

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5074 OF 2004

STATE OF ORISSA AND ANOTHER

Appellant (s)

VERSUS

BIBHUTI BHUSHAN MISHRA (D) BY LRS. AND OTHERS

Respondent(s)

O R D E R

This appeal is illustrative of the usual apathy shown by executive apparatus of the State to the recommendations made by the High Court under Article 229(2) of the Constitution in matters relating to the conditions of service of officers and servants of the High Courts.

In 1985, the Government of Orissa decided, in principle, that certain categories of posts are required to be upgraded to Level-I. In furtherance of that decision, the State Government circulated memo dated 23.4.1986 to all the departments to sent proposal for upgradation of the posts.

When the matter was placed before the Chief Justice of Orissa High Court, he recommended that 8 posts of Superintendents be upgraded to Level-I in the revised scale of Rs.1975-2975/- and the remaining 16 posts be re-designated as Superintendents Level-II in the revised scale of Rs.1365-2385/-.

The recommendations of Chief Justice, who is holder of a constitutional office, were

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communicated to the State Government vide letter dated 7.5.1986 of the Registrar (Administration) of the High Court.

The aforesaid recommendations made by a constitutional functionary should have been promptly processed by the concerned officers of the Finance and Home Department, as they must have been doing qua the recommendations of the Governor, the Chief Minister and the Speaker of the Legislative Assembly but they did not take necessary steps till 18.10.1989, on which

date sanction of the Governor for up-gradation of 9 out of 28 posts of Superintendents conveyed to the High Court with the rider that the up-gradation will become effective from the date of the actual filling up of the posts.

The respondents filed OJC No.1406 of 1996 with the complaint that they have been discriminated vis-à-vis the employees holding corresponding posts in the Secretariat who were given the benefit of up-gradation w.e.f. 1.8.1986. They

pleaded that the State Government had throughout maintained parity between the officers and employees of the High Court on the one hand and the Secretariat on the other hand, but they have been subjected to hostile discrimination in the matter of up-gradation of the posts of Superintendent and in this manner, their fundamental right to equality has been violated.

The appellants herein, who were non-petitioners before the High Court, justified the discriminatory treatment meted

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out to the writ petitioners by asserting that the officers and employees of the High Court have been given benefit of up-gradation with effect from 18.10.1989 i.e. the date on which sanction of the Governor for up-gradation of the posts was communicated.

The learned Single Judge referred to Government Resolution dated 16.2.1949 by which the High Court was informed that the High Court employees have been allowed the same scales of pay as are admissible to the employees of the Secretariat in the corresponding ranks and held that there was no valid ground to discriminate the officers of the High Court in the matter of up-gradation of posts and fixation of pay in the higher scales of pay.

The appellants sought review of the order of the learned Single Judge by relying upon order dated 16.11.1992 passed by the Division Bench of the High Court in OJC No.4162 of 1989 and batch but could not succeed because the learned Single Judge found that the view taken by him was consistent with the law

laid down in B.B. Mahapatra v. State of Orissa (1994) 78  
Cuttack Law Times 685 in which the order passed in OJC No.4162  
of 1989 and connected matters was duly considered.

The appellants did not challenge the order passed in the  
writ petition but filed special leave petition against the  
review order.

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On 10.11.2003, this Court passed the following order:

"Delay condoned.

The learned counsel for the petitioners submits  
that the parity in the pay scale cannot be made  
admissible for the period prior to 18.10.1989 and  
the order making it as admissible w.e.f. 1.8.1986  
is not valid.

Issue notice limited to the question raised as  
indicated above.

Contempt proceedings pending in the High Court  
shall remain stayed."

Shri Suresh Chandra Tripathy, learned counsel for the  
appellants argued that the direction given by the learned  
Single Judge for fixation of the respondents' pay in the scale  
of Rs.1975-2975/- with retrospective effect is legally  
unsustainable and is liable to be set aside because the  
Governor had not sanctioned retrospective up-gradation of the  
posts of Superintendent to Level-I. Shri Tripathy submitted

that though the recommendations made by the of the High Court  
under Article 229(2) of the Constitution deserve full respect,  
the Government is not always bound to accept the same and the  
mere fact that there was delay in sanctioning up-gradation of  
the posts of Superintendents, could not be made a ground by the  
learned Single Judge for issuing a mandamus for fixation of the  
respondents' pay with retrospective effect.

Shri P.N. Mishra, learned senior counsel appearing for the  
respondents supported the direction given by the learned Single  
Judge and submitted that this Court should take serious notice  
and adverse view of the casual manner in which the

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recommendations of the High Court are dealt with by the  
functionaries of the State. Shri Mishra relied upon the

judgment of the three-Judge Bench in Union of India v. S.B. Vohra (2004) 2 SCC 150 and argued that the direction given by the learned Single Judge for retrospective grant of higher pay-scale to the Superintendents cannot be faulted because the employees holding corresponding posts in the Secretariat were given the benefit of fixation of pay with effect from 1.8.1986.

We have considered the respective arguments. In the context of the submissions made by him, we repeatedly asked Shri Tripathy, learned counsel for the appellants to show as to why the recommendations made by the Chief Justice of the High Court were kept pending for three years and five months and why decision on the issue of up-gradation of the posts of Superintendents of the High Court was not taken with the same alacrity with which the matter relating to the posts in the Secretariat and other departments of the Government was taken up and decided but the learned counsel could not offer any explanation. The record produced before this Court also does not show as to what action was taken by State Government on the recommendations of the Chief Justice. It is also not clear at what level and who dealt with the matter and why it took three years and five months to the Government to take appropriate

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decision. Therefore, we are constrained to remark that the State Government had put the recommendations made by the Chief Justice in May, 1986 in cold storage and decision on the issue of up-gradation of the posts of Superintendents was taken after three years and five months for which no explanation worthy name has been given.

In Union of India v. S.B. Vohra (supra), this Court elaborately considered a somewhat similar issue in the backdrop of the appellants' challenge to the order passed by the High Court on judicial side for grant of higher pay-scale to the Private Secretaries, Court Masters and Superintendents. While dealing with the argument of the appellants, which is usually

put forward in such cases that the High Court cannot issue a writ of mandamus for implementation of the recommendations made under Article 229(2), the Court referred to the earlier judgments in C.L. Agrawal (1997) 5 SCC 1, High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal (1998) 3 SCC 72, State of Maharashtra v. Association of Court Stenos, PA, PS (2002) 2 SCC 141, High Court Employees Welfare Association v. State of West Bengal (2004) 1 SCC 334 and observed:

"Decisions of this Court, as discussed hereinbefore, in no unmistakable terms suggest that it is the primary duty of the Union of India or the State concerned normally to accept the suggestion made by a holder of a high office like a Chief Justice of a High Court and differ with his recommendations only in exceptional cases. The reason for differing with the opinion of the

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holder of such high office must be cogent and sufficient. Even in case of such difference of opinion, the authorities must discuss amongst themselves and try to iron out the differences. The appellant unfortunately did not perform its own duties.

In a matter of this nature the appellant, with a view to show that its action is reasonable, was bound to perform its duties within a reasonable time. Reasonableness being the core of Article 14 of the Constitution of India would imply that the constitutional duties be performed within a reasonable time so as to satisfy the test of reasonableness adumbrated under Article 14 of the Constitution of India.

It has to be further borne in mind that it is not always helpful to raise the question of financial implications vis-à-vis the effect of grant of a particular scale of pay to the officers of the High Court on the ground that the same would have adverse effect on the other employees of the State. Scale of pay is fixed on certain norms; one of them being the quantum of work undertaken by the officers concerned as well as the extent of efficiency, integrity etc. required to be maintained by the holder of such office. This aspect of the matter has been highlighted by this Court in the case of the judicial officers in All India Judges' Assn. v. Union of India (1992) 1 SCC 119 as well as the report of the Shetty Commission."

In view of the discussion made herein above and the observations made by the three Judge Bench in Union of India v. S.B. Vohra (supra), we hold that the High Court did not commit any error by directing the appellants to fix the pay of the

respondents in the scale of Rs.1975-2975/- with effect from 1.8.1986 and give them consequential benefits.

In the result, the appeal is dismissed.

The appellants

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are directed to implement the order of the High Court not only qua the respondents and/or their legal representatives but also extend similar benefit to other similarly situated employees and/or their representatives. The exercise for fixation of pay and payment of arrears shall be completed within a period of three months from today and a report to this effect be submitted to the Registrar of the High Court, who shall place the file before the Chief Justice of the High Court.

.....J.  
(G.S. SINGHVI)

.....J.  
(ASOK KUMAR GANGULY)

NEW DELHI,  
APRIL 07, 2011.

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ITEM NO.103

COURT NO.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5074 OF 2004

STATE OF ORISSA & ANR.

Appellant (s)

VERSUS

BIBHUTI BHUSHAN MISHRA (D) BY LRS. & ORS

Respondent(s)

(With appln(s) for Amendment of Cause Title)

Date: 07/04/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. Suresh Chandra Tripathy,Adv.

For Respondent(s) Mr. P.N. Misra, Sr.Adv.  
Mr. S. Misra,Adv.  
Mr. Pankaj Sharma, Adv.

UPON hearing counsel the Court made the following  
O R D E R

In terms of signed order, the appeal is dismissed. The appellants are directed to implement the order of the High Court not only qua the respondents and/or their legal representatives but also extend similar benefit to other similarly situated employees and/or their representatives. The exercise for fixation of pay and payment of arrears shall be completed within a period of three months from today and a report to this effect be submitted to the Registrar of the High Court, who shall place the file before the Chief Justice of the High Court.

(A.D. Sharma)  
Court Master  
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(Phoolan Wati Arora)  
Court Master

(Signed Order is placed on the file)