

The State of Assam

Vs

Bhubhan Chandra Dutta and Another

Civil Appeal No. 1547 of 1969

(CJI A. N. RAY, K. K. Mathew, V. R. Krishna Iyer)

05.03.1975

JUDGMENT

RAY, C.J. -

1. This appeal by special leave raises the question as to whether the appointment of the Registrar of the High Court of Assam at a special salary of Rs. 1,500 with special allowance of Rs. 250 is valid.
2. On April 28, 1967, Bhubhan Chandra Dutta was appointed Registrar of the High Court of Assam. The appointment was made by the Chief Justice of the Assam High Court in exercise of powers conferred by Article 229 of the Constitution of India and Rules 7 and 13 of the Assam and Nagaland High Court Service (Appointment, Conditions of Service and Conduct) Rules, 1967.
3. The order of appointment of the Registrar was as follows :

He shall be entitled to draw an initial pay of Rs. 1,500 per month less the pension, if any, he has been drawing from the Government. He shall, in addition to the pay, be entitled to draw a special pay of Rs. 250 per month admissible under the Rules to the Registrar of the High Court. He shall hold the appointment for a minimum period of two years in the first instance. This period may, however, be extended as considered suitable and necessary by the Chief Justice.
4. It may be stated here that Bhubhan Chandra Dutta had previously been Additional District Judge and also the Registrar of the High Court. On July 1, 1958, Bhubhan Chandra Dutta attained the age of 55 years. He was then the Registrar of the High Court. He was given an extension of one year. On July 1, 1959 he retired as Registrar of the High Court.
5. On July 25, 1968, the Deputy Registrar of the High Court under the direction of the Chief Justice wrote to the Secretary to the Government of Assam in the Law Department to instruct the Accountant General to issue provisional pay slip to Bhubhan Chandra Dutta for Rs. 1,500 as pay plus special pay of Rs. 250. On August 2, 1968, the Accountant General issued a provisional pay slip for the period May 1, 1967 to October 31, 1967 authorising Bhubhan Chandra Dutta to draw a sum of Rs. 870.75 as provisional pay. The special pay of Rs. 250 was not included in the pay slip.
6. Bhubhan Chandra Dutta thereafter filed a writ petition in 1969 in the High Court at Assam for a mandamus to give effect to the notification, dated April 28, 1967, appointing him to the post of Registrar fixing the pay and special pay allowable to him and a further mandamus on the

Accountant General, Assam and Nagaland, Shillong to issue pay slip to Bhubhan Chandra Dutta for the full amount payable to him in terms of the said notification.

7. The High Court issued a mandamus directing the appellant to issue pay slip to Bhubhan Chandra Dutta at the rate of Rs. 1,500 per month minus his pension and a special pay of Rs. 250 per month. Bhubhan Chandra Dutta, according to the mandamus issued by the High Court, became entitled to the said salary as Registrar for two years with effect from May 1, 1967.

8. There is no dispute that under Article 229 of the Constitution the appointment of the Registrar is to be made by the Chief Justice of the High Court. It may be stated here that under Rule 7 of the Assam and Nagaland High Court Services (Appointment, Conditions of Service and Conduct) Rules, 1967, a person who had retired from the State Judicial Service Grade I could be appointed Registrar. The only question is whether the Chief Justice had authority to appoint the Registrar at a salary of Rs. 1,500 p.m. and special pay of Rs. 250 p.m. In view of the fact that Bhubhan Chandra Dutta had already retired from the Judicial Service and was drawing pension, it is common ground that the pension that he was drawing was to be deducted from the salary of Rs. 1,500.

9. Under the Assam and Nagaland High Court Service (Appointment, Conditions of Service and Conduct) Rules, 1956, the pay scale of the Registrar was at Rs. 850-50/1-1,500 per month. The relevant Rule 3(1) of the 1956 Rules provided as follows :

The post of the Registrar, when filled up from the Service will carry a special pay of Rs. 150 per mensem in addition to the Grade pay as admissible to the members of the Assam Judicial Service (Senior) Grade I. In any other case the Chief Justice will have power to fix, without the previous approval of the Governor, the initial pay up to Rs. 1,200 a month according to the experience, ability and age of the person concerned.

10. Subsequently the pay scale was fixed at Rs. 850-50-1,000-60-1,300-EB-50-1,500. With the said change in the pay scale there was a consequential alteration in Rule 3(1) authorising the Chief Justice to fix the initial pay, without the approval of the Governor up to Rs. 1,180.

11. Therefore, under the 1956 Rules the Chief Justice could appoint a Registrar at the initial pay up to Rs. 1,200 a month without the previous approval of the Governor. When the pay scale was subsequently changed the Chief Justice could similarly fix the initial pay of the Registrar without the approval of the Governor at Rs. 1,180.

12. The Government revised the pay scale of the Registrar on September 4, 1967. The revised pay scale was Rs. 1,200-60-1,380-EB-60-1,500. This revision was however made with effect from April 1, 1964. With effect from that date a special pay was also sanctioned if the Registrar was borne on the Judicial Service. It should be stated here that when the pay scale was revised in 1967 there was no change in Rule 3(1) which as it stood then said that the Chief Justice could fix the initial salary at Rs. 1,180 per month.

13. The High Court held that when the initial pay of the Registrar became Rs. 1,200 the authority to fix the initial pay at Rs. 1,180 became meaningless, and, therefore, by implication the figure of Rs. 1,180 should be read as Rs. 1,500. The reason given by the High Court was that when the Chief Justice could fix the initial pay at Rs. 1,180 under the Rules the Chief Justice could allow six increments at the time of initial appointment. Therefore, according to the High Court, when the

initial pay became Rs. 1,200 the authority to fix the initial pay would be Rs. 1,500 because the Chief Justice could grant six increments at the time of initial appointment. The High Court also said that though six increments at the rate of Rs. 60 would make it Rs. 1,560, the sum of Rs. 1,500 should be adopted because that was the highest pay.

14. When in 1967 the pay scale of the Registrar was revised there was no corresponding alteration in the Rules that the Chief Justice would have power to fix, without the authority of the Governor, the initial pay at Rs. 1,500.

15. At no stage could the Chief Justice fix the initial pay up to the maximum of the scale of pay which remained constant at Rs. 1,500 all throughout, notwithstanding the two revisions in the scale of pay. On the other hand, it appears that at no time the Chief Justice was empowered to fix the initial pay higher than Rs. 1,200. When the scale of pay was revised in 1964 it is significant to know that the power of the Chief Justice to fix the initial pay was reduced from Rs. 1,200 to Rs. 1,180.

16. Just because the initial pay of the Registrar in 1967 became Rs. 1,200 and with five increments the salary would be Rs. 1,500 no implication can arise on the power of the Chief Justice to appoint the Registrar at the initial pay of Rs. 1,500. The reasoning of the High Court that because in the past under the Rules the Chief Justice could appoint the Registrar at the initial pay of Rs. 1,200 or at Rs. 1,180 which showed that the initial pay of Rs. 1,200 or Rs. 1,180 gave six increments at the time of initial appointment, there is no warrant for implying the power to appoint the Registrar at the highest salary of Rs. 1,500 at the time of initial appointment on the ground that it would carry increments.

17. Article 229 of the Constitution confers power on the Chief Justice of the High Court to appoint officers and servants of the High Court. Article 229(2) states that subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose. It is also provided that the rules made under Article 229(2) shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State. It is not disputed that the appointment of Bhubhan Chandra Dutta by the Chief Justice of the High Court at a salary of Rs. 1,500 per month with special allowance of Rs. 250 per month was made without the approval of the Governor. If the Chief Justice of the High Court wanted to appoint the Registrar at the initial salary of Rs. 1,500 with a special salary of Rs. 250 per month, special approval of the Governor should have been taken in view of the fact that the rules did not permit such salary and the higher salary involved greater financial burden on the Government. (See *M. urumoorthy v. A. G., Assam & Nagaland* (1971 Supp SCR 420 : (1971) 2 SCC 137.)).

18. The special pay of Rs. 250 per month which was granted by the Chief Justice to the Registrar by his order dated April 28, 1967 was impeached by the State on the ground that Rule 3(1) conferred power on the Chief Justice to fix the special pay only when the post is filled from the members of the Assam Judicial Service (Senior) Grade I. It was contended by the State that Bhubhan Chandra Dutta at the time of his appointment on April 28, 1967 had retired from service and he was no longer a member of the Service and therefore he was not entitled to any special pay.

19. On behalf of Bhubhan Chandra Dutta it was said that he was, at the time of appointment of the Registrar, the Presiding Officer, Industrial Tribunal, and therefore, he was a member of the Judicial Service. The High Court interpreted Rule 3(1) to mean that whoever will be appointed as the

Registrar will be a member of the State Judicial Service, and, therefore, Bhubhan Chandra Dutta on being appointed as the Registrar was entitled to the special pay of Rs. 250 per month. On April 28, 1967 when Bhubhan Chandra Dutta was appointed as the Registrar of the High Court the post of the Presiding Officer, Industrial Tribunal was not included in the Assam Judicial Service (Senior) Grade I. This post was included in the Assam Judicial Service on August 17, 1967. That apart it is indisputable that Bhubhan Chandra Dutta had retired from the State Judicial Service on April 28, 1967. It could not, therefore, be said that a retired man can be a member of the Judicial Service or shall be borne on the service.

20. Counsel on behalf of Bhubhan Chandra Dutta in the alternative submitted that under Rule 11 of the Assam and Nagaland High Court Service Rules the Chief Justice had power to fix the pay of Rs. 1,500 and the special pay of Rs. 250 per month. Reliance was also placed on Fundamental Rule 19. Rule 11 and Fundamental Rule 19 are set out hereunder :

Rule 11-(i) In regard to pay, allowances, leave, leave salary or pension, the Rules and Regulations applicable to the members of the services under the rulemaking power of the Government of Assam shall apply, mutatis mutandis to person serving in this High Court and subject also to such amendments and variations as may be made by the Chief Justice from time to time with the approval of the Governor, where necessary :

Provided that the powers exercisable under the said rules and orders by the Governor or by any authority subordinate to the Governor shall be exercisable by the Chief Justice or by such person as he may, by special or general order direct.

(ii) Any question arising as to which rules or orders are applicable to the case of any person serving on the staff attached to the High Court shall be decided by the Chief Justice.

F. R. 19-The fixation of pay is within the competence of the Provincial Government; provided that, except in the case of personal pay granted in the circumstances defined in Rule 9(23)(a), the pay of a government servant shall not be so increased as to exceed the pay sanctioned for his post without the sanction of an authority competent to create a post in the same cadre or a rate of pay equal to his pay when increased.

21. The High Court held that the Chief Justice under Rule 11(i) read with Fundamental Rule 19 could fix the pay of the Registrar at Rs. 1,500. Rule 11 is not applicable to the appointment and fixation of pay and special pay of the Registrar because there is a specific provision made exclusively for the post of the Registrar. Rule 3(1) prevails over Rule 11 which is a general rule. The revision of pay scale from time to time since 1956 cannot alter the content and meaning of Rule 3(1). The revision of pay scales cannot have the effect of transferring the power from Rule 3(1) to Rule 11. Further Rule 11 must be read subject to the proviso to Article 229(2) of the Constitution. Any fixation of pay by the Chief Justice apart from Rule 3(1) requires the approval of the Governor. Fundamental Rule 19 does not permit the fixation of pay in the teeth of Rule 3(1) on the strength of Rule 11.

22. The High Court was wrong in granting a mandamus. The respondent Bhubhan Chandra Dutta was entitled only to the initial pay of Rs. 1,200 less pension and (pension) equivalent to gratuity. The amount was calculated by the Accountant General at Rs. 870.75. Bhubhan Chandra Dutta was not entitled to any special pay.

23. For these reasons the judgment of the High Court is set aside. The appeal is accepted. The rule granted by the High Court is discharged. In view of the fact that the appeal is by special leave we need not express any opinion on the contention advanced on behalf of the State that the High Court should not have entertained a writ for the enforcement of a contractual claim or a monetary claim.

24. This Court at the time of granting the special leave made an order that the respondent Bhubhan Chandra Dutta would be at liberty to withdraw Rs. 1,000 out of the security amount. Save as aforesaid, the parties will pay and bear their own costs.

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