

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2597/2014**

% **Date of Decision: 28th April, 2014**

O.P.MAURYA Petitioner

Through : Petitioner in person.

versus

THE SECRETARY MINISTRY OF LAB & EMP. & ORS.

..... Respondents

Through : Mr.Mukesh Kumar Tiwari,
Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

DEEPA SHARMA, J.

1. We have dismissed the writ petition by a separate order passed today. We now record the reasons for doing so.
2. The petitioner retired as Joint Director of Employment Exchanges (JDX) on his superannuation on 31st January, 2003 in the pay scale of Rs.10,000 – 15,200.
3. Subsequently to his retirement vide office order dated 6th May, 2003 the post of Joint Director of Employment Exchanges in Employment Directorate in the Directorate General of Employment & Training under Ministry of Labour, as a result of restructuring,

was put in the pay scale of Rs.12000 – 16,500.

4. The petitioner has claimed that the revised pay scale of Rs.12000-16500/- from the date he had started working as Joint Director.

5. The brief facts and the history of case which are necessary for disposal of the present writ petition are narrated as under:

6. The petitioner joined on promotion the services as Deputy Director of Employment Exchanges (DDX) on ad-hoc basis in the pay scale of Rs.1100 to 1600 on 17th June, 1982. He was regularised with effect from 8th October, 1987. He joined as Joint Director on officiating basis in the pay scale of Rs.3000 – 5000/- and work till 30th June, 1995. He joined JDX on promotion of ad-hoc basis in the pay scale of Rs.10000 to 15200 with effect from 1st September, 1998. At that time he was working at the same pay scale as DDX. After his retirement vide his representation dated 28th January, 2004 he made a representation to the department, demanding fixation of his official pay for the post of Joint Director of Employment Exchanges in terms of Clause (1) (a) (i) of FR 22 from the date of his promotion to the said post that is with effect

from 1st September, 1998 till his retirement i.e. 31st January, 2003. He also made the representation that office order dated 6th May, 2003 by which the post of Joint Directors of Employment Exchange in DGE&T had been restructured and placed in the pay scale of Rs.12000 to 16500 be given retrospective effect and he be given pay scale of Rs.12000 to 16500/- from 1st September, 1998, the date he joined the post of Joint Director. His representation was dismissed by the department vide office order dated 20th April, 2006. The petitioner challenged the said order of the department by way of O.A.No.2187/2006 under Section 19 of the Central Administrative Tribunal Act, 1985 before the Principal Bench. Vide order dated 10th May, 2007, the Tribunal allowed the application filed by the petitioner and directed the respondent to examine the case of the petitioner for grant of revised pay scale of Rs.12000 to 16500/- and pass a speaking order in the said record.

The relevant portion of the said order is reproduced as under:

“6. As applicant, while functioning for than 14 years, the requisite eligibility period on the post of Joint Director, had been appointed on ad hoc basis w.e.f. 01.09.1998, the aforesaid was continued from time to time till 31.01.2003. Applicant preferred several representations to either regularize his services in Joint

Director or to consider him for Joint Director in accordance with law.

7. The only impediment for such a consideration is the anomaly created by revising the pay scale, whereby feeder category of Deputy Director and erstwhile post of Joint Director have come into identical pay scale. However, this anomaly was corrected and has been given effect to. The approval was sought in April 2003 by the time applicant had retired on superannuation.....We find that non-consideration of the applicant for promotion on regular basis despite he had continued uninterruptedly on approval of the President on ad-hoc basis as Joint Director has prejudiced his right to get pension of a substantive post of Joint Director. This omission has taken place without any fault of the respondent and is squarely imputed to the inordinate delay on part of the respondents. Applicant should not suffer for the mistake of the Government. This may be on account of anomaly created at their behest on equating the feeder cadre in the same pay scale. However, when an administrative order is approved by the Government, no decision is taken either to operate it prospectively or retrospectively. However, taking harmonious construction a welfare piece of decision, we could rule that such a proposal would extend retrospectively even to the persons who had held the post on ad hoc basis. However, this is within the domain of the Government and prerogative to be considered in the interest of the employee and also in the wake of the fact that the rightful-claim of employee should not be deprived of on the ipsi dixit of the authorities.

*8. In the result, for the foregoing reasons, OA is disposed of taking cue from the decision of the Apex Court in **Ram Sewak Prasad** (supra) directing the respondents to take a decision to grant the revised pay scale to the applicant from 01.09.1998 when it was due to him till 31.1.2003, i.e. when he retired on*

superannuation....”

7. In compliance of the said directions of the Central Administrative Tribunal, the department passed a speaking order dated 24th August, 2007 and rejected the claim of the petitioner for fixation of his salary in the pay scale of Rs.12000 – 16500/- with effect from 1st September, 1998 and also to fix the initial pay of the respondent in the post of Joint Director of Employment Exchanges in term of clause (1) (a) (i) of FR 22. The relevant portion of the order passed by the department reads as under:

“3. Whereas this recommendation of the Vth CPC had created an anomalous situation and therefore Dr.Maurya represented for considering his case for giving him benefit of pay fixation under FR 22(1)(a)(i) from the date of his promotion to the post of JDX on ad-hoc basis w.e.f. 01.09.98. The Govt. did not agree to grant him the benefit under FR 22(1)(a)(i) and advised the Department to appropriately restructure the cadre in terms of the Ministry of Finance instruction dated 24.11.2000.

4. Whereas this department took up the matter with the Ministry of Finance for upgradation of the pay scales of Joint Director of Employment Exchanges. The Ministry of Finance did not agree to the proposal of upgradation but agreed for restructuring the post of Joint Director of Employment Exchanges in the scale of Rs.12,000-16,500/- by merging the post of Additional Director of Employment Exchanges and abolition of one post of Deputy Director of Employment Exchanges

(being matching savings). Accordingly, the restructuring orders were given prospective effect from 06.06.2003.

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6. Therefore, in compliance of the above orders of the CAT, upon considering all the above facts & circumstances of the case, the following decisions are conveyed:-

I. After the recommendations of the Vth CPC the scales of DDX and JDX has been merged. This resulted in a situation where the promotional post and feeder grade were in the same grade. At that time, efforts were made to remedy this situation in consultation with the Ministry of Finance. During this process, Dr.Maurya was granted ad-hoc promotion from DDX to JDX due to the reason that the proposal for up gradation of three posts of JDX was under consideration of the Ministry of Finance and also to save the post from coming under the purview of general economy ban. Dr.Maurya was not given any benefit as the pay scales for both the posts has been placed in the same scale on the recommendation of the Vth CPC. Since cadre restructuring of the posts of JDX, by merging the post of Additional Director of Employment Exchanges and abolishing of one post of Deputy Director of Employment Exchanges has taken prospective effect w.e.f. 06.05.2003 hence there is no ground for grant of revised pay scale of Rs.12,000 – 16,500/- to Dr.Maurya retrospectively w.e.f. 01.09.1998 till 31.1.2003.

II. Since there was only a marginal difference between the pre-revised scale of Rs.3000-4500 and Rs.3000-5000 and therefore their merger after Vth CPC to one common scale of Rs.10,000-15,2000/- would connote that the duties and responsibilities of both the posts would be on the same footing. Accordingly, there is no ground/merit for grant of benefit of pay fixation under FR 22(1)(a)(i).”

8. The petitioner challenged the said order of the department and filed contempt petition before the Tribunal. His plea was that the denial of grant of the revised pay scale of Rs.12000- 16500 by the respondent vide its order dated 24th August, 2007, amounts to violation of the directions of the Tribunal vide its order dated 10th May, 2007. The Tribunal, however, dismissed the contempt petition of the petitioner vide its order dated 13th December, 2007 holding that the only direction issued by the Tribunal vide its order dated 10th May, 2007 to the Department ,was to consider the case of the respondent for grant of revised pay scale and pass a speaking order in that regard.

9. The petitioner filed another application under Section 19 of the Administrative Tribunal Act, 1985 before the Tribunal which was registered as O.A.No.2002/2008 challenging the order of the Tribunal whereby the relief to the petitioner was denied. Vide order dated 25th March, 2009, the Tribunal allowed the O.A. of the petitioner. The relevant portion of the order reads as under:

“8. We have heard both the learned counsels and also perused the materials on record.

9.1 Since various aspects of this issue have already been elaborated in the earlier order of the Tribunal in

OA 2187/2006, it would not be necessary for us to go over them again. Suffice it is to say that the fact of an anomaly having been created by grant of the same revised pay scale, after the 5th CPC, to the feeder post of DDX and the promotional post of JDX is admitted by the respondents. They have also sought to remedy the anomalous situation by the decision of restructuring under which, out of the three existing posts of Joint Directors, one was abolished and the remaining ones were merged in the Additional Director's higher pay scale of Rs.12000-16500/-.

9.2 The claim of the applicant to be promoted against this post is not disputed by the respondents. The order of the Tribunal dated 10.5.2007 mentions in para-6 about the applicant while functioning for more than 14 years, and having the requisite eligibility period on the post of Joint Director being appointed on ad hoc basis against that post. Para-7 of this order also mentions that this had been done with the approval of the President and the applicant had continued against this post uninterruptedly till his superannuation.

9.3 The department's proposal for regular promotion of the applicant against this post was not concurred with by the UPSC on the ground that after the 5th CPC, both the DDX and JDX posts carry the same pay scale. It is however, surprising that despite the restructuring was decided, they left out of consideration the legitimate claims of the persons who had been working against this post on a scale admittedly not justified since 1998. We also find no apparent justification as to why the department did not choose to take up the case with the Ministry of Finance as also with the UPSC in order to see that justice was done to the applicant.

....

11. To conclude, we find it to be an appropriate case warranting judicial intervention. The OA is allowed, the impugned order dated 24.8.2007 is quashed and set aside. The respondents are directed to grant the

applicant the revised pay scale of Rs.12000-16500 from the date he was promoted on ad hoc basis with all consequential benefits including re-fixation of pay as per Rule FR22(1)(a)(i) by adopting appropriate methodology. We also direct for revision of the retiral benefits of the applicant consequently....” (Emphasis Supplied)

10. The department i.e. the respondent before this court challenged the impugned order dated 25th March, 2009 by way of Writ Petition (Civil) No.10935/2009. After taking into consideration all the facts and the various orders passed in the case of the petitioner, this court had passed an order dated 22nd December 2010, relevant paragraph of the same is reproduced as under:

“17.From the afore-noted conspectus of facts, it is clear that that the two questions arise for consideration in the present case namely, (i) whether the initial pay of the respondent in the post of Joint Director of Employment Exchanges was required to be fixed in terms of clause I)(a)(i) of FR 22; and (ii) whether the department was justified in not giving retrospective effect to the order issued by it for restructuring of the posts.”

11. This court gave its finding on question no.1 whereby the relief to the petitioner for fixation of pay as per clause (l) (a) (i) of FR 22 was rejected. Relevant paragraph is reproduced as under:

“23. In the instant case, the posts of Deputy Director of

Employment Exchanges and Joint Director of Employment Exchanges were having the same scales of pay after the implementation of the recommendation of the Fifth Pay Commission and that the respondent was promoted to the post of Joint Director of Employment Exchanges after the implementation of the said recommendations. Therefore, by virtue of clause (III) of FR 22, clause (I)(a)(i) of FR 22 has no application in the present case and thus the department was not required to fix the initial pay of the respondent in the post of Joint Director of Employment Exchanges in terms of clause (I)(a)(i) of FR 22.”

12. As regards question no.2 i.e. denying the benefit of restructuring restricting of the post with retrospective effect, this court had issued the following directions:

“25. In such circumstances, we have no option but to remand the present case to the Tribunal for deciding the question whether the action of the department of not giving retrospective effect to the order issued by it for restructuring of the posts is legal or not.”

13. Therefore, it is clear that this court had set aside the impugned order dated 25th March, 2003 passed by the Tribunal whereby the Tribunal issued directions to the department to fix the initial pay of the respondent in the post of Joint Director of Employment Exchanges in terms of Clause (I) (a) (i) of FR 22 and remanded the matter to the Tribunal for deciding the question whether the action of the department for not giving retrospective

effect to the order dated 6.5.2003 is legal or not. The petitioner had challenged the said order of this court by way of S.L.P.CC. No. 7819/2011 before the Apex Court. The following order was passed by the Apex Court:

*“Upon hearing counsel the Court made the following
O R D E R
Delay condoned.
The Special Leave Petition is dismissed.”*

14. From the above factual position, it is apparent that while the issue of fixation of the pay of the petitioner in terms of Clause (I) (a) (i) of FR 22 is concerned, the matter has attained finality. The issue regarding grant of scale to the petitioner in the pay scale Rs.12000 - 16500 in terms of office order dated 6th May, 2003 is concerned, the matter was remanded to the Tribunal. The Tribunal on receiving the matter on remand gave fresh consideration to the entire issue on this point and gave its findings dated 26th July, 2012 whereby the O.A. was dismissed. It is this order which is under challenge before this court in the present writ petition.

15. As discussed above, the sole question for consideration is whether the order dated 6th May, 2003 can be given retrospective effect or this order is prospective. Relevant order dated 6th May,

2003 is reproduced as under:

**“No.DGE&T-A-11015/1/2000-Adm.II
Bharat Sarkar/Government of India
Shram Mantralaya/Ministry of Labour
(Directorate General of Employment and Training)**

New Delhi, Date: 6/5/2003

To

All Subordinate Offices under the DGE&T
Ministry of Labour.

Subject: **Restructuring of the posts of Joint
Directors of Employment Exchanges in the
DGE&T-regarding.**

Sir,

I am directed to convey the sanction of the President to place the posts of Joint Directors of Employment Exchanges in Employment Directorate in the Directorate General of Employment & Training under Ministry of Labour in the scale of Rs.12,000-16,500/- from the existing scale of Rs.10,000-15200/- as a result of the restructuring of the posts.

2. This issue with the approval of Ministry of Finance Department of Expenditure E-III (B) Br.ID No.6(5)-E-III(B)/03 dated 02/04/2003.

Yours faithfully,

(K.K.MITTAL)
Director
Tel.: 23714765”

16. From plain reading of this order, it is apparent that the order has not been given retrospective effect. It has become applicable from the date it has been passed. The sole question for

consideration is can this court exercising its jurisdiction under Article 226 of the Constitution of India issue a direction to make this order operative from a previous date.

17. The power of the court under writ jurisdiction has been discussed by the apex court in **1989 Supp (2) SSC 364** titled as ***Asif Hameed and Others vs. State of Jammu and Kashmir*** and Others in para 17 and 19 which read as follows:-

17. Before advertng to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social

and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

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19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an Appellate Authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

18. In another case of **(2005) 13 SCC 495** titled as ***State of Orissa vs. Gopinath Dash and Others***, the Hon'ble Supreme Court has held as under:

5. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere.

6. *The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.*

7. *The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.*

19. From the findings of the Apex Court, it is apparent that the scope to interfere in the policy decisions of the Government is very limited and the courts are required to refrain from doing so unless it is shown that some fundamental rights of the petitioner are infringed or that the policy is in direct contradiction to existing statute or other rule or procedures.

20. In **(2009) 1 SCC 73** titled as ***Chandrashekar A.K. vs. State of Kerala and Another***, the Apex Court has clearly held that the revision of the pay scale is a policy decision. The

recommendations related to revision of pay scale require its acceptance by the employer or the State which has to bear the financial burden and unless it is formally implemented by the authority concerned, it does not automatically come into force. The revised pay scales applicable retrospectively are available only to an employee who was in service on the date from which the revised pay scale has been given effect retrospectively.

In the said case, the appellant retired from service on 23rd May, 1995 and later on an O.M. dated 19th July, 1995 was issued which provided for a higher pay scale available with effect from 1st January, 1992. The appellant claimed for benefit of this O.M. as he was in service on 1st January, 1992. It was found as a fact that higher pay scale was not automatically applicable from 1st January, 1992 but it required specific approval of respondents who gave effect to the O.M. from 1st April, 1997 much after the appellant left the service.

21. In the present case also as it is clear, the appellant was not in service on the date when order dated 6th May, 2003 had come into effect. This order is effective from the date it was made. No

retrospective effect was given to this order. This order is also not contradictory to any right of the petitioner who had retired before the said order had come into effect. The petitioner has failed to show that this had a retrospective effect. The petitioner has relied on the findings of the Apex court in **(1984) 1 SCC 199** titled as ***Munshi Lal Verma vs. Union of India***. The findings in this case are not applicable on the facts of this case. In that case, the upgradation of post was done during the tenure of the appellant and thus the court had directed that the appellant be given the benefits arising out of that upgradation of post. In the present case, the benefit has been given to its employees by the respondent with effect from 6th May, 2003. Admittedly, on this date, the appellant was not in service of the respondent. No claim or right for grant of pay scale of Rs.12000-16,500 has accrued to the petitioner.

22. This writ petition has no merit in it. The same is hereby dismissed.

DEEPA SHARMA, J

GITA MITTAL, J

APRIL 28, 2014/rb