

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 738/2004

Reserved on: September 14, 2011

Decision on: September 28, 2011

DR. REENA RAMACHANDRAN

..... Petitioner

Through:

Ms. S. Janani with
Mr. Deepak Goel and
Mr. Sunando Rana, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through:

Mr. Ravinder Agarwal, CGSC.

CORAM: JUSTICE S. MURALIDHAR

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

JUDGMENT

28.09.2011

1. The Petitioner who retired as the Chairman and Managing Director ('CMD') of Hindustan Organic Chemicals Limited ('HOCL'), Respondent No. 3 herein, seeks a mandamus to the Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers, Government of India, Respondent No. 1, and the Department of Public Enterprises ('DPE'), Ministry of Industry, Government of India, Respondent No. 2, to re-fix/revise the Petitioner's pay during the period of her service with HOCL by protecting her last drawn pay with the Oil and Natural Gas Corporation Limited ('ONGC'), Respondent No. 4, including the full personal/special/incremental pay granted to her, and consequently direct the Respondents to pay the differential amount to the Petitioner along with the costs of this petition.

2. The Petitioner initially joined the ONGC and at the time of her being appointed as Director (Marketing) of HOCL, she was holding the post of General Manager ('GM') in the ONGC. She was appointed as Director (Marketing), HOCL on 23rd April 1992 in the scale of pay of Rs. 7500-200-8500. On 1st June 1992, the HOCL

conveyed to Respondent No. 1 the details of the last pay drawn by her in the scale of Rs. 7250-200-8250 in the ONGC. On 24th December 1992, the ONGC furnished to the HOCL the last pay certificate in respect of the Petitioner. This last pay certificate of the ONGC showed that her basic pay was Rs. 8250/- and the special pay was Rs. 350/-. The ONGC further clarified to Respondent No. 1 that the Petitioner had been granted two incentive increments @ Rs. 100/- each with effect from 23rd October 1982, i.e., from the date of her joining the ONGC. These increments were revised to Rs. 175/- each (Rs. 350/- in total) with effect from 1st January 1987, i.e., the day of pay revision of the officers in ONGC. This was conveyed to Respondent No. 1 by the HOCL by a letter dated 28th January 1993. On 9th September 1993, Respondent No. 1 conveyed to the HOCL the terms and conditions of the Petitioner's appointment as Director (Marketing) of HOCL. As regards the pay and DA, it was indicated in the said letter as under:

“3) Pay: Dr. (Mrs.) Ramachandran will draw a basic pay of Rs. 8,500/- per month in the scale of Rs. 7500-200-8500 (Schedule 'C') with effect from 23/04/1992 (forenoon). In addition to this she will get a Personal Pay (PP) of Rs. 100/- per month. This PP of Rs. 100/- will get absorbed at the time of her appointment in the next higher scale or at the time of the next day revision, whichever takes place earlier, she should not be eligible for drawl of any increment as her salary has already been fixed in the maximum of schedule 'C' scale.

4) Dearness Allowance: She will be allowed DA in accordance with BPE's O.M. No. 4(12)/82-BPE (WC) dated 19/03/1993 as amended from time to time.”

3. The Petitioner's pay as Director (Marketing) HOCL was fixed as follows:-

a) Basic Pay (last drawn in ONGC)	Rs. 10,223/-
b) Higher Qualification Pay	Rs. 600/-
c) Total Pay	Rs. 10,823/-
d) Pay fixed at the next stage	Rs. 11,200/-
e) Personal Pay to be absorbed at the time of next pay revision.”	Rs. 823/-

4. It is pointed out by the Petitioner that an express assurance was given in the letter

dated 9th September 1993 that in addition to the basic pay she would get a personal pay of Rs. 100/- and further that the personal pay would get absorbed at the time of her appointment or the next pay revision. The Petitioner contends that the above undertaking was never adhered to. On 28th February 1995, she was directed to hold additional charge of CMD of HOCL. She took over as such on 1st March 1995. This was confirmed by a Presidential Order dated 12th June 1995. On 17th August 1995, Respondent No. 1 conveyed the detailed terms and conditions of the Petitioner's appointment as CMD of HOCL. The Petitioner was to draw a basic pay of Rs. 8700/- per month in existing scale of pay of Rs. 8500-200-9500/-. The letter dated 17th August 1995 stated as under:

“iii) Pay: Dr. (Mrs.) Reena Ramachandran will draw a basic pay of Rs. 8700/- per month in the existing scale of Rs. 8500-200-9500 (Schedule ‘B’) from the date of her assumption of office as CMD. The existing scales of pay were last revised by the Govt. in April, 1990 and were made effective from 1.1.87. These scales of pay are to be revised by the Govt. further w.e.f. 1.1.92. The present fixation of her pay in Schedule ‘B’ at Rs. 8700/- is, therefore, a stop-gap arrangement and her pay would be refixed in the revised scales which would be notified by the Govt. w.e.f. 1.1.92. Since her appointment in schedule ‘B’ has taken place much after 1.1.92 she would be deemed to have been appointed ab-initio in the scale of pay which would be notified subsequently. She would not be eligible for any fitment amount as CMD.”

5. The Petitioner states that in the meanwhile, there was a revision of pay scales in the ONGC whereby salaries of the Executives below the Board level were increased with effect from 1st January 1992. The DPE, Respondent No. 2, made an announcement on 19th July 1995 for Board level posts in public sector enterprises (‘PSEs’) with effect from 1st January 1992 for a period of five years. The existing Schedule ‘A’ scale of Rs. 9000-250-10000 was revised to Rs. 13000-500-15000. The Schedule ‘B’ scale of Rs. 8500-200-9500 was enhanced to Rs. 12000-400-14000. By an Office Memorandum (‘OM’) of the same date, Respondent No. 1, while announcing pay revision for the posts below the Board level stated that the PSEs were being given the flexibility to adopt the pay scale at PSE level depending on their requirements. Respondent No. 1 conveyed its authorization of Respondent No. 3 HOCL to implement the revised pay scales with effect from 1st January 1992

for Board level posts. The Petitioner states that she would have automatically been entitled to the revised pay scale as Director holding the additional charge as CMD of HOCL. On 6th February 1996, the DPE issued an OM regarding the treatment of personal pay for fixation of pay and DA. Paras 2 and 3 of the said OM read as under:

“2. Some clarifications have been sought by some of the PSUs as to whether the ‘Personal Pay’ granted to some of the executives while fixing their pay in the revised scales, shall be counted for purpose of computation of DA & other allowances. It has now been decided by the Govt. that ‘personal pay’ granted after fixation of pay at three stages below maximum of the scale as per Annexure shall also be counted as ‘pay’ for the purpose of computation of dearness allowance on percentage basis of neutralization.

3. The ‘personal pay’ shall also be counted for purpose of recovery of licence fees in case of executives living in company’s leased accommodation.”

6. The ONGC issued an office order on 21st March 1996 stating, *inter alia* that the Petitioner’s revised pay as on 1st February 1992 was Rs. 10,223/- + Rs. 2,102/- as Personal Pay. On 30th April 1996, the ONGC enhanced the two increments for higher qualification from Rs. 175/- per month to Rs. 300/- each per month in terms of office order dated 4th April 1996 amounting to a total of Rs. 600/- per month with retrospective effect from 1st January 1992. In a letter dated 23rd May 1996 addressed to Respondent No.1 the HOCL noted that the revised pay drawn by the Petitioner in ONGC as on 22nd April 1992 was Rs. 10,233/- per month. The personal pay was a combination of personal pay of Rs. 2,102/- and special pay of Rs. 600/-. Her basic pay as Director (Marketing), HOCL in the revised pay scale of Rs. 10000-12000, was fixed at Rs. 10,400/-. With a yearly increment from 23rd April 1992 onwards, the basic pay was revised to Rs. 11,600 as on 23rd April 1995. The communication dated 23rd May 1996 of the HOCL further stated that in addition, the Petitioner would receive Rs. 2,702/- i.e., personal pay (2,102) *plus* special pay (600) till the next wage revision. The Petitioner’s basic pay as CMD, HOCL was fixed as follows:

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| “i) | Basic Pay drawn by her in the post of Director (Marketing) in the scale of pay of Rs. 10000-400-12000 as on 11-6-95. | Rs. 11,600/- |
| ii) | Scale of pay attached to the post of the CMD is | Rs. 12000-400-14000/- |

- iii) Next stage available in the higher scale of Rs. Rs. 12,000/-
12000-400-14000 is

Thus her basic pay as CMD, HOC in the scale of pay Rs. 12000-400-14000 would be fixed as Rs. 12000/-. In addition to this she is entitled to the payment of personal pay and special pay of Rs. 2702/- per month till the next wage revision and she will draw her increment on 12-6-86 and so on the anniversary date of her appointment in Schedule 'B' scale."

7. Respondent No.1 was requested by the HOCL to process the case and solicit the approval of Respondent No. 2.

8. Consequent upon certain clarifications sought by Respondent No.1, the ONGC, by its letter dated 8th August 1996, clarified to the HOCL that the Petitioner's pay had been fixed at three stages below the maximum of the revised pay scale, i.e., Rs. 9500-11500 in terms of the DPE's instructions. It further clarified that the personal pay had been increased from Rs. 791/- to Rs. 2,102/- with effect from 1st January 1992 by granting second fitment of Rs. 1,311/- as on 1st February 1992. As regards the two special increments for higher qualification (at Rs. 600/- per month), they could be claimed separately and did not get merged in the subsequent increase or decrease in the pay.

9. Respondent No. 1 wrote a letter to the HOCL on 10th July 1997 regarding fixation of pay of the Petitioner as Director (Marketing) and CMD of the HOCL. Her basic pay as Director (Marketing) with effect from 23rd April 1992 was fixed as Rs.11,200/- in the scale of Rs.10,000-400-12,000/- and as CMD with effect from 12th June 1995 as Rs.12,400 in the scale of Rs.12,000-400-14,000/-. It was *inter alia* stated in paras 3 and 4 as under:-

"3. The personal pay drawn by Mrs. Reena Ramachandran as below Board level as on 1.1.92 at the time of fixation of pay would be adjusted in the next pay revision as per DPE's O.M. dated 19.7.95.

4. The other terms and conditions for appointment of Mrs. Reena Ramachandran as Director (Marketing) in HOCL as notified vide this Deptt. letter No. 17011/13/90-Ch-I Desk dated 9.9.93 and as CMD HOCL notified vide this Deptt. letter No. 51/24/94-Ch.III Desk dated 17.8.95 shall remain

unchanged.”

10. The Petitioner protested against the above fixation of pay and by a letter dated 15th July 1997 she pointed out that it was a fundamental principle of pay fixation that the total emoluments of the Petitioner drawn by her in the ONGC should not be reduced while fixing her pay on appointment to a Board level post. The basic pay in the post of GM in the ONGC was Rs. 10,223/-, the higher qualification pay Rs.600/-, the second fitment benefit Rs. 1,311/- and the personal pay Rs. 823/- as on 1st January 1992. The total emoluments as on 22nd April 1992 when she left ONGC worked out to Rs. 12,957 per month. The element of Rs. 823/- which was personal pay could be absorbed at the time of the next pay revision. Therefore, ignoring that element the total emoluments to be reckoned for the purposes of pay fixation in the post of Director (Marketing) worked out to Rs. 12,134/-. She accordingly pointed out that given that the scale of pay attached to Director (Marketing) was Rs.10,000-400-12,000, her basic pay should have been fixed at Rs. 12,000/- and she should have also been allowed personal pay of Rs. 134/-. Apart from that, she should be allowed to carry her personal pay of Rs. 823/- which was granted by the ONGC as on 1st January 1992. Her total personal pay would, therefore, work out to Rs. 957/- (Rs. 823/- + Rs. 134/-). As far as the post of CMD, HOCL was concerned, her basic pay for that purpose, as on 11th June 1995, has to be taken as Rs. 12,000/- and when merged with the personal pay it worked out to Rs. 12,134/-. Her pay was required to be fixed at the next higher post which was in the pay scale of Rs. 12000-400-14000, and worked out to Rs. 12,400/-. Although the basic pay was correctly fixed at Rs. 12400/-, the orders did not mention her personal pay which should have been absorbed at the time of the next pay revision which would take place on 1st January 1997.

11. Pursuant to certain observations made by the DPE with regard to the grant of personal pay to the Petitioner, a letter dated 8th January 1998 was written by Respondent No. 1 to the ONGC. In reply to the said letter, the ONGC clarified by its letter dated 29th January 1998 that after the normal increment, the Petitioner's pay as on 1st January 1992 in the ONGC was Rs. 10223/- + personal pay of Rs. 823/-. Her pay as on 1st February 1992 was Rs. 10223/- + Rs. 2102/- as personal pay. It was pointed out that the second fitment of Rs. 1311/- would be merged in the personal

pay drawn on 1st January 1992, i.e., Rs. 791/- + Rs. 1311/- = Rs. 2102/-. Consequently, “on her fixation of pay with effect from 1st January 1992 on pay revision, the total personal pay which has been generated is to the tune of Rs. 2102.” It was further pointed out that “this personal pay generated as above in all such cases would be allowed to be carried forward in addition and to be adjusted in the next pay revision of the officers effective from 1st January 1997.”

12. However, on 11th March 1998, Respondent No. 1 conveyed the approval to the personal pay of Rs. 791/- payable to the Petitioner in addition to her pay as Director (Marketing) with effect from 23rd April 1992 and as CMD, HOCL with effect from 12th June 1995. By a further letter dated 21st September 1998, Respondent No.1 granted the Petitioner personal pay of Rs. 823 with effect from 23rd April 1992. It was stated that this personal pay would be allowed to be carried forward and would be adjusted in the next pay revision as per the DPE’s OM dated 19th July 1995.

13. The case of the Respondents is that the grant of the second fitment of Rs. 1311/- by the ONGC to the Petitioner was never contemplated by the OM dated 19th July 1995. Consequently, the area of dispute has narrowed down to the grant of the second fitment and the consequential differential sum of Rs. 1279 (i.e. 2102 - 823) claimed as personal pay by the Petitioner. According to the Respondents, the same was not given because in terms of the said OM, there could be only one fitment which was to be on the basis of the salary drawn on 1st January 1992 while the PSEs were given the flexibility to determine their own pay scales and they were debarred from the said OM from adopting different pay scales. Further, the OM dated 19th July 1995 provided that the revision could be on the basis of the pay drawn on 1st January 1992 whereas the second fitment was given with effect from 1st February 1992. It is submitted that the Petitioner’s last drawn pay from ONGC was duly protected on her appointment as Director (Marketing), HOCL and that the principle of pay protection is not applicable in respect of further revisions.

14. Ms. S. Janani, learned counsel appearing for the Petitioner submits that the concept of pay protection for candidates recruited from Central Autonomous Bodies and PSEs was well settled. She refers to an OM dated 7th August 1989 which concerns the grant of pay protection of candidates working in PSUs when appointed

either in government or other PSUs. It is stated that “their initial pay may be fixed at a stage in the scale of pay attached to the post, so that the pay and DA, as admissible in the Government will protect the pay *plus* DA, already being drawn by them in their parent organization.” Reliance is also placed on the judgment of the Supreme Court in *State Bank of India v. K. P. Subbaiah* (2003) 11 SCC 646 which explains the difference between the expressions ‘pay’ and ‘pay scale’. It was further held that there was no fitment to a particular scale. All that has to be ensured is that the pay should not be of an amount less than the last pay drawn. The Petitioner has placed on record the chart showing the differential amount of ‘pay’ arising out of the denial to her of the revised personal pay on account of the second fitment and the consequential arrears of differential amounts of gratuity, leave encashment, HPL, contribution to PF. The total sum which according to the Petitioner is owed to her works out to Rs. 1,96,901/-.

15. Mr. Ravinder Aggarwal, learned counsel appearing for the Respondents, on the other hand, submits that the petition is barred by laches as it was filed more than three years after the rejection of the Petitioner’s representation on 7th December 1999. The subsequent representations were made by relying on a subsequent OM dated 6th June 2001 and did not give rise to any fresh cause of action. Reference is also made to an order dated 15th September 2011 in Writ Petition (Civil) No. 6712 of 2011 (*Sushil Kumar v. Union of India*) to urge that a claim barred by laches ought not to be entertained. Relying on the judgment of the Supreme Court in *Basudev Pati v. State of Orissa* (1997) 3 SCC 632, and *M. Raja v. CEERI Educational Society Pilani* (2006) 12 SCC 636 it is submitted that as long as the last drawn pay as GM was duly protected, there was no obligation on HOCL to pay the Petitioner all the subsequent revisions in pay.

16. The plea of the Respondents that the present petition is barred by laches overlooks the fact that the last of the Petitioner’s representations was rejected on 27th March 2003 leading to a further clarification by the Petitioner on 5th September 2003 followed by the filing of the present petition on 8th January 2004. The preliminary objection of the Respondents as to laches is accordingly rejected.

17. On merits, much of the arguments turn around the interpretation of the OM dated

19th July 1995 which sets out the fitment formula. In terms thereof the PSEs were given the flexibility to adopt pay scales depending on their requirements. The fitment method indicated in Annexure-II of the OM envisaged that the basic pay at the revised scale would be fixed as under:

- (a) The total of basic pay in the existing scale of pay as on 1st January 1992; plus
- (b) Actual DA as on 1st January 1992; plus
- (c) The fitment amount on account of the revision of pay scale up to 20% of the basic pay in the existing scale of pay as on 31st December 1991; plus
- (d) “Personal Pay/Personal Allowance/Personal DA wherever payable along with existing basic pay”.

18. It was further stated that “on the aggregate pay fixed in the revised scale where the total does not fit in a stage of the revised scale of pay, the pay will be fixed at the next higher stage.” “If in some cases the total of the (a) to (d) exceeds the maximum of the revised scale of pay . . . then in such circumstances, the pay of the concerned executive or non-unionized supervisors should be fixed at three stages below the maximum of the scale and the balance amount should be treated as PP. On promotion or appointment in the next higher scale, his pay would be fixed in the normal course, i.e. taking into account only his basic pay for the purpose. PP would be allowed to be carried forward in addition and this would be adjusted in the next pay revision”.

19. One thing is clear from the above OM dated 19th July 1995. It was not only the total of the basic pay, DA, and fitment amount as of 1st January 1992 that was protected but also the personal pay wherever applicable “along with the basic pay.” The clarification issued on 6th February 1996 by Respondent No. 2 to the effect that personal pay would also be counted as ‘pay’ for the purpose of DA is also significant. This is consistent with the law explained by the Supreme Court in *State Bank of India v. K.P. Subbaiah* that (SCC, p. 655): “when a question of pay protection comes, the basic feature is that the fitment or fixation of pay in a particular scale must be such as to ensure that **the total emoluments are not reduced.**” In the context of the present case, last drawn pay cannot be narrowly construed as last drawn ‘pay scale’. The two are not the same. Under Fundamental

Rule 9 (21), 'pay' is defined to include special pay and personal pay.

20. The contention of learned counsel for the Respondents that PSEs were debarred from adopting different pay scales and in any event the flexibility was subject to the revision of pay scales only up to 20% is really besides the point. The controversy in the present case is not about the revision of pay scale. The real controversy is narrowed down to the personal pay which is in addition to the basic pay and was allowed to be carried forward for being adjusted in the next pay revision in terms of the OM dated 19th July 1995. While the said OM dated 19th July 1995 states that the "fitment amount on account of the revision of pay scale up to 20% of the basic pay in the existing scale of pay" would be calculated as on 31st December 1991, it separately mentions "Personal Pay/Personal Allowance/Personal DA wherever payable along with existing basic pay" without reference to any particular date. The crucial date for determining the pay which the Petitioner was entitled to seek protection of was that drawn by her in the post of GM, ONGC when she joined HOCL as Director (Marketing). This date was 23rd April 1992. As on that date, the Petitioner was drawing a personal pay of Rs. 2,102. Even if one were to take the crucial date for the purposes of the OM dated 17th July 1995 as 1st January 1992, then the position stands clarified by the ONGC by its letter dated 29th January 1998. It was stated therein that the Petitioner was drawing, as on 1st January 1992, the basic pay of Rs. 10223/- + personal pay of Rs. 823/-, and as on 1st February 1992 a basic pay of Rs. 10223/- + personal pay of Rs. 2102/-. Significantly, it was clarified by the ONGC that the second fitment of Rs. 1311/- "would be merged in the personal pay drawn on 1st January 1992, i.e., Rs. 791/- + Rs. 1311/- = Rs. 2102." Consequently, on her fixation of pay on 1st January 1992 on pay revision, the total personal pay generated was Rs. 2102. Therefore as on 1st January 1992 by virtue of the above "merger" of the second fitment in the personal pay, the Petitioner's total personal pay was Rs. 2,102 and this was entitled to protection when she joined HOCL as Director (Marketing). The ONGC further clarified that "this personal pay generated as above in all such cases would be allowed to be carried forward in addition and to be adjusted in the next pay revision of the officers effective from 1st January 1997."

21. It is not open to the Respondents 1 and 2 to deny the Petitioner the benefit of protection of the personal pay drawn by her in ONGC as on 1st January 1992 only on

the ground that ONGC was too liberal in granting the second fitment. The correctness of the decision of the ONGC to grant second fitment to all board level and below board level executives (and not especially to the Petitioner) cannot now be questioned by the Respondents. In fact, the PSEB ratified the grant of the second fitment by ONGC. The Petitioner was appointed in the HOCL through a competitive selection process. She moved to HOCL on the understanding that her last drawn pay in the ONGC would be protected. In terms of the OM dated 19th July 1995, this included her personal pay. There is nothing in the OM dated 19th July 1995 barring the grant of a second fitment which in turn enhances the personal pay. The grant of incentives by a PSE, by way of a second fitment, is linked to its performance and the profits earned by it. It would be irrational to direct that such second fitment ought not to be granted by the better performing PSE or that a uniform enhanced personal pay should be granted by every PSE, irrespective of its performance. There appears to be no rational basis for the Respondents to deny the Petitioner the protection of her last drawn pay in the ONGC which includes the personal pay as enhanced by the second fitment of Rs.1311 merged into her personal pay as on 1st January 1992.

22. The decisions in *Basudev Pati v. State of Orissa* and *M. Raja v. CEERI Educational Society Pilani* deal with the question of revision or grant of pay scales and not so much as protection of last drawn personal pay. In neither case was there a notification similar to OM dated 19th July 1995 which envisages not only protection of last drawn pay scale but personal pay, special pay etc. drawn in addition to basic pay. To reiterate, the question in the present case is not about revision of pay scale but the grant of enhanced personal pay which, as clarified by the ONGC, was revised in the case of board level and below board level executives of ONGC to Rs. 2,102/- as of 1st January 1992 and merged in the personal pay granted as of that date.

23. For the aforementioned reasons, the petition succeeds. The Petitioner is held entitled to the protection of her last drawn pay in the ONGC which includes the personal pay of Rs. 2,102/- as on 1st January 1992. The Respondents are directed to calculate the arrears of differential pay, and the consequential arrears of differential gratuity, leave encashment, HPL, the differential contribution of the employer to the PF due to the Petitioner and pay the same to the Petitioner within a period of eight weeks with simple interest @ 9% per annum from the dates that the amounts became

due till the date of their payment. If the amount determined by the Respondents as payable to the Petitioner is different from the amount calculated by her in Annexure P-43 to the writ petition, the Respondents will furnish the Petitioner the detailed break-up of the amount being paid. In case of any delay in payment, the Respondents will pay penal simple interest at 12% per annum for the period of delay.

24. The writ petition is disposed of in the above terms, with costs of Rs. 10,000/- which will be paid by the Respondents to the Petitioner within a period of eight weeks.

S. MURALIDHAR, J.

SEPTEMBER 28, 2011
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