

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

+ **W.P. (C.) No. 1179/2010**

% **Date of Decision: 26.03.2010**

UNION OF INDIA & OTHERS PETITIONERS
Through Mr.A.K.Bhardwaj, Advocate

VERSUS

SUKHVINDER SINGH SHAGUFA RESPONDENT
Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. The short point involved in this matter is as to whether the petitioners are entitled to postpone the increment of the respondent from 1.3.1996 to 1.3.1997 relying upon the Office Memorandum dated 22.7.1998, which is available at page 151.

2. Briefly stating, the facts of this case are that the respondent who was working as Mono-Operator in Government of India Press, Faridabad, New Delhi after reaching the maximum in the pay scale of Rs. 1320-2040/- was conferred the next pay scale i.e. pay scale of Rs.1600-2600/- in terms of Office Memorandum dated 13.9.1991 w.e.f.

1.3.1996, which was applicable to his case at the relevant time and was conferred to him on 1.1.1996 instead of 1.3.1996 when the Fifth Pay Commission came into being and was made effective from 1.1.1996, the said pay scale was revised to the pay scale of Rs. 5000-8000/- with effect from 1.3.1996. An approval to this effect was also granted by the Ministry of Urban Development. In fact, even the Ministry of Finance also allowed the respondent to carry on in a pay scale of Rs. 5000-8000/-. On 17.07.2000 the respondent was also granted the benefit of second financial upgradation to the next pay scale of Rs. 5500-9000/- w.e.f. 09.08.1999. Even though the respondent was retired from the service of the petitioners, his pension and retiral benefits were not settled earlier. He was informed that his pay fixation was in process. Later on his pay was reduced from May 2004 by one increment without any show cause notice by deferring the benefit of in situ promotion and ACP by one year. A sum of Rs.23,568/- was rather recovered from the DCRG of the petitioner.

3. Aggrieved of the aforesaid order, the respondent challenged the same before the Central Administrative Tribunal (for short “the Tribunal”) but the said application was dismissed. Even a review application was dismissed. The respondent thereafter filed a writ petition before this Court, which was registered as WP(C) No. 3131/2006. In terms of the order passed by this Court in the said writ petition on 20.03.2007, the petitioners were directed to refund a sum of Rs.23,568/- with the following directions:-

In case the respondents seek to take any action against the petitioner based on the premises which are found in the counter affidavit, such action for reduction of the petitioner's pensionary dues and other retiral benefits can only be taken after issuing an appropriate show cause notice to the petitioner.

4. In terms of the aforesaid order, the petitioners issued a show cause notice bearing No. A-38015/X(21)/RRP/Estt-I/2003/185 dated 17.05.2007. The said notice was duly replied to by the respondent. Some of the points raised by the respondent with regard to recovery of amount of Rs. 23,568/- from pension paid to him, which is the subject matter of the dispute, is as under:-

(i) I reached the maximum of the Scale of Rs. 1320-2040 on 01.03.1995 and after stagnating for one year, I was granted in-situ promotion vide office order No. A043013/2/RRP/92-93/(EI)/1956 dated 7.3.1996 on recommendation of the D.P.C. and my pay was fixed accordingly in the next higher scale. The recommendation of the Pay Commission had not been received by that time, which were received only in October, 1997, but were implemented retrospectively w.e.f. 01.01.1996. My pay was initially fixed in the revised pay scale of Rs. 4000-6000 and subsequently given corresponding revised pay scale of Rs. 5000-8000 w.e.f. 01.03.1996 on account of IN-SITU promotion as my personal pay consequent on my redeployment to the post of D.T.P. Operator vide Office Memorandum dated 26.08.1998 with the approval of the Ministry of Finance. A copy of the office order dated 07.03.1996 granting IN-SITU promotion and O.M. dated 30.03.2000 giving clarification regarding in-situ promotion w.e.f. 01.03.1996 and fixation of pay, which already stand earlier, is enclosed. This was done in consultation with the Ministry of Finance as indicated therein.

(ii) That I was further granted second financial upgradation in the scale of Rs. 5500-9000 w.e.f. 09.08.1999 vide office order dated 17.07.2000.

(iii) That I continued to draw my pay on the basis of the pay so fixed till April, 2004 and when my pay was reduced arbitrarily without any show cause notice to me.

(iv) I retired from the Govt. service on 30.06.2004.

(v) In reply to my representation I was informed by the Manager, Govt. of India Press, Mayapuri, New Delhi vide O.M. No. A-38015/X/(21)RRP/2003-Estt-I/1445 dated 05.01.2005 that my pay has been refixed as per instructions given by the Directorate of Printing and my Pension and D.C.R.G. are under process. Earlier vide O.M. No. 2/32/92-A-I(PL) dated 08.12.2004 from the Directorate of Printing, 'B' Wing, Nirman Bhawan, New Delhi addressed to Shri N.L. Mazumdar, Manager, G.O.I. Press, New Delhi, the following clarification is reported to have been received from the Ministry of Finance.

"The maximum of the pay scale for any purpose including computing the eligibility to in-situ promotion has to be determined with reference to the pay in the revised scale effective from 01.01.1996." The Press is advised to settle the matter accordingly.

However, I was at no time given order refixing my pay as stated in O.M. dated 08.12.2004 nor advised about the clarification stated to have been received from the Ministry of Finance, which I submit have no application in the facts of my case. A.C.P. Scheme is not statutory in nature, but it is beneficial scheme. Certain rights have been created on its implementation and granting of the benefit thereto. Once a benefit has been granted, that they cannot be withdrawn by issuing clarifications unless the Govt. amends the Scheme in accordance with the law. (CAT Full Bench Judgment dated 16.02.2005 in OA No. 557 (2004). Likewise the Tribunal has taken the view that clarification can have only prospective operation. The Hon'ble Supreme Court Constitution Bench had also ruled in Maharashtra Recruitment Rules Case that no administrative order can have retrospective effect, which can reduce the benefits already granted to a Govt. Servant. No person can be divested of his vested rights, which has accrued to me on grant of the in-situ promotion in terms of the law laid

down by the Constitution Bench of the Hon'ble Supreme Court in 1997 (2), Chairman, Railway Board & Ors Vs. C.R. Gangadhamaiiah, wherein it was held *that a rule which seeks to reverse from an interior date a benefit which has been granted or availed e.g. promotion or pay scale, can be assailed as being violative of Articles 14 & 16 of the Constitution to the extent it operates retrospectively.*

Having regard to the law laid down as detailed above, it is not permissible to reduce the pay of the Govt. Servant after his retirement from Govt. Service and to reduce his retiral benefits on that basis. Therefore, the action of the Deptt. To pass an order dated 05.01.2005, whereby the undersigned is informed that my pay has been refixed as per instructions given by the Dte. Of Printing and my pension and D.C.R.G. are under process on that basis is patently illegal as I cannot be divested of the benefit which has accrued to me during the period of my service, which has been approved by the Ministry of Finance as well as indicated above.

5. However, the petitioners still deducted the aforesaid amount from the pension of the respondent. Aggrieved by the aforesaid order passed by the petitioners the respondent approached the Tribunal by way of OA No. 2286/2008 which was decided in favour of the respondent vide order dated 30.06.2009 on the basis of judgment given in OA 46/HR/2004 in the case of *Jiley Zingh and Others Vs. The Secretary, Ministry of Urban Development & P.A. and Others*, which order has been accepted by the petitioners. The relevant portion of the aforesaid order is reproduced hereunder:-

2. The applicant through this OA has sought extension of benefit of the decision of the Tribunal in OA 6/HR/2004 in *Jiley Singh & Ors. Vs. Union of India* as given to others. The applicant since retired seeks re-fixation of pension and also sought option to switch over

which was allowed to Jiley Singh and others similarly circumstanced.

3.Today learned counsel of the respondents has produced before us a letter addressed to them by Ministry of Finance dated 8.5.2009 wherein it is stated that the case of Jiley Singh and others was agreed only in respect of the applicant therein and as it is still sub judice cannot be quoted as a precedent.

4.The aforesaid is an antithesis to the principle of law and more particularly doctrine of precedent according to which, unless a decision of the coordinate Bench is overturned or modified by the higher forum, it keeps the value of precedent which shall be followed.

5.Being similarly circumstanced, it would be unjust to the respondent to deny the benefit of extension of the decisions, as we find the applicant being similarly circumstanced and covered in all fours by the decision in Jiley Singh's case.

6. The Apex Court deprecated on-extension of benefit to the similarly circumstanced in **Promotee Telecom Engineer Vs. D.S. Mathur, 2008 (4) SCALE 815.**

7. In the above view of the matter, OA stands allowed. Impugned order is set aside. Respondents are directed to extend to the applicant the benefit of Jiley Singh's case (*supra*) and in such an event, all the consequences as were given to the applicants in Jiley Singh and more particularly, the applicant, a retiree, shall be accorded to him within a period of three months from the date of receipt of a copy of this order. No costs.

6. Learned counsel appearing for the petitioners fairly conceded before us that the case of the respondent is not different than the case of *Jiley Singh (supra)*. He also submitted that the judgment delivered in the case of *Jiley Singh (supra)* is a subject matter of a writ petition but there is no stay with respect to the operation of the said judgment.

7. The judgment dated 6.1.2005 of the Tribunal, Chandigarh Bench in *Jiley Singh's case (supra)*, which is available on the file of this case, goes to show that the facts involved in that case are exactly similar. The relevant extract from the said judgment are reproduced hereunder:-

9. The short point involved in the present O.A. is that whether the applicants before us are entitled for in-situ promotion w.e.f. 01.02.1996 or w.e.f. 01.01.1997. According to the 1991 scheme, one of the relevant condition for grant of in-situ promotion is that its applicability to is confirmed to that employee, whose pay on appointment to such a post is fixed at the minimum of the scale; and employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post. This condition signifies that employees who have been stagnating even after one year on reaching the maximum scale of such post, they became eligible for in-situ promotion. The applicants, in this case have reached maximum of the scale on 1.2.1995 so they were to complete one year on 1.2.1996. Their pay were fixed accordingly at Rs. 1530/- w.e.f. 1.2.1996 then on in 1997, when the 5th C.P.C. report was accepted with retrospective effect from 1.1.1996, the applicants were also given option to save the benefit of revised pay scale and their pay was revised w.e.f. 1.2.1995 at Rs. 4700/-. The respondents reduced the pay of the applicants by postponing the date of in-situ promotion from 1.2.1996 to 1.2.1997 on the plea that their pay was revised at the revised scale. So, under these circumstances, the pay of the applicants has been reduced.

10. Now, learned counsel for the applicant prays that in view of further clarification issued vide O.M. dated 23.4.1999 by Govt. of India (DOP&T) on the subject of option of date for fixation of pay on promotion, it has been clarified in paragraph 3 & 4 of the said O.M. as under:-

“3.The question as to whether the Government servants promoted before 1st January, 1996, should be given another opportunity to give

fresh option to get their pay fixed in the promoted post in view of the introduction of revised pay scales with effect from 1st January, 1996, has also been considered and it has been decided that the employees promoted after 1.1.1995 but before 1st January, 1996, and whose date of next increment in the lower posts the promoted post under FR 22 I (a)(i) either from the date of promotion or from the date of next increment in the lower post failing on or after 1st January, 1996.

4.Option in terms of para 3 shall be exercised within a period of three months in case of officers who have been promoted on or after 1st January, 1996, till the date of issue of these orders. In case of promotion after the date of issue of these orders, option shall be given within one month of the date of promotion. Option once exercised shall be final.”

After reading these paragraphs 3 & 4 above, the learned counsel for applicants submitted that paragraph 4 contains the provision that when an employee, who is promoted on or after 1.1.1996 till issue of these orders, option has to be given to such employee within one month of the date of promotion and once exercised the option, shall be final. The learned counsel for applicants submitted on the basis of this that the applicants were also entitled to revise option to be exercised by them as they were to get promotion in-situ after 1.1.1996 and this option was to be given till the date of issue of this and this option has not been given to them.

11. Learned counsel for respondents fairly conceded that this option has not been given though their pay has been reduced. Hence, in our view, the applicant were entitled for revision of their options. So we find that this O.A. deserves to be allowed and accordingly we allow the OA and direct the respondents to give options to the applicants in terms of paragraphs 3 & 4 of the O.M. dated 23.04.1999 and refix their pay in

accordance with the rules and instructions on the subject. Meanwhile, the recovery effected from the applicants should be refunded to the applicants. This exercise should be done by the respondents within a period of 3 months from the date of receipt of copy of this order.

8. Another point in addition to the reasoning given by the Tribunal in *Jiley Singh's case (supra)* which has also been applied by the Tribunal in this case, we are also of the considered view that in such like case once the next pay scale was conferred upon the respondent in terms of the Office Memorandum dated 13.09.1991, the petitioner could not have acted on the basis of subsequent memorandum. The benefit conferred upon the respondent earlier, on the basis of Office Memorandum dated 22.07.1998 could not be withdrawn for the reason that the pay commission had come into picture, and therefore, the respondent was certainly entitled to the next pay scale after coming into force of the pay commission and he was also entitled to the revised pay scale in the pay scale in which he was placed in terms of the OM dated 13.09.1991. Thus, there is no justification for the petitioners to postpone the increment of the respondent from 1.3.1996 to 1.3.1997 merely because of subsequent OM dated 22.07.1998 and another OM of 1999, as has been argued on behalf of the petitioners. Moreover, in the case of the respondent, the Ministry of Finance and Urban Development had accorded the sanction on 20.3.2000 and 26.8.2008 respectively.

9. Taking all these facts into consideration, we find no reason to interfere into the order passed by the Tribunal while exercising our

jurisdiction under Article 227 of the Constitution of India. Accordingly, the writ petition is dismissed.

CM No.2451/2010 (Stay)

In view of the orders passed above, this application has become infructuous and is accordingly disposed of.

MOOL CHAND GARG, J.

MARCH 26, 2010
'DC'

ANIL KUMAR, J.