

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

+ W.P. (C) No. 6349/2002

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Reserved on: 24th July, 2012

Decided on: 1st August, 2012

NAT. INST.OF PUBLIC FIN & POLICY & ANR Petitioner

Through Ms. K. Iyer, Mr. Manoj Chatterjee,
Advts.

versus

PRESIDING OFFICER & ORS Respondent

Through Ms. Megha Bharara, Adv. for Ms.
Ruchi Sindhwani, Adv. for R-1&2.
Mr. Abhishek Singh, Mr. Atul T.N.,
Advts. for R-3.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner impugnes the award dated 12th April, 2002 directing that the Assistants and Stenographers of the Petitioner are entitled to fitment in the grade of Rs.1640-2900 and revised DA with effect from 1.1.1986 which is revised to Rs. 5500-175-9000 w.e.f. 2.8.1999 as per the undertaking given on behalf of management on 29th October, 2001 and directed to place the workmen in the said grade and pay arrears with effect from 1.1.1986.

2. Learned counsel for the Petitioner contends that the Petitioner is an Institute established at the joint initiative of Ministry of Finance (in short MOF), Govt. of India, Planning Commission of India and several State Governments. The nature of work, inter alia, carried out by the Petitioner is

research and education in the area of public finance etc. The Institute is running on the grants received from MOF and project grants received from other bodies. A memorandum of understanding was entered into between the MOF and Institute in 1988. Respondent No.3 raised a demand for the fitment of Assistants and Stenographers of Gr. II in the grade of Rs. 1640-2900 as well as revised DA at par with the Government employees. On a reference being made the impugned award was passed. It is contended that based on the decision of the Governing Body and the legal advice received by the Petitioner, the Administrative Officer on behalf of the Institute gave a statement on 29th October, 2001 before the Labour Court to the effect that the Institute had implemented the scale of Rs. 5500 – 9000 with effect from 2.8.1999 for Stenographers Gr.II with approval of the Governing Body and an undertaking was given by the said Administrative Officer that the arrears of pay would be made within three months. The said decision of the Governing Body duly conveyed by the Administrative Officer was subject to and in anticipation of the approval of the Government. However, instead of approval, the Government/Ministry of Finance, Department of Expenditure sent its communication dated 28th February, 2002 stating that the request of the Institute is not agreed to and the case be defended on merits effectively before the Tribunal. Thus a detailed application was filed by the Petitioner before the Labour Court seeking withdrawal of its undertaking. The Labour Court dismissed the application and pronounced its award on 1st April, 2002 in favour of the Respondent on the basis of the undertaking given by the Petitioner.

3. Learned counsel for the Petitioner contends that the learned Trial Court failed to appreciate that in view of the MOU between the Petitioner Institute and the MOF, the Institute could not deviate or bypass the specific terms and conditions of the MOU and could not concede to the revision of scale of pay and allowances in respect of the Core staff without the approval of Ministry of Finance. The learned Trial Court erred in dismissing the application of the Petitioner for recalling its undertaking. The Petitioner relies upon an OM dated 31st July, 1990 for not considering the case of the Respondents. However, the same was not considered by the learned Trial Court. The claim of the Respondent No.3 was not accepted by the MOF, Govt. of India, inter alia, for the reason that the Assistants/ Stenographers in the Petitioner were not comparable to the persons holding similar posts of CSS & CSSS in view of recruitment rules, educational qualifications, method of recruitment, duties, responsibilities, classification of posts, etc., and thus pay parity could not be granted. The Vth Pay Commission considered the issue of parity between the Stenographers outside the secretariat and in the secretariat and did not recommend the same. It is contended that designation is not the sole determinant for pay scales and there are many other factors such as nature of work, responsibilities, classification of posts, workload, professional skill, proficiency, etc., which have to be gone into while considering parity in pay scale. Reliance is placed on *Union of India and Anr. Vs. P.V. Hariharan (1994) 4 SCC 78*. It is thus contended that the impugned award be set aside.

4. Learned counsel for the Respondent on the other hand contends that even as per the MOU dated 9th March, 1998 between the Petitioner and the

MOF all policy matters are to be decided by the Governing Body on which the Central Government is represented by the Finance Secretary, Secretary Revenue and the Secretary Planning Commission. Further, the MOU provides that the Institute will follow the Central Government rules regarding service conditions as also pay and allowances for its non-professional Core staff. The MOU also provides that subject to the other provisions the Governing Body will have the powers for final decisions in financial matters provided that if there be any difference of opinion between the members representing the Finance Ministry on the Governing Body and the Chairman the matter will be referred to the Ministry of Finance for final decision. It is contended that the members of the Respondent No.3 were appointed during the period of 1982 to 1999. The pay scale of the workmen from 1.1.1976 to 1.1.1986 was higher than the Central Government employee's pay scale i.e. 450-800 as compared to 425-800 of the Central Government employees. Even from 1.1.1986 to 31.7.1990 the pay scale was at par i.e. 1400-2600. However, on 31st July, 1990 the Central Government issued an office memorandum revising the pay scales of Stenographers Gr. II and Assistants of Central Secretariat Services to 1640-2900 with effect from 1.1.1986. Thus, for this reason the disparity arose between the cadres. Even from 1.1.1996 to 1.8.1999 the pay scales of the members of the Respondent No.3 and the Central Government employees were the same. Thus, the only dispute is for the pay scale from 1.1.1986 to 1.8.1999 when there was a difference. In view of the resolution of the Governing Body dated 7th March, 2001 the Officer of the Petitioner No.1 was competent to give an undertaking that the members of Respondent No.3 were entitled to the same pay scales and they would be granted the arrears. It was also stated that the

expenditure on the same would be met out of Institute's funds. Having made the statement on behalf of the Petitioner based on the decision of the Governing Body and legal advice, the Petitioner could not have recalled its undertaking and thus the learned Tribunal rightly rejected the application of the Petitioner vide order dated 12th April, 2002. It is further contended that the learned Tribunal did not base its award only on the undertaking of the Petitioner but assigned independent reasons thereof. Reliance is placed on *Yogeshwar Prasad and Ors. Vs. National Institute of Education, Planning and Administration and Ors.*, (2010) 14 SCC 323. There being no infirmity in the impugned award, the writ petition is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the record. The short issue for determination in the present case is whether the Tribunal can direct the Petitioner that the members of the Respondent No.3 are entitled to fitment in the grade of Rs. 1640-2900 and revised DA with effect from 1.1.1986 which is revised to 5500-175-9000 with effect from 2.8.1999 and arrears of pay with effect from 1.1.1986.

6. In *State of West Bengal Vs. Subhas Kumar Chatterjee and Ors.* (2010) 11 SCC 694 it was held:

“14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its

wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. (See *Union of India v. Arun Jyoti Kundu* [(2007) 7 SCC 472 : (2007) 2 SCC (L&S) 695] and *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* [(2002) 6 SCC 72 : 2002 SCC (L&S) 822]) It is no doubt true, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post.”

7. In *K.T. Veerappa and Ors. Vs. State of Karnataka and Ors.* (2006) 9 SCC 406 It was held:

“13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* [(2002) 6 SCC 72 : 2002 SCC (L&S) 822] and *Union of India v. S.B. Vohra* [(2004) 2 SCC 150 : 2004 SCC (L&S) 363] . There is no dispute nor can there be any to the principle as settled in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* [(2002) 6 SCC 72 : 2002 SCC (L&S) 822] that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.”

8. In *State of Haryana Vs. Haryana Civil Secretariat Personal Staff Association* AIR 2002 SC 2589 it was held:

“10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge, While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position 'and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration of the State Government courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the government is patently irrational unjust and prejudicial to a section of employees and the government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the government to implement the same. As noted earlier, in the present case the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the Central Secretariat It has also ignored the basic principle that there are certain rules, regulations and

executive instructions issued by the employers which govern the administration of the cadre.”

9. Thus, it is well settled that the Courts are not expert bodies who can go into the question of parity and direct revision of pay scale. Further, in the present case the undertaking given on behalf of the Petitioner was sought to be withdrawn which application was dismissed by the learned Tribunal. It may be noted that even as per the MOU the Governing Body of the Petitioner has no final say in the pay scales and it has to depend on the approval by the Govt. of India. Without obtaining approval of the Govt. of India the undertaking given by Shri Naveen Bhalla, Administrative Officer of the Petitioner could not be acted upon. In this regard it would be appropriate to note the relevant terms of the MOU:

“(ii) The Institute will follow the Central Government rules regarding service conditions as also pay and allowances for its non-professional Core staff. The scale of pay and allowances of the Institute’s professional staff will be based broadly on the pattern approved by the University Grants Commission for teaching staff in universities and colleges as modified by the Governing Body from time to time. No revision in the scales of pay and allowances in respect of the Core staff will be carried out without the approval of the Ministry of Finance.”

10. It is thus apparent that without the approval of Ministry of Finance the decision of the Governing Body was not actionable and could not be enforced and the learned Tribunal grossly erred in basing the impugned award on the undertaking of the Administrative officer of the Petitioner. The Administrative Officer of the Petitioner without the approval of Ministry of Finance was not competent to confer the status on the workmen.

11. In *State of Punjab v. Jagdip Singh & Ors.*, AIR 1964 SC 521, the Constitution Bench held-

“8. The question then is as to the effect of a void order of confirmation. When an order is void on the ground that the authority which made it had no power to make it cannot give rise to any legal rights, and as suggested by the learned Advocate-General, any person could have challenged the status of the respondents as Tahsildars by instituting proceedings for the issue of a writ of quo warranto under Article 226 of the Constitution. Had such proceedings been taken it would not have been possible for the respondents to justify their status as permanent Tahsildars and the High Court would have issued a writ of quo warranto depriving the respondents of their status as permanent Tahsildars. Now, where the Government itself realises that an order made by an authority under the Government is void, is it powerless to do anything in the matter? Is it bound to give effect to a void order and treat as confirmed Tahsildars persons who have no legal right to be treated as confirmed Tahsildars? Is it not open to the Government to treat the confirmation as void and notify the persons affected and the public in general of the fact of its having done so by issuing a notification of the kind it made on October 31, 1957? In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status. No doubt, the Government has used the expression “de-confirming” in its notification which may be susceptible of the meaning that it purported to undo an act which was therefore valid. We must, however, interpret the expression in the light of actual facts which led up to the notification. Those facts clearly show that the so-called confirmation by the Financial Commissioner of PEPSU was no confirmation at all and was thus invalid. In view of this, the notification of October. 31, 1957 could be interpreted to mean that the Government did not accept the

validity of the confirmation of the respondents and other persons who were confirmed as Tahsildars by the Financial Commissioner, PEPSU.”

12. However, in the present case there is a peculiar feature which would be evident from the chart below:

Period	NIPFP Pay Scales	Central Govt. pay scales (CSS)
1.1.1976 to 1.1.1986 (prior to implementation of Report of the 4 th Pay Commission)	450-800	425-800
1.1.1986 to 31.7.1990 (after coming into force of 4 th Pay Commission)	1400-2600	1400-2600
31.7.1990 the Government issued Office Memorandum revising the pay scale of Stenographers Grade-II and Assistants of Central Secretariat Services	1400-2600	1640-2900. This revision was granted to the CSSS staff with effect from 1.1.1986 and because of this revision the pay scale of Rs. 425-800 (pre 4 th Commission pay scale) which was post 4 th Pay Commission 1400-2600 was revised to Rs. 1640-2900.
1.1.1996 to 1.8.1999	5000-8000	5500-9000
2.8.1999-1.1.2006	5500-9000	5500-9000
1.1.2006 till date	9300-34800	9300-34800

13. A perusal of the above chart shows that from 1.1.1976 to 1.1.1986 the members of the Respondent No.3 were getting a higher pay scale than the employees working in the same cadre in the Central Secretariat. The disparity arose because of the Office Memorandum dated 31st July, 1990 revising the pay scale of the Central Secretariat employees to 1640-2900

with retrospective effect from 1.1.1986 and from 1.1.1996 to 1.8.1999 when the Central Secretariat employees were getting Rs. 5500-9000 as against the members of the Respondent No.3 getting scale of Rs. 5000-8000. Thereafter again the members of the Respondent No.3 and the Central Secretariat employees are getting the same pay scales. On the own showing of the Petitioner it is thus evident that the arguments that there is a difference in the work, recruitment rules, educational qualifications, duty hours, etc., as raised by the learned counsel for the Petitioner hold no merit because the Government itself has provided pay parity to the members of the Respondent No.3 with the Central Secretariat employees on number of occasions. Dealing with a similar issue, the Hon'ble Supreme Court in *Yogeshwar Prasad and Ors.* (supra) held:

“12. The short question which arises for consideration in these appeals is why the appellants should not be given the pay scale of Rs 1640-2900 from the date when their counterparts have been given that pay scale in the Central Government? Although the stand of the Institute has also been that the appellants are entitled for the pay scale of Rs 1640-2900 which is quite evident from the aforementioned letters sent by the respondent Institute to the Central Government. The Union of India has now in the Vth and VIth Pay Commissions given that scale to the appellants.

13. In our considered view, the Division Bench was not justified in setting aside the judgment of the learned Single Judge. It may be pertinent to mention that the Division Bench did not consider the service regulations of the National Institute of Educational Planning and Administration. The case of Appellant 1 herein was not even discussed or considered in the impugned judgment.

14. Mr Amitesh Kumar, learned counsel appearing for Respondent no. 1 Institute tried to make out the case that duties, responsibilities and obligations of the appellants were different

to their counterparts functioning in the Central Secretariat and they were justified in not giving the same pay scale. But we do not find any merit in the submission because the respondent Institute's stand all through was that the appellants be given the pay scale of Rs 1640-2900. At this stage, Respondent no.1 cannot be permitted to take a somersault in this manner. The Union of India accepted the recommendations of the Vth and VIth Pay Commissions and are giving the appellants the same pay scale which their counterparts in the Central Government are getting. It may be pertinent to observe that these appellants were getting the same pay scale as was given to the employees of their categories in the Central Government up to 1-1-1986. The Union of India accepted the recommendation of the Vth and VIth Pay Commissions and are giving them same pay scale then how only during the IVth Pay Commission their pay scale could be different and how their duties, obligations and responsibilities became different only for a brief period?"

14. The law is thus settled that though the High Court in its power under Article 226 of the Constitution of India would not direct pay parity and leave the same to the wisdom of the administrators, however, where the decision is unjust, arbitrary, prejudicial to a section of the employees and taken in ignorance of material and relevant facts, the Courts will interfere with the administrative decisions of fixation of pay scale. It would be thus seen that the Government of India has been treating the members of the Respondent No.3 either on higher side or at par with the Central Secretariat employees from 1st January, 1976 to 1st January, 1986 and from 2nd August, 1999 till date. There is no reason for basing the disparity in the period commencing from 1.1.1986. In the peculiar facts of the present case the Petitioner is directed to grant pay scale of Rs.1640-2900 and revised DA to the members

of Respondent No.3 with effect from 1.1.1986 which is revised to Rs. 5500-175-9000 w.e.f. 2.8.1999. Arrears of pay be paid within four months.

15. Though for different reasons, I agree with the final directions issued by the learned Tribunal vide the impugned award. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

AUGUST 01, 2012
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