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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19th November, 2019

Decided on: 29th November, 2019

W.P.(C) 9546/2016

SHAMBHU SHARMA AND ORS.

..... Petitioners

Through: Ms. Saahila Lamba, Advocate.

versus

HIGH COURT OF DELHI THR. ITS
REGISTRAR GENERAL

..... Respondent

Through: Mr. Rajshekhar Rao, Mr. Karthik
Sundar and Ms. Rajshree Jaiswal
Advocates for Delhi High Court.

CORAM:

**JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

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Dr. S. Muralidhar, J.:

1. This class action litigation has been instituted by six employees of this Court, aggrieved by the disparities in the grant of clothing and dress maintenance allowance, also called 'washing allowance'.

2. Petitioner No. 1 is presently a Judicial Assistant ('JA'), Petitioner Nos. 2 and 3 are Senior Judicial Assistants ('SJAs'), Petitioner No. 4 is a Senior Judicial Translator ('SJT'), Petitioner No. 5 is a Judicial Translator ('JT') and Petitioner No. 6 is a Junior Judicial Assistant ('JJA').

3. It is pointed out that in this High Court, uniforms were prescribed only for Gazetted Officers, Stenographer and Readers posted with the Courts as well as with the Courts of the Registrars and Joint Registrars. These officers and officials were provided with a clothing allowance of Rs.4500/- annually and a washing allowance of Rs.500/- per month. Following the recommendations of the 6th Central Pay Commission ('CPC'), the above allowances were increased to Rs.9000/- and Rs.1000/- respectively with effect from 1st September, 2008. At the time of the filing of the present petition, on 17th October, 2016, the clothing allowance for the above sections of the employees was Rs.11,250/- and the washing allowance Rs.1750/- per month. Other staff members of this Court were allowed to wear formal clothes of their choice, as they were not required to wear any designated uniform. Consequently, they were paid neither a clothing allowance nor a washing allowance.

4. In 2007-08, uniforms were made compulsory for all employees of this Court. This is when the disparity in the grant of allowances began. One set of employees was provided with stitched uniforms/clothes. The cost of one set of stitched clothes was Rs.458/- (Rs.189/- for a shirt and Rs.269/- for a pair of trousers). At the time of the filing of the present petition, the cost of one set of stitched clothes had been revised to Rs.340/- for a shirt and Rs.385/- for a pair of trousers, aggregating to Rs.725/-. The employees entitled to such stitched clothes got approximately 4 shirts and 2 pairs of trousers during the summer, once in two years. They also got two pairs of trousers, once in three years, as winter wear. Thus, while the prescribed

clothing allowance for Gazetted Officers was an annual sum of Rs.11, 250/-, the other set of employees annually got a sum of Rs.1500/- per person.

5. There was disparity in the matter of the washing allowance as well. Whereas the former set of employees, the Gazetted Officers, got Rs. 1750/- per month as washing allowance, the other set of employees got only Rs.1250/- per month. The petition sets out in a tabular form, the rates payable to the different sets of employees, as provided for in the reply of the Public Information Officer ('PIO') of this Court dated 3rd November, 2014 in response to an application made under the Right to Information Act, 2005 ('RTI Act'). This confirms the disparity in the rates of both clothing and washing allowances to the above two broad classes of employees of this Court.

6. It is pointed out that the difference in the rates would increase by 25% every time the dearness allowance crossed the limit of 50%. It is contended that there is no rational basis for the above differentiation in the payment of clothes and washing allowance to the two sets of employees. Further, it is pointed out that similarly placed employees, who have statutorily been recognized as having 'equal status posts' under the Delhi High Court (Staff Seniority) Rules, 1971 ('Rules') are being subjected to differential treatment. Arguing that equals cannot be treated unequally, the Petitioners place reliance on the decisions in *The State of West Bengal v. Anwar Ali Sarkarhabib Mohamed and Ors.* AIR 1952 SC 75, *Probhudas Morarjee Rajkotia and Ors. v. Union of India and Ors.* AIR 1966 SC 1044, and *M/s. Ramchand Jagadish Chand v. Union of India and Ors.* (1962) 3 SCR 72.

7. It is further pointed out that there are no guidelines/criteria governing the allocation of such amounts and there is no transparency in the process of prescribing uniforms to the employees of the Court. For example, while some officials of a branch, for instance, the Protocol Branch of this Court, could be getting clothing allowance, others of the same branch could be getting stitched clothes. Further, even the JJAs, posted with the Registrars/Joint Registrars as Readers, are paid clothing allowance at par with Stenographers/Readers, whereas their seniors i.e. JAs and SJAs are getting stitched clothes, even if they are posted to work as Personal Assistants ('PAs'). There are several employees in the same pay band who are treated differently in the matter of clothing allowance. For instance, SJAs, SJTs, and SPAs are grouped in the same pay band; however, only SPAs and PAs receive clothing allowance and the others receive stitched clothes.

8. The petition also highlights that those being provided clothing allowance are accorded other benefits and privileges, some of which are:

- Cash Allowance of Rs.11,250/- given, as compared to the meagre amount of Rs.1,500/- spent on the employees being provided with stitched clothes.
- Employees drawing allowances are free to choose any cloth of their choice.
- They are free to choose any tailor of their own choice to get their uniform stitched.
- They are free to choose branded garments of their own liking.

- They are free to purchase any number of uniforms throughout the year as the amount of Rs.11,250/- is transferred to their account in the month of January every year.

9. The Petitioners point out that they are only entitled to receive stitched ready-to-wear uniforms of a total budget of Rs.1500/- annually. There are certain disadvantages arising from receiving stitched uniforms. For instance, there are repeated complaints of improper fitting and, at times, employees having to wait for several months before getting their alterations done. In addition, employees are provided with such uniforms once in two or three years and have to wait for their turns to receive the next batch of uniforms, even if the current ones have faded or gotten torn. There are instances when summer/winter uniforms are provided after the commencement of the summer/winter season and, at times, even after the season has ended. For instance, uniforms which were due in April, 2015 began to be provided only from April, 2016, and that too only for a small number of employees. The last occasion on which stitched uniforms were received by the Petitioners and those similarly placed was in the year 2013. The new uniforms were begun to be supplied only in 2016, after a lapse of three years. Meanwhile, they had to make do with sub-standard quality uniforms, which eroded easily with time. The Petitioners are not even allowed to procure uniforms from the outside market, as they are obliged to wear only those uniforms which are supplied by this Court.

10. It is stated that on 6th May, 2009, an application was filed under the RTI Act addressed to the PIO of this Court seeking answers to queries in relation to the rates of stitched uniforms and dress allowances provided to certain

employees. In response thereto, on 1st June, 2009, the PIO stated that the decision to grant different allowances was an administrative one. It was further admitted that there were no guideline/criteria in place. Also, it was confirmed that while PAs, SPAs, Court Officers and Readers were being paid clothing allowance for white shirts and white/grey trousers, JAs, SJAs, and SJTs were provided with uniforms without a clothing allowance. In addition to the clothing allowance already granted to them, PAs, SPAs, Court Officers and Readers were also being provided with black coats and neck ties. The present Petitioners state that they as well as other similarly placed employees also received coats and neck ties, which were grey in colour. However, they were provided to them only in the winter season. It is further admitted by the Respondents that the employees otherwise on the same footing and receiving equal pay are being differentiated and discriminated against in the matter of clothing and washing allowance.

11. On 6th December 2014, the Petitioners addressed a representation to the Chief Justice of this Court. Further reminders were sent on 9th April and 17th November, 2015. When all these representations remained unanswered, the Petitioners submitted a request to the Registrar General ('RG') of this Court about the pending representations and reminders. When this went unanswered, the Petitioners filed an application dated 4th May, 2016 under the RTI Act seeking to know about the fate of their representation dated 6th December, 2014 addressed to the Chief Justice of this Court. The PIO by its response dated 30th May, 2016 stated that the said representation had been placed before the Liveries Committee of this Court on 15th January and 22nd July, 2015 and consideration thereof had been ordered to be deferred. The

reminders sent by the Petitioners were not placed before the Liveries Committee.

12. With 18 months having elapsed since then, and the representations having remained unanswered, the present petition was filed for a direction to the Respondents to accord similar status to all the employees of the Respondent similarly situated and grant dress allowance uniformly to all employees by dispensing with stitched uniforms, as well as equal washing allowance to all the employees of the Respondent. The Petitioners also pray for grant of all consequential benefits in accordance therewith, in light of the detailed facts and circumstances narrated hereinabove.

13. This petition was first listed for hearing on 19th October, 2016 when notice was issued to the Respondent. While fixing the next date of hearing as 18th January 2017, the Court requested the Liveries Committee in the meanwhile to consider the representation of the Petitioners and take a decision thereon.

14. A counter affidavit has been filed by the Respondent on 21st February, 2017 stating that “there is a clear and intelligible differentia between the Petitioners and other employees of Respondent No. 1 since there is a clear distinction between the duties and functions performed by both these classes of persons”. It is contended that this “critical aspect” has weighed with the Respondent in its decision to grant clothing and washing allowance to its employees, a decision which has undergone changes from time to time, “keeping in mind its functional requirements”. It is stated that the Petitioners

are provided with their uniforms at the expense of the Respondent, while other eligible officials of the Respondents are provided with clothing washing allowance “to ensure that they are attired in the uniforms prescribed by the Respondent No.1”. Accordingly, it is submitted that the claim of parity on account of “equal status posts” under the Rules is “misconceived”. The counter affidavit then proceeds to trace the history of grant of clothing and washing allowances to Gazetted Officers and its increase from time to time.

15. As regards the cost of a particular stitched uniform of one class, it is contended by the Respondent that this cannot be equated with the amount given to the “other class” as the latter’s uniform is “dissimilar from that of the Petitioners”. The counter affidavit then sets out the expenditure incurred on the uniforms given to different sets of officials. It is pointed out that after the Liveries Committee rejected their representation at its meeting on 11th January, 2017, the Chief Justice of this Court endorsed the decision of the Liveries Committee on 17th January, 2017. It is contended by the Respondent that the assumption by the Petitioners that all of them are similarly placed as the officials receiving clothing and washing allowance is a ‘gross misrepresentation’. As an illustration, it is stated that Petitioner No.6 is a JJA, who cannot be said to be holding a post equal to that held by an official eligible for allowance as per the Rules. Even if equal status post is a criterion, Petitioner No. 6 does not qualify for the allowance.

16. The counter affidavit then seeks to justify granting clothing allowance to certain classes of officials of this Court for “three broad reasons”. Firstly,

according to the Respondent, the officials directly assisting the Hon'ble Judges inside court “are required to maintain the decorum and discipline of the court by wearing a uniform prescribed by Respondent No.1”. Secondly, the Respondent submits that it is incumbent upon the officials assisting Hon'ble Judges outside court at public places (i.e. Airports, Railway Stations, Embassies, Passport Offices, etc.) and other governmental offices to subscribe to a fixed formal attire as they appear in the public eye in a representative capacity for the Respondent.

17. Thirdly, the Respondent submits that it is necessary for such officials to be easily identifiable to their superiors in public. Moreover, Clothing/Dress Maintenance Allowances are given to the eligible officials in order to facilitate the purchase and maintenance of the prescribed attire while rendering regular services to the Judges during and after Court hours, including services rendered during non working days and Court vacations alike. The above-mentioned task/functions/assignments are not included in the job profile of the Petitioners. It is therefore submitted that the wisdom of a reasoned administrative decision ought not to be interfered with merely on the ground that pay scales are equal.

18. The Respondent does not dispute that when an SJA or Reader is deputed to work in the Court directly with the Judges, such an official is also provided with clothing and washing allowances in terms of the administrative order dated 11th May, 2009 passed by the Chief Justice. However, it is submitted that when such officials are deputed back to work with the Registry, the attached benefit of clothing and washing allowances is

withdrawn and in case such official is shifted to the Registry mid-term, the benefit of uniform allowance would cease after the completion of the block period. The basis for the differentiation is purportedly the “nature of duty performed by the official”.

19. On 24th February, 2017 the Petitioners filed a rejoinder to the above counter affidavit by and large reiterating the submissions in the writ petition. The Petitioners points out that the requirement of ‘decorum to be maintained’ in Courts as a deciding factor for grant of allowance is self contradictory since there are certain officials belonging to Category-II posted in the Court who were not granted the clothing and washing allowance. It is pointed out that if such measures and attires are necessary for officials to be easily identified to their superiors in public then equally, the Petitioners cannot be denied those allowances. It is pointed out that the Petitioners are not claiming the same attire but parity with regard to allowances admissible to the Category-I officials.

20. On 1st May, 2017 a copy of the minutes of the meeting of the Liveries Committee held on 11th January, 2017 was placed on record by the Respondent. The said minutes record the decision of the Liveries Committee on the representation of the Petitioners as under:

“The Committee has considered the representations. It is noticed that there has always been distinction maintained between the Gazetted Class of officers and the Class-III officials who have to work in Courts on one hand and the remaining Class-III officials on the other. Even, while considering enhancement in the rate of washing allowance in the meeting held on 04.02.2014, the Committee had enhanced

the rates of washing allowance of both these classes by Rs.500/- each to Rs.1750/- and Rs.1250/- respectively, maintaining the distinction of Rs.500/-.

As regards the clothing allowance of Rs.11,250/- per annum, being paid to the Gazetted class of officers and the Class III officials, who have to work in Courts on one hand and the remaining Class-III officials on the other, the Committee notes that the same is being paid to such officers/officials I for procurement of uniform whereas the other class of non-gazetted officials (to, which the representationists belong) is provided with the stitched uniform by the Registry.

After due deliberations, the Committee accordingly recommends rejection of the representation.”

21. It is thus seen that no reasons have been given by the Liveries Committee for maintaining a distinction between the two broad classes of employees of this Court in the matter of grant of clothing and washing allowance, except to state that such a distinction has “always been” maintained.

22. On 20th July, 2017, the Petitioners were asked by the Court to ascertain the recommendations of the 7th CPC with respect to the allowances approved by the Union Cabinet, pursuant to which a notification had been issued. On 12th October, 2017, nearly one year after the first hearing of the present petition, the Court was informed that the representation of the Petitioners had still not been disposed of by the Liveries Committee. Two months later, on 8th December, 2017, the Court was informed that the Liveries Committee had postponed its decision to await the decision of the Supreme Court. On 10th May, 2018 i.e. one and a half years after the petition was first listed, the

Respondent requested for an adjournment on the ground that the Petitioners' representation was pending before the Liveries Committee.

23. When the matter was listed for hearing on 16th September, 2019, the Court was informed by Mr. Rajshekhar Rao, learned counsel appearing for the Respondent that the Liveries Committee had rejected the representation of the Petitioners.

24. On the next date of hearing i.e. 23rd September, 2019, Counsel for the Petitioner sought leave to file an application seeking leave to amend the petition to challenge circulars further revising the rates of uniform and washing allowance. Pursuant thereto, an amended writ petition has been filed challenging two subsequent circulars of 20th August, 2018 and 16th May, 2019, as also annexing a copy of the notification dated 31st January, 2018 and circular dated 2nd February, 2018 issued by the Government of India notifying the rates of dress allowance for officers of the Supreme Court of India.

25. There have been certain revisions made on the basis of the recommendations of the Seventh CPC. Stitched uniforms have now been dispensed with. Each category is required to purchase the uniform on its own, and then seek reimbursement as per its entitlement. In terms of the circular dated 20th August, 2018, the category of Gazetted Officers, PAs, SPAs and staff working as Readers (which could be JJAs, or SJAs, in the Courts of Registrars, or Joint Registrars) and officials working in the Protocol Branch (hereafter referred to for convenience as Category I

employees) as well as in few administrative branches were getting Rs.10,000/- per annum for four shirts and four pairs of trousers and the same washing allowance of Rs.1,750 per month. The other category to which a blue coat is provided (previously a grey coat), which includes JJAs, JAs, or SJAs, other than those posted as Readers (JT/SJT, Assistant Librarian/Senior Assistant Librarian, etc.) were also getting four shirts and four pairs of trousers, but once in two/three years, and at a much lesser price.

26. The above figures have with effect from 8th May, 2019 undergone further revision only in respect of Category II employees i.e. SJAs, Readers, Court Officers, SJTs, Senior Assistant Librarian, JAs, Chief Cashier, JTs, Assistant Librarian, JJs, Restorers, JJAs (DEO), ex-cadre and other officials of the equivalent rank. Instead of Rs.315/- per shirt, they are now given Rs.650/- net per shirt. Instead of Rs.345/- per pair of trousers, they are now given Rs.750/- net per pair of trousers. For women, the price per set of a terricot suit has been revised from Rs.685/- to Rs.1350/-. This, however, is still less than what has been provided to Category-I officers.

27. The comparative figures in a tabular form appear thus:

Male

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Category I			Category II		
<i>Items</i>	<i>Price</i>	<i>Duration</i>	<i>Items</i>	<i>Price</i>	<i>Duration</i>
White shirts for summers (02)	Rs.1000/- per shirt	Every year	White Shirts (04)	Rs.315/- per shirt	02 years
White shirts for winters (02)	Rs.1000/- per shirt	Every year			

White /black trousers for summers (02)	Rs.1500/- per trousers	Every year	Black trousers for summers (02)	Rs.345/- per trousers	02 years
White / black trousers for winter (02)	Rs.1500/- per trousers	Every year	Black trousers for winters (02)	Rs.1000/- per trousers	03 years
Black terricot coat	Rs.1950/-	3 years	No Court for summers		
Black terriwool coat	Rs.2450/-	3 years	Blue terriwool coat	Rs.2200/-	03 years

Female

Category I

Category II

<i>Items</i>	<i>Price</i>	<i>Duration</i>	<i>Items</i>	<i>Price</i>	<i>Duration</i>
Four sarees, blouse and petticoat or salwar kameez (white / black)	Rs.2500/- per set + dupatta @ Rs.240/-	Every year	Four terricot suits (white kameez and black salwar) and four dupattas.	Rs.685/- per set	02 years

28. It is thus seen that the points of discrimination in the clothing allowance for males in the two categories are in the amount allowable for white shirts and their duration and black trousers and their duration. There is also a slight difference in the amount reimbursable for the black terriwool coat. When it comes to the female category there is a difference in the reimbursable sum for the terricot suits and dupattas and their duration.

29. As regards washing allowance, there has been no change. It still remains Rs.1750/- for category-I males and females whereas it is Rs.1250/- for Category-II.

30. As far as the allowances being provided in the Supreme Court are concerned, there are two broad categories there. One is of Secretary General and Registrars who are provided with three shirts for summer and two for winter for three years at Rs.1200/- per shirts. The second category has all the Additional Registrars, Deputy Registrars, Assistant Registrars and equal in posts, Court Masters, Branch Officers, PS to Additional Registrar, PS to Registrars and Sr. P.As and P.As as well as Sr. Court Assistants, Court Assistants and Junior Court Assistants in equal post. For all of these category persons the males are given three shirts for summer and two shirts for winter in three years at Rs.1000/- per shirt whereas for females there are three sets for summer and two sets for winter in three years with Rs.1200/- per suit with dupatta or sari with blouse or trouser/shirt.

31. Thus, it is seen that among the category of employees there is not too much of a difference in the rates of reimbursement. As far as the washing allowance is concerned, following the 7th pay commission, such allowance was abolished and substituted with a newly proposed dress allowance. The Department of Expenditure had advised payment of dress allowance at Rs.5000/- per annum to class III and IV employees and Rs.10,000/- per annum to higher level officers of the Supreme Court. However, the matter was remitted to the Government for re-consideration and deferred till a decision in IA No. 19/2016 in W.P.(C) No. 801/1986 was pending in the Supreme Court. Subsequently, the Department of Justice by a letter dated 22nd December, 2017 conveyed the approval of the Government of India to washing allowance to officers/officials/non-clerical staff of the Supreme Court with effect from 14th December, 2017 as under:

Officers Rs.1750/- per month

Officials Rs.1250/- per month and

Non-clerical Rs.1350/- per month

32. On this basis, the Supreme Court on the judicial side by order dated 22nd January, 2018 disposed of the aforementioned IA and a notification was brought out to that effect on 31st January, 2018.

33. Whatever may be the rationale for the grant of the slightly difference rates of washing allowance it is seen that there is not too much of a disparity in the rates.

34. Having heard Ms. Saahila Lamba, learned counsel appearing for the Petitioners, and Mr. Rajshekhar Rao, learned counsel appearing for the Respondents, the Court is of the view that none of the reasons put forth for justifying the differentiation in the payment of allowances bears scrutiny.

35. Let us now consider each of the reasons. The first reason is that the officials directly assisting Judges inside the courts “are required to maintain the decorum and discipline of the Court by wearing the prescribed uniform”. The Court fails to understand how only the staff serving inside the courts is required to maintain decorum, while those working in the Registry are not. In fact, every employee of the High Court should be required to maintain decorum of the Court, both inside and outside the court halls/complex. In the entire High Court complex, each staff member projects the image of the Court and has to be mindful of his/her conduct. Moreover, it is not only

Category-I officers who assist the Judges inside the Court. The Assistants to the Court Masters i.e. JAs, SJAs and the Restorers (JJAs, JAs and SJAs) also assist Judges inside the court, but are not provided the enhanced allowance. Thirdly, all staff members assist Judges, whether inside the court or outside the court, and their services are indeed indispensable for the proper functioning of the Court. This reason, therefore, does not persuade this Court at all. Incidentally, none of these reasons are found in the minutes of the meeting of the Liveries Committee, which rejected the representation of the Petitioners.

36. The second reason is that the employees being provided higher allowances appear in public in a representative capacity for the Delhi High Court. Here again, the Court fails to appreciate how the position is different when it is an official working inside or outside the courtroom. The staff posted in the medical branch also visits public places. The officials working in the branches deal with advocates, litigants, and other visitors on a daily basis. The staff working in the P&P and the General Branch deals with government authorities. In fact, it is on this basis that the Protocol Branch staff, that has to deal with officials of government, other branches, and the public, is provided enhanced allowances. The position can be no different as regards the employees working in other branches.

37. The third reason, which is most specious, is that it is necessary for the officials in the first category to be identifiable to their superiors in public. The Court fails to appreciate how, merely because the colour of their uniform is different, an official could get a higher allowance, since, in any

event, both categories are to be identifiable to their superiors. As regards rendering regular services to the Judges, during and after court hours, including non-working days and vacations; this applies equally to the staff who sits late along with the officials on such non-working days during vacations, and after hours. While it is understandable that an overtime allowance is payable on account of working beyond normal hours, that cannot form the basis for discretion in the matter of clothing and washing allowances.

38. The Supreme Court has, in several judgments, maintained that disparate granting of allowances or special pay to similarly situated employees or personnel, performing similar duties and function is discriminatory and liable to be set aside. In *Telecommunications Research Centre Scientific Officers' (Class I) Association and Ors. v. Union of India and Ors. (1987) 1 SCC 582*, the Court observed in Paragraph 8 as under:

“8. The discrimination between the direct recruits and the transferred officers regarding the payment of Special Pay is attempted to be justified by the Government in the Counter-affidavit filed by Shri C.L. Sumon, Assistant Director General (P & T Directorate). It is stated that the petitioners (direct recruits) who are specifically recruited to the Telecommunication Research Centre for a limited purpose are not entitled to any Special Pay but the transferred officers from the Indian Telecommunications Service who are selected by the Union Public Service Commission after a rigorous competition examination need to be paid Special Pay. It is alleged that 'it is felt that most of the direct recruits TRC officers may be good in small areas in which they are working, but their capability of taking over a complete group and directing them to fruitful research is doubtful'. This statement is a vague one and has the effect of adding insult to injury. This allegation appears to be a

lame excuse for denying what is legitimately due to the direct recruits. It is not the case of the Government that the petitioners are not competent and are not able to discharge their duties. All the direct recruits are graduate engineers and have been working throughout in the Telecommunication Research centre. They do the same job as the transferred officials. The Special Pay is not being paid to the transferred officials for compensating their displacement or for their qualifications. It is not deputation allowance. It is paid for the arduous and special nature of the functions to be discharged in the Telecommunication Research centre. The rigorous test is applied while transferring them to the Telecommunication Research centre to prevent persons of inferior calibre amongst them getting into the said centre. It does not mean that persons who are directly recruited and working in the centre are inferior to those who enter the centre by transfer.”

39. Similarly, in *M. P. Singh, Deputy Superintendent of Police, CBI v. Union of India (1987) 1 SCC 592*, it was observed as under:

“10. From the foregoing discussion it emerges that the Special Pay that was being paid to all the officers in the cadre of Sub-Inspectors, Inspectors and Deputy Superintendents of Police in the Central Investigating Units of the Central Bureau of Investigation has nothing to do with any compensation for which the deputationists may be entitled either on the ground of their richer experience or on the ground of their displacement from their parent departments in the various States, but it relates only to the arduous nature of the duties that is being performed by all of them irrespective of the fact whether they belong to the category of the 'deputationists' or to the category of the 'non-deputationists'. That being the position, the classification of the officers working in the said cadres into two groups, namely, deputationists and non-deputationists for paying different rates of Special Pay does not pass the test of classification permissible under Articles 14 and 16 of the Constitution of India since it does not bear any rational relation to the object of classification. In these circumstances, it is difficult to accept the

stand of the Central Government justifying the discriminatory treatment meted out to the non-deputationists as regards payment of Special Pay.”

40. In *Nehru Yuva Kendra Sangathan v. Rajesh Mohan Shukla (2007) 6 SCC 9*, wherein the grant of dearness allowance was at issue, it was observed in Paragraph 9 as under:

“9... We find that the nature of duties being discharged by the Youth Coordinators who have come on deputation and have been absorbed as such and those who were directly recruited on fixed term are discharging the same duties. The only difference is their source of recruitment. Once the deputationists are discharging the same duties and are being paid salary and other allowances then there is no reason to deny the same benefits who are discharging the same duties and functions. Those deputationists now absorbed obtained the order from this Court but the direct recruits did not approach this Court, they were treated as a class apart because of their source of recruitment. Once these persons are already working for more than two decades discharging the same functions and duties then we see no reason why the same benefit should not be given to the respondents...”

41. The aforesaid principle was also recognised by the Supreme Court in *Bishan Chand Khanna v. Municipal Corporation of Delhi (1972) 7 SLR 914*, whereby it was directed that the similarly situated petitioners be treated at par with other employees of the respondent authority in receipt of graduate allowance.

42. Additionally, several High Courts have also reiterated the aforesaid principle in their decisions. Especially pertinent is the judgment of the Shillong Bench of the Guwahati High Court in W.P.(C) 279 (SH)/2009 (*Naib Subedar/Nursing Assistant Dijendra Pathak and Ors. v. Union of*

India), whereby Nursing Assistants working at the hospitals of the Assam Rifles were granted Nursing Allowance at par with nursing staff/personnel working for other forces, Nursing Assistants being “an integral part of the nursing staff.” In arriving at its decision, the court relied on an order passed by the Central Administrative Tribunal, Guwahati Bench, dealing with the grant of uniform and washing allowance, and Nursing Allowance, observing thus:

“4. The Tribunal upon a reference to the law laid down by the Apex Court in the matter of discrimination of pay, allowances and other service benefits between one set of employees in a particular unit of the Government and that of another set of employees in another unit observed thus:

‘7. The basic principle laid down by the Hon’ble Supreme Court in a plethora of judicial pronouncement is that there should not be any discrimination of pay, allowances and other service benefits between one set of employees in a particular unit of the Government and that of another set of employees in another unit if the nature and duties of work discharged by the members of both units are one and the same. At the cost of repletion, we may say that in the present case there is absolutely no dispute raised on behalf of the opposite parties that the nature and duties of work in the Petitioners is different from that of the nature and duties of work of Nursing Staff of other hospitals. In such circumstances we find no justifiable reason to deny to the Petitioners the allowance such as Uniform allowance, washing allowance and the new allowance called nursing allowance at the enhanced rate as stated in the above quoted office memorandum. There, we direct that the enhanced rate of such allowance be paid to the Petitioners with effect from 1.10.1986 and amount due to the

Petitioners by virtue of this judgment paid to each of them within 120 days from the date of receipt of a copy of this judgment.’

5. The aforesaid judgment of the Tribunal was carried on appeal to the Apex Court, but the same was dismissed vide order dated 5.11.1990 (Annexure-C) affirming the judgment of the Tribunal.”

43. The principle of parity in payment of washing and holiday allowances was also recognised by the Allahabad High Court in *Syed Hasan Askari v. U. P. State (1987) 5 SLR 118 (All) (DB)*, although the issue therein related to the grant of said allowances to admittedly similarly situated employees starting from different dates. The court observed as under:

“4. The petitioner’s case in the writ petition is that police constables posted in the Vigilance Establishment also do not avail of public holidays and they are also required to wear uniform like their counter-part in the Police Establishment and there is, therefore, parity between the police constables posted in the two Establishments so far as the availing of the public holidays and the wearing of uniform are concerned and this parity has already been accepted by the State Government by allowing payment of the washing allowance and holiday allowance to constables posted in both the Establishments and after acceptance of this parity there is no occasion for the Government to practice discrimination in the matter of fixing the date from which the said allowance would be available to the constables posted in these two Establishments. According to the petitioner the discrimination practised by the Government is not justified and is, therefore, hit by Articles 14 and 16 of the Constitution.

...

6. In our opinion the writ petition has substance and deserves to be allowed. Once it has been accepted that in the matter of payment of washing allowance and holiday allowance the constables posted in the two Establishment are at par, there is no reason to allow payment of the said allowances to the said personnel posted in the two Establishments from different dates. As already pointed out, no justification has been offered on behalf of the State for the fixation of different dates for the payment of these allowances.”

44. A decision of the High Court of Madras in W.P.(C) No. 15014/1992 (*P. Perumal and Ors. v. State of Tamil Nadu and Ors.*) set aside the disparity between the meagre travel allowance granted to chauffeurs attached to the High Court and the bus passes issued to drivers attached to Ministers and State Guest Houses thus:

“12. What has troubled my mind in the instant case, however, is the complete lack of understanding of the fact that the Chief Justice of the Court who is competent to decide as to the pay and allowances, directed the Registrar of the Court to inform the Government that chauffeurs (drivers) allotted to the Hon'ble Judges were, like drivers attached to the Ministers, required to attend to office or residence of the Hon'ble judges and return to their residence and also go to the workshop or their residence after leaving the vehicle in office or in the workshop for repairs, etc., and that they have no fixed hours of duty and they have to remain at work till late night and report for duty at the residence of the Hon'ble judges even on holidays including public holidays for which they do not claim compensatory leave, honorarium or overtime, etc., and that their work is onerous, yet, the reply in the impugned letter is a one sentence consideration of the above stating that the Ministers etc. are having jurisdiction all over the State that the duties and responsibilities of the drivers attached to them differ entirely from the drivers of the High Court, and though the Heads of Departments of the Government are also State touring officers, the Government has allowed only two way bus pass for the

journey from the residence to the place where the vehicle is parked and back to the driver's residences. The reasons not to extend the allowance of the all route bus passes to the Petitioners are wholly untenable. It is clearly a mistake both of fact and of law in not recognizing the jurisdiction of the Hon'ble judges of this Court co-extensive with the territory of the State, when in fact that Hon'ble judges of this Court exercise jurisdiction not only in the State of Tamil Nadu but also in the State of Pondicherry, and in equating the drivers under the administrative control of the Registrar of this Court with the drivers of the Heads of Departments of the Government.”

45. The Court also notes that the JAs working as PAs to Registrars, are also not getting such higher allowance, whereas the Readers attached to such Registrars are getting it. The Readers working in the Courts of Joint Registrars, whether they are JJs, JAs, SJAs are also getting such higher allowance, while their counterparts in other branches are not.

46. The Court is handicapped by the Liveries Committee itself having not put forth the above reasons for discrimination in the clothing and washing allowances. It is, therefore, not understood whether these reasons have been thought up by the officials of the Registry themselves, and not the Liveries Committee. The fact remains that there is no rational basis for making any distinction between the two sets of employees in the matter of clothing and washing allowances. The need for all employees of the High Court to be turned out well enough cannot change depending on the rank and status of such employees. Once it has been decided that there should be a prescribed uniform for the employees, the Court sees no logic in making distinctions as to the quality of the clothes and the washing allowance. The Court notes that under the Rules the following posts are of equal status:

- “(iii) Readers, Senior Judicial Assistants, Senior Judicial Translators, Senior Personal Assistants and Senior Assistant Librarian;
(iv) Chief Cashier, Judicial Assistants, Judicial Translators, Personal Assistants and Assistant Librarians;
(v) Junior Judicial Assistants and Restorers.”

47. Further, in terms of Rule 8 of the High Court Establishments (Appointments and Conditions of Service) Rules, 1972, a person appointed to a post in one category may be transferred to a post of equal status in any other category. Given that this is the position under the relevant rules, the Court finds no justification whatsoever, in discriminating against the Petitioners and others similarly placed employees of the Respondent in the matter of grant of clothing and washing allowances.

48. The Court accordingly directs that with effect from the date of the last revision for the category to which the Petitioners belong i.e. 8th May, 2019, the Petitioners and others belonging to their category will be paid the same clothing and washing allowances as the employees falling under Category-I referred to hereinbefore. The arrears as a result thereof will be paid within eight weeks from today.

49. The petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 29, 2019

rd/mw

W.P.(C) 9546/2016

Page 25 of 25