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WPA 11951 of 2018

Shri Binod Chandra Jena
Vs.
Indian Institute of Technology,
Kharagpur (IIT Kharagpur) & Ors.

Mr. Ujjal Roy
Mr. Arpa Chakraborty
... For the petitioner.

Mr. R.N. Majumder
Mr. S.M. Obaidullah
... For IIT.

In this writ petition, the petitioner has challenged an order dated June 12, 2018 issued by the Registrar of Indian Institute of Technology at Kharagpur (in short, “the Institute”). The said order has been passed in purported compliance of the judgment and order dated January 15, 2018 passed by a Coordinate Bench of this Court in W.P. 31221 (W) of 1997, which was filed at the instance of the petitioner in the earlier round of litigation.

This case has a chequered history. The petitioner has been consistently pressing his claim for a higher scale of pay on his appointment as a regular employee under the Institute on December 17, 1990 to the post of Attendant.

Initially, the petitioner was appointed for a project under the Institute. Consequent upon the completion

of the project, the petitioner along with other employees was terminated from service. The terminated employees of the project moved before this Court and this Court passed an order directing the Institute to consider the prayer of their re-employment in the Institute.

The said project employees were thereafter given fresh appointments.

Thereafter, again a Division Bench of this Court directed the continuation of their service and also accorded pay protection to the employees. The Institute, thereafter, issued appointment letters to said project employees and also paid the arrear salary for the period during which they were unemployed, i.e. from the date of termination to the date of fresh appointment.

The petitioner also, like the said employees, was inducted in the regular service of the Institute on December 17, 1990.

It should be noted that in the project, the petitioner had been appointed as "Caretaker, Animal & Milk Production" with a basic pay of Rs. 416/- in the pay scale of Rs.380/- - Rs.640/- and upon his induction as a regular employee of the Institution, he was given the pay scale of Rs. 750/- - Rs. 940/-. The petitioner, thereafter, approached this Court by filing a

writ petition, W.P. 20087 (W) of 2007 alleging that he had not been given the same benefits following the order of this Court as had been given to other project employees.

The said writ petition was disposed of on July 11, 2013 by a Coordinate Bench. The operative portion of the said order is quoted below: -

“Heard the learned Counsel appearing for the parties. It appears that in case of some employees the concerned respondents reappointed them, paid their arrear salaries and gave them continuity of service and also gave them pay protection but in the instant case of the writ petitioners they have denied pay protection.

“In my view, the actions of the respondents are arbitrary and illegal as well as discriminatory. Therefore, the respondents should be directed to give similar benefits i.e. pay protection in favour of the writ petitioner. However, in the facts and circumstances of this case direct the respondents to give notional benefit to pay protection till before January, 2007 which would be calculated and/or taken note of at the time of fixing the retiral dues of the writ petitioner and the writ petitioner would be given monetary benefit from January, 2007 onwards”

In compliance with the said order, the case of the petitioner was considered by the Institute and the Institute by an order dated April 16, 2015 passed the following order:

“After termination of JBMF project Shri Binod Chandra Jena and Nine others joined the Institute posts of Attendant/Mali/Cleaner on 17.12.1990. Later they were also paid arrears of salaries during the period of unemployment from date of termination of project service to date of fresh appointment in the Institute as per the order of the Hon’ble High Court dated 25th April, 1986 passed in C.O. No.6294 (W) of 1986 (Binod Chandra Jena & Ors –Vs- IIT, Kharagpur & Ors.), thereby regularizing the period in between. At the time of joining the Institute posts of Attendant/Mali /Cleaner in pay scale of Rs.750-940/- all of them had drawn their pay in the same scale of Rs.750-940/- in the JBMF Project and during the interim period except Shri Jena, who was drawing a pay of Rs.1640/- in the pay scale of Rs.1350-2200 in JBMF Project as Care-taker.

The Institute service profile of Shri Jana was as under:

- 1) Joined the post of Attendant (Scale Rs.750-940) : 17.12.1990
- 2) Promotion as Attendant (SS) by antedated his selection under R&CDS by counting project service (Rs.800-1150) : 01.01.1991
- 3) Revision of scale under 5th CPC (Rs.2650-4000) : 01.01.1996
- 4) Promotion as Sr. Attendant under RCPS (Rs.3050-4590) : 01.01.2003
- 5) Revision of scale under 6th CPC ((PB-1, GP 1900) : 01.01.2006
- 6) Appointed as Jr. Technician (PB-1, GP 2000) : 09.05.2007

“As per the Order dated 11th July 2013 passed by the Hon’ble High Court at Calcutta in W.P. No.20087 (W) of 2007, notional benefit of pay protection till before January, 2007 with financial benefit from 1st January, 2007 onwards with reference to the pay drawn in JBMF project service were accorded Shri Jena and other as per O.O. No.Estt./648/2013 dated 28th November, 2013.

“Therefore, the claim of Shri Binod Chandra Jena for refixation of his pay in the scale of Rs.380-640/- and granting the benefit of last pay drawn by him i.e. Rs.1640/- is not sustainable.”

The said order was again challenged by the petitioner by filing a writ petition, W.P. 31221 (W) of 2017. A Coordinate Bench of this Court disposed of the said writ petition on January 15, 2018 with the following directions: -

“When the petitioner had joined the post of Attendant he did so in the scale of Rs.750-940/-. It is an admitted position that petitioner was given last pay by back wages in the scale of Rs.380-640/-, which stood at the pay scale of rs.1350-2200/- as on 17th December, 1990. The direction made in order dated 11th July, 2013 was that pay protection should be given to the petitioner notionally till before January, 2007 and thereafter by monetary benefit. This means that though the petitioner actually drew pay in a lesser pay scale attached to the post he was appointed in on 17th December, 1990 and continued thereafter but for the purpose of calculation of his retiral benefits, the

same had to be calculated giving him pay protection as in the scale of Rs.380-640/- which stood at Rs.1350-2200/- as aforesaid on December, 1990. This notional pay protection was to be given effect as such up to 31st December, 2006. On and from 1st January, 2007 taking into consideration the pay as protected, the retiral dues must be calculated on the basis of notional pay protection for calculation thereafter on the basis thereof for actual payment. This does not appear to have been done by the Registrar of the Institute.

“For the reasons aforesaid, the impugned order is set aside. The said authority being the respondent no.2 will revisit the matter in the light of the observations made above and make appropriate order within a period of four weeks from the date of communication of this order.”

In terms of the said order, the case of the petitioner was again considered and the order impugned dated June 12, 2018, as noted above, was issued. The relevant part of the order impugned is quoted below: -

“Shri Binod Chandra Jena had accepted and joined the post of Attendant (carrying a Pay Scale of Rs.750-940) in the Institute service on 17.12.1990 which was offered to him based on his qualifications.

“Further, based on the Order of the Hon’ble High Court, Kolkata dated 11.07.2013 Shri Jena was given pay protection in the scale of pay in which he is appointed (i.e. Rs.750-940) by placing him in the

maximum of the scale. As each post in this Institute carries a pre-defined pay scale and grant of higher scale of Rs.1350-2200/- in a lower post of Attendant is not admissible. The drop in emoluments is also compensated by grant of Personal Pay which was absolved in future increments keeping in view of the rule of pay protection as per DoPT norms.

“Hence, Shri Jena is informed that the pay protection given to him at the maximum of the Pay Scale for the post of Attendant, in which he was appointed, is in order.”

Mr. Ujjal Roy, learned advocate appearing for the petitioner submits that the Institute, in the name of pay protection, only protected his gross salary in the pay scale of Rs. 750/- 940/- “by grant of Personal Pay”. The order dated January 15, 2018 makes it very clear that petitioner’s pay is to be protected by granting him the corresponding pay scale of Rs. 380/- - 640/-, i.e. Rs. 1350/- - Rs. 2220/- in terms of 5th Pay Commission Pay Scale.

Mr. Majumder, learned advocate appearing on behalf of the Institute submits that the petitioner was given a fresh appointment under the Institute on December 17, 1990 to the post of Attendant. The petitioner cannot claim any higher scale of pay than the pay scale attached to the post. The petitioner had accepted the said appointment and the Institute had

also protected the gross pay of the petitioner by providing Personal Pay. Thus, it is contended that there has been no violation of the order passed by this Court as the petitioner is not entitled to a higher scale of pay.

I am of the view that the order impugned in the writ petition cannot be sustained as it is in the teeth of the order dated January 15, 2018. The said order has already been quoted above. The said order makes it absolutely clear it is not the gross pay of the petitioner that was directed to be protected, rather, the pay of the petitioner was to be protected by granting him the scale of pay corresponding to the scale of pay, which the petitioner had been enjoying as the project employee. To make the position clear, it is to be noted that the petitioner had been enjoying the pay scale of Rs. 380/- - 640/- before his termination of service in the project. This pay scale was revised in the 4th Pay Commission to a corresponding pay scale of Rs. 1350/- - 2220/-. Therefore, in terms of the order dated January 15, 2018 there cannot be any doubt that the Institute should have notionally fixed the pay scale of the petitioner as Rs. 1350/- - 2220/- from December 17, 1990 and revised his salary and pension accordingly. The petitioner is entitled to arrears from January 2007.

I am of the view that the Institute without challenging the said order could not have declined to comply with the same; and should not have merely provided him with gross pay protection granting him some “Personal Pay”.

Accordingly, this Court directs the Indian Institute of Technology, Kharagpur to notionally fix the salary of the petitioner in the scale of Rs. 1350/- - 2220/- as on December 17, 1990 and work out his revised salary and retiral dues. The petitioner should be given the arrears from January 2007.

Accordingly, the impugned order is set aside.

WPA 11951 of 2018 is allowed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)