IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2024

PRONOUNCED ON : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.Nos.178, 165 and 208 of 2023

1 Union of India
rep. By The Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.

2 The Principal Accountant General (A&E),
Tamil Nadu Chennai – 600 018.

3 The Secretary to Government of India,
Ministry of Finance,
New Delhi. ... Petitioners in all Writ Petitions

Vs.

1 Indra

2 Rama Sunderarajan

3 Bhavani Panneerselvam

4 S.Kalyani

5 Padmavathi Sridharan

6 Meena Jayakumar

7 Vasanthi Sundaram

8 Jayalakshmi narayanan

9 Mangaladundari

10 The Central Administrative Tribunal
Rep. by its Registrar City Civil
Court Buildings High Court complex, Chennai – 104.

... Respondents in W.P.No.165 of 2023

1 Narasimhan

2 U.G. Lakshmi

3 A. Vidyasagar

4 G. N. Jayalakshmi

5 S. Thiagarajan

6 Parvathi Subramanian

7 Shanhi Balan

8 Radha Rajagopalan

9 Latha chandrasekaran

10 B. Revathy I

11 K. boopalan

12 T.R. Chandra

13 Lalitha Sivakumar

14 R. Savithiri

15 D. Padmaja

16 T. Lakshmi

17 K. suseela

18 G. Lalitha

19 Baby sekar

20 V. kamala

21 Kamala Kumaravel

22 S. Nambi

23 Ramamani Rangan

24 Malathi Krishnamurthy

25 B. Malathi

26 M. Vatsala

27 Vimala subramanian

28 S.Swarna Kumari

29 A. Komala

30 P. Vijayalajshmi

31 N. Ganga Bagirathi

32 Rani Pinakapani

33 K. S. Sakunthala

34 Nandhini Pai

35 Lalitha Balasubramanian

36 R. Parimala Kasthuri

37 G.Srinivasan

38 The central Administrative Tribunal
Rep by its Registrar City Civil
Court Buildings High Court complex chennai- 600 104

... Respondents in W.P.No.178 of 2023

1 M.S.Narayanan

2 V.Karpagam

3 C.K.Shyamaladevi

4 Janaki Ramakrishnan

5 S.S.Jayasree

6 Parvathi Ravishankar

7 Revathi Ravishankar

8 R.Mythili

9 T.S.Ranganayaki

10 S.Kala

11 K.Ravi

12 Vanitha Parthasarathy

13 Padma Rajaraman

14 S.Jamuna

15 Vijaylakshmi Ravi

16 K.Swarnamala

17 R.Padmavathi

18 V.Radhamani

19 Usha Guruprasad

20 Babynaaz Sebastian

21 Nalinikumari Srinivasamoorthy

22 V.Padmasini

23 S.V.Revathy

24 Ramamani Rajagopal

25 P.Padmaja Rani

26 S.Ganesan

27 Shantha Ramakrishnan

28 P.B.Sudha

29 Lakshmi Chandrasekaran

30 Sudha Ganesh

31 Rajeswari Viswanathan

32 Amudha Janarthanan

33 S.Meenakshi

34 R.Palanisamy

35 Vedhavathi

36 G.Ranganathan

37 S.Poomadhu

38 Soundaram Krishnan

39 Radha Subramanian

40 T.R.Ganapriya

41 N.Jeeva

42 K.Meenakumari

43 Janaki Bharath

44 R.Jamuna

45 Geetha S.Vasan

46 Kamala Subramanian

47 P.Jayanthi

48 K.M.Vasudevan

49 T.R.Ethirajan

50 Pushkalammal S.

51 Shymala H.Kumar

52 A.N.Devakumar

53 The Central Administrative Tribunal

Rep. by its Registrar City Civil Court Buildings,

High Court Complex, Chennai- 600 104.

54 Vijaya Kumar.D

55 Chitra Muthuvelappan

56 R.Gomathy

57 M.Ramaswamy

58 Geetha Jagadeeswaran

59 Renganathan V

60 V.Savithri

61 R.Akilandeswari

62 S.Thangakumar

63 B.Prasanna Vijay

64 P.A.Badhra

65 Shyamala Mohan

66 Subashree Sekar

67 Lakshmi Prasad

68 P.K.Premavalli

69 D.Jayanthi

70 N.Lakshmi

71 Lalitha Hariharan

72 Vidhya Govindarajan

73 K.Amirthalakshmi

74 Jayanthi Siva

75 Latha Sundar

76 M.Raja Rajeswari

77 Shaheen D'cruz

78 N.Vijayan

79 M.S.Mahalakshmi

80 ThirupursundariRaviChandran

81 K.Kalyani

82 S.Sethulakshmi

83 A.S.Geetha Kumary

[Respondents 54 to 83 impleaded vide order dated 12.12.2024]

... Respondents in W.P.No.208 of 2023

<u>Prayer in W.P.No.165 of 2023</u>: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records relating to the order passed by the 10th Respondent Central Administrative Tribunal made in OA No.1608 of 2015 dated 14.9.2022 and quash the same.

<u>Prayer in W.P.No.178 of 2023</u>: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records relating to the order passed by the 38th Respondent Central Administrative Tribunal made in OA No.1607/2015 dated 14.9.2022 and quash the same.

<u>Prayer in W.P.No.208 of 2023</u>: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records relating to the order passed by the 53rd Respondent Central Administrative Tribunal made in OA No.1407/2015 dated 14.9.2022 and quash the same.

For Petitioners in all Writ Petitions	:	Mr.V.Vijay Shankar Senior Panel Counsel
For Respondents in W.P.No.165/2023	:	No appearance (for R1-9) Tribunal (R10)
For Respondents in W.P.No.178/2023	:	Mr.V.Prakash, (for R1) Senior Counsel for Mr.Gautam S.Raman for M/s.Raman & Associates No appearance (for R2,4-28,30-37) R3 died – steps due R29- Not ready in notice Tribunal (R38)
For Respondents in W.P.No.208/2023	:	No appearance (for R1-51) Mr.V.Prakash, Senior Counsel for Mr.Gautam S.Raman (for R54-83) R52 died – steps due] Tribunal (R53)

COMMON ORDER

S.M.SUBRAMANIAM, J.

Table of Contents

Under assail are the orders dated 14.09.2022 passed in O.A.Nos.1607, 1608, 1407 of 2015 on the file of the Central Administrative Tribunal, Chennai Bench.

I. CASE OF THE PETITIONERS:

2. The Union of India is the 1st Writ Petitioner in all Writ Petitions. The respondents are retired Senior Accountants and Serving Senior Accountants in the office of the Principal Accountant General (A&E), Tamil Nadu. Having noted certain pay anomalies after the implemention of V Central Pay Commission recommendations, the Government of India issued an Office Memorandum, dated 28.02.2003, revising the pay scales for the staff belonging to the organized account department on notional basis with effect from 01.01.1996 with actual payments being made from 19.02.2003, the date on which the decision was approved by the Government of India. Consequently, the 1st respondent issued a circular dated 04.03.2003, extending the said benefit to the Accountants, Senior Accounts, Assistant Accountant Officers and Section Officers in the Indian Audit of Accounts Department. The Accounts Wing employees of the Railway Department filed a case before the Patna High court in Civil Writ Jurisdiction case No.11452

of 2005, challenging the portion of the order denying retrospective benefit of pay arrears from 01.01.1996. The Patna High court allowed the petition on 09.04.2010. Thereafter, the Junior Account Assistants, Divisional Accounts office of the Southern Railway, filed OA.No.671 of 2003 before the Central Administrative Tribunal Ernakulam Bench, challenging the denial of arrears of pay from 01.01.1996 to 18.02.2003 and the said OA was allowed by order dated 30.06.2006 and the said order was confirmed by the High Court of Kerala in WP(C)No.22276 of 2007 dated 27.03.2012. The Special Leave to Appeal (Civil) CC.No.1997 of 2013 was also dismissed on 25.02.2013. In pursuance of the above developments, the respondents in the present Writ Petitions filed representations both individually as well as through their Employees Association to the 1st respondent, claiming arrears of salary from 01.01.1996 to 18.02.2003. Since no action was taken the respondents filed O.A.No.1607 of 2015.

3. The Tribunal considered the judgments of the Kerala High Court, Patna High Court and allowed the Original Application, which resulted in filing of the present Writ Petition before this Court by the Union of India.

4. Mr.V.Vijay Shankar, learned Senior Panel Counsel appearing on behalf of the Writ Petitioners would mainly contend that, the disputed issue regarding granting of retrospective monetary benefits with effect from 01.01.1996 pursuance to the Office Memorandum dated 28.02.2003 has not reached finality, since the Hon'ble Supreme Court of India kept the question of law open in SLP(C).No.5 of 2021 – ***Union of India and Others Vs. Prafulla Ranjan Howladar & Others*** and SLP(C).No. 14938 of 2020 - ***Union of India and Others Vs. Subashish Mukherjee & 7 Others*** on the similar matter and it is subjudiced before the Hon'ble Supreme Court.

5. The Apex Court in SLP(C).No. 1587-1588 of 2014, in the appeal filed against the judgment of Patna High Court held that the relief granted by the Central Administrative Tribunal, Patna Bench, as affirmed by the High Court of Patna is confined to the parties before the Tribunal/High Court only. Therefore, the Central Administrative Tribunal, Chennai Bench ought to have adjudicated the issues on merits independently, by considering the grounds raised by the Writ Petitioners herein.

6. The Office Memorandum dated 28.02.2003 of the Ministry of Finance that formed the basis for the grant of pay upgradation with monetary effect from a prospective date has never been challenged nor has it been set aside in any of the entire litigations. So long as the said OM is in force the relief as such sought for by the respondents, ought not to have been considered by the Central Administrative Tribunal. The Office Memorandum in clear terms stipulates that, the pay will be upgraded on notional basis with effect from 01.01.1996 with actual payment from 19.02.2003.

7. The benefits of retrospective revision with effect from 01.01.1996 was extended to only 11 employees, 5 on the basis of Kerala case (SLP No. 1997 of 2013) and 6 on the basis of Patna case (WP No. 11452 of 2005 & RP No. 233 of 2010) and there are a large number of employees (more than 20,000) all over India to whom the benefits have not been extended.

8. Mr.V.Vijayshankar, learned Senior Panel Counsel would submit that the decision of the Government of India to upgrade the pay notionally with effect from 01.01.1996 with actual payment being made prospectively with effect from 19.02.2003, cannot be said to be arbitrary nor whimsical.

The Government of India has taken a rational decision, keeping in view the Government's capacity to absorb the financial burden. The object of granting the upgraded scales is achieved by giving notional benefit from 01.01.1996 and monetary benefits from 19.02.2003.

9. In the event of extending the benefits to the similarly placed employees numbering more than 20,000 will result in huge financial implication of about Rs. 1000 crores for the different Ministries/Departments of Central Government. That exactly is the reason why the policy decision has been taken to grant the actual payments prospectively from 19.02.2003.

10. Mr.V.Vijay Shankar, would raise a preliminary objection that, the Office Memorandum was issued on 28.02.2003 and the respondents filed Original Application in the year 2015 before the Tribunal. Thus, the Original Application ought to have been rejected on the ground of latches.

11. No Ministry/Department of Government of India has so far ordered for monetary benefit from 01.01.1996, but only notional effect was ordered. In support of the said contentions, the learned Senior Panel Counsel

would rely on the judgement of the Hon'ble Supreme Court of India in the case of ***Union of India Vs. Arun Jyothi Kundu and Others*[1]*,*** wherein the Apex Court made the following observations,

> 20.When a concession was being extended as distinct from implementing a specific recommendation of the Pay Commission with reference to a particular point of time, it is open to the Government to provide that the benefit it proposes to give, would be available only from a notified date. As this Court has observed, neither the Central Administrative Tribunal nor the High Court, can direct the merger of any cadre. That is a policy decision for the Government to take. So long as it is not done, it is not open to the tribunal or the court to issue directions in that regard and to follow it up with what are thought to be consequential directions.
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> 21. We may in this context notice that the Central Administrative Tribunal, Principal Bench, Delhi dealing with a similar claim took up the position on the basis of decisions of this Court, that the tribunal would have no jurisdiction to issue the directions sought for by the employees. It is submitted that the correctness of the said decision has been questioned in the High Court at Delhi. Therefore, it is not necessary for us to make any observation regarding that decision. But we note that, that tribunal declined jurisdiction in similar

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1 2007 7 SCC 472

circumstances.

22. Once we find that it was open to the Government to extend a benefit to a set of its employees with effect from a particular day on the basis of some anomaly found in the report of the Fifth Pay Commission, there would arise no discrimination because the very implementation of the Fifth Pay Commission Report would not entitle the respondents to any benefit. The very right to their benefit arose because of the decision of the Government to extend to them a particular benefit not specified in the Fifth Pay Commission Report. It is, therefore, not possible to postulate that the decision of the Government must be given retrospective effect and if no such effect is given, the tribunal or court can interfere and direct the giving of such retrospective effect. Once it is found that paragraph 83.296 is attracted to the case, it has to be found that the applicants before the Tribunal were not entitled to any relief.

12. In the case of ***State of Punjab and Others Vs. Amar Nath Goyal and Others,***[2] the Apex Court held as follows,

25.The only question, which is relevant and needs consideration, is whether the decision of the Central and State Governments to restrict the revision of

2 2005 6 SCC 754

the quantum of gratuity as well as the increased ceiling of gratuity consequent upon merger of a portion of dearness allowance into dearness pay reckonable for the purpose of calculating gratuity, was irrational or arbitrary.

26.It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/ State Governments to limit the benefits only to employees, who retire or die on or after 1.4.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

37. In the instant case before us, the cut-off date has been fixed as 1.4.1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that the fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14.

13. In the case of ***Government of Andhra Pradesh Vs. N.Subbarayudu and Others,***[3]the Hon'ble Supreme Court in a short judgment

3 2008 14 SCC 702

held follows,

> 7.There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.
>
> 8.In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide State of Bihar vs. Ramjee Prasad 1990(3) SCC 368, Union of Indian & Anr. vs. Sudhir Kumar Jaiswal 1994(4) SCC 212 (vide para 5), Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association (vide para 31), University Grants Commission vs. Sadhana Chaudhary & Ors. 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and

violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

14. Relying on the above judgements, the learned counsel for the petitioners would submit that the order of the Central Administrative Tribunal is liable to be set aside.

II. REPLY BY THE RESPONDENTS:

15. Mr.V.Prakash, the learned Senior Counsel appearing on behalf of the respondents/employees would strenuously oppose by stating that, the benefit once extended to similarly placed employee, in pursuance to the order of the Court, the said benefit cannot be denied to other similarly placed employees, who all are equally placed. The Courts have time and again held that, benefits once granted should be extended to all similarly placed employees and each one should not be driven to approach the Court of law for securing similar benefits.

16. The Ministry of Finance, the Government of India issued an Office Memorandum on 28.02.2003 upgrading the pay on notional basis with effect from 01.01.1996 and actual payment from 19.02.2003. The issue was

taken before the Central Administrative Tribunal, Ernakulam Bench and by order dated 30.06.2006, the Ernakulam Bench allowed the Original Application and directed the Department to pay the arrears with retrospective effect from 01.01.1996.

17. The Union of India preferred W.P.No.(C).No.22276 of 2007 before the High Court of Kerala, and the High Court confirmed the order of Central Administrative Tribunal, Ernakulam bench and SLP filed by the Union of India was dismissed. Therefore, the issues reached finality.

18. The Patna High Court took a similar view taken by the High Court of Kerala and held that the employees are entitled for retrospective upgradation of pay and arrears from 01.01.1996. The SLP filed against the said judgment was also dismissed. Therefore, the Central Administrative Tribunal, Chennai Bench followed judicial precedents and granted the relief. Thus, the Writ Petitions are liable to be rejected.

19. In support of the submission, Mr.V.Prakash, learned Senior Counsel would reply on, the judgment of the Hon'ble Supreme Court of India

in the case of ***Lt.Col.Suprita Chandel Vs. Union of India and Others*** in Civil Appeal No.1943 of 2022 dated 09.12.2024.

> 10.At the outset itself, we may say that the phrase "Only to the Petitioners" in the order rejecting the representation is patently erroneous. While the AFT Principal Bench granted relief to the petitioners, it did not prohibit the department from considering similarly situated persons. Another representation was disposed of on 9 th November 2017, inter alia, on the primary ground that she did not meet the criterion. In the meantime, the appellant's services were further extended for a period of 4 years on 31.10.2017.
>
> 14. It is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court. [See Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others, (1975) 4 SCC 714].

20. The Central Administrative Tribunal, Jaipur Bench passed an order in O.A.No.154 of 2015 dated 11.01.2022. The relevant portion of the order reads as follows,

5. Since the facts and the legal issues involved in these cases are identical, we have no option but to follow the verdict pronounced by the Hon'ble High Court in this matter. The OA is therefore disposed of with an identical direction to the respondents to grant the applicants revised pay scale in question from 1st January 1996, when the recommendations of the 5th CPC became operational. The order dated 7th March, 2003 of the Railway Board, to the extent that it limits the actual benefit of the revised pay scale by granting the same from 2nd February, 2003, and not from 1st January. 1996, is hereby set aside. The arrears shall now be granted to each of the Petitioners within 12 weeks of the date of receipt of this order, failing which the Respondents will be liable to pay simple interest at 6% per annum thereon till the date of payment. No costs.

21. In respect of above judgment of the Central Administrative Tribunal, Jaipur Bench, the Hon'ble Supreme Court dismissed the appeal filed by the Union of India.

22. Confirming of the judicial precedents, upholding the issues, relating to retrospective upgradation of pay along with the arrears to the

respondents/employees with effect from 01.01.1996, the present Writ Petitions are to be rejected.

III. ANALYSIS ON THE JUDICIAL PRECEDENTS RELIED ON:

23. It is not in dispute that Office Memorandum dated 28.02.2003 was issued by the Ministry of Finance, Government of India, upgrading the pay scale for the Accounts staff of Railways, on notional basis with effect from 01.01.1996 with actual payments from 19.02.2003.

24. The issues mainly raised in the present litigation is,

(I) Whether the decision taken by the Ministry of Finance, Government of India upgrading the pay scale of Accounts Staff on notional basis with effect from 01.01.1996 with actual payments being made from 19.02.2003 is valid or not?

(II) Whether the employees are entitled for retrospective monetary benefits with effect from 01.01.1996 or not ?

25. Let us consider the judicial precedents relied on by the

respondents, for grant of retrospective monetary benefits from 01.01.1996. Admittedly, the Central Administrative Tribunal, Ernakulam Bench considered the issues and extended the monetary benefits with retrospective effect from 01.01.1996. The Kerala High Court in its judgment dated 27.03.2012 has not adjudicated the issues with reference to the legal position settled by the Constitutional Courts. In a short judgment of one paragraph, the Kerala High Court confirmed the order of the Ernakulam Bench, Central Administrative Tribunal. What was considered by the Kerala High Court was that there is no jurisdictional error or legal infirmity to say that there is any injustice against the establishment, on the basis of the order of the Ernakulam Bench of Central Administrative Tribunal judgment. Absolutely, there is no adjudication of issues either factually or on legal points regarding the upgradation of pay or regarding retrospective grant of actual monetary benefits, which were considered time and again by the Constitutional Courts. Therefore, the order of the Kerala High Court in W.P.(C).22276 of 2007 dated 27.03.2012 cannot be followed as precedent for the purpose of extending retrospective monetary benefits to the respondents with effect from 01.01.1996. The validity of the orders passed by the Central Administrative Tribunal, Ernakulam Bench was not tested, based on the legal propositions.

The Apex Court dismissed the SLP at the admission stage, which need not be followed as precedent, as per the legal principles settled by the Hon'ble Supreme Court of India.

26. As far as the Patna High Court judgment is concerned, the order of upgradation issued by the Government of India dated 28.02.2003 in paragraphs (2) and (3), the Patna High Court extracted the brief statement of facts, essential for the disposal of the Writ Petition.

27. Paragraph (4) is the extraction of notification issued by the Government of India. In paragraph (6), the Patna High Court considered that *"The only logic advanced by the respondent authorities before the Tribunal was that these three categories of employees had threatened to proceed on strike, leading to mutual negotiations, and bipartite settlements."* The said submission was considered by the Patna High Court and held that *"We have no hesitation in holding that this categories of employees have been subjected to hostile discrimination. It was open to the respondents therein to give notional benefits to the employees of the Account establishment provided the same principle were applicable to all*

categories of employees, in the absence of which falls foul of Articles 14 and 16 of the Constitution of India."

28. Therefore, the Patna High Court has considered the ground raised by the Union of India that there is likelihood of proceeding with the strike by the employees, the Patna High Court held that said ground cannot be considered and extended benefit by stating that the decision to grant notional benefits from 01.01.1996 and actual monetary benefits from 2003 is violative of Article 14 and 16 of the Constitution of India.

29. In our considered opinion, even the Patna High Court has not considered the legal position regarding the upgradation of pay cut off date for actual monetary payment and arrears to be claimed with retrospective effect.

30. The Patna High Court judgment was taken by way of an Appeal by the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.1587-1588 of 2014. The Hon'ble Supreme Court passed an order on 07.07.2014 with an observation that *"However, the relief granted by the Tribunal (CAT) as affirmed by the High Court shall be confined to the parties before the*

Tribunal as well as before the High Court. This is without prejudice to the rights of other claimants which will be adjudicated on its own merit as and when any such claim is raised."

31. The Apex Court kept the legal issues open. Therefore, the respondents in the present case cannot take shelter, on the ground that the Patna High Court judgment was confirmed by the Hon'ble Supreme Court of India on legal issues. Both the Kerala High Court and Patna High Court have not considered the issues with reference to the legal position. Therefore, we have made an attempt to consider the issues independently in the present Writ Petitions.

<u>IV. DISCUSSIONS:</u>

32. The V Central Pay Commission recommendations were implemented by the Government of India. Implementation of the recommendations of Pay Commission can never be claimed as an absolute right by the employees. Employer/Union of India is empowered to implement the Pay Commission recommendations with or without modifications. Final decision taken by the Government of India regarding fixation of pay becomes final. Therefore, mere recommendation made by the Pay Commission, One

Man Commission etc., would not confer any right on the employees to claim all the benefits recommended by the Pay Commission, One Man Commission or otherwise. Once the pay commission recommendations are implemented and orders are passed by the Government of India, then alone the right accrue to the employees.

33. Perusal of the Office Memorandum dated 28.02.2003 would reveal that, it was not issued with reference to the recommendation of the V Central Pay Commission. It was a conscious decision taken by the Ministry of Finance, Government of India to rectify the pay anomaly identified by the Ministry concerned. Thus, the Office Memorandum dated 28.02.2003 was issued by taking a policy decision to grant upgradation to certain class of employees, who faced pay anomaly and consequently, pay upgradation was granted on notional basis, with effect from 01.01.1996 with actual payment from 19.02.2003. It is a policy decision taken by the Government of India. Policy decision cannot be ordinarily interfered with by the High Courts, in exercise of the powers of judicial review.

34. The power of judicial review of the High Court under Article 226

of the Constitution, is to ensure the process through which the decision has been taken in consonance with the statutes and Rules in force, but not the decision itself.

35. Every policy decision cannot be subjected to judicial review, unless such decision is found to be unconstitutional, discriminatory or violative of any of provisions under the Statutes or Rules in force.

36. In the present case, the pay upgradation was granted to the respondents with effect from 01.01.1996 notionally and actual monetary benefits from 19.02.2003, the date on which the policy decision was approved by the Government of India.

37. Let us now consider, whether the Government of India is empowered to grant pay upgradation on notional basis with effect from 01.01.1996 and actual benefits from 19.02.2003.

38. On this context, in the case of ***Union of India Vs. Arun Jyothi Kundu and Others,*** cited supra, wherein similar circumstances arose and the Hon'ble Supreme Court of India made an observation that, *"when a*

concession was being extended as distinct from implementing a specific recommendation of the Pay Commission with reference to a particular point of time, it is open to the Government to provide that the benefit it proposes to give, would be available only from a notified date." That is the policy decision for the Government to take. It is not open to the Tribunal or the Court to issue directions in that regard and to follow it with what are thought to be consequential directions.

39. Pertinently, in paragraph No. 22 of the said judgment, the Apex Court held that we find that it was open to the Government to extend a benefit to a set of its employees with effect from a particular day on the basis of some anomaly found in the report of the V Pay Commission, there would arise no discrimination because the very implementation of the V Pay Commission Report would not entitle the respondent to any benefit. The very right to their benefit arose because of the decision of the Government to extend to them a particular benefit not specified in the V Pay Commission Report.

40. In the present case, the OM dated 28.02.2003 was not issued with reference to the Pay Commission recommendations, but an independent

decision taken by the Ministry of Finance to rectify the pay anomaly for certain group of employees. Thus, the policy decision was taken to upgrade the pay scale on notional basis with effect from 01.01.1996 and actual monetary beneits from 19.02.2003, the date on which the policy was approved by the Government of India.

41. In the case of ***Government of Andhra Pradesh and Others Vs. N.Subbarayudu and Others,*** cited supra, the Hon'ble Supreme Court of India has made an observation that, "*There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.*"

42. Therefore, even if no reason has been given by the Government or the Executive Authority, as to why a particular cut off date has been chosen, the Court must still not declare that the date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result. The said decision was reiterated in several judgments by the Apex Court.

43. Regarding cut off date, even in the case of ***State of Punjab Vs. Amar Nath Goyal and Others,*** cited supra the Apex Court held that "the cut-off date has been fixed as a policy decision on the very valid ground, namely, that of financial constraints." Therefore, the Courts have taken into consideration about the financial constraints of the Government, which was taken into consideration by the executive Authority, while fixing cut off dates, while extending the actual monetary benefits.

V. CONCLUSION:

44. In the recent judgment, in the case of ***Banwari and others vs. haryana state industrial and infrastructure development corporation limited*** in Civil Appeal No.13348 of 2024, dated 10.12.2024,

> While considering the rule of per incuriam, the Constitution Bench of this Court has held that a decision or judgment can be said to be per incuriam if it is not possible to reconcile its ratio with that of a previously

pronounced judgment of a co-equal or larger Bench.

45. In the present case, we are unable to reconcile the ratio laid down by the Patna High Court and Kerala High Court, where there is no adjudication of issues either factually or with reference to the legal principles settled by the Hon'ble Supreme Court in the judgment referred by us in the aforementioned paragraphs.

46. In fine, we find that the decision taken by the Ministry of Finance in Office Memorandum dated 28.02.2003 is in consonance with the legal principles settled and fixing of cut off date cannot be said to be arbitrary or discriminatory. The cut off date was fixed taking into various facts and consideration, which is the prerogative of the Executive Authority and Government of India, which cannot be interfered by the High Court in exercise of the powers of judicial review. That apart, there is a long delay on the part of the respondents in approaching the Central Administrative Tribunal. Section 21 of the Tribunal prescribes limitation and the present case is hit by the said provision.

47. For all these reasons, we are unable to sustain the judgment of the Central Administrative Tribunal. Consequently, the order dated 14.09.2022 passed in O.A.Nos.1607, 1608, 1407 of 2015 on the file of the Central Administrative Tribunal, Chennai Bench are set aside and the Writ Petitions are allowed. The connected Miscellaneous Petitions, if any, are closed. No costs.

(S.M.S.J.,)

(M.J.R.J.,)

18.12.2024

Index : Yes
Internet: Yes
Speaking order
Neutral Citation : Yes
gd

To
The Central Administrative Tribunal
Rep. by its Registrar City Civil
Court Buildings High Court complex,
Chennai – 104.

S.M.SUBRAMANIAM, J.

and
M.JOTHIRAMAN, J.

gd

Pre-Delivery Order in
W.P.Nos.178, 165 and 208 of 2023

18.12.2024