

K. Vasudevan Nair And Others Etc. Etc. vs Union Of India And Others on 19 September, 1990

Equivalent citations: AIR1990SC2295, [1991(61)FLR639], JT1990(4)SC58, 1990LABLC1931, (1991)IILLJ420SC, 1990(2)SCALE553, 1991SUPP(2)SCC134, 1990(3)SLJ124(SC), 1990(2)UJ659(SC), AIR 1990 SUPREME COURT 2295, (1990) 3 SERV LJ 124, (1990) 2 LAB LN 1002, (1991) 2 LAB LJ 420, (1990) 4 JT 58 (SC), (1991) 17 ATC 362, 1991 SCD 55, (1990) 61 FACLR 639, 1990 UJ(SC) 2 659, (1990) 6 SERV LR 67, (1990) 2 CURLR 767, 1991 SCC (SUPP) 2 134, 1990 4 JT 58, 1991 SCC (L&S) 1199

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Bench: Kuldip Singh, P.B. Sawant

ORDER

Kuldip Singh, J.

1. The question for our consideration is whether the Section Officers working in the Indian Audit and Accounts Department are entitled to the same pay scales as are being drawn by the Section Officers in the Central Secretariat.
2. The S.A.S. (Subordinate Account's Service) Accountants/Superintendents in the Audit and Accounts Department were re-designated as Section Officers (Account and Audit) with effect from April 1, 1973. The post of Section Officer was categorised as Class III post and prior to January 1, 1973 it carried the pay-scale of Rs. 270-575. On the other hand, in the Central Secretariat there were two levels of Class II posts. The lower level of Class II post of Assistant (non-gazetted) was in the pay scale of Rs. 210-530 and the higher level post of Section Officer (Gazetted) carried the pay scale of Rs. 350-900.
3. The Central Government set-up the Third Pay Commission which was presided over by a former Judge of this Court. The Commission took into consideration all relevant facts and circumstances including expert evidence and submitted its report to the Government of India recommending revision of pay scales in various government departments including Audit and Accounts Department. The Commission did not accept the representation of the Section Officers of the Audit and Accounts Department to the effect that they were entitled to the same pay-scale as was being recommended for the Section Officers in the Central Secretariat. The pay scale of the Section Officers in the Audit and Accounts Department was recommended to be revised from Rs. 270-575 to

Rs. 500-900 whereas the pay scale of Section Officers in the Central Secretariat was recommended to be revised from Rs. 350-900 to Rs. 650-1200 and that of the Assistants in the Central Secretariat from Rs. 210-530 to Rs. 425- 800. The aforesaid recommendations of the Third Pay Commission were accepted by the Government of India in consultation with the Comptroller and Auditor General of India. The revised pay scales came into force with effect from January 1, 1973.

4. Y.P. Sharma and other Section Officers in the Audit and Accounts Department filed Civil Writ Petition No. 484 of 1975 in the High Court of Delhi contending that the nature of duties and responsibilities attached to their post were the same, if not more onerous, as were being performed by the Section Officers in the Central Secretariat and as such they claimed parity in the pay scales of the two cadres. The Learned Single Judge of the High Court dismissed the Writ Petition by his judgment dated March 15, 1982. The Letters Patent Appeal against the judgment was dismissed on July 20, 1982. Civil Appeal No. 2567 of 1983 by way of Special Leave is against the High Court judgment.

5. While Civil Writ Petition No. 484 of 1975 was pending before the Delhi High Court, Shri K. Vasudevan Nair and other Section Officers of the Indian Audit and Accounts Department filed Civil Writ Petition No. 1698 of 1979 in this Court under Article 32 of the Constitution of India seeking the same relief as was being asked for from the Delhi High Court.

6. The Comptroller and Auditor General of India, with a view to promote efficiency and improve quality of work, decided to reorganise the Department with effect from March 1, 1984. The combined Audit and Accounts Service was bifurcated into (i) Accounts and Entitlement Officer and (ii) Audit Office with separate cadres of their own. Keeping in view the special functional needs of the two cadres the recruitment, training and placement policies were also redesigned. Options were given to the Section Officers to opt for either of the two bifurcated cadres. The options of all those who opted for the Audit Wing were accepted. 80% of the Section Officers in the Audit Wing were given the pay scale of Rs. 650-1040 and were designated as Accounts Officers. The remaining 20% in the Audit Wing and all those in the Accounts and Entitlement Wing continued to be in the pay-scale of Rs. 500-900.

7. Civil Miscellaneous Petition No. 6197 of 1984 was filed by the petitioners in writ petition No. 1698 of 1979 challenging the bifurcation and also the grant of higher pay scale of Rs. 650-1040 to the Section Officers (designated as Account Officers) in the Audit Wing. R. Mani Nair and others filed writ petitions No. 11968, 12334-42 of 1984 in this Court under Article 32 of the Constitution of India seeking the same relief.

8. This is how Civil Appeal No. 2567 of 1983, Civil Writ Petition No. 1698 of 1979 with C.M.P. No. 6197 of 1984 and Civil Writ Petition Nos. 11968, 12334-42 of 1984 have come up for our consideration.

9. Mr. T.P. Sundra and Mr. K.M.K. Nair, learned Counsel appearing in person in Civil Appeal have raised the following points:

1. That in view of Article 148(5) of the Constitution of India the pay-revision in respect of persons serving in the Audit and Accounts Department, could not be referred to Pay Commission.

2. That on the basis of the principle 'equal pay for equal work' the petitioners/appellants are entitled to the same pay-scale with effect from January 1, 1973, as was given to the Section Officers of the Central Secretariat.

3. The post of Section Officer in the Audit and Accounts Department was illegally classified as Class III post. It was a Class II post and the report of the Third Pay Commission based on the assumption that it was a Class III post, was thus vitiated.

4. That in any case after the bifurcation there was no justification to treat the Section Officers in the Accounts Wing differently than the Section Officers who opted for the Audit Wing. According to the appellants/petitioners who belong to the Accounts Wing they are entitled to the same pay scale from March 1, 1984 as was given to the Section Officers in the Audit Wing.

10. There is no force in the first point urged before us. Article 148(5) of the Constitution of India is as under:

148(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

11. The plain reading of the above provisions show that the rules providing conditions of service of persons serving in the Indian Audit and Accounts Department are to be made after consultation with the Comptroller and Auditor-General. We do not see in these provisions any bar for the Government to set up an expert-body like Pay Commission to consider the Pay revision of persons serving in the Indian Audit and Accounts Department. The recommendations of the Pay Commission are not binding on the Government. It is not disputed that the revised pay-scales in respect of the Section Officers in the Indian Audit and Accounts Department were enforced after consultation with the Comptroller and Auditor-General of India.

12. Adverting to the second point raised by the Appellants- Petitioners, we may refer to Paragraph 122, Chapter V, Volume II of the Third Pay Commission Report which is as under:

This demand was examined by the Second Pay Commission also but was not accepted. We have given careful consideration to the matter and find that there are differences in regard to the method of recruitment and the level of supervision exercised by the S.A.S. Accountants on the one hand and the Section Officers and the Assistant Civilian Staff Officers on the other. While the S.A.S. Accountants generally

supervise the work of Selection Grade Clerks and Upper Division Clerks, both the Assistant civilian Staff Officers and the Section Officers exercise supervision over Assistants who are in a higher pay scale. Further, an equation of S.A.S. Accountants with the Section officers would disturb their existing internal relativities vis-a-vis the posts of Accounts Officers who are also in the upper segment of the Class II Scale of pay. Unlike S.A.S. Accountants, who are promoted after a qualifying departmental examination, there is direct recruitment to 25% posts of Assistant Civilian Staff Officer and to about 1/6 of the permanent vacancies of Section Officers from the combined competitive examination for the Class I non-technical services. We are therefore, unable to accept the demand for equation of S.A.S. Accountants with either the Section Officers in the Central Secretariat or the Assistant Civilian Staff Officers in the Armed Forces Headquarters. We accordingly recommend the pay scale of Rs. 500-900 for the S.A.S. Accountants in the Audit Department, Defence Accounts Department, Senior Accountants in the P & T Department and Accountants, Inspectors of Stores Accounts and Inspectors of Station Accounts in the Railways.

13. The question was also examined earlier by the Second Pay Commission and was answered in Chapter XXVI, para 22, of its report in the following words:

Broadly speaking, Accountants have asked to be treated as Class II Officers and the scales of pay proposed by their association are Rs. 275-800, Rs. 275-750, Rs. 275-650. Some of the associations representing these staffs common cadre of Assistant Accounts Officers and Accountants. According to them the duties and responsibilities of Assistant Accounts Officers and Accountants are identical. We do not accept this claim. Assistant Accounts Officers are employed on work of a higher order. In fact, Accountants perform their duties under the supervision and guidance of Assistant Accounts Officers. We are satisfied that the two cannot be put in one grade. We have, therefore, examined the pay proposals of Accountants independently of this suggestion.

14. The High Court after examining the recommendations of the second Pay Commission, the third Pay Commission and the material placed before it came to the following conclusions:

The aforesaid view of the Second Pay Commission in addition to what has been stated by the Third Pay Commission in its report in paragraph 122 clearly show that the petitioners and the Section Officers in the Central Secretariat Service cannot be treated at par. Mr. Gupta is right when he contends that the Third Pay Commission was wrongly of the view that direct recruitment does not take place to the post of S.A.S. Accountants but it is not disputed that most of the recruitment as S. A.S. Accounts has taken place by way of promotion. Even if the Pay Commission was not correctly informed about the manner of recruitment, nevertheless the other consideration which weigh with the Pay Commission were relevant considerations and the Pay Commission could rightly come to the conclusion that the two types of posts could not be equated. Another relevant factor which has to be taken into

consideration is that when Section Officers like the petitioners are sent on deputation to the different Ministries, they work under the supervision of Section Officers of the Central Secretariat. It is obvious, therefore, that the Section Officers like the petitioner cannot be equated with the Section Officers in the Central Secretariat Service. The type of work which is performed by the two categories is also different.

15. We see no reason to differ with the finding reached by the High Court.

16. The Appellants-Petitioners have, however, strenuously argued before us that the Comptroller and Auditor General of India stated before the Third Pay Commission that the duties of Section Officers in the Audit and Accounts Department are similar to those performed by the Section Officers in the Central Secretariat. Apart from that our attention was invited to the averments in the writ petition where comparison of duties of Section Officers of Central Secretariat and Section Officers of Audit and Accounts Department have been detailed. The respondents in their counter affidavit have denied the averments and have asserted that the duties performed by the two sets of Section Officers are different. It is not possible for us to determine the question on the basis of the assertions made in the writ petition and the counter filed by the respondents. The pay revision by the Government was based on the recommendations of the Third Pay Commission which was an expert body. The extent of material and expertise before the Pay Commission is obvious from Para 22 Part I of the report which is as under :

We devoted 98 days for taking oral evidence of service associations, 69 days for discussions with officials (including representatives of State Governments) and 31 days for taking evidence from non-official witnesses. We held internal meetings on 235 days to discuss various issues and finalise our recommendations.

17. The Pay Commission took into consideration the statement of Comptroller and Auditor-General of India and all other material placed before it by the petitioners/appellants. We, therefore, see no force in this contention and reject the same.

18. Mr. Sadhu Ram Gupta appearing in person in the civil appeal has argued that a Central Civil post carrying pay or scale of pay with a maximum of not less than Rs. 575/- but less than Rs. 950/- is a Class II post in terms of the notification dated March 13, 1962 issued under Sub-rule (I) of Rule 8 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. According to him the pay scale of the post of Section Officer in the Audit and Accounts Department was Rs. 270-575 and since the maximum was not less than Rs. 575/- it was a Class II post. Mr. Gupta contended that the Government illegally classified the post as Class HI post. According to him, had the post been classified as Class II post the Pay Commission would have recommended the pay scale of Rs. 650-1200 as was done in the case of Section Officers of Central Secretariat. Although there is considerable force in the argument of Mr. Gupta that in terms of the notification dated March 13, 1962 the post of Section Officer in the Audit and Accounts Department should have been classified as Class II post, but it is not necessary for us to go into this question because the Pay Commission was not guided by the classification of the posts. Paragraph 122 of the report reproduced above clearly shows that pay-scale of Rs. 500-900 for the Section Officers of the Audit and Accounts

Department was recommended on considerations other than the classification of the post. The respondents in their counter affidavit have given various instances showing that the recommendations of the third Pay Commission were not based on the existing classification of the posts. Assistants in the Central Secretariat were Class II (non-gazetted) but were given the revised scale of Rs. 425-800 whereas Appellants-petitioners who were treated as Class III were given the revised scale of Rs. 500-900. We, therefore, do not agree with the contention of Mr. Gupta and reject the same.

19. There is also no force in the argument of the Appellants- Petitioners that they are entitled to the same pay scale as was given to the Section Officers of the Audit Wing on bifurcation. As mentioned above all the members of the combined cadre were given options to join the Audit Wing. It was admitted before us that all those who opted for the Audit Wing their option were accepted. The Appellants-Petitioners did not opt for the Audit Wing and as such there is no justification for them to claim the same what they have themselves rejected. Even, otherwise, we are of the view that the duties and responsibilities of the Audit Wing are entirely different than those performed by the Section Officers of the Accounts Wing.

20. As a result of the recommendations of the Fourth Pay Commission there has been further revision in the pay scale of the Section Officers working in the Audit Wing as well as Accounts Wing. Both the categories of Section Officers in the Account and Audit Wing have been designated as Assistant Account Officers and Assistant Audit Officers and have been placed in the revised pay scale of Rs. 2000-3200. The pay scale of the Section Officers of the Central Secretariat has been revised to Rs. 2000-3500. The revised pay scales have been implemented with effect from January 1, 1986. The grievances of the petitioners-appellants, if any, have thus been redressed.

21. We, therefore, see no merit in the contentions raised by the Appellants-Petitioners and reject the same. Civil Appeal No. 2567 of 1983, Civil Writ Petition No. 1698 of 1979 with C.M.P. No. 6197 of 1984 and Civil Writ Petition No. 11968, 12334-42 of 1984 are dismissed. There shall be no order as to costs.