IN THE HIGH COURT AT CALCUTTA

IN THE APPEAL FROM ITS

CONSTITUTIONAL WRIT JURISDICTION

ORIGINAL SIDE

APO 105 of 2021

With

WPO 1128 of 2016

IA NO: GA 1 of 2021

UNION OF INDIA

VS.

DR. AMINUL ISLAM KHAN & ORS.

With

APO 64 of 2021

IA NO: GA 1 of 2021

THE BOARD OF TRUSTEES FOR THE PORT OF KOLKATA

VS.

DR. AMINUL ISLAM KHAN & ORS.

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

For the Union of India	: Mr. D.N Ray, Adv. Mr. Sunil Kr. Singhania, Adv.
For SPMPT	: Mr. Abhrajit Mitra, Sr. Adv. Mr. Somnath Bose, Adv. Mr. Sourav Ghosh, Adv. Mr. Snehashis Sen, Adv.
For the Respondents/ Writ Petitioners	: Mr. Shakti Nath Mukherjee, Sr. Adv. Mr. Soumya Majumder, Adv. Mr. Mainak Ganguly, Adv.
Hearing Concluded on	: August 1, 2024
Judgement on	: September 05, 2024

DEBANGSU BASAK, J. :-

1. Two appeals have been heard analogously as they emanate out of the same impugned judgement and order dated September 16, 2020 passed in WPO 1128 of 2016.

2. Union of India (U.O.I) has filed an appeal being APO 105 of 2021 being aggrieved by the impugned judgement and order to the extent of revision of pay and allowances of Class I and II officers and bunching of increments. Dr. Shyamaprasad Mukherjee Port Trust (SPMPT) has filed APO 64 of 2021 against the same impugned judgement and order.

3. Learned advocate appearing for U.O.I has submitted that Ministry of Shipping sought a clarification regarding the methodology of pay fixation done by SPMPT. In line with the advice of Department of Expenditure, Ministry had issued a clarification dated November 23, 2016 to SPMPT and all ports indicating the correct method of pay fixation. It has been clarified that bunching was not attracted as pay scales A and B both are to be directly revised to pay scale C with no notional upgradation. Ports had been requested to recover excess amount of pay by them by wrong implementation of the bunching effect.

4. Learned advocate appearing for U.O.I has submitted that, the two-pay revision orders dated July 26, 2010 and clarification issued on August 3, 2010 were sought to be implemented on a provisional basis by SPMPT with an undertaking of the employee to the effect that if any excess payment was made and any anomaly noted subsequently, the excess would be refunded.

5. Learned advocate appearing for U.O.I has contended that, the fixation of pay scale, upgradation and consequent revisions are policy matters exclusively within the domain of the Executive. Courts should not direct what scale of pay has be given to employees of public sector enterprises as all service matters are contract are between employer and employee.

6. Learned advocate appearing for U.O.I has contended that the writ petitioners did not have a vested right to get notional upgradation in the pay scale Rs. 10,750 - 16,750 prior to applying the fitment formula to fit their pay in the scale. He has pointed out that, U.O.I would be saddled with unnecessary financial burden due to such erroneous fixation.

7. Learned advocate appearing for U.O.I has contended that, a person if found suitable for promotion by a selective process undertaken by SPMPT over such employees of notional benefit in the pre-revised scale of Rs. 10,750 – 16,705 would be justified and promotion of the employees within the next higher scale from the feeder category was not permissible in law and could not have been the policy of the Government.

8. Learned advocate appearing for U.O.I has contended that, recommendation of any committee is not binding upon the U.O.I. In any event U.O.I is the authority to specify the salaries and allowances payable to different grades of officers of all major port trusts in terms of the Section 23 and 111 of the Major Port Trust Act, 1963.

9. Learned advocate appearing for U.O.I has contended that, policy decision of U.O.I or the legislature should not be substituted by the Writ Court. In any event, U.O.I has the prerogative to correct any mistake made earlier. He has contended that the recommendations were not binding upon U.O.I and that, the impugned memo dated November 23, 2016 is not arbitrary as it is within the competence of the U.O.I to issue the same.

10. In support of his contentions, learned advocate appearing for the U.O.I has relied upon ***2011 Volume 1 Supreme Court Cases 640 (Bajaj Hindustan Limited vs. Sir Shadi Lal Enterprises Lmited and Another)*** and ***2022 Volume 5 Supreme Court Cases 314 (Satya Dev Bhagaur and Others vs. State of Rajasthan and Others)***.

11. Learned Senior Advocate appearing for SPMPT has drawn the attention of the Court to the letter dated July 26, 2010. He has contended that, clarification had been sought for and that such clarification had been granted by the letter dated August 3, 2010.

12. Learned Senior Advocate appearing for SPMPT has contended that, the Pay Revision Committee made a recommendation on June 6, 2007 which was accepted by the Ministry of Shipping by a communication dated July 26, 2010 modified on August 3, 2010. He has contended that, SPMPT had implemented such recommendation incorrectly. Such implementation was not consistent with the implementation made by other Major Port Trusts. Consequently, another committee had been constituted by the letter dated November 20, 2014 of the Ministry. Such committee had made a recommendation dated April 2, 2015. This recommendation had been directed to be implemented by the Ministry by the letter dated November 23, 2016.

13. Learned Senior Advocate appearing for SPMPT has contended that, the manner in which, the pay revision has been implemented, it has made pay scale for both the promotional post and the entry level same.

14. Learned Senior Advocate appearing for SPMPT has contended that, the manner in which, the port trust have implemented the pay revision entails expenditure on the part of the Union of India. Such aspect has not been taken into consideration.

15. Learned Senior Advocate appearing for SPMPT has contended that, the recommendations made are yet to be accepted. Therefore, SPMPT and other port trusts were not authorized to act on the basis of the recommendations which are yet to be accepted. He has also pointed out the scope of reference made to the Committee who made the recommendations.

16. Learned Senior Advocate appearing for the writ petitioners has contended that, from 1997 onwards, the writ petitioners had received 10 yearly pay revisions on the basis of the recommendations made by Pay Revision Committee (PRC) as accepted by the employer. He has pointed out that, in 1997 the entry level pay scale for Class I officers was Rs. 9,100/- to Rs. 15,100/- which was commonly known as Non-Standard Pay Scale (NSPS). He has pointed out that, there was another pay scale of Rs. 10,750/- to Rs. 16,750/- which was commonly known as Standard Pay Scale (SPS). Standard Pay Scale was the promotional pay scale of NSPS. He has pointed out that NSPS was unique to SPMPT and was not prevalent in other Central Public Sector Enterprise (CPSE). PRC had been appointed to address such anomaly. It had been constituted on June 6, 2007. PRC had recommended upgradation of NSPS to SPS. It had also recommended that when all feeder grade pay scale and promotional grade pay scale became the same then the promotional scale will be upgraded to the next pay scale. Ministry of Finance had concurred with the pay scale and fitment formula of the pay revision with effect from January 1, 2007 on July 14, 2010. Pay revision order directive had been issued by the Ministry on July 26, 2010 by removing NSPS. This pay revision order directive had been issued with the concurrence of the Finance Ministry as appearing in Clause 17 thereof.

17. Learned Senior Advocate appearing for the writ petitioners has contended that Pay Revision Order was modified on August 3, 2010 by making the replacement of NSPS to SPS subject to suitability of the incumbent to hold the upgraded pay scales. SPMPT had generated a note sheet for implementation of bunching increments as per the pay revision order on August 19, 2010. On September 14, 2010 Finance Department of SPMPT had issued note to all Heads of Departments at Paragraph 2.2 of pay revision order dated July 26, 2010 to the effect that it was effective from January 1, 2007 and bunching increments were up to January 1, 1997. Finance Department had issued instructions on January 14, 2011 for withdrawal of bunching increments. On January 24, 2011, Finance Department of SPMPT had withdrawn bunching benefits given from January 1, 2007.

18. Learned Senior Advocate appearing for the writ petitioners has pointed out that pay revision was implemented in SPMPT in 2011. Resultantly, on and from January 1, 2007 the unrevised pay scales of Rs. 9,100 to 15,100 and Rs. 10,750 to 16,750 got revised to Rs. 20,600 to Rs. 46,500 on and from January 1, 2007.

19. Learned Senior Advocate appearing for the writ petitioners has pointed out that, on March 7, 2014 SPMPT decided to accept the detailed report prepared by the Core Committee for implementation of bunching increments. On April 2, 2015, Ministry of Shipping had constituted a committee for uniform application of the report. On October 5, 2016, an officer of the Ministry of Finance had generated a note for pay fixation in the revised scale so that it would be made straightway and corresponding to the pay point in the pre-revised scale without routing through the process of upgradation. On November 23, 2016 Central Government had written to all major ports to initiate recovery and submit report with regard to re-fixation and change on fitment formula. Consequently, the writ petitioners had filed the writ petition in which an interim order dated December 15, 2016 was passed and the writ petition was allowed by the impugned judgement and order dated September 16, 2020.

20. Learned Senior Advocate appearing for the writ petitioners has contended that, the pay revision order was issued after a thorough exercise undertaken by the Ministry to do away with the disparity suffered by the officers of SPMPT. According to him, the retrospective reversal has been made arbitrarily. Other port trusts have not withdrawn the benefits.

21. Learned Senior Advocate appearing for the writ petitioners has contended that, the pay revision was to bring about pay parity and do away with injustice and disparity in pay. Purposes of upgradation and pay revision are entirely different and could not have been intertwined at the time of reversal of the benefit. Moreover, SPMPT has sufficient financial clout to absorb the financial implication.

22. Relying upon ***1973 Volume 1 Supreme Court Cases 651 (Purshottam Lal and Others vs. Union of India and Another)*** and ***2017 Volume 4 Supreme Court Cases 449 (Secretary, Mahatama Gandhi Mission and Another vs. Bhartiya Kamgar Sena and Others)*** learned Senior Advocate appearing for the writ petitioners has contended that, recommendation of a committee once accepted by the employer becomes a right in favour of the employees. Such a right which has vested cannot be curtailed retrospectively.

23. Learned Senior Advocate appearing for the writ petitioners has contended that, pay revision order dated July 26, 2010 which is claimed to have been modified by the order dated August 3, 2010 does not work retrospectively, rather allows upgradation to be implemented for eligible employees. Additionally, the modified order dated August 3, 2010 has mentioned the word replacement which necessarily signifies that the Non-Standard Pay Scale stood replaced by the Standard Pay Scale.

24. Learned Senior Advocate appearing for the writ petitioners has contended that the office memorandum constituting the Pay Committee dated June 6, 2007 contains terms of reference of the Pay Revision Committee. Such committee had framed guidelines for pay comparison with other Central Public Sector Enterprises. He has contended that, officers of SPMPT cannot be singled out arbitrarily in relation to other Central Public Sector Enterprises officers.

25. Learned Senior Advocate appearing for the writ petitioners has contended that, there can be no retrospective/retroactive implementation of a policy decision more so when the same affects vested rights. In support of such contention, he has relied upon ***2008 volume 7 Supreme Court Cases 353 (Tamil Nadu***

Electricity Board and Another vs. Status Spinning Mills Limited and Another).

26. Relying upon ***All India Reporter 1981 Supreme Court 783 (The Accountant General and Another vs. Doraiswamy and Others)*** learned Advocate appearing for the writ petitioners has contended that unless a statute permits making a rule with retrospective effect there can be no application of the retrospective Rule.

27. Relying upon ***1997 Volume 3 Supreme Court Cases 568 (Union of India and Another vs. P.V. Hariharan and Another)*** and ***1989 Volume 1 Supreme Court Cases 121 (State of U.P and Others vs. J. P Chaurasia and Others)*** learned Senior Advocate appearing for the writ petitioners has contended that Pay Commission is an expert body and its recommendations are normally accepted. Deviation is permissible for strong and exceptional reasons.

28. Relying upon ***1980 Volume 2 Supreme Court Cases 593 (Gujarat Steel Tubes Ltd. and Others vs. Gujarat Steel Tubes Mazdoor Sabha and Others)*** learned Senior Advocate appearing for the writ petitioners has contended that a Writ Court does not exercise powers of an Appeal Court.

29. A section of class I officers of SPMPT had challenged the order dated November 23, 2016 in the writ petition which has resulted in the impugned judgement and order.

30. As class I officers the pay scale of the writ petitioners had been revised initially after every 5 years and from 1997 onwards every 10 years. In 2007, when the time arrived for a pay revision on the frequency of 10 years, the Ministry of Shipping by a memorandum dated June 6, 2007 had decided to constitute a Pay Revision Committee to formulate proposal for pay revision of class I and II officers of Major Port Trusts and Dock Labour Boards effective from January 1, 2007.

31. Pay Revision Committee constituted on June 6, 2007 had submitted a recommendation where amongst various recommendations, it recommended removal of the non-standard pay scale of Rs. 9,100-250-15,100 and extension of pay scale of Rs. Rs. 10,750-16,750 to those categories of officers. It had also recommended that, consequently wherever the pay scale of the feeder category and the promotional post fell on the same scale, the pay scale of the promotional category would be upgraded to the next higher scale.

32. By a memorandum dated July 14, 2010 the Ministry of Finance had agreed to the recommendations of the Pay Revision

Committee. It had directed that, revised pay scale be implemented from January 1, 2007 but allowances be effective from the date of issuance of the Presidential directive. It had also provided that the pay revision would be adopted subject to the criteria laid down in the DPE Guidelines and that no budgetary support would be provided by the Government of India.

33. Ministry of Shipping had directed implementation of the revised scale recommended by the Pay Revision Committee. By a pay revision order dated July 26, 2010, the central government had directed revision of the pay scale of Major Port Trusts and Dock Labour Boards. Central government by such writing had accepted the recommendation of the Pay Revision Committee to do away with the pay scale Rs. 9100-15,100 and the extension of the pay scale Rs. 10,750-16,750 to those categories of officers. The pay revision order had also provided that where the feeder category in the promotional post fell on the same scale, the promotional post may be upgraded to the next higher scale. Fitment formula in accordance with the recommendation of the Pay Revision Committee as also bunching increment had been provided for in the pay revision order. This pay revision order dated July 26, 2010 had been issued with the concurrence of the Ministry of Finance noted in the memorandum dated July 14, 2010.

34. By a memorandum dated August 3, 2010, Ministry of Shipping had modified clause 1.1 of the pay revision order dated July 26, 2010 partially. It had replaced non-standard pre-revised scale of Rs. 9,100-15,100 by the standard pre-revised whilst pay scale of Rs. 10,007-50-16,750 subject to the suitability of the incumbent to hold the upgraded pay scale.

35. SPMPT had implemented the revision orders dated July 26, 2010 and August 3, 2010 by giving effect to the replacement of the non-standard pay scale by extension of the standard pre-revised pay scale, notionally on December 31, 2006 and thereafter revised the pay from January 2007 in accordance with the fitment formula. SPMPT had obtained an undertaking from the officers that they would refund excess payment if any, made due to such erroneous assessment of fitment.

36. Some of the Major Ports Trusts did not implement the bunching up as per the pay revision orders dated July 26, 2007 and August 3, 2017 uniformly and consequently, Central government had by an order dated November 20, 2014 constituted a 2 member committee to look into the issue of granting bunching implements to officers of Major Port Trusts. Such committee had submitted a report dated April 2, 2015. Such committee had found that so far as SPMPT was concerned, the benefit of upgradation of the revised pay scale of Rs. 9,100-15,100 to Rs. 10,750-16,750 given in the pay revision order dated July 26, 2010 was not withdrawn by the pay revision order dated August 3, 2010 and the benefit of upgradation given by SPMPT notionally on December 31, 2006 was in accordance with the pay revision orders. Such committee had noted that the extension of the notional upgradation of December 31, 2006 in the pre-revised pay scale and thereafter the revision from January 1, 2007 was in keeping with the spirit of the pay revision order dated August 3, 2010. Such committee had opined that it was open to the ports to extend the benefit of operation either on January 1, 1997 or December 31, 2006 or on any date between January 1, 1997 to the December 31, 2006. It had noted that although, the same would be beneficial to the employees, it would impose additional financial burden on the port for notional extension of December 31, 2006. Committee had recommended that the actual pay drawn in the month of December 2006 in the non-standard pay scale of Rs. 9,100-15,100 should be taken to provide the benefit of bunching instead of the notionally fixed upgraded basic pay.

37. The report of the committee dated April 2, 2015 had been considered by the Ministry of Finance. The under Secretary of the Ministry of Finance in the note sheet dated October 7, 2016 referred to the proposal for the replacement of pay scale Rs. 9,100-15,100 by Rs. 10,750-16,750 and asked the Ministry of Shipping to follow the pay scales of the Department of Public Enterprises as approved by the Finance Department by its memorandum dated July 14, 2010 and instructed the Ministry of Shipping that the pay in the revised applicable scale from January 1, 2007 would be fixed with reference to the actual pay (pre revised) drawn, by applying the fitment formula.

38. ***Purshottam Lal and others (supra)*** has observed that, where the government has made a reference in respect of all government employees and it accepted the recommendation, then it is bound to implement the recommendation in respect of all government employees.

39. ***Secretary, Mahatma Gandhi Mission and another (supra)*** has held that, once the Government of India accepted the recommendations of the Pay Commission and issued orders signifying its acceptance, it became the decision of the Government of India. Such decision had created a right in favour of its employees to receive pay in terms of the recommendation of the Pay Commission and the Government of India is obliged to pay the same.

40. In the facts and circumstances of the present case, the initial recommendations made by the Pay Revision Committee constituted on June 6, 2007 had been accepted by the Union of India by the writing dated July 14, 2010 and implemented by SPMPT by issuance of a direction dated July 26, 2010. Central government having accepted the recommendations and SPMPT acting on the recommendation and implementing the same, neither central government nor authorities subordinate to the central government can be allowed to reopen such issues.

41. ***TN Electricity Board (supra)*** has held that, there is a distinction between a policy decision and a statute. It has observed that whereas prima facie a policy decision may not have any retroactive operation, a statute may have.

42. ***S Doraiswamy and others (supra)*** has held that, unless a statute conferring the power to make rules provides for the making of the rules with retrospective operation, the rules made pursuant to such power can have prospective operation only.

43. In the facts and circumstances of the present case,nothing has been placed on behalf of the appellants that, the retrospective effect that the appellants were seeking to give to the impugned memorandum dated November 23, 2016 was issued pursuant to any rule having been made pursuant to any statute granting power to make rules with retrospective operation. Since the decision embodied in the impugned memorandum dated November 23, 2016 has retrospective effect and the authority which has issued such memorandum does not have any power to issue a memorandum with retrospective effect, it has to be held that, such memorandum was issued beyond authority and therefore nonest.

44. ***PV Hariharan (supra)*** has held that, Pay Commission which goes into the problem of a fixation at great length and has a full picture before it, is the proper authority to decide upon such issue and unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales made by the Pay Commission.

45. In the facts and circumstances of the present case, the pay scales had initially been fixed on the basis of the recommendations made by the Pay Review Committee as accepted by the central government.

46. ***JP Chaurasi and others (supra)*** has held that, courts should not tinker with the equivalence determined by expert bodies like Pay Commission unless it is shown that it was made with extraneous consideration. Nothing has been placed on record to suggest that Pay Review Committee’s decision was made taking into account extraneous materials.

47. ***Gujarat Steel Tubes Limited and others (supra)*** has held that, a writ court does not act as a Court of Appeal while exercising jurisdiction under Article 226. It has noted that, an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. It has also noted that the difference is real, though fine.

48. ***S. Doraiswamy and others (supra)*** has held that, unless a statute conferring the power to make rules provide for the making of rules with retrospective operation, the rules made pursuant to that power can have prospective operation only.

49. Dwelling on the scope of judicial review, Supreme Court in ***Bajaj Hindustan Ltd (supra)*** has held that, judiciary can interfere with administrative decision within narrow limits, such as, when there is clear violation of the statute or a constitutional provision, or there is arbitrariness in the Wednesbury sense or where the policy decision is clearly illegal. It has observed that, economic and fiscal regulatory measures are a field where judges should encroach upon very warily as judges are not experts in these matters.

50. Similarly, ***Satya Dev Bhagaur (supra)*** has held that, courts should be slow in interfering in the policy matters unless the policy is found to be palpably discriminatory and arbitrary.

51. In the facts and circumstances of the present case, pay revision once having been granted, is sought to be taken away by a process which is not approved in law.

52. In view of the discussions above, we do not find any merit in the two appeals.

53. APO 105 of 2021 and APO 64 of 2021 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

54. I agree.

[MD. SHABBAR RASHIDI, J]