
(2002) 05 RAJ CK 0044
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5600 of 1991

Anil Bhandari

APPELLANT

Vs

United India Insurance Company and Others

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 RLW 739 : (2002) 4 WLC 630 : (2002) 4 WLN 465

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; M.S. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 22.10.1991 against the respondents with the prayer that by an appropriate writ, order or direction, the respondents be directed to give the benefit of 60% of Rs. 115/- as functional allowance (Rs. 69/-) at the time of fitment on promotion to the post of Senior Assistant and similar benefit may also be given to him in regular pay scale etc. etc.

2. It arises in the following circumstances :

The petitioner was appointed on the post of Assistant in August, 1977 in the pay scale of Rs. 175-585 and he was posted in Branch Office, Jodhpur and, therefore, on 4.2.1985, he was promoted to the post of Senior Assistant.

It was submitted by the petitioner that on account of revision of pay scale made in the year 1985, the pay scale of Rs. 175-585 of Assistant was revised to Rs. 520-30-670-45-850-60-1210-75-1660 and though that revision of pay was made in the year 1985, but it was made applicable with effect from the year 1983. Thereafter, that pay scale was further revised to Rs. 1000-2850 and the same was made applicable with effect from 1.8.1987.

It was further submitted by the petitioner that on 4.2.1985 he was promoted to the post of Senior Assistant in the pay scale of Rs. 230-735 and that pay scale was further revised in the year 1985 to Rs. 715-60-1135-75-2035 and the same was made applicable with effect from 1983. The said pay scale of Rs. 715-2035 was further revised to Rs. 1390-3460 in the year 1989 and the same was made applicable with effect from 1.8.1987.

It may be stated here that when the pay scales were revised, options were invited by the Authorities concerned about the acceptance of revised pay scales and pursuant to that, the petitioner opted for the revised pay scale with effect from 1.4.1983 and as per the option given by the petitioner, his pay scales were fixed accordingly.

The first grievance of the petitioner is that though he was promoted on the post of Senior Assistant on 4.2.1985 and another person, who was promoted on the post of Senior Assistant in August, 1986 i.e. after 1-1/2 years would be at an advantages position because in August, 1986, the petitioner would get only Rs. 1210/- whereas newly promotee will get Rs. 1285/-. This clearly reveals that this anomaly in the fixation of pay scale causes great injustice to the petitioner.

The second grievance of the petitioner is that the employees, who were not getting graduation allowance prior to Scheme, have been given benefit of graduation allowance, who were recruited as Assistant during the period from 21.9.1984 to 31.7.1987 and promoted to the higher cadre before 1.8.1987 and since the petitioner was working as Cashier before 1.8.1987, he wanted that benefit of functional allowance should be given to him like graduation allowance irrespective of the fact that though the Scheme was to be enforced with effect from 1.8.1987.

It was further submitted by the petitioner that he has made several representations to the concerned authorities in respect of the above two grievances and one of them is Ex.2. He has further submitted that his representations were seriously considered authorities, but through letter dated 17.9.1990 (Ex.4), the respondent No. 2 Divisional Manager, United India Insurance Co. Ltd., Jodhpur informed the petitioner that since the petitioner was promoted prior to 1987, therefore, it was not possible to consider any part of cash allowance received prior to 1.8.1987 in respect of fitment promotion and in case the petitioner wanted that benefit, he should opt August, 1985 instead of Feb. 1985.

Through letter dated 19.9.1990 (Ex. 6), the case of the petitioner on the above two points was referred by the respondent No. 2 Divisional Manager to the Regional Office, Jaipur and through letter dated 20.2.1991 (Ex.8), the Admn. Officer, Regional Office, Jaipur replied holding that even though the petitioner re-opts he would not get any relief.

Hence, the case of the petitioner was not found favourable with the respondents and aggrieved from these orders, this writ petition has been filed by the

petitioner with the prayer as stated above.

A reply to the writ petition was filed by the respondents and after taking some preliminary objections, it was submitted by the respondents that benefit of fixation was granted to the petitioner with effect from August, 1985 as per his own option and, therefore, now it was not open for the petitioner to raise grievance about the anomaly of pays with those persons who were promoted later to him. It was further submitted by the respondents that grant of allowance is a matter of discretion and concerns with the policy decision. If in the Scheme of 1989, a provision was made for taking into account 60% of the cashier functional allowance as well as graduation allowance for the purpose of fitment on promotion, the petitioner cannot seek a direction for application of the decision or policy with effect from 1985 when the Scheme was to be enforced with effect from August, 1987. It was further submitted by the respondents that the petitioner has not suffered any hardship nor any anomaly has been caused to the petitioner because no person junior to him has been getting salary more than him. It was further submitted by the respondents that no mandamus can be issued to compel the administrative authorities to exercise the discretion in a particular manner. It was further submitted that the petitioner had already opted for the change of the date of revision and that has been accepted by the respondents and furthermore, the representation of the petitioner was examined by the respondents and it was found that the request of the petitioner was not genuine one and therefore, his request was not accepted and thus, the present writ petition should be dismissed, as no legal right had accrued in favour of the petitioner to get writ of mandamus issued in his favour.

A rejoinder was also filed by the petitioner.

3. I have heard the petitioner present in person and the learned counsel for the respondents and gone through the materials available on record.

4. During the service, it is generally seen that whenever pay is revised, the newly recruited persons get more benefit in the fixation of pay etc. and if some persons joining the service later get slightly more benefit than to those, who were senior to them in service, on account of taking option from a particular date, in my considered opinion, this itself is not a ground where this Court under Article 226 of the Constitution of India should interfere with the fixation of pay case, when the petitioner has opted for revision of pay in the year 1985, his pay was to be fixed according to that option and as per his own option, the pay of the petitioner was fixed by the respondents and thus, this Court would not like to interfere with the fixation of pay of the petitioner made by the respondents.

5. Even for the sake of argument that there may be some anomaly in fixing the pay of the petitioner, but until and unless it is shown that the fixation of pay is arbitrary or unreasonable, no mandamus can be issued. In the present case, the petitioner has not pointed out that his fixation either after promotion or before promotion in any manner is arbitrary or unreasonable or contrary to his option

and therefore, when there is no arbitrariness or unreasonableness in the fixation of pay of the petitioner, no mandamus can be issued.

6. To substantiate the above proposition, the following observations made by the Hon"ble Supreme Court in Union of India and Ors. v. O.P. Saxena, may be quoted here :-

"A. Service Law-Pay-Fixation of pay-Anomaly Removal of, by stepping up of senior's pay with reference to junior's pay- Conditions for -One of the conditions laid down in departmental provisions was that "the scales of pay of the lower and higher posts should be identical"-The condition held, not satisfied where the seniors were promoted from Driver, Grade "C" to Loco supervisor while the junior was promoted from Driver, Grade "A" to Loco Supervisor. Hence, the seniors were not entitled to removal of anomaly even if their junior was getting more pay than them."

7. On second point, the case of the petitioner is also not to be accepted for the simple reason that the Scheme of providing functional allowance was introduced with effect from 1.8.1987 and the plea that since the petitioner was getting graduation allowance prior to that period, therefore, on the same reasoning, he would be entitled to functional allowance is not at all tenable when the Scheme though introduced in 1989 was to come in force on 1.8.1987. Therefore, the case of the petitioner that the said Scheme should also be made available to him prior to 1.8.1987 is not at all appreciable and it cannot be made applicable prior to 1.8.1987 by issuing writ of mandamus under Article 226 of the Constitution of India as if that Scheme was introduced with effect from 1.8.1987, it would not infringe any legal right of the petitioner.

8. Furthermore, the cut off date i.e. 1.8.1987 provided in the Scheme cannot be changed by issuing mandamus, as the fixation of that cut-off date cannot be said to be arbitrary or unreasonable.

9. Apart from this, the case of the petitioner was referred by the concerned authorities to the higher expert authorities and the higher expert authorities came to the conclusion that the petitioner was not entitled to the relief sought for by him and in these circumstance, when there is a decision of the expert body, this Court should not interfere in such matters and in this respect, the following observations made by the Hon"ble Supreme Court in Shiba Kumar Dutta and Ors. v. Union of India and Ors., may be quoted here:-

"Nomenclature and fitment is one of the executive policy of the Government. Unless the action is arbitrary or there is invidious discrimination between persons similarly situated, doing same type of work, it would be difficult for the courts to go into the question of equation of posts or fitment into a particular scale of pay. They must be left to be decided by Expert Committees and Government. The courts cannot go into them and evaluate the job criteria and scales of pay prescribed for each category."

10. For the reasons stated above, there is no merit in this petition and the same is liable to be dismissed.

11. It may be stated here that the preliminary objections taken by the respondents about the maintainability of the writ petition and about admissibility of document produced after filing of the writ petition, are not being considered, as the writ petition is being decided on merits alone and apart from this, the case law referred to pertaining to these matters are also not being discussed.

Accordingly, this writ petition filed by the petitioner is dismissed.