

Court No. - 4

Case :- WRIT - A No. - 3860 of 2020

Petitioner :- Deen Dayal And 14 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Avanish Kumar Upadhyay, Raj Kumar Upadhyay

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 15363 of 2021

Petitioner :- Awdhesh Kumar Dubey

Respondent :- The State Of U.P. And 3 Others

Counsel for Petitioner :- Avanish Kumar Upadhyay, Raj Kumar Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Raj Kumar Upadhyay, learned counsel for the petitioners and Sri S.K. Pal, learned Additional Chief Standing Counsel appearing for the State respondents.

2. Petitioners before this Court in Writ-A No.3860 of 2020 are Group-D category employees of the UP State Cement Corporation Limited and they are aggrieved by the order dated 07.02.2020 for the reason that their claim for correct pay fixation has been rejected in gross violation of the directives issued by the **Supreme Court in the matter of Civil Appeal No.9165-9172 of 2010 (Sunil Kumar Verma & ors v. State of UP & ors)** vide its paragraph 14 as well as the decision taken previously by the State Government vide government order dated 27.08.2010. The petitioner in Writ-A No.15363 of 2021 belonged to Group-C category and seeks a direction for the authority to fix his pay on the basis of last pay drawn by him while he worked as an employee of erstwhile Cement Corporation in light of the decision taken by the State Government reproduced in the order of Supreme Court. Petitioners in Writ-A No.3860 of 2020 are seeking identical relief in Group-D category.

3. It is argued on behalf of the petitioners that while disposing of the matter in the case of **Sunil Kumar Verma (supra)**, the Court referred to the stand taken by the State Government in contempt petition drawn before the Supreme Court being Contempt Petition No.255 of 2008 in Civil Appeal No.782 of 2006. In order to comply with the judgment of the Supreme Court in its letter and spirit, the Government took a decision that all those absorbed

employees shall be given pay fixation as far as possible nearest to the last pay drawn by them. It is in light of the aforesaid statement made/stand taken by the State Government that Supreme Court disposed of the contempt petition making observations that aggrieved petitioners would be making representation which would be decided. Relevant paragraphs 14 & 15 of the judgment of the Supreme Court in the case of **Sunil Kumar Verma** (*supra*) is reproduced hereinunder:-

"14. We will be failing in our duty if we do not take note what followed thereafter. After the directions were issued by this Court, Contempt Petition No.255 of 2008 in Civil Appeal No.782 of 2006 and certain other contempt petitions were filed. This Court issued directions from time to time as the employees were not absorbed. Thereafter, they were absorbed and this Court directed for payment of salary component and certain other consequential benefits from the date of retrenchment. This Court referred to the order passed by the State Government and reproduced the same. It is extracted hereunder:-

"Hon'ble Governor has been pleased to accord its sanction to extend following facilities/benefits to the petitioners of Contempt Petition No.255/2008-Mukund Lal Singh versus Atul Kumar Gupta, Secretary, Government of Uttar Pradesh; Contempt Petition No.256/2008- Shailendra Kumar Pandey and others versus Kunwar Fateh Bahadur Singh and others; and Contempt Petition No.15/2009 (Civil Appeal No.782/2006) – Mohd. Shakiluddin and others versus Shri Atul Kumar Gupta and others and other connected Civil Appeals pending before the Hon'ble Supreme Court as well as those petitioners who are covered by the Judgment and order of the Hon'ble Supreme Court dated 31.1.2008 and in furtherance to government order No.3504/ 77-1-2009 /13(Cement)/2004 dated 3.12.2009.

1) All the petitioners of the aforesaid Contempt Petitions and all others who are covered by the Judgment of the Hon'ble Supreme Court dated 31.1.2008, will be deemed to have been absorbed in the government service with effect from the date of their retrenchment by the Uttar Pradesh State Cement Corporation Limited.

2) If it is not possible to absorb Petitioners of the aforesaid Contempt Petitions and all others who are covered by the Judgment of the Hon'ble Supreme Court dated 31.1.2008, on the posts on which they were working in the Uttar Pradesh Cement Corporation Limited on the date of their retrenchment, then they be protected in the pay scale for the post on which they are being absorbed, in such a manner that their salaries are closest to the salaries which they were withdrawn on the date of their retrenchments from the Corporation. It was further decided in the meeting that if the last salary drawn by them was higher than the salary being given to them after their absorption in the government service, then such a difference be considered as personal pay and such personal pay be given to them from the date of their retrenchment. But before doing so, an undertaking must be obtained from the concerned personnel that he has not already received any other benefits, salary, retrenchment compensation etc. from the Official

Liquidator, for the period after their retrenchment from parent department. If any personnel has already availed any benefit from the official liquidator for the period after his retrenchment, then same will be adjusted from the arrears of the said personnel. Affidavit of undertaking given by the personnel should also be got verified from the official liquidator.

3) Besides above, these personnel will also be entitled effect from the date of their retrenchment.

4) These benefits are being extended to all the Petitioners of the aforesaid Contempt Petitions and all others who are covered by the Judgment of the Hon'ble Supreme court dated 31.1.2008, in accordance with the directions given by the Hon'ble Supreme Court. However, these benefits would not have been available to them in normal course. It is also pertinent to mention here that no other personnel will be entitled to such benefits in future.

5) Services rendered by these personnel in U.P. Cement Corporation Ltd., i.e., before their absorption in government service, will not be considered for the purpose of their pensionary benefits.”

15. After reproducing the said order, this Court noted that as the order had been substantially complied with the direction given by the High Court and the order passed by this Court, there is no valid reason to continue with the contempt proceedings. Additionally, this Court added, which we may profitably reproduce:-

“If the petitioners are not satisfied with the fixation of their pay etc., they may make representation(s) to the competent authority. Such representation shall be disposed of by the concerned authority within next two months by passing speaking order. If the petitioners are not satisfied with the order passed on their representation(s), then they shall be free to avail appropriate legal remedy.”

4. Supreme Court took exception to the decisions taken by the High Courts for not adhering to the rule of judicial discipline for the reason that judgments passed by the Supreme Court were not followed in their letter and spirit and hence directed in the matter that all those petitioners who were identically absorbed could not be denied benefit of order of the Supreme Court. Vide paragraph 17 of the judgment, the Apex Court observed thus:-

"17. In this regard, a few lines from **Sundarjas Kanyalal Bhatija v. Collector** is worth reproducing:-

"... One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority."

We have highlighted this aspect as we intend to ingeminate that this kind of unnecessary enthusiastic quest should be avoided. It is because it is contrary

*to the principles of judicial discipline. In this regard reference to **Official Liquidator v. Dayanand & ors** would be apt. In the said ruling, it has been observed thus:- "There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system."*

5. It is argued on behalf of the petitioners that the petitioners came to be absorbed under the command of the Supreme Court but their pay fixation was arbitrarily done. So far as petitioner of Writ-A No.15363 of 2021 is concerned, the pay fixation was done at the basic of the pay drawn by the petitioner on 08.12.1999 which was Rs.1893 whereas last pay drawn by the petitioner was Rs.6226 at the time of retrenchment on 08.12.1999 and both the documents have been brought on record as Annexures-6 & 9 to the petition. Likewise in respect of petitioners of Writ-A No.3860 of 2020, the fixation of pay was done at Rs.1679 which was basic of the pay drawn by them on 08.12.1999 whereas the last pay drawn by them at that relevant point of time was Rs.6461, Rs.6786, Rs.6461, Rs.6238 and Rs.5986 respectively. These documents have been brought on record as Annexures 5 & 9 to the writ petition and in respect of other petitioners, the pay fixation orders have been brought on record as Annexures-1 to 5 of the rejoinder affidavit in which also the pay fixation has been done on the basic of the pay being Rs.1679.

6. Counsel for the petitioners has drawn attention of the Court to the pay fixation of one Raj Kumar Singh in whose case the pay fixation has been done on the basis of last pay drawn at Rs.6850. Copy of that document has been brought on record as Annexure-7 to the petition. He further argues that in the matter of grade pay also, the petitioners have been discriminated against as in the case of Raj Kumar, it has been drawn at Rs.1800 whereas in case of petitioners herein it has been drawn at Rs.1300 only.

7. Thus, according to Mr. Upadhyay, petitioners have been discriminated arbitrarily and this act and conduct in rejecting the representation of the petitioners amounts to contempt of order of the Supreme Court.

8. Meeting the submissions, learned Additional Chief Standing Counsel has drawn attention of the Court to the pleadings raised in

the counter affidavit reiterating the stand taken in the order impugned that petitioners were not entitled to pay fixation at nearest to the last pay drawn at the time of retrenchment. In so far as the case of Raj Kumar Singh is concerned, the stand taken is that it was done by the Directorate of Industries which is in excess and differs from the absorbed employees of the agricultural department.

9. Upon a pointed query being made as to whether there can be discrimination between two departments of the State Government while making absorption of such employees under the command of the Supreme Court, moreso in the face of fact that in the contempt petition drawn against the State Government, the stand taken was that pay fixation would be done as far as possible nearest to the last pay drawn, the learned Additional Chief Standing Counsel could not dispute the legal position.

10. In such view of the matter, therefore, stand taken by the respondents merely because the agricultural department has taken a decision to fix the pay with the minimum of the basic pay, drawn by the petitioners at the time of retrenchment, appears to be in total contrast to the stand taken before the Supreme Court. The relevant paragraphs of the order of the Supreme Court has been highlighted above in which a clear stand was taken that as far as possible the pay fixation would be done at nearest to the last pay drawn.

11. The agricultural department is a department of State and State cannot be permitted to take dual stand, one in the matter of industries department and another in the matter of agricultural department. This not only sounds arbitrary and discriminatory both from the point of view of State being same employer in respect of identically placed employees but also the stand taken by the State Government is against the mandate of Article 14 of the Constitution.

12. Still further, I have noticed that in the matter of fixation of grade pay also, petitioners have been discriminated against and that also does not appeal to reason. In the entire counter affidavit, there is no pleading to the effect as to why the lesser grade pay has been awarded to the petitioners. All the retrenched employees of the erstwhile cement corporation are to be treated alike as they have all sailed in the same boat facing retrenchment at the end of the cement corporation and once the Court decided that all of them should be absorbed, then they should be meted out with similar treatment by the State Government and, therefore, I see no justification also for awarding lesser pay to the petitioners.

13. This is a fit case where matter ought to have been referred to the Supreme Court for drawing contempt proceedings against the erring official of the State Government for the reason and the manner in which the representation has been rejected in total ignorance of what has been observed by the Supreme Court in the case of **Sunil Kumar Verma** (*supra*). Once the State of U.P. had given an undertaking by filing affidavit that pay fixation would be done as nearest as possible to the last pay drawn by such absorbed employees, non-adherence to such a stand amounts to an act of criminal contempt. However, taking lenient view in the matter so as to provide immediate justice to the petitioners, I consider it appropriate to impose cost upon the authority while disposing of this matter.

14. Learned Standing Counsel does not dispute that both the petitions place identical question and no different stand can be taken in the petition in which no counter affidavit has been filed.

15. I, accordingly, proceed to ***dispose of*** the matter in view of the discussions made above and the legal position explained. The writ petitions succeed and are allowed. The order impugned in Writ-A No.3860 of 2020, dated 07.02.2020 passed by respondent No.1 (Annexure-12) is hereby quashed. The petitioners' pay fixation in their respective cadre shall be done appropriately as far as possible nearest to the last pay drawn as has been done in the matter of its employees like one Raj Kumar Singh of another department and also the grade pay should be awarded at par.

16. The appropriate orders of compliance shall be issued by doing needful within a period of one month of production of certified copy of this order. The respondents shall start paying current salary to the petitioners after fixation is done and the arrears accrued over the years right from the date of absorption till the actual fixation is done shall also be paid within next two months' time.

17. This petition thus stands allowed with a cost quantified as Rs.1 Lakh, which if not paid within one month, shall be recoverable as arrears of land revenue. Cost will go to the petitioners in equal share.

Order Date :- 19.9.2024

P Kesari