the said earlier writ petition filed on behalf of the West Bengal Process Servers Central Association was not relevant consideration for the learned District Judge in refusing the claim of the writ Petitioner in terms of the Government order.

8. In the third place, it was submitted by Mr. Sarkar, in view of the clear assertions made in the representation that the writ Petitioner having worked as a "process server" from May 30, 1980 to March 4, 1985, the present writ Petitioner was entitled to enhanced pay scale of Rs. 300-685 with usual yearly increments.

9. Mr. Dipak Prakash Kundu, learned Advocate appearing for the Respondents, has drawn my attention to the statement made in para.7 of the affidavit-in-opposition affirmed by Sukhendu Bikash Dasgupta, the present District Judge, Midnapore, "wherein it was stated that the representation of the writ Petitioner was duly considered by the concerned authority. While considering the said representation, it revealed that the name of the writ Petitioner does not find place as one of the members of the West Bengal Process Servers Central Association, which was the writ Petitioner in C.R. No. 5139(W) of 1981, and as this Hon'ble Court specifically

directed the Respondents to treat the process servers, being the Petitioners in the said Civil Rule, at par with the Seal Bailiffs serving in the City Civil and Sessions Court at Calcutta as well as in the Presidency Small Causes Court, Calcutta, the Petitioner was not entitled to get the benefit of the said writ petition.

10. Mr. Kundu further has submitted that the judgment delivered by Sudhir Ranjan Roy J., referred to hereinabove, may not bind this Court in view of the observation of the Supreme Court in the case of [A.R. Antulay Vs. R.S. Nayak and Another](#), wherein in para. 64 of the said judgment, the, Supreme Court observed that ♦

unless a plea in question is taken it cannot operate as res judicata and the Supreme Court was not bound to follow a decision of its own if it is satisfied that the decision was given per incuriam or the attention of the Court was not drawn. It is also well-settled that an elementary rule of justice is that no party should suffer by mistake of the Court.

11. According to Mr. Kundu, as the State Government could not file any affidavit because some reason or other the learned Judge in the said judgment had not been benefited for arriving at the necessary fact that the nature of job performed by the writ Petitioner is similar to that of the bailiff and, as such, the said judgment may not bind me on awarding the benefit to the writ Petitioner.

12. Mr. Kundu has also referred to a very recent judgment of the Supreme Court delivered by Murari Mohan Dutt and T. Kochu Thommen JJ. in the case of [Supreme Court Employees' Welfare Association and Others Vs. Union of India \(UOI\) and Another](#), on the aspect that it is not the business of this Court to fix the pay scales of the employees of any institution in exercise of its jurisdiction under Article 32 of the Constitution. If there be violation of any fundamental right by virtue of any order or judgment, this Court can strike down the same but, surely, it is not within the province of this Court to fix the scale of pay of any employee in exercise of its jurisdiction under Article 32 of the Constitution.

13. Mr. Kundu has also referred from para.40 of the said judgment wherein their Lordships had referred to the observation of the Supreme Court in the case of State of U.P. v. J.P. Chaurasia AIR 1989 S.C. 19 which is as follows:

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 equivalent unless it is shown that it was made with extraneous consideration.

14. Mr. Kundu has further referred to another decision of the Supreme Court in the case of Harbans Lal and Others Vs. State of Himachal Pradesh and Others, on the doctrine of equal pay for equal work. In the said case it has been held that the principle of "equal pay for equal work" is not one of the fundamental rights expressly guaranteed by the Constitution of India. The principle was incorporated only under Article 39(d). It was in Randhir Singh Vs. Union of India (UOI) and Others, the Supreme Court held that the said principle was to be read into Articles 14 and 16 of the Constitution. However, there are in-built restrictions in that principle as pointed out in various decisions of the Supreme Court.

15. I have considered the submissions of both sides at length and the recent case laws cited by Mr. Kundu, but I am of the view, in the instant case, this Court is not called upon to decide the point at issue on the basis of the authorities cited by Mr. Kundu simply on the reason that the State Government having decided to allow the process server the same scale of pay as of bailiff as referred to in the said judgment and issued the relevant Government order, whether the District Judge, Midnapore, has acted properly in denying the writ Petitioner the benefit of the said Government order on the basis of representation filed by the writ Petitioner, which is Annex. D to the present writ petition.

16. I am of the view that as relevant statement has been made by the writ Petitioner in the said representation (Annex. D to the writ petition) that the present writ Petitioner has acted as a process server for the period from May 30, 1980 to March 4, 1985, the writ Petitioner was entitled to the benefit of the enhanced pay scale of Rs. 300-10-400-15-565-20-685 with usual yearly increments and the stand taken by the learned District Judge, Midnapore, as communicated by letter dated July 1, 1988, cannot be upheld by this Court.

17. Accordingly, I set aside the impugned communication dated July 1, 1988, being Annex. E to the writ petition, whereby the learned District Judge, Midnapore, has rejected the representation of the writ Petitioner (Annex. D to the writ petition) and I direct the District Judge, Midnapore, to consider the question afresh on the basis of the representation and in view of the Government order issued by the Respondents referred to hereinabove.

18. Such consideration should be made within a period of two months from communication of this order and the District Judge, Midnapore, will grant enhanced pay scale to the writ Petitioner who was admittedly discharging his duties as "process server" on the basis of his assertions made in the representation and in accordance with law.

19. The writ petition is allowed. Let a plain copy of this order countersigned by the A.R. (St.) be given to the 1/A for the Petitioner on undertaking to obtain certified copy for communication and for compliance.