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

Reserved on: 10.12.2015

% **Decided on : 29.01.2016**

+ LPA 783/2012 & C.M.No.5754/2015

NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY ..... Appellant

Through: Mr.Manoj Chatterjee, Ms.K.Iyer, and Ms.Drishti Chatterjee, Advocates

versus

NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY EMPLOYEES UNION ..... Respondent

Through: Mr.Abhishek Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA (JUDGMENT)

1. In this appeal the appellant has impugned the order of the Single Judge dated 01.08.2012.

2. The brief facts of the case are that the appellant is an autonomous non-profit organization, registered with the Registrar of Societies on 05.04.1976 and was established with the joint initiative of Ministry of Finance (hereinafter referred to as 'MOF') and Planning Commission to carry out research and training activities in the areas of public finance and policy, public expenditure, budgetry control etc. A Memo of Understanding (MOU) dated 09.03.1988 was executed between MOF and the appellant.

Under the MOU, the Central Government was to be represented by the Finance Secretary, Secretary (Revenue) and the Secretary, Planning Commission. The Chief Economic Advisor, Ministry of Finance and the Chairman, CBDT and the Chairman, CEBC were to be permanent invitees. Under the MOU the appellant was required to follow the Central Government's Rules relating to service conditions and pay and allowances for its non-professional core-staff and no revision in the scales of pay and allowances in respect of core staff was permissible except with the approval of the Ministry of Finance.

3. At the time, when appellant society was formulated and registered, the pay scale of Assistants and Stenographers was fixed at ₹450-800 although the pay scale of Stenographer/Assistants of Central Secretariat Service (CSS) was fixed at ₹425-800 after the 3rd Pay Commission Report. After the 4th Pay Commission recommendations, the appellant adopted the scale of CSS fixed at ₹1400-2600 for the Assistants and Stenographers with effect from 01.01.1986. Subsequently, by OM 31.07.1990 the scale of Stenographers/Assistants of CSS was increased to ₹1640-2900. In terms of the MOU the appellant did not bring the scale of respondents at par with that of Central Government employees. They consequently raised an industrial

dispute demanding the corresponding increase in their pay scale. A reference was made to Industrial Tribunal by the appropriate government's order dated 09.09.1997. The following were the terms of reference:

> *"Whether the Assistants and Stenographers of National Institute of Public Finance and Policy are entitled to fitment in the grade of Rs. 1640-2900 and revised D.A. and if so,what directions are necessary in this respect?"*

4. The Tribunal passed an award dated 12.04.2002 whereby, based on the statement of Mr.Naveen Bhalla, the appellants' AO granted the relief to respondents. The relevant statement of Mr.Naveen Bhalla is reproduced:

> *"The Institute has already implemented the scale of pay in respect of Stenographers Gr.II of Rs.5000-150-8000 to Rs. 5500-175-9000 w.e.f. August 2, 1999 with the approval of governing body of the institute. In respect of payment of arrears to the affected staff members w.e.f. 1.1.1986, the same will be paid to the staff members within three months from today latest by 31.1.2002,towards full and final settlement of this case."*

5. In the affidavit filed by appellant through Mr. Naveen Bhalla, the respondents claim was also admitted. This award was impugned before the Single Judge. The learned Single Judge after discussing the case laws i.e. ***West Bengal Vs. Subhas Kumar Chatterjee and Ors.*** (2010) 11 SCC 694, ***K.T. Veerappa and Ors. Vs. State of Karnataka and Ors.*** (2006) 9 SCC 406 and ***State of Haryana Vs. Haryana Civil Secretariat Personal Staff***

Association AIR 2002 SC 2589 dealing with the power of judicial review and relying on findings of the Supreme Court in ***Yogeshwar Prasad & Ors. vs. National Inst., Edu.Planning & Admn. & Ors.*** Civil Appeal Nos.288-289 of 2005 held as under:

> *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 4th Pay Commission)	*450-800*	*425-800*
1.1.1986 to 31.7.1990 (after coming into force of 4th 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 4th Commission pay scale) which was post 4th Pay Commission 1400-2600 was revised to Rs. 1640-2900.*
1.1.1996 to	*5000-8000*	*5500-9000*

1.8.199		
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.*

6. The appellant challenges the impugned judgment on the ground that the Assistants and the Group 'C' Stenographers of Central Secretariat Stenographers Service (CSSS) and Central Secretariat Service (CSS) are not comparable to the Assistants and Stenographers in its organization in terms of the recruitment rules, educational qualification, method of recruitment, duties, responsibilities, classification of posts etc. and that the designation cannot be the sole determinant for purposes of pay scales. It is further contended that the respondents are also not entitled to the pay parity for the reason that the Department of Education by Office Memorandum dated 11.12.1990 had categorically instructed the Ministry/Departments to roll

back the extended pay scales to all the persons who do not belong to CSS/CSSS. It is further submitted that even the 5th Pay Commission did not recommend the pay parity for the respondents' staff with that of staff of the CSS and CSSS since they were placed in the pay scale of ₹5000-8000. Also that the wisdom of Pay Commission recommendations cannot be questioned before the Court. It is further contended that this court lacks jurisdiction under Article 226 of the Constitution of India to issue directions to the Central Government to grant a particular pay scale to its employees.

7. It is submitted that learned Single Judge exceeded her jurisdiction and failed to consider the various pronouncements wherein the claim for parity with the staff of CSS and CSSS had been rejected. Reliance is placed on the findings in the case of ***Union of India vs. Tarit Ranjan Das*** 2004 (2) ALT 48 SC, ***Chairman, National Productivity Council vs. Association of Employees of National Productivity Council*** 2008 (150) DLT 618, ***S.K.Sharma vs. National Council for Cement of Building Material and Anr.*** 2013 (134) DRJ 397, ***Jagmohan Sharma & Ors. vs. NIPCCD & Ors.*** W.P.(C) 7958/2011, ***APEDA Assistant and Stenographer – I Employees Association vs. Union of India & Ors.*** LPA 635/2015.

8. The respondents on the other hand have relied upon on the findings in the case of ***Yogeshwar Prasad's*** case (*supra*). The relevant para is reproduced as under:

> *"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 IIIrd Pay Commission their pay scale could be different? and how their duties, obligations and responsibilities became different only for a brief period?"*

9. It is further argued that the case law relied upon by the appellant has no application to facts of this case because in the present case the pay scale of the Assistants and Stenographer of the appellant organization was fixed at ₹450-800 with effect from 01.01.1976, whereas that of the Central Government employees was fixed at ₹425-800 by the Third Pay Commission. However, after the Fourth Pay Commission recommendation, parity was granted and both were placed in the pay scale of ₹1400-2600/- with effect from 01.01.1986. While by Office memorandum dated 31.07.1990 issued in terms of the order dated 23.05.1989 in OA No.1538/1987 (of the Central Administrative Tribunal, Principal Bench, Delhi) the pay scale of Stenographers Grade II and Assistants of CSS and

staff of CSSS was enhanced to ₹1640-2900 from ₹1400-2600, the appellant did not correspondingly increase the scale of the respondent which it was required to do under MOU which mandates that the appellant was to follow Central Government rules regarding service conditions and pay and scale of its non-professional staff.

10. It is further contended that with effect from 02.08.1999 the scale of respondents was brought at par with that of Central Government employees and their pay is now fixed in the scale of ₹5500-9000. It is further submitted that this pay parity was also maintained in the Sixth Pay Commission and its respondents were also given the same scale i.e. ₹9300-34800 at par with the employees of CSS and CSSS. It is further submitted that the disparity between the scales of the respondents and that of CSS and CSSS staff remained only during the said short period between 01.01.1986 to 01.08.1999. It is submitted that the case law relied upon by the appellant has no bearing to the facts of this case because the parity between the scales of respondents and that of CSS and CSSS had never been disputed by the appellants. It is submitted that the denial of pay parity during this period i.e. 01.01.1986 to 01.08.1999 is arbitrary, baseless and unfounded. It is further contended that the learned Single Judge has considered all the materials on

the record and the impugned judgment does not suffer from any illegality and therefore the present appeal is liable to be dismissed.

11. We carefully considered the rival contentions of the parties and considered the record.

12. There is no dispute that the pay scale of respondents during the period 01.01.1976 to 01.01.1986 was higher than that of staff of the Central Government; pursuant to the recommendations of the 4th Pay Commission the Government had fixed the scale of both (the employees of the appellant and that of CSS) in the same scale i.e. ₹1400-2600. It is also a fact that subsequently by an office memorandum dated 31.07.1990, the government revised the scale of employees of CSS and CSSS and placed them in the scale of ₹1640-2900 while the respondents continued to be in the scale of ₹1400-2600. It is also undisputed that as per the terms of MOU the respondents were to be governed by Central Government rules and norms relating to their service condition and pay and allowances. The appellant however could not have revised the scale of pay and allowances of the respondents without concurrence/approval of the Ministry of Finance, in view of express prohibition under the MOU. Under the MOU, policy decisions could be taken only by the governing body and the governing

body has not only the representatives of MOF and Ministry of Planning but also economic advisor of MOF and Secretary of Revenue department of Government of India besides other representatives. The relevant clause of MOU is reproduced as under:

> *".... Under the Memorandum of Association and Rules of the Institute, all policy matters are to be decided by its Governing body on which the Central Government is represented by the Finance Secretary, Secretary (Revenue) and the Secretary, Planning Commission, while the Chief Economic Advisor, Ministry of Finance, Chairman, CBDT, and Chairman, CBEC are permanent invitees. Three among the members States are represented by their Finance Secretaries by rotation. The Governing Body also includes a few distinguished economists and heads of specified sister research institutions."*

13. In terms of the MOU the Governing Body of the appellant, which has the representatives of Central Government (Finance Secretary, Secretary (Revenue) and the Chief Economic Advisor, Ministry of Finance and the Chairman, CBDT and the Chairman, CEBC are the permanent invitees) is competent to take a policy decision. If the Governing Body takes makes certain policy decisions, it can reasonably be termed as a decision in concurrence with the Central Government (which also includes MOF). It is also a fact that before the Industrial Tribunal Mr.Naveen Bhalla, AO of the appellant had made a statement wherein he had admitted that the

appellant, with the approval of the Governing Body had revised the scale of pay of respondents from ₹5000-150-8000 to ₹5500-175-9000 with effect from 02.08.1999 and also undertook to pay the arrears with effect from 01.01.1986 within three months. The abstract of the Minutes of Meeting of the Governing Body held on 07.08.2000 regarding Item No.9 is reproduced as under:

> *"ABSTRACT OF THE MINUTES OF THE GOVERNING BODY MEETING HELD ON AUGUST 7, 2000. REFER ITEM NO.9*
>
> *Agenda Item 9:*
>
> *Proposal to revise the scale of pay attached to the post of Stenographer Grade-II.*
>
> *The Director informed the members that the Governing Body at its meeting held on July 31, 1999 approved the proposal for upgradation of the scale of pay attached to the post of Assistants to the Government of India. Accordingly, the pay scale attached to the post of Assistants was upgraded to Rs.5500-175-9000 with effect from August 2, 1999.*
>
> *The Director Further informed that in the Central Government, Stenographer Grade-II a post equivalent to the post of Assistant, are also placed in the scale of pay of Rs.5500-175-9000, whereas the Stenographer Grade-II in the Institute are presently in the scale of pay of Rs.5000-150-8000. In order to remove the anomaly, it is proposed that the scale of pay attached to the post of Stenographer Grade-II may also be revised to Rs.5500-175-9000 to bring them at par with the Assistants of the Institute, with effect from August 2, 1999.*

After a brief discussion, the Governing Body approved the proposal to revise the scale of pay attached to the post of Stenographer Grade-II from Rs.5000-150-8000 to Rs.5500-175-9000, to bring them at par with the Assistants of the Institute, with effect from August 2, 1999."

14. The appellant had also filed an affidavit of Sh.Naveen Bhalla, AO before the Industrial Tribunal wherein the respondents' claim was admitted. The appellant's governing body had thus revised the pay scale of respondents and brought it at par with that of CSS and CSSS with effect from 02.08.1999 and subsequent to VIth Pay Commission recommendations that parity was maintained. The matter thus relates to the grant of pay parity during the period 01.01.1986 to 01.08.1999.

15. The appellants' contention that this court lacks jurisdiction under Article 226 of the Constitution of India to direct pay parity and its reliance on the case law cited in support of such contention has no relevance in the peculiar facts of this case. Here at the time when appellant organization was created way back in 1976, the respondents were placed in higher pay scale of ₹450-800 while the scale of CSS employees was ₹425-800. This was fixed in terms of the Third Pay Commission recommendations. The Central Government thus, based on recommendations of that Pay Commission placed the respondents in higher grade than that of CSS. In Fourth Pay

Commission both were brought at par. However, the CSS employees were subsequently placed in pay scale of Rs.1640-2900 while correspondingly appellant did not revise the scale of respondents (under MOU, this policy decision was to be taken by governing body in which Central Government has its representatives). Later, the Governing body revised the pay scale of respondents with effect from 02.08.1999. The learned Single Judge has, rightly relied on the findings of the Supreme Court in ***Yogeshwar Prasad's*** case (supra). The order of the learned Single Judge does not suffer with any infirmity and needs no intervention. The letters patent appeal has no merit. The appeal and the pending application are hereby dismissed with no order as to costs.

DEEPA SHARMA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

JANUARY 29, 2016
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