Willard W. Cass, Jr., et al., Appellants, v. State of New York et al., Respondents. (And Two Other Actions.)

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

58 N.Y.2d 460*; *448 N.E.2d 786*; *461 N.Y.S.2d 1001*; *1983 N.Y. LEXIS 2940

February 14, 1983, Argued
March 30, 1983, Decided

PRIOR HISTORY: Appeals, from an order of the Appellate Division of the Supreme Court in the Third Judicial Department, entered August 9, 1982, which (1) reversed, on the law, three judgments of the Supreme Court at Special Term (Harold J. Hughes, J.; opn *109 Misc 2d 107*), entered in Albany County, granting plaintiffs' motions for summary judgment against defendants Chief Administrator of the Courts of the State of New York and the State of New York to the extent that portions of the Unified Court Budget Act were declared unconstitutional and plaintiffs were declared entitled to salary increases retroactive to April, 1977, (2) dismissed the complaints as against the defendant State of New York, and (3) directed that judgments be entered declaring that the Unified Court Budget Act is not violative of the Federal or State Constitution insofar as plaintiffs are provided lower salaries than granted to other Judges performing similar duties.

Plaintiffs County, Family and Surrogate's Court Judges brought three declaratory judgment actions claiming that the Unified Court Budget Act (L 1976, ch 966; L 1979, ch 55; L 1980, ch 881) denies them equal protection insofar as it provides higher salaries for Judges of co-ordinate jurisdiction in certain counties in the New York City metropolitan area, and also seek a declaration that they are entitled to retroactive salary increments to compensate them for the discrepancies. The Supreme Court consolidated the actions, and granted summary judgment for the plaintiffs against all defendants except the State Comptroller, dismissing the action against him. The Appellate Division reversed and granted judgment in favor of all the defendants except the State, declaring the statute constitutional. The complaint against the State was dismissed because the Appellate Division found that it was not a proper party to the actions.

The Court of Appeals modified by reinstating the complaints against the State and otherwise affirmed, holding, in a *Per Curiam* opinion, that the State was a proper party to a declaratory judgment action in the Supreme Court and that plaintiff Judges were not denied equal protection since a rational basis exists to justify price differentials for those Judges serving in different areas of the State.

Cass v State of New York, 88 AD2d 305.

DISPOSITION: Order modified, with costs to respondents, in accordance with the opinion herein and, as so modified, affirmed.

HEADNOTES

Parties -- Proper Parties

1. Although claims against the State primarily seeking money damages should be brought in the Court of Claims, the State is a proper party to a declaratory judgment action in the Supreme Court because of its

obvious interest in the right to be heard on the matters concerning the constitutionality of its statutes.

Judges -- Disparity in Judicial Salaries

2. A State budgetary act will not be struck as violative of equal protection merely because it creates differences in geographic areas; the Unified Court Budget Act (L 1976, ch 966; L 1979, ch 55; L 1980, ch 881) is not violative of equal protection insofar as plaintiff Judges residing in various counties across the State are provided lower salaries than those received by Judges of co-ordinate jurisdiction in certain counties in the New York City metropolitan area, since there are State-wide disparities in population, caseload and cost of living, which provide a rational basis for the Legislature to adopt price differentials for those Judges serving in different areas of the State. Nor does equal protection require that all classifications be made with mathematical precision, and, as such, the fact that the general statutory scheme, when applied on a State-wide basis, may produce some inequities for certain Judges within a particular class does not render the statute unconstitutional.

COUNSEL: *Murray A. Gordon* and *Richard Imbrogno* for appellants. I. The act, in perpetuating the disparities in judicial salaries which exist here, violates the New York State and *Federal Constitution equal protection clauses*. In this respect the instant appeals are governed by *Weissman. (Weissman v Evans, 56 NY2d 458*; *Lindsley v Natural Carbonic Gas Co., 220 U.S. 61*; *Dandridge v Williams, 397 U.S. 471*.) II. The disparity in judicial compensation here complained of violates the constitutionally guaranteed independence of the judiciary. (*Matter of McCoy v Mayor of City of N. Y., 73 Misc 2d 508, 41 AD2d 929*; *People ex rel. Burby v Howland, 155 NY 270*; *United States v Will, 449 U.S. 200*; *Benvenga v La Guardia, 182 Misc 507, 268 App Div 566, 294 NY 526*; *Evans v Gore, 253 U.S. 245*; *O'Donoghue v United States, 289 U.S. 516*; *Atkins v United States, 556 F2d 1028, 434 U.S. 1009*.) III. The State of New York is a necessary and proper party to these actions and the dismissal of the complaint as against the State was error. (*Press v County of Monroe, 50 NY2d 695*; *Fehlhaber Corp. v State of New York, 69 AD2d 362*; *Saso v State of New York, 20 Misc 2d 826*; *St. Paul Fire & Mar. Co. v State of New York, 99 Misc 2d 140*; *Hallock v State of New York, 39 AD2d 172, 32 NY2d 599*; *Matter of Martin v Ronan, 47 NY2d 486*.)

Robert Abrams, Attorney-General (*William J. Kogan* and *Peter H. Schiff* of counsel), for State of New York and another, respondents. I. The salary disparity issue is inappropriate for judicial resolution; in any event, there is no violation of equal protection because there is a rational basis for the unequal pay. (*Matter of Tolub v Evans, 58 NY2d 1*; *Weissman v Evans, 56 NY2d 458*; *Board of Educ. v Nyquist, 57 NY2d 27*; *Matter of Evans v Newman, 71 AD2d 240, 49 NY2d 904*; *Farrington v Pinckney, 1 NY2d 74*; *Matter of Rosenthal v Hartnett, 36 NY2d 269*; *Matter of Roosevelt Raceway v County of Nassau, 18 NY2d 30*; *Cox v Katz, 22 NY2d 903*; *New York State Assn. of Trial Lawyers v Rockefeller, 267 F Supp 148*.) II. Neither the language of New York State Constitution (art VI, § 25) nor the principle of an independent judiciary is violated by the *Unified Court Budget Act. (County of Broome v Bates, 197 Misc 88, 302 NY 587*.) III. The court below properly dismissed the complaints against the State of New York for lack of subject matter jurisdiction. (*Schaffer v Evans, 57 NY2d 992*.), *Paul A. Feigenbaum* for Herbert B. Evans, respondent. The salary disparities among Judges in the respective Family, County and Surrogate's Courts do not deprive plaintiffs of their rights to equal protection of the law.

JUDGES: Judges Jasen, Jones, Wachtler, Meyer and Simons concur in *Per Curiam* opinion; Judge Fuchsberg dissents and votes to reverse in a separate opinion; Chief Judge Cooke taking no part.

OPINION BY: PER CURIAM

OPINION

[*462] [786] [***1001] OPINION OF THE COURT**

In these three declaratory judgment actions the plaintiffs are County Court **[**787] [***1002]** Judges, Family Court Judges, and Surrogates who claim that the Unified Court Budget Act (L 1976, ch 966; L 1979, ch 55; L 1980, ch 881) denies them equal protection insofar as it provides higher salaries for Judges of co-ordinate jurisdiction in certain counties in the **[*463]** New York City metropolitan area. The plaintiffs also seek a declaration that they are entitled to retroactive salary increments to compensate them for the discrepancies.

The Supreme Court consolidated the three actions and granted summary judgment for the plaintiffs, against all defendants except the State Comptroller and dismissed

the action against him.

The Appellate Division reversed and granted judgment in favor of all the defendants, except the State declaring the statute constitutional. The complaint against the State was dismissed because the Appellate Division found "no persuasive authority * * * to demonstrate that it is a proper defendant in these actions". (*88 AD2d 305, 308*.)

The order of the Appellate Division should be modified by reinstating the complaints against the State and otherwise affirmed.

Claims against the State primarily seeking money damages should, of course, be brought in the Court of Claims (*Schaffer v Evans, 57 NY2d 992*). It is settled, however, that a declaratory judgment action in the Supreme Court is an appropriate vehicle for challenging the constitutionality of a statute (*Press v County of Monroe, 50 NY2d 695*). In addition, the State is a proper party to such an action because of its obvious interest in and right to be heard on matters concerning the constitutionality of its statutes (*CPLR 1012*; cf. *Weissman v Evans, 56 NY2d 458*). Thus the motion to dismiss the complaint against the State for lack of jurisdiction should have been denied.

In all other respects the Appellate Division correctly held that the defendants are entitled to summary judgment for the reasons stated in its opinion. We would simply note that our recent opinion in *Matter of Tolub v Evans (58 NY2d 1*) provides additional authority for the Appellate Division's conclusion that the plaintiffs have not been denied equal protection.

In the *Tolub* case we stated (at p 8) that a State budgetary act "will not be struck as violative of equal protection merely because it creates differences in geographic areas * * * As long as the State had a rational basis for making such a distinction, it will pass constitutional muster under **[*464]** an equal protection challenge". In the case now before us the relevant classes encompass Judges of three separate courts established and maintained throughout the State. As the Appellate Division indicates, there are State-wide disparities in population, caseload, and cost of living, which provide a rational basis for the Legislature to adopt price differentials for those serving in different areas of the State. The case is clearly distinguishable from *Weissman v Evans* (*supra*) involving a limited class composed entirely of Judges of the District Court which exists only in two adjoining counties on Long Island, where differences of this nature were not evident and therefore could not serve to provide a rational justification for a salary differential between the Judges sitting in Nassau County and those sitting in Suffolk County.

In the *Tolub* case we also observed that when a rational basis exists for the classification enacted by the Legislature, "equal protection does not require that all classifications be made with mathematical precision" (*Matter of Tolub v Evans, supra, at p 8*). Thus in this case the fact that the general statutory scheme, when applied on a Statewide basis, may produce some inequities for certain Judges within a particular class does not render the statute unconstitutional.

[788] [***1003]** Accordingly, the order of the Appellate Division should be modified, with costs, by reinstating the complaints against the State only for the technical purpose of declaring in favor of the State as well as the other defendants; and otherwise the order should be affirmed.

DISSENT BY: FUCHSBERG

DISSENT

Fuchsberg, J. (dissenting). Special Term's holding that "[there] is no rational basis for the classifications here under review" (*109 Misc 2d 107, 113)* is eminently correct.

Far from the Legislature having adopted "price differentials for those serving in different areas of the State" (at p 464), whether on the basis of population, caseload or cost of living, the criteria which occur to the majority, or, for that matter, to any other factors, be these qualifications, experience, length of service or any other acceptable justification for singling out certain members of the same court, these differences were totally disregarded. Rather, the only basis for the patent discrimination to which plaintiffs point **[*465]** is the historical fact that in times gone by it was permissible for each of the 62 counties of the State, all discrete governmental units, to set whatever salary it thought best. And, lest there be any doubt on this score, although the respondent on this appeal, Chief Administrator of the Courts, now urges that we hold that the system adopted by the Legislature be found not to violate the plaintiffs' equal protection rights, his official report made a point of

noting that the differences in compensation with which we deal in this case indeed are due solely to "the former system of court funding by local government" (Report of the Chief Administrator of the Courts to the Governor, the Legislature and the Chief Judge of the Court of Appeals [pursuant to L 1979, ch 55]). Such a ground, standing alone, will not support the disparate treatment here (*Weissman v Evans, 56 NY2d 458, 464).*

This though the "long-heralded and legislatively indorsed substitution of State for local control of the courts" (*56 NY2d, at p 466*) ushered in by section 1 of article VI of our State Constitution took this power and obligation away from the counties and placed it in one authority, the State. For court unification, "unimpeded by artificial local boundaries", was to eliminate "the discordant results which were bound to flow from the discredited funding practice which permitted each county to go its own way" (*Weissman v Evans, supra, at p 464*).

Nevertheless, irrational disparities, which no nonhistorical theory can explain, continue to abound. For example, bearing in mind that a geographical distinction without rational basis will offend equal protection (*Manes v Goldin, 400 F Supp 23, 29,* affd *423 U.S. 1068*), while the State paid the Onondaga Surrogate $ 48,000 per annum for managing a caseload of 1,868 probate and accounting petitions in a county which ranked tenth in population, his counterpart in Richmond County, which ranked eleventh, received $ 10,000 more for managing a load of only 648 petitions. An even more topsy-turvy illustration, say from the County Court, is found in a comparison between the $ 53,928 paid to the Judge of that court in Broome County, where the load of 445 case filings was the largest in the State, with that of his fellow Judge in more rural Sullivan County **[*466]** (where, though the filings numbered only 112, the County Judge received $ 58,422) or the salary of their Putnam County colleague (who, though concerned with but 39 filings, was the recipient of $ 61,792).

Equal protection does not, to be sure, demand absolute uniformity. So a broad classification may be divided into subclasses whose distinctions are not governed by mathematical nicety. By equal logic, a total failure to classify should not validate invidious discrimination within the resulting broad classification. It follows that to treat the salary levels of the County, Family and Surrogate's Court Judges as though they still are set by 62 separate counties **[***1004]** rather than by the unitary State government **[**789]** upon which this responsibility has been imposed is to mock not only the equal protection principle in general, but, as applied to fair compensation, our pretensions of uniformity in particular.

Finally, as to *Matter of Tolub v Evans (58 NY2d 1*), from which the majority seeks succor, it is enough to note that the salary differential which prevailed among the law assistants there was, as our court took the pains to note (*58 NY2d 1, 9-10)*, then in the process of being equalized during an ongoing transitional period which the Legislature had established to wipe out the inequality. Consequently, whatever the merits of the equal protection claim there, it is not to be equated with the present case, where the inequality has been completely ignored.

It follows that the order of the Appellate Division should be reversed and judgment entered declaring (1) the Unified Court Budget Act unconstitutional insofar as it denies equal protection of the laws to the plaintiffs, County Court Judges, Family Court Judges and Surrogates by whom this suit is brought and (2) that, accordingly, these Judges are entitled to retroactive salary increments.