

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:61963-DB

Reserved on:08.08.2024

Delivered on:09.09.2024

Court No. - 2

Case :- WRIT - A No. - 19945 of 2020

Petitioner :- State Of U.P.Through Prin.Secy.Revenue Lucknow And
Another

Respondent :- Vikram Singh And Another

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C.,S.P. Singh Somvanshi

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per : Rajan Roy, J.)

1. Heard Shri Rajiv Srivastava, learned Standing Counsel for the State-petitioners and Shri S.P. Singh Somvanshi, learned counsel for the respondent no. 1.

2. This is a writ petition by the State challenging the judgment and order dated 31.05.2017 passed by the State Public Services Tribunal, Indira Bhawan, Lucknow in Claim Petition No. 1322 of 2016; Vikram Singh Vs. State of U.P. and Anr.

3. The Tribunal has allowed the claim petition of the opposite party no. 1 herein. It has quashed the order dated 08.06.2016 and has directed the opposite party no. 2 therein i.e. the District Magistrate, Pratapgarh to

reconsider the representation of the respondent-claimant for grant of benefit of 2nd ACP w.e.f. 01.12.2008 in the light of Government Order dated 05.11.2014 and 23.06.2015 by passing a reasoned order.

4. The contention of the learned Additional Chief Standing Counsel for the State is that the Tribunal has misread the Government Order dated 05.11.2014 to grant the relief aforesaid. In fact, as per the policy contained in the said Government Order the opposite party no. 1-claimant having been promoted from the post of Junior Assistant to the post of Senior Clerk/Senior Assistant vide order dated 04.05.2005 in the pay-scale of Rs.4000-100-6000 is not entitled to be given the second ACP as claimed w.e.f. 01.12.2008, in fact, prior to 01.12.2008 i.e. the date from which the 6th Pay Commission Recommendation and the Assured Career Progression Scheme became effective, the opposite party no. 1- claimant had not been granted any time scale under the earlier existing scheme, but, had been granted one promotion on 04.05.2005, therefore, the benefit of financial upgradation under the Assured Career Progression scheme would be admissible to him on completion of 10 years, 16 years and 26 years of satisfactory service from the date of promotion i.e. 04.05.2005 and not otherwise. He fairly accepted that in fact, the benefit already extended to the opposite party-1 claimant is also not in tune with the Government Order dated 05.11.2014 may be because the same were granted to him prior to issuance of said Government Order.

5. On the other hand learned counsel for the opposite party no. 1-claimant submitted that as per the order which was impugned before the Tribunal itself, it is the admitted factual position that higher Grade Pay of Rs.2800/- has been given to his client w.e.f. 01.12.2008.

6. In response learned counsel for the State/ petitioners submitted that as per the said order dated 08.06.2016 the opposite party no. 1-

claimant having been promoted on 04.05.2005 in the Grade Pay of Rs.2400/- the higher grade pay of Rs.2800/- was sanctioned to him on completion of six years from the said i.e. on 04.05.2011, but, on account of juniors to him having been granted the said benefit from 01.12.2008 the same was again sanctioned to him with effect from the said date i.e. 01.12.2008.

7. Learned counsel for the opposite party no. 1- claimant further submitted that in fact, the opposite party no. 1- claimant having been promoted in the year 2005 on the post of Senior Assistant in the Grade Pay of Rs.2800/- and the next grade pay being Rs.4200/- which is of the higher promotional post of Head Assistant after completion of 16 years of Service from the date of initial appointment i.e. 28.10.1991 his client should have been given the said Grade Pay of Rs.4200/- w.e.f. 01.12.2008, but, the petitioners herein misinterpreted Government Orders and have given the said Grade Pay only w.e.f. 18.03.2011 in place of 01.12.2008. It is in the circumstances that the claim petition was filed which has been allowed, rightly so, and the judgment of the Tribunal does not require any interference. In this regard he referred to various Government Orders dated 04.05.2010, 08.09.2010, 22.12.2011, 21.02.2014, 05.11.2014, 03.03.2015 and 26.08.2015.

8. We have heard learned counsel for the parties and perused the records.

9. The facts of the case in brief are that the opposite party no. 1- claimant was appointed as Junior Clerk in the regular Collectorate Establishment in the Pay-scale of Rs.950-1500 on 28.10.1991. On 01.01.1996 the 5th Pay Commission Recommendations were implemented. The pay of the said opposite party was fixed in the Pay-scale of Rs.3050-75-3950. On 28.10.1999 he was granted selection grade on completion of 8 years of service in the form of one additional

increment. On 04.05.2005 he was promoted as Senior Clerk/ Senior Assistant in the pay-scale of Rs.4000-100-6000 and his pay was fixed in the said scale. The said order and the pay-scales were never challenged by the State. With effect from 01.01.2006 the 6th Pay Commission Recommendations pay-scales came into force and his pay was fixed accordingly in pay-scale of Rs.5200-20200 Grade Pay of Rs.2400/-.

10. Prior to it, there was no such Assured Career Progression scheme but there was a scheme/policy for grant of time-scale or next promotional pay-scale/ next pay-scale, as the case may be, but, the opposite party no. 1 herein had not been given the first, second and third time-scale/ promotional pay-scale etc. under the old scheme, however, he had been given one promotion in the higher pay-scale as already stated.

11. Various Government Orders were issued from time to time regarding implementation of the assured career progression scheme w.e.f. 01.12.2008.

12. On coming into force of the Assured Career Progression scheme w.e.f. 01.12.2008 the opposite party no. 1 was already receiving salary in the pay-scale of Rs.5200-20200/- grade pay of Rs.2400/- thereafter he was given the second ACP w.e.f. 01.12.2008 as aforesaid in the form of next grade pay of Rs.2800/-. Under the ACP Scheme financial benefits were to be made available on completion of 10 years, 16 years and 26 years of service. This Scheme, as already stated, was effective from 01.12.2008. As per the said ACP Scheme on completion of said period of service in terms of the policy/scheme as contained in various Government Orders, the officer/employee would be entitled to one additional increment in the pay-scale as also the next grade pay.

13. On 18.03.2011 a Government Order was issued restructuring the post of Senior Clerk and the pay-scale attached to it with effect from the

issuance of the said Government Order. Consequent to it, the opposite party no. 1-claimant who was already receiving Grade Pay of Rs.2400/- was re-designated as 'Pradhan Sahayak' and his grade pay was enhanced from Rs.2800/- to Rs.4200/-. This was given effect from 22.12.2011.

14. It is the case of the State that higher grade pay of Rs.4200/- was incorrectly granted to the opposite party no. 1 w.e.f. 18.03.2011, in fact, it should have been granted from 22.12.2011 which is the date mentioned in the order dated 31.05.2013. Accordingly, the said error was rectified and an amount of Rs.13,610/- was recovered from him for the excess salary paid from 18.03.2011 to 22.12.2011.

15. Essentially, the claim of the opposite party no. 1-claimant before the Tribunal was that, he, already having been promoted in the year 2005 on the post of Senior Assistant in the Grade Pay of Rs.2800/- and the next higher post (promotional post) of Head Assistant carried a grade pay of Rs.4200/-, therefore, on completion of 16 years of satisfactory service from the date of initial appointment which fell prior to 01.12.2008, in view of the scheme which had come into effect from 01.12.2008, he should be given the grade pay of Rs.4200/- which is the next higher grade pay from 01.12.2008 and not from 18.03.2011 as has been done. This is clearly mentioned in Para 4.8 of the claim petition and is also evident from relief clause. This claim when raised before the authorities was declined vide order dated 08.06.2016. The Tribunal has allowed the claim petition with reference to Government Order dated 05.11.2014 and has quashed the order dated 08.06.2016. However, on a reading of the said Government order dated 05.11.2014 we fail to understand as to how this claim could be sustained.

16. The opposite party no. 1- Claimant is claiming 2nd ACP in the Grade Pay of Rs. 4200/- w.e.f. 01.12.2008 on the ground that he had already been promoted to the higher post in the higher pay-scale of

Rs.4000-6000/- on 04.05.2005 and the said pay-scale corresponded to the 6th Pay Commission Recommendation carrying a grade pay of Rs.2800/- under new pay-scale which came into effect from 01.01.2006, however, learned counsel for the opposite party no. 1 has lost sight of the fact that the said grade pay of Rs.2800/- came into effect from 01.01.2006 and his promotion was prior to it i.e. from 04.05.2005, therefore, apparently the contention is fallacious.

17. It is the admitted factual position that the opposite party no. 1-claimant had not been granted any higher pay-scale whether as time pay-scale or next promotional pay-scale or next pay-scale under the earlier existing Scheme i.e. the scheme prior to 01.12.2008, but, he had been promoted in the higher pay-scale of Senior Clerk on 04.05.2005. As already stated, 6th pay commission scales with corresponding grade pay came into effect from 01.01.2006, therefore, the contention of the opposite party no. 1- claimant that his promotion on 04.05.2005 was in the pay band carrying Grade Pay of Rs.2800/-, is factually incorrect, as, at that time these pay bands and grade pay were non existent.

18. The purpose of granting such higher pay-scales prior to 01.12.2008 under the earlier existing schemes in the form time-scale/next promotional pay scale/next pay-scale and the grant of similar however benefits under the new Assured Career Progression scheme which has come into effect 01.12.2008 is to address the situation of stagnation of an officer or employee in a particular rank or post. The object is that if an Officer or employee has not received any promotions for a particular period of service but has rendered satisfactory service, then, on completion of such service he would be given the next promotional pay-scale or if there is no promotional avenue, then, the next pay-scale or grade pay etc., as the case may be. In the case at hand though the opposite party no. 1- claimant was appointed on the post of Junior Clerk on 18.10.1991 he was promoted to the higher post of Senior

Clerk in a higher pay-scale on 04.05.2005. It being so, it is not as if he was stagnating on the said post. Accordingly, as per Government Order dated 05.11.2014, which, superseded the earlier Government Order dated 21.02.2014 and various other Government Orders as mentioned therein, in view of Para 3(क) thereof, the opposite party no. 1-claimant was entitled to grant of financial benefit on completion of 10 years of service from the date of his promotion i.e. 04.05.2005 and the second financial benefit under the ACP scheme on completion of 16 years of service from such promotion i.e. 04.05.2005 and the third financial benefit under the ACP scheme on completion of 26 years of satisfactory service from the date of such promotion i.e. 04.05.2005 subject to other conditions being satisfied and not from the date of initial direct recruitment on the post of Junior Clerk for the simple reason that he had not been stagnating but had been granted promotion in the interregnum on 04.05.2005. Any other understanding or interpretation or implementation of the said Government Orders/ policy would be against the very object of the same. The Government Order dated 03.03.2015 does not apply to the case of the opposite party no. 1, as, it applies to those, who, in spite of having completed 26 years of service have not been granted three financial benefits under the earlier exiting scheme or the new scheme. The Government Order dated 26.08.2015 is also not applicable considering the subject matter which it cater. The earlier Government Order 21.02.2014 has already been superseded. The benefits falling on completion of 10 years, 16 years and 26 years on satisfactory service would be calculated from the date of initial appointment by way of direct recruitment only in cases where in the interregnum officer/employee has not been promoted to higher post with higher pay scale and not otherwise.

19. The Tribunal has lost sight of the fact that as per Para 3 of the said Government Order dated 05.11.2014 as also that the opposite party no. 1 having already been promoted prior to 01.12.2008 the period of 10

years, 16 years and 26 years would have to be counted from the date of such promotion and not the date of initial recruitment which is apparent from a bare reading of para 3 of the said Government Order.

20. The word 'उक्तपद' appearing in Para 3(क) of the Government Order dated 05.11.1994 is a reference to the post of direct recruitment in a case where no promotions have taken place after such recruitment and in a case where such promotions have taken place, it means the promotional post. If there was any doubt the same stands removed in view of Para 7 of the same government order which says that after coming into force of the ACP scheme in the event a person directly appointed on a post is granted first promotion, then, he will be given only the 2nd and 3rd financial upgradation and in the event of second promotion he will be given only 3rd financial upgradation and if he has been promoted thrice, then, he will not be given any financial upgradation under the ACP Scheme. This, it makes the object of the scheme clear as already noticed hereinabove. Thus, the eligibility for second financial upgradation/financial benefit under the ACP Scheme would be considered from the date of such promotion.

21. Moreover, as already stated the promotion on 04.05.2005 was not in the new pay-scales which came into effect from 01.01.2006 nor in the grade pay of Rs.2800/-, apparently so, therefore, to claim the grade pay of Rs.4200/- from 01.12.2008 is apparently erroneous even as per pay structure available the initial grade pay is Rs.2400/- then Rs.2800/- and then Rs.4200/-. While fixing the pay of the opposite party no. 1 under the new pay-scales w.e.f. 01.01.2006 he was given salary in the pay-scale of Rs.5200-20200/- with grade pay of Rs.2400/-.

22. No doubt respondent was given the third financial benefit under the ACP scheme on 28.10.2017 and his pay-scale was revised from Rs.9300-34800/- and grade pay was enhanced from Rs.4200/- to

Rs.4600/-. On 03.10.2019 as per 7th pay commission scales the matrix level 6 has been granted to him by the Departmental Promotion Committee as he had already received the benefit of third ACP and is at present getting the Grade Pay of Rs.4600/-. It appears that prior to issuance of Government Order dated 05.11.2014 considering that the opposite party no. 1 had already been promoted on 04.05.2005 the benefit of second ACP was given to him w.e.f. 01.12.2008 and thereafter, for some inexplicable reason he has been given the benefit of third ACP under the Scheme w.e.f. 28.10.2017 on completion of 26 years of service which obviously has been calculated from the date of direct recruitment on initial post in the year 1991. This is apparently erroneous for reasons already discussed earlier. As already stated, he having been promoted to the higher post on 04.05.2005 as per policy he would have got the first financial benefit under the ACP Scheme on completion of 10 years which would be sometimes in 2015 and thereafter the second and third benefit would be given subject to the condition if he had not been promoted to the next higher post in the interregnum. It is however quite possible that the benefit of second ACP w.e.f. 01.12.2008 and thereafter the third ACP from 28.10.2017 were given to the opposite party no. 1- claimant prior to issuance of Government Order dated 05.11.2014, therefore, we will not interfere in the benefits already granted to him rightly or wrongly and our judgment will not be understood interpreted or implemented to recover or deny him the benefits already given to him. However, so far as the claim of the opposite party no. 1 for grant of the next grade pay of Rs.4200/- w.e.f. 01.12.2008 is concerned, the same is absolutely misconceived.

23. The Tribunal has erred in passing the impugned judgment dated 31.05.2017. It is, accordingly, quashed subject however to observations made hereinabove. The Claim Petition No. 1322 of 2016 is dismissed. As already stated the financial benefits of ACP already granted to the opposite party no. 1-claimant would remain undisturbed for the reasons

hereinabove, but, so far as his claim to grant of Grade Pay of Rs.4200/- w.e.f. 01.12.2008 is concerned, the same is absolutely misconceived.

24. The writ petition is **allowed**.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date: - 09.09.2024

R.K.P.