

Court No. - 5**1. Case :- WRIT - A No. - 667 of 2019****Petitioner :-** Van Nigam Sewa Nivrat Karmik Wel. Society U.P. Thru G.S.**Respondent :-** State Of U.P. Addl.Chief/Prin. Secy. Deptt. Of Forests And Ors**Counsel for Petitioner :-** Gaurav Mehrotra,Utsav Misra**Counsel for Respondent :-** C.S.C.,Lakshmipat Shukla**2. Case :- WRIT - A No. - 33763 of 2018****Petitioner :-** Rajendra Singh Jayara And 55 Ors**Respondent :-** State Of U.P Thru Prin Secy Forests And Ors**Counsel for Petitioner :-** Nandita Bharti,Vibhanshu Srivastava**Counsel for Respondent :-** C.S.C,L.P Shukla,Lakshmipat Shukla**3. Case :- WRIT - A No. - 36499 of 2018****Petitioner :-** Alok Kumar Jaiswal And Ors.**Respondent :-** State Of U.P. Thru Prin. Secy. Dept. Of Forests And Ors.**Counsel for Petitioner :-** Nandita Bharti,Vibhanshu Srivastava**Counsel for Respondent :-** C.S.C.,L.P. Shukla,Lakshmipat Shukla**Hon'ble Abdul Moin,J.**

1. Heard learned counsel for the petitioners, learned Standing Counsel for respondent-State and Shri Som Kartik Shukla, learned counsel for respondents No.3 to 5.

2. Learned counsels for the parties contend that the issue involved in all the three writ petitions is same. As such, the Court proceeds to hear all the writ petitions together and they are being decided by way of a common judgement. For convenience, facts of WRIT - A No. - 667 of 2019 In Re Van Nigam Sewa Nivrat Karmik Wel. Society vs State of U.P. & Ors are being taken.

3. Instant writ petition has been filed praying for following reliefs:-

"(a) To issue Writ, Order of Direction in the nature of Certiorari quashing the Impugned Government Order dated 14.01.2010 passed by the Respondent No.1 i.e. Additional Chief Secretary/Principal Secretary, Department of Forests, Government of U.P., to the extent it denies the payment of actual benefit in the revised pay scale as per the recommendation of 6th Pay Commission, with effect from 01.01.2006, a copy whereof is annexed as Annexure-1 to this Writ Petition.

(b) To issue Writ, Order of Direction in the nature of Certiorari quashing the Impugned Order dated 19.10.2010 passed by the Respondent No.2 i.e. Deputy Secretary, Department of Forest, Government of U.P., a copy whereof is annexed as Annexure-2 to this Writ Petition.

(c) To issue Writ, Order of Direction in the nature of Certiorari quashing the Impugned Order dated 27.06.2018 passed by the Respondent No.5 i.e. General Manager (Personnel) Uttar Pradesh Forest Corporation, a copy whereof is annexed as Annexure-3 to this Writ Petition.

(d) To issue Writ, Order of Direction in the nature of Certiorari quashing the Impugned Order dated 17.12.2018 passed by the Respondent No.4 i.e. Managing Director, Uttar Pradesh Forest Corporation, a copy whereof is annexed as Annexure-4 to this Writ Petition.

(e) To issue Writ, Order of Direction in the nature of Mandamus commanding Respondents to pay arrears of salary from 01.01.2006 to 31.12.2009 in the revised pay scale to the members of the Petitioner Society as per the recommendation of the 6th Pay Commission.

(f) Award the costs of the Writ Petition to the Petitioner Society."

4. Bereft of unnecessary details, facts of the case as set forth by the learned counsel for the petitioner are that the petitioner is a society registered under the Societies Registration Act, 1862 espousing the cause of its retired employees working in the Forest Corporation. In the connected writ petitions, some of the petitioners are serving employees of the Corporation.

5. Contention of the learned Counsel for the petitioner is that the benefit of the 6th pay commission has been extended to the State Government employees with effect from 01.01.2006 while with respect to the employees of the Forest Corporation, the same has been extended with effect from the issuance of the impugned Government Orders dated 14.01.2010 and 19.10.2010, copies of which are Annexure-1 & 2 to the petition.

6. Consequently vide the order dated 27.06.2018, a copy of which is Annexure-3 to the petition, the Corporation has also denied the extension of the benefit of the 6th Pay Commission with effect from 01.01.2006 based on the Government Order dated 16.10.2009 which again has been reiterated by respondent no.4 by issuing the order dated 17.12.2018, copy of which is Annexure-4 to the petition.

7. The contention is that the Government Order dated 14.01.2010 though extends the benefit of the 6th Pay Commission to the employees of various Corporations yet the same has been extended only on notional basis with effect from 01.01.2006 and on actual basis with effect from the date of issuance of the said Government Order.

8. Placing reliance on the Government Order dated 16.10.2009, a copy of which is Annexure-10 to the petition, learned counsel for the petitioner has placed reliance on Clause 3(7) of the said Government Order to contend that it categorically provides that where Dearness Allowance payable to the employees of the Corporation is equivalent to 50% of the basic pay then the process of pay fixation for employees of the Corporation shall be the same as was adopted for pay fixation of the employees of the State Government.

9. Contention is that in a meeting which has been held by the Forest Corporation, which has also been attended by the respondent No.1 as well as Secretary of the Finance Department, a copy of which is part of Annexure-11 to the petition (Page 114), it has been proposed by the Corporation that in terms of the Government Order dated 16.10.2009 the revised pay scale can be given to the employees of the Corporation with effect from 01.01.2006 for which the proposal had been sent to the State Government.

10. Subsequently vide a letter dated 22.12.2009, a copy of which is Annexure-12 to the petition, the Corporation had again expressed its intention and willingness of grant of the said pay scale to its employees with effect from 01.01.2006 for which again a proposal had been sent to the State Government.

11. It is contended that despite the aforesaid recommendation being sent by the Corporation, the State Government vide aforesaid Government Order had turned down the said proposal and had only directed for extending the pay scale of the 6th Pay Commission with immediate effect i.e. with effect from the date of issuance of the said Government Order dated 14.01.2010.

12. Reliance has also been placed on the judgment of this Court in ***Writ A No.7498 of 2014 In re U.P. Mandi Parishad Karmchari Sangh Through President Lko & Ors vs State of U.P. & Ors***, decided on 13.09.2022, a copy of which is Annexure-SA-1 to the supplementary affidavit dated 18.01.2024, to contend that with respect to the employees of the U.P. Mandi Parishad also, the State Government had refused the grant of benefit of the 6th Pay Commission with effect from 01.01.2006 rather the same had been extended with effect from 18.03.2011. The writ court in the aforesaid judgment has set aside the said order with a further direction to the respondents to pay the benefit of the 6th Pay Commission to the petitioner with effect from 01.01.2006, which has been complied with by the State Government as would be apparent from perusal of the orders dated 22.08.2023 and 23.08.2023, copies of which are as Annexure SA-2 and 3 to the aforesaid supplementary affidavit. Thus, it is contended that there cannot be any justifiable reasons for the respondents to not extend the benefits of 6th Pay Commission with effect from 01.01.2006 as were extended to the employees of the State Government.

13. On the other hand, learned Standing Counsel on the basis of averments contained in the counter affidavit has argued that the Government Order dated 14.01.2020 and the directions issued on 19.10.2010, a copies of which are Annexure-1 and 2 to the petition, are based upon the Government Order dated 16.10.2009 issued by the Department of Public Enterprises in which specific provision has been made that actual benefit upon the recommendation of the pay committee shall be provided with immediate effect and in pursuance thereof in fact the employees of the Corporation have been provided the said benefit with effect from the date of issuance

of the said Government Order and consequently there cannot be any occasion for extension of said benefit with effect from 01.01.2006 as has been extended to the State Government employees. It is further contended that aforesaid Government Order dated 16.10.2009 has not been challenged by the petitioner consequently they would be bound by the terms and condition of the said Government Order.

14. Shri Som Kartik Shukla, learned counsel appearing for the Corporation fairly states that keeping in view the proposal that had been sent by the Corporation to the State Government for extending the benefits of the 6th Pay Commission with effect from 01.01.2006, he stands with the said proposals.

15. From the arguments as raised by the contesting parties and perusal of the record, it emerges that the petitioners are all employees of the Forest Corporation, who are either retired from service or still are continuing in the service. They are aggrieved by not being given the benefit of the 6th Pay Commission with effect from 01.01.2006 i.e. the date from which the said benefit has been extended to the employees of the State Government. The petitioners have been extended the benefit in terms of the Government Order dated 14.01.2010 i.e. with effect from the date of issuance of the said Government Order and the benefits from 01.01.2006 had been given only on notional basis.

16. It has been argued that a perusal of the impugned Government Order dated 14.01.2010 followed by the impugned order dated 19.10.2010, copies of which are Annexure-1 & 2 to the petition, would indicate that while passing the said order reliance has been placed on the Government Order dated 16.10.2009 more particularly Clause 1 Sub clause (vi) of the said Government Order. The same has been made the basis for non extension of the actual benefit of 6th Pay Commission with effect from 01.01.2006 rather only from 14.01.2010.

17. A perusal of Clause 1 sub Clause (vi) of the Government Order 14.10.2009 indicates that said clause provides that for the purpose of

revised pay scale no financial benefit would be extended by the State Government.

18. At the same time, clause 3(ग) of the said Government order dated 16.10.2009 reads as under:-

ऐसे सार्वजनिक उपक्रमों/निगमों के कार्मिकों, जिनके वेतनमानों का पुनरीक्षण वेतन समिति (1997-99) की संस्तुति पर लिये गये निर्णय के अनुसार दिनांक 01 जनवरी, 1996 अथवा अनुवर्ती तिथियों से किया जा चुका है और उनके मूल वेतन के 50 प्रतिशत के बराबर महंगाई भत्ते की दरानराशि को महंगाई वेतन में परिवर्तित किया जा चुका है तथा दिनांक 01 जनवरी, 2006 को महंगाई भत्ता भी अद्यावधिक है, अर्थात् इनकी स्थिति राज्य कर्मचारियों के समान ही हैं। ऐसे कार्मिकों के वेतन निर्धारण हेतु वही प्रक्रिया अपनायी जायेगी जैसा कि राजकीय कर्मचारियों के लिए अपनायी गयी है।

19. A perusal of the aforesaid Clause would clearly indicate that employees of such Public Sector Undertakings/Corporations, whose pay scales have been revised as per the decision taken on the recommendation of Pay Committee (1997-99) from 1st January, 1996 or any subsequent date and the amount of dearness allowance equal to 50% of their basic pay has been converted into dearness pay and dearness allowance is also updated on 01st January, 2006 i.e. their status is same as that of State employees, then, for fixation of pay of such employees, the same procedure will be adopted as adopted for State Government employees.

20. A perusal of the minutes of meeting, which has been held by the Corporation, in which the Secretary, Finance has also participated, a copy of which is part of Annexure-11 to the petition, would indicate that a proposal has been sent by the Corporation indicating the pay scale as applicable to the Corporation and of adhering to Clause 3(ग) of the Government Order 16.10.2009. Said resolution is dated 09.11.2009 and an approval from the State Government has been asked for. The same has been reiterated by the Corporation vide its letter dated 22.12.2009, a copy of which is Annexure-12 to the petition, for giving the benefit of the 6th Pay Commission to its employees with effect from 01.01.2006 itself and again indicating that the same would be in consonance to the Government Order

dated 16.10.2009. Strangely, the said proposals have not been acceded by the State Government rather have been rejected by means of the Government Orders dated 14.01.2010 and 19.10.2010 and which have been indicated also by the Corporation while passing the orders impugned dated 27.06.2018 and 17.12.2018, copies of which are Annexure-3 and 4 to the petition, which incidentally are based on the rejection orders passed by the State Government.

21. Once the State Government has already issued the Government Order dated 16.10.2009 and in terms of the recommendations as made by the Corporation, as indicated above, the Corporation purports to adhere to Clause 3(π) of the Government Order dated 16.10.2009 consequently there does not appear to be any reason for the aforesaid impugned Government Orders to have been passed by the State Government refusing the proposal of the Corporation and directing for giving the benefit of the 6th Pay Commission with effect from the date of the order i.e. 14.01.2010 and not with effect from 01.01.2006 i.e the date when the said benefit has been extended to the State Government employees.

23. This Court in the case of ***U.P. Mandi Parishad Karmchari Sangh (supra)*** while considering the case of the employees of the Mandi Parishad pertaining to 6th Pay Commission which though came into force with effect from 01.01.2006 but has been extended to the employees of the Mandi Parishad with effect from 18.03.2011 has quashed the said orders. The Mandi Parishad also being a corporation like the Forest Corporations as in the instant case, its employees have been extended the benefit of the 6th Pay Commission with effect from 01.01.2006.

24. The order passed by the writ court has been complied with by the State Government consequently there cannot be any occasion for non extension of the same benefit to the employees of the Forest Corporation also when through its aforesaid proposals, the Corporation is said to have adhered to the conditions as stipulated in

the Government Order dated 16.10.2009 more particularly Clause 3(ग) of the said Government Order.

25. Keeping in view the aforesaid discussion, the writ petition is ***allowed***. Impugned orders dated 14.01.2010 and 19.10.2010, copies of which are Annexure-1 and 2 to the writ petition, are quashed to the extent they direct for grant of payment of 6th Pay Commission with effect from 14.01.2010. On the same analogy, the orders dated 26.02.2018 and 17.12.2018 passed by the Corporation, copies of which are Annexures 3 and 4 to the petition, are quashed to the extent they do not grant the benefit of 6th Pay Commission with effect from 01.01.2006.

26. The respondents are directed to extend the actual benefit of the 6th Pay Commission to the petitioner with effect from 01.01.2006 within a period of six weeks from the date of receipt of certified copy of this order.

Order Date :- 10.12.2024
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