

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 135 of 2019**

Sitaram Rathore S/o Late Uday Ram Rathore Aged About 49 Years Presently Working As Assistant Editor (ILR), Chhattisgarh, High Court, Bilaspur, District- Bilaspur, Chhattisgarh. --- **Petitioner**

Versus

1. State of Chhattisgarh Through Principal, Secretary Law, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. High Court of Chhattisgarh Through Registrar General, Bodri, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh ---
Respondents

For the Petitioner	:	Mr. Tarendra Kumar Jha, Advocate.
For the State	:	Mr. Rahul Jha, Govt. Advocate
For respondent No.2	:	Mr. Keshav Dewangan, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****12.08.2021**

1. In this writ petition, the petitioner has challenged the memos dated 13.12.2016 (Annexure P-8) and 04.06.2018 (Annexure P10) whereby the proposals made by respondent no.2 for amendment of the grade pay to the post of Assistant Editor (ILR) have been rejected by the State/Respondent no.1.
2. The facts of the case are that the petitioner was initially appointed to the Post of Assistant Grade-III in the establishment of Chhattisgarh High Court in the year 2003. Subsequently, he was promoted to the Post of Assistant Grade-II in 2005 and thereafter to Assistant Grade-I in 2013. The petitioner was possessing the Degree in Law, as such, as

per the criteria he was further promoted to the post of Assistant Editor (ILR) by order dated 27.01.2015 (Annexure P-2) on the pay band of Rs.9300-34800 plus 4400/- grade pay. According to him, the post of Assistant Editor (ILR) is a Class-II Post as per the *Chhattisgarh High Court Establishment (Appointment and Conditions of Service) Rules, 2003 (for Short Rules of 2003)* and is equivalent to the post of Section Officer, Private Secretary and Librarian which carry the similar pay scale. The scale of pay was lastly shown to be the pay-band of Rs.9300-34800 + grade pay 4400.

3. It is further case of petitioner that according to Second Schedule of the High Court Rules 2003, the post of Assistant Editor (ILR) is equivalent to the corresponding post of Section Officer existing in the State Secretariat. According to him, by letter dated 04.03.2016 (Annexure P-5) Respondent no.1/State has communicated to respondent no.2 about the approval to amend grade pay to the post of Section Officers and Private Secretaries sanctioned in the establishment of High Court from Rs.4400 to Rs.4800/- at par with the grade pay applicable to the officers of establishment of State Secretariat and accordingly the Grade Pay of all Section Officers/Private Secretaries working in the High Court establishment was enhanced to Rs.4800/-. According to the petitioner, though he is holding the post of Assistant Editor (ILR) which is at par with Section Officer and Private Secretary, yet the benefit to grant grade pay of Rs.4800/- was omitted. Thereafter, pursuant to his application, respondent No.2 the High Court through its Registry made

certain correspondence with the State and requested for getting necessary orders from the Finance Department to amend and enhance the grade pay of Assistant Editor (ILR) from Rs.4400 to 4800 /- as the post of Assistant Editor (ILR) was equivalent to that of Section Officers and Private Secretaries of this Registry. Though initially the said request was turned down, but during the pendency of this petition, the grade pay of Assistant Editor (ILR) was enhanced from 4400 to 4800 by order dated 06.02.2020.

4. Shri T.K. Jha, learned counsel appearing on behalf of the petitioner would submit that at the earlier point of time when the grade pay of Section Officers and Private Secretaries was increased w.e.f. 01.03.2016 by memo dated 04.03.2016, the State by adopting *pick and choose policy* could not have arbitrarily taken a different prospective date for extension of such benefit to the post of petitioner especially when the petitioner is placed in similar class. Therefore, the petitioner having been promoted to the post of Assistant Editor (ILR) with additional qualification of LLB, is entitled to the same benefit from the initial date inasmuch as there cannot be discriminatory classification for the persons who belong to the same cadre and the petitioner cannot be differentiated for grant of such benefit. He relied on a decision reported in ***AIR 2019 SC 3338*** and would contend that there cannot be any discriminatory classification especially when the post of Assistant Editor (ILR), Section Officer and Private Secretaries form a single class and thus the petitioner is entitled to the benefit of amended grade pay from 01.03.2016 i.e., the date from which other Private Secretaries and Section Officers

were granted the benefit of amended grade pay.

5. Per contra, Shri Rahul Jha, learned State Counsel would submit that a conscious decision was arrived at by the State and only the grade pay scale of Section Officers/Private Secretary was increased from Rs.4400 to 4800/- by way of amendment, which was communicated vide memo 04.03.2016 and thereafter when the correspondence was made by the High Court, eventually it has been granted to the Assistant Editor (ILR) by memo 06.02.2020 (Annexure P-11). He would submit that looking to the nature and importance of duties of different posts, the State is within its domain to grant such different grade pay and there cannot be any compulsion to grant such revised grade pay to the petitioner. It is further submitted that due to consideration of financial resources, initially the decision was taken to grant pay scale only to the employees of like nature in the cadre and subsequently the Grade Pay of the petitioner has been increased in the year 2020. Consequently it cannot be said that it would be discriminatory and arbitrary in nature.
6. Heard learned counsel for the parties and also perused the documents. Indisputably, the petitioner was promoted to the post of Assistant Grade-I in 2013 and subsequently was promoted as Assistant Editor (ILR) on 27.01.2015. Part IV of High Court Establishment Rules 2003 (supra) prescribed the source and method of appointment of various Class II posts. The criteria to appoint Section Officer and Assistant Editor (ILR) is relevant and reproduced hereinbelow:

S.No.	Name of the Post	Source & Method of appointment
2.	Private Secretary	By promotion strictly on merit cum seniority basis from setenographs of the establishment subject to the

		condition that the stenographer must have passed Engloish Shorthand Examination at the speed of 100 words per minute from any recognized Board.
3.	Section Officer	By promotion strictly based on merit-cum-seniority from amongst Assistants Grade-I, Translators, Stamp Reporter and Examiner (I.L.R) of the establishment.
5	Assistant Editor (I.L.R)	By promotion strictly based on merit-cum-seniority from amongst Assistant Grade-I, Translators, Stamp Reporter and Examiner (ILR) of the Establishment, having Degree in Law.

Reading of the criteria would show that the Assistant Editor (ILR) should have possessed the additional qualification of degree in law and as per Part XII First Schedule of Rules 2003, class II posts are placed in the same cadre, which includes the Private Secretary, Section Officer, Librarian and Assistant Editor (ILR) on the same pay scale. The relevant portion of Part XII (First Schedule) reads as under :

S.No.1	Name of the Post	No. of posts	Existing pay Scales (in Rs.)
15	Private Secretary	10	6500-200-10500
16.	Section Officer	12	6500-200-10500
17.	Librarian	1	6500-200-10500
18.	Assistant Editor (ILR)	1	6500-200-10500

7. Thereafter, with the enhancement of pay scales and strength, the pay scale of Class II Officers and their strength is shown as under:

S.No.	Name of the post	No. of posts	Existing Pay Scales (in Rs.)
15.	Private Secretary	31	9300-34800+4400
16.	Section Officer	36	9300-34800+4400
17.	Librarian	1	9300-34800+4400
18.	Assistant Editor ILR	1	9300-34800+4400

8. Further reading of second schedule at Sl.No.18 of Rules 2003 would show the posts of the High Court and the corresponding posts existing in the State Secretariat wherein at Serial No.18, the post of Assistant Editor (ILR) is shown to be equivalent to the corresponding post of Section Officer existing in the State Secretariat. Similarly at Sl.16 the post of Section Officer is shown to be equivalent to the corresponding post of Section officer in State Secretariat. It reads as under:

S.No.	Name of Post	Corresponding post in the State Government Secretariat
16	Section Officer	Section Officer
18	Assistant Editor (ILR)	Section Officer

9. The dispute arose when the Grade Pay of S.O. & P.S. of the Registry's establishment was increased from Rs.4400 to 4800/- by memo dated 04.03.2016 and the petitioner who is holding the post of Asst. Editor (ILR) was left out though was placed in equivalent cadre. Certain correspondence was made by the High Court with the State Government wherein requests were made that the Grade Pay of the post of Assistant Editor (ILR) requires to be amended from Rs.4400 to 4800 effective from 01.01.2015 as the State Government by letter dated 04.03.2016 extended the benefit to all the Private Secretaries and Section Officers. Initially the said request was turned down but later-on during the pendency of the petition, the grade pay of the Assistant Editor (ILR) has been revised from Rs.4400 Rs.4800/- by letter dated 06.02.2020 which is placed on record vide Annexure P-11.
10. As stated in the foregoing paragraphs, *The Chhattisgarh*

High Court Rules 2003, First Schedule would clearly show that the Class-II posts of Private Secretaries, Section Officers, Librarian and Assistant Editor (ILR) are placed in one cadre as they all form a single class. The strength of Private Secretaries and Section Officers is much higher whereas only one post of Assistant Editor (ILR) is sanctioned to which the petitioner was promoted. The Second Schedule of Rules 2003 would further show that the post of Assistant Editor (ILR) is corresponding to the post of Section Officer of the State Secretariat. Initially, by order dt. 04.03.2016 the amendment was effected in the grade pay of all the Private Secretaries and Section Officers of the Registry and the benefit of enhanced grade of Rs.4800/- was extended to all P.S and S.Os. Though by order dated 27.01.2015 the petitioner was promoted to the post of Asst. Editor (ILR) which was placed in the same rank/cadre of Private Secretary & Section Officer whose grade pay was enhanced to Rs.4800/- by way of amendment, however, in the memo dated 04.03.2016 (Annexure P-5), only Section Officers and Private Secretaries were picked as one cadre, whereas the present petitioner who is Assistant Editor (ILR) was left out, consequently his grade pay remained as Rs.4400/-. For the sake of convenience, memo dated 04.03.2016 is reproduced herein below :

GOVERNMENT OF CHHATTISGARH
LAW AND LEGISLATIVE AFFAIRS DEPARTMENT, MANTRALAYA,
MAHANADI BHAWAN, NAYA RAIPUR (C.G) 492 002

No.2465/316/XXI-B/C.G/2016
04.03.2016

Baya Raipur dated

To

The Registrar General,

High Court of Chhattisgarh,
Bodri, Bilaspur
Chhattisgarh.

Sub: Regarding amendment of grade pay to the post of Section Officers and Private Secretaries sanctioned on the establishment of High Court in accordance with GAD memo No.F/10-4/2008/1-8 dated 6.12.2014 and GAD memo endt. No.F/5-16/2004/1-8 dated 06.12.2014 and GAD memo endt. No.F/5-16/2014/1-8 dated 29.11.2014.

Ref: Your Memo No.583/R.G./2016 dated 25.01.2016.

....

State Government, hereby, accords, approval to amend the grade pay to the post of Section Officers and Private Secretaries in the establishment of Chhattisgarh High Court from Rs.4400 to Rs.4800 in accordance with the grade pay applicable to the establishment of state Government Secretariat.

This order issues with concurrence of Finance Memo No.F-2016-21-00883 dated 1st March, 2016.

By order and in the name of
the Governor of Chhattisgarh
Sd/-
(A.K. Samantray)
Principal Secretary
Government of Chhattisgarh
Law and Legislative Affairs Department

11. Subsequently on certain correspondence being made by the Registry pursuant to the request made by the Respondent High Court, a subsequent order dated 06.02.2020 was communicated whereby the grade pay of Asst. Editor (ILR) was enhanced to Rs.4800/- and in the result, the petitioner was denied the benefit of enhanced grade pay from the initial date though he was placed in similar cadre of Private Secretaries and Section Officers.
12. The reply of the State also does not assign any valid reason to show that why the similarly situated person like petitioner who is holding the same class of post was left out to grant the amended grade pay from initial date. The Supreme Court had occasion to deal with similar nature of case while

dealing with the cases of pension in *All Manipur Pensioners Association v. State of Manipur* in AIR 2019 S.C. 3338 : AIROnline 2019 SC 407 and held that when the pensioners form a one class, there cannot be too discriminatory pay scales. The Court further held that Article 14 of the constitution of India ensures to all equality before law and equal protection of laws and therefore it is necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. The Court further held that a classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarized as a distinction based on a classification founded on an intelligible differential, which has a rational relationship with the object sought to be achieved.

13. Further in case of *City Industrial Development Corporation through its Managing Director Vs. Platinum Entertainment (2015) 1 SCC 558* the Supreme Court had reiterated the observations in *Ramana Dayaram Shetty Vs. International Airport Authority of India (1979) 3 SCC 4989* and also in *Akhil Bhartiya Upbhokta*

Congress Vs. State of M.P (2011) 5 SCC 29 and held that the Government while dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily as its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or direction of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down.

14. Applying the analogy laid down in *All Manipur Pensioners Association (supra)*, I am of the opinion that the State cannot arbitrarily pick and chose a different prospective date for extending the benefit of amended grade pay to the petitioner especially when similar class of people i.e., Section Officers and Private Secretaries of the Registry were granted such benefit from the back date of 01.01.2015. In the instant case, nothing is on record or is justified by the Reply of the State as to why the Post of Assistant Editor (ILR) was left out to give the same grade pay while it was enhanced in respect of Section Officers and Private Secretaries. There has to be a proper classification founded on some rationale principal when similarly situated class is differentiated for grant of any benefit.

15. In view of above discussion, the communications dated 13th December, 2016 (Annexure P-8) and 01.06.2018 (Annexure P-10) being arbitrary and irrational are struck down as it affects the petitioner. Accordingly, it is ordered that the petitioner is entitled to get the benefit of enhanced grade pay of Rs.4800/- which was granted to all the Private Secretaries and Section Officers of this Registry from the initial date as per the Memo dated 04.03.2016. The State is also obliged to calculate the benefit accrued to him and pay the arrears accordingly. The petitioner is also entitled to get 6% simple interest from the date of his entitlement to the date of realization.
16. With such observations, this writ petition is allowed. No order as to cost.

**Sd/-
GOUTAM BHADURI
JUDGE**

Rao