

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 313 of 2019**

{Arising out of order dated 08.03.2019 passed by learned Single Judge in Writ Petition (S) No. 6638 of 2010}

1. SECL Through its CMD Seepat Road, Bilaspur, Chhattisgarh.
2. The General Manager, Central Excavation Workshop, SECL Korba, Chhattisgarh.

---- Appellants**Versus**

- Vinod Kumar Tiwari, S/o Late Shri S.K. Tiwari, aged about 43 years, Resident of Q.No. B-3, Shakti Nagar Colony, S.E.C.L. Gevra, Post – Gevra, District Korba, Chhattisgarh.

---- Respondent

For Appellants	:	Shri Sudhir Kumar Bajpai, Advocate.
For Respondent	:	Smt. Meena Shastri, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Judge****25.07.2019**

1. The Appellant company has challenged the impugned order passed by the learned writ Court dated 08.03.2019 whereby the learned Single Judge allowed the writ petition and directed for payment of difference of pay between the pay scale as mentioned in the appointment order and corresponding revisions thereafter.
2. Brief facts, in nutshell, are that the Respondent was appointed by the North Eastern Coalfields (for short, 'NEC') on 08.02.1994 on the post of Assistant

Foreman (Mech.) Technical and Supervisory Grade-C on the pay-scale of 1405-69-1957-76-2565/- and posted at Simsang Project.

3. During the course of his service, the Respondent was transferred from NEC to SECL (South Eastern Coalfields Ltd.) and fixed his pay-scale as Rs. 1222-60-1702-66-1230/-. The Respondent made several representations to the authorities to which the authority has also forwarded the representation concerned department and sought instructions with respect to fixation of basic pay of the Petitioner on which he was appointed. But his application / representation has not been considered in accordance with law and therefore, the Respondent has filed writ petition seeking for the following reliefs:

“(i) That, the Hon'ble Court be pleased to direct the respondents to follow the principle decided General Manager (I.R.) in letter dated 08.09.2005 address to Coal India.

(ii) That, the petitioner is entitled to protection of basic pay since his joining of S.E.C.L. with all consequential benefit as per NCWA IV to NCWA-VIII, with the arrears of wages with 12% interest.

(iii) Any other relief, which may be deemed fit by this Hon'ble Court just and proper in the facts and circumstances of the case may also be provided in favour of the petitioner.”

4. After hearing the counsel for the parties, the learned writ Court allowed the writ petition in the following terms:

“12. The writ application is allowed. The Respondent-SECL is directed to make sure that they pay the difference between the pay-scale on which he was initially appointed i.e. 1405-69-1975-76-2565/- and corresponding revisions thereafter from time to time. A decision in this regard must be taken by the Respondent authorities within a period of eight weeks from the date of production of a copy of this order.”

5. Learned counsel appearing for the Appellant submits that the Respondent was appointed in NEC but during his probation period, he was transferred to SECL

and as he was not confirmed on the post on which he was appointed, the basic pay has been fixed as prevailing where he was posted, serving and has been confirmed in his service. He further submits that the writ petition has been filed after long delay and therefore, the learned writ Court ought not to have considered and entertained the writ petition.

6. On the other hand, learned counsel appearing for the Respondent submits that the Respondent was appointed by the NEC and he was transferred on an administrative ground and not on his own request and therefore, his pay-scale cannot be brought down, to the scale prevailing in the institution where he was transferred.
7. The employee of any department if sent on the ground administrative exigencies to other department then the employee has a vested right for protection of pay and other benefits on which he was appointed. The pay-scale on which the employee is appointed is one of the terms and conditions of the service. Once the employee is appointed by any employer and appointment order is issued then the terms and conditions on service cannot be changed at the whims of the employer. In the instant case Respondent was transferred to other wing unilaterally.
8. Learned writ Court after considering the over all facts and circumstances of the case held as under:

“This Court is not satisfied with the reason which has been offered by the SECL as the justification for reduction of the pay-scale of the Petitioner. The transfer of the Petitioner from NCE, Assam was a decision taken by the CIL unilaterally. He has carried his post and position by virtue of the order of transfer which does not indicate that his pay-scale or salary will get reduced by virtue of such transfer. The office order contained in Annexure P/1 is silent. Even otherwise, a person does not lose his perks and privileges specially salary on an order of transfer because any reduction in his pay-scale would

amount to reduction in his stature, even though he may be substantively holding the post. Since the decision of transfer was taken by the CIL unilaterally, therefore, no decision contrary to the interest of the Petitioner could be taken by reducing his pay-scale to bring it in conformity with what was available to similarly placed employees in Gevra Area. It was his pay and it should be treated as his personal pay as he was not an appointee of SECL.”

9. We have gone through the documents annexed alongwith the writ petition.
10. The appointment order dated 08.02.1994 (Annexure P/5) which is issued by the NEC mentions the basic pay and the pay-scale of the Respondent as Rs. 1405-69-1975-76-2565/-. The Respondent has also enclosed the document which he got under the Right to Information Act, 2005 wherein it has been mentioned the details of the Respondent and the ground / reason for transferring him from NEC to SECL to be on administrative grounds.
11. The Appellant-Company has not filed any document showing the policy of the company in case of transfer of the employees working in one coalfield to another coalfield. But only argument advanced by the learned counsel appearing for the Appellant that the Respondent was transferred during his probation period and has been confirmed in the SECL and his pay-scale / basic pay has been fixed according to the pay-scale of Assistant Foreman as prevailing in SECL.
12. It is not the case of the Appellant that the transfer has been made on the application made by the Respondent himself seeking his transfer from NEC to SECL and his transfer has been made as a conditional transfer. The Hon'ble Supreme Court in the matter of **K. Gopinathan vs. Union of India** reported in **(1992) 4 SCC 701** has dealt with the issue of reduction of pay-scale on absorption of employee and held as under:

“We are afraid we cannot subscribe to this reasoning. While upholding the view of Central Administrative Tribunal, Principal

Bench, New Delhi in Original Application No. 1680 of 1989 in SLP (C) No. 2196 of 1992, we have pointed out how the basic pay cannot be reduced. The same principal will be applicable to this case as well. Accordingly, the appeal is allowed. However, there shall be no order as to costs.”

13. In the aforementioned case employee who was working as Assistant Sub Inspector was taken on deputation by CBI. During the period of deputation he was paid salary of parent department and also deputation allowance subsequently he was absorbed permanently and his pay was re-fixed and while refixing his basic pay was reduced from 510 to 390 but over all pay was more. The Central Administrative Tribunal held that salary was more than the basic pay than in earlier department by add dearness allowance there was no real reduction in basic pay. In these facts Supreme Court had held as aforementioned.
14. Coming to the facts of the case in hand the Respondent was initially appointed on a pay-scale of Rs. 1405-69-1975-76-2565/- at Simsang Project. Respondent was transferred by NEC to the SECL unilaterally. In these facts case of the Respondent is covered with the pronouncement of the Hon'ble Supreme Court in the matter of **K. Gopinath (supra)**.
15. In the above facts and circumstances of the case and the verdict of the Supreme Court, we do not find any illegality or infirmity in the impugned order.
16. The writ appeal is devoid of merit which is liable to be dismissed and is accordingly dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge