UNION OF INDIA AND ORS. A

v.

HIRANMOY SEN AND ORS.

OCTOBER 12, 2007

B

[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

Service Law:

Pay Scale—Claim of parity—By Senior Auditors in office of Accountant General with Assistants in Central Secretariat—Grant of, by courts below—Held: Not Justified since there is no complete identity between the two groups—Moresover, the Government and the Authorities fix the pay scales—Judiciary must exercise self restraint and not encroach into executive or legislative domain—Judicial restraint. C D

Respondents-Senior Auditors in the office of the Accountant General, Assam and Meghalaya claimed parity in pay scale with Assistants in the Central Secretariat. Both the tribunal and the High Court decreed the claim in favour of the respondents. Hence the present appeals. E

Allowing the appeals, the Court

HELD: 1.1. It cannot be said that there is a complete and wholesale identity between Senior Auditors in the office of the Accountant General, Assam and Meghalaya, and Assistants in the Central Secretariat. Furthermore, it is entirely on the Government and the Authorities to fix pay scales. The judiciary must exercise self restraint and not encroach into executive or legislative domain. [Paras 4 and 5] [85-B, D] F G

S. C. Chandra and Ors. **v** *State of Jharkhand & Ors.*, **JT (2007) 10 SC 272, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7232 of

 H

2003.

From the Judgment and Order dated 16.9.2002 of the High Court of Gauhati at Gauhati in W.P. No. 7598 of 2001.

WITH

C.A. No. 7234/2003 & 4858/2007

Vikas Singh, A.S.G., T.S. Doabia, P.S. Patwalia, Manpreet Doabia, Sunita Sharma, Amreeta Swarup, Ashok Bhan, Alka Sharma, R.C. Kathia, D.S. Mahra, Anil Katiyar, V.K. Verma, J.S. Attri, Sunil Roy, Amanpreet Singh Rahi, Devesh Kumar Tripathi, R. Anand Padmanabhan, Pramod Dayal, Anil Nauriya, Sumita Hazarika, E.J. Varghese, V.K. Sidharthan, Ajay Sharma for the appearing parties and Smita Varma for Intervenor.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J.

CIVIL APPEAL NO. 7232 OF 2003

1. This appeal has been filed against the impugned judgment of the Gauhati High Court dated 16.9.2002 in W.P. No.7598 of 2001.

2. Heard learned counsel for the parties and perused the record.

3. In brief the claim of the respondents herein who were Senior Auditors in the office of the Accountant General, Assam and Meghalaya, was to be given parity in pay scale with Assistants in the Central Secretariat. This claim was decreed by the Central Administrative Tribunal vide its order dated 19.1.2001 and the order of the Tribunal was upheld by the Gauhati High Court. Hence this appeal.

4. This Court in *S.C. Chandra and Ors.* v. *State of Jharkhand and Ors.*, JT (2007) 10 4 SC 272 has held that the Court cannot fix pay scales as that is the purely executive function. In the aforesaid decision one of us (Markandey Katju, J.) has discussed in detail the principle of equal pay for equal work and has observed that the said principle has been considerably watered down in recent decisions of this Court, and it

is not applied unless there is a complete and wholesale identity between the two groups, and even there the matter should be sent for examination by an Expert Committee appointed by the Government instead of the Court itself granting the higher pay scale. The entire case law on the subject has been discussed in the said decision. Following the aforesaid decision in *S.C. Chandra's* case (Supra) this appeal has to be allowed. It cannot be said that there is a complete and wholesale identity between the Senior Auditors in the office of Accountant General, Assam and Meghalaya and Assistants in the Central Secretariat.

5. Learned counsel for the respondents submitted that the auditors and assistants have been historically treated at par in the matter of pay scales. Although this fact has been denied by the appellant, we are of the opinion that even if it is correct, that will not be of any help to the respondents. To give an illustration, if post A and post B have been carrying the same pay scales, merely because the pay scale of post A has been increased that by itself cannot result in increase in the pay scale of Post B to the same level. It is entirely on the Government and the authorities to fix the pay scales and to decide whether the pay scale of post B should be increased or not. The judiciary must exercise self restraint and not encroach into the executive or legislative domain.

6. In view of the above, and following decision of this Court in *S.C. Chandra's* case, the impugned judgment of the Gauhati High Court dated 16.9.2002 and of the Tribunal dated 19.1.2001 are set aside. The appeal is allowed. No order as to costs.

CIVIL APPEAL NO...../2007 [arising out of SLP(C) No. 6229/2006] & CIVIL APPEAL NO. 7234/2003

7. Leave granted in S.L.P(C) No. 6229/2006.

8. In view of the decision in Civil Appeal No. 7232 of 2003, these appeals are allowed. No order as to costs.

N.J. Appeals allowed.