

High Court for the State of Telangana

**THE HONOURABLE THE CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY**

Writ Petition No.42297 of 2018

Date: 05.02.2020

Between:

The Pay & Accounts Officer, Department of Statistics,
Room No.27, 4th Floor, Sardar Patel Bhavan,
New Delhi – 100 001
and two others

... Petitioners

... And

S.Veerabhadraiah

...Respondent

Counsel for the petitioners : Mr.G.Venkateshwarlu
for Assistant Solicitor General

Counsel for the respondent : Mr.Kumara Swamy
for Mr.G.Pavana` Murthy

The Court made the following:

ORDER: *(Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)*

The petitioners have challenged the legality of the order, dated 07.12.2017, passed by the learned Central Administrative Tribunal, Hyderabad Bench, Hyderabad in O.A.No.021/0040/2017, whereby the learned Tribunal had granted the benefit of the upgraded pay scale of Rs.6500-10500, and the corresponding pay scale in the VI CPC, and Grade Pay of Rs.4600/- for the purpose of re-fixation of the applicant's pension. Moreover, the learned Tribunal had directed the respondents (the petitioners before this Court) to re-fix the pension of the applicant in accordance with the instructions in the Office Memorandum dated 06th April, 2016, and pay the consequential arrears within a period of three months from the date of receipt of a copy of the order.

2. Briefly the facts of the case are that on 19.11.1956 the applicant, Mr. S. Veerabhadraiah, joined in the National Sample Survey Organization as an Investigator. In April, 1982, he was promoted as a Superintendent, Field Operations Division. Subsequently, on 01.05.1982, he was absorbed in the National Hydro-Electric Power Corporation Limited. Therefore, the applicant was deemed to have retired from the Government of India after putting in service of twenty-six years. The applicant retired on 06.07.1984. After his retirement, his pension was revised to Rs.6,840/-, and his restored one-third pension was fixed at Rs.4,824/- w.e.f., 01.01.2006. Since the applicant was aggrieved by the denial of the benefit of upgraded pay-scale of Rs.6500-10500, and the corresponding pay-scale under the VI CPC, and the Grade Pay of Rs.4,600/- for the purpose of re-fixation of his pension, and since he was of the opinion that

his pension, in fact, should be re-fixed as Rs.8345/-, he filed the present OA before the learned Tribunal. As mentioned hereinabove, by order, dated 07.12.2017, the said OA was allowed in the aforementioned terms. Hence, this petition before this Court.

3. The issue before the learned Tribunal was whether those retirees, who retired prior to 2006, would be entitled to the benefit of upgradation of posts subsequent to their retirement, and thus would be entitled to the upgradation of their pay scale, and re-fixation of the pay or not? The said issue was decided by the Delhi High Court in the case of **Ram Phal v. Union of India**¹, wherein the Delhi High Court had not only quashed the Office Memorandum dated February 11, 2009, which had denied such benefit to the pre-2006 retirees, but had also directed the respondents therein to give the benefit of the upgraded pay scale, and to re-fix the pension of the pre-2006 retirees.

4. The learned counsel for the petitioners submits that the judgment passed by the Delhi High Court in the case of **Ram Phal** (supra) is under challenge before the Hon'ble Supreme Court. However, the learned counsel frankly conceded, and in the opinion of this Court rightly so, that the judgment of **Ram Phal** (supra) has not been stayed by the Hon'ble Apex Court. But, the learned counsel submits that subsequently the Delhi High Court had decided the case of **Rajendra v. Union of India & Ors** by judgment dated 14.09.2017 in W.P(C) No.8113 of 29016, while relying on the judgment of **Ram Phal** (supra). In the case of **Rajendra**, the Delhi High Court had granted the benefit of the upgraded pay scale, and had directed re-fixation of the pension,

¹2017(2) SLR 1982 Delhi

but the said judgment has been stayed by the Hon'ble Supreme Court in **Union of India & Ors v. Rajendra** by order dated 03.07.2018 in SLP (Civil) Dairy No.20410/2018. Therefore, the learned counsel submits that the learned Tribunal is not justified in relying on the case of **Ram Phal** in order to grant the similar benefit to the applicant in the present OA.

5. On the other hand, the learned counsel for the applicant submits that admittedly, the judgment in the case of **Ram Phal** had never been stayed by the Hon'ble Supreme Court. Therefore, it continues to hold the field. Moreover, in **Union of India v. Rajendra** (supra), the Hon'ble Supreme Court has merely stayed the recovery of the amounts already paid to the respondent in the said SLP, Mr.Rajendra. Thus, the Hon'ble Supreme Court has not stayed the operation of the entire judgment of **Rajendra** (supra). Moreover, the learned counsel has relied on the case of **the Pay and Accounts Officer, Archaeological Survey of India, Secunderabad and Ors v. L.L.Sudhakar Reddy** (W.P.No.39884 of 2018 dated 31.01.2019), whereby a learned Division Bench of this Court had dismissed the writ petition filed by the petitioners (the same petitioners as presently), and had upheld the order of the learned Tribunal dated 27.02.2018, where the same benefit of upgraded pay scale, and the re-fixation of pension was allowed by the learned Tribunal. Therefore, according to the learned counsel, the present case is squarely covered by the case of **L.L.Sudhakar Reddy** (supra). Hence, the learned counsel has supported the impugned order passed by the learned Tribunal.

6. As mentioned above, the only issue before the learned Tribunal is whether the pre-2006 retirees are entitled to the upgradation of the pay scale, and the re-fixation of their pension or

not? As noticed above, in the case of **Ram Phal**, the Delhi High Court has quashed the Office Memorandum issued by the petitioners denying such a benefit, and had granted the benefit of upgradation of the pay scale, and the re-fixation of the pension. Undoubtedly, the said judgment of the Delhi High Court has not been stayed by the Hon'ble Supreme Court. Even the stay granted in the case of **Rajendra** (supra) is only limited to the recovery part of the judgment. Hence, the judicial thinking presently is that those who have retired prior to 2006 would indeed be entitled to the upgraded pay scale, and the re-fixation of their pension. A similar view has been expressed by the learned Coordinate Bench of this Court in the case of **L.L.Sudhakar Reddy** (supra). Therefore, even the present case is covered by the said judgment.

7. Hence, for the reasons stated above, this Court does not find any illegality or perversity in the order, dated 07.12.2017, passed by the learned Tribunal. Since this writ petition is devoid of any merits, it is hereby dismissed. The petitioner is directed to carry out the directions of the learned Tribunal within a period of two months from the date of receipt of the certified copy of this order. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A.ABHISHEK REDDY, J)

05th February, 2020

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