

SUPREME COURT OF INDIA

State of Bihar

Vs.

Secretariat Press Ministerial Staff Union

C.A.No.2283 of 1999

(S. Rajendra Babu and P. Venkatarama Reddi JJ.)

26.4.2002

JUDGMENT

P. Venkatarama Reddi, J.

1. Respondents 1 and 2 namely Secretariat Press Ministerial Staff Union and Government Stationary Stores Staff Union filed a Writ petition with a prayer to issue a writ of Mandamus directing the Bihar State Government and other appellants herein to treat the ministerial staff of the Government Secretariat Press, Gulzarbagh, Patna and the Government Stationary Stores and Publication Press, Gulzarbagh, Patna as employees of the offices attached to the Secretariat and accordingly extend the benefits admissible in law to the employees of the offices attached to the Secretariat, including grant of replacement scale of pay on par with the attached office employees.

2. Respondents 3 to 12 herein who, it appears are employees working in the Press, subsequently were impleaded as parties in the writ petition. The High Court formulated the question for consideration as follows:-

"Whether the ministerial and menial staff employed in these two organisations, which are directly under the control of the Department of Finance, are employed in the attached offices of the Bihar Secretariat."

3. At the outset, we may mention that the dispute in the Writ Petition is specifically confined to ministerial staff of the Press; but not other categories, such as "meniastaff". The High Court, following the judgment of the Division Bench of the same Court rendered in CWJC 1315 of 1981 as long back as 14.12.1982 answered that question in affirmative and allowed the writ petition. The High Court observed that "the Judgement has attained finality and for so many years the concerned Assistants have been treated as employed in the attached offices of the Secretariat. The case of the petitioners stand on identical footing". Having observed thus, the direction was issued to treat the members of the petitioners-Unions as employees of the offices attached to the Secretariat and to grant them all consequential benefits which they are eligible in accordance with the rules from the date of filing of the writ petition.

Aggrieved by this judgment the present appeal has been preferred by the State of Bihar and other official-respondents in the writ petition.

4. In the counter affidavit filed in the writ petition the following stand is taken by the State Government: The Government Printing Presses at Gulzarbagh and Gaya are not attached offices of the Secretariat but they are only subordinate offices of the Finance department. These two establishments are not notified as attached offices. The pay scales, qualifications and mode of employment of clerical staff are entirely different from those existing in the Secretariat department. The Government Printing Presses at Gulzarbagh and Gaya are headed by the Superintendent. The posts in the ministerial cadre belongs 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, for instance, by resolutions dated 13.12.1981 and 18.12.89, on the basis of recommendations of Pay Commissions. Nature of the 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 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 1315 of 1981 has no application to the present case because the relief sought for therein was quite different.

5. Pursuant to the order passed by this Court on 21.11.2001 an affidavit was filed by the Under-Secretary to the Department of Finance, Government of Bihar enclosing therewith certain documents. It is stated therein that the respondents are to be treated as mufasil clerks, that the employees of the press are governed by the Factories Act and they are getting overtime for the work done beyond the prescribed hours. It is then clarified that the posts of LDCs and UDCs were merged into one and termed as clerks from 24.9.1980. The qualification of the mufasil clerks remains to be matriculation till today. The mode and procedure of recruitment of clerks and other Class III staff in mufasil offices and the Assistants in Secretariat differ. Moreover, the clerks in mufasil offices. had the opportunity of seeking entry into Secretariat Assistant's cadre through competitive examination, if they fulfil the requisite qualification. This was the position before 1992. Annexure A-3 containing the recruitment Rules regarding an appointment of Assistants in the Bihar Secretariat is filed. It is then stated that 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. It is further clarified that in the Secretariat and attached offices, 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 and after confirmation, they became eligible for promotion as Selection Grade Assistants, as is evident from exhibit A-4. The qualification for recruitment as Assistants in Secretariat and its attached offices is graduation. Government Memorandum dated 3.1.1985 (A-5) has been filed to substantiate this. The pay scales of the Assistants in the Secretariat and its attached offices and the mufasil staff/press clerks are set out in paragraph 7 of the affidavit. It is seen therefrom that t pay-scale of Assistants after merger are higher than those given to mufasil and other clerks working in the Government press. It is submitted that mufasil D clerks and the Assistants of the

Secretariat and attached offices are different in status, having different recruitment qualification, mode of recruitment, duties and responsibilities and pay-scales.

6. Adverting to the position obtaining from the year 1992 onwards, a reference been made to an enactment called as Secretariat and Attached Offices Assistants Joint Cadre Act, 1989 according to which the clerks in the mufasil offices may enter the joint cadre of Assistants for the Secretariat and Attached Office by appearing in the limited combined test provided that they are graduates having one year of satisfactory service in mufasil offices. The appointment through such limited competitive examination was fixed at 25% of the vacancies. It is pointed out that appointments to the posts of Assistants in the Secretariat and its attached offices are made on the recommendation of BPSC.

7. It seems to us that the High Court fell into an error in finding a solution to the controversy with reference to an earlier judgment rendered years back. In C.W.J.C. 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. They 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 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.

8. Assuming that the Government printing Press which is said to be under the administrative control of the Finance Department could be considered as 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 benefit admissible to the Assistants and/or other categories of ministerial staff in the Secretariat. It is apparent from the Memorandum of Writ Petition that the grievance of the Respondents is that the revised scales of pay given to the Secretarial staff are denied to the ministerial staff of the two Printing Presses. When it comes to the

question of pay-scales and pay benefits, the recommendation of the expert Body like Pay Commission, the pay structure adopted by the Government pursuant to such recommendation, the questions regarding equivalence of posts, the nature of duties and responsibilities attached to the relevant post are all matters that may have to be considered by the Court. Whether an establishment under the administrative control of a Secretariat Department, if governed by Factories Act, can have separate staff pattern with different pay scales is another aspect that may deserve consideration. None of these aspects were in fact considered by the High Court. The High Court merely followed its earlier Judgment which has only a limited relevance in the context of the issue raised in the present case. The High Court overlooked the fact that the scope of enquiry in the case on hand is much wider than that in the previous case. That apart, the relief granted by the High Court is too wide and general. Even if the High Court had come to the conclusion that the members of the petitioner-Unions and other impleaded staff were working in the attached offices of the Secretariat, the High Court 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". Such a direction, in our view, would lead to uncertainty and difficulties in implementation. Therefore, such a general direction should not have been granted by the High Court. We are, therefore, of the view that the matter has to be remitted to the High Court for fresh consideration in the light of the observations made above. As the matter is going back to the High Court it is also appropriate and proper for the High Court 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 Presses are or are not attached offices of the Secretariat in so far as that aspect becomes relevant in the case.

The impugned judgment is, therefore, set aside and the matter is remitted to the High Court for fresh consideration. The appeal is allowed accordingly. We further direct that if any monetary benefits have been disbursed to the Respondents pursuant to the impugned judgment of High Court, the same shall not be recovered. We make no order as to costs.

Appeal allowed.