

(2006) 03 AHC CK 0040

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6012 of 2005

Draughtsman Computer Association, Allahabad Unit, U.P. Jal
Nigam and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 9 ADJ 88 : (2006) 7 AWC 6898

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : B. Lal and J.S. Pandey, for the Appellant; Q.H. Siddiqui, Vinod Kumar Singh and N.N. Verma and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. This petition has been filed by the petitioner for a direction to the respondents to fix the salary of Draughtsman/Head Draughtsman/Computer Operator as per Government Order dated 2.12.2000. A further direction has been sought for payment of arrears of salary of Draughtsman/Head Draughtsman since 30.10.2002 corresponding to the post which they are holding and not to recover the amount which has already been paid to them.

3. By means of the amendment application prayer for quashing of the orders dated 16.9.2004, 12.12.2002 and 23.2.2004 passed by the Managing Director, the Chief Engineer Karmik and the Executive Engineer (Anu.), Allahabad respectively has been made.

4. A further prayer in the nature of a writ of mandamus has been sought by the petitioner directing respondent Nos. 1 and 2 to decide the question of fixation of salary of Draughtsman/Head Draughtsman as per Government Order dated 2.12.2000 expeditiously restraining them from recovering of any excess amount

said to have been paid to the petitioners as Draughtsman/Head Draughtsman by coercive measures.

5. It is claimed that the Draughtsman/Head Draughtsman/Computer Operator, as the case may be, are legally entitled to their salary in accordance with Government Order dated 2.12.2000 which provides for time scale salary of the post of Draughtsman/Head Draughtsman to the employee after he has completed 8, 14, 19 and 24 years of satisfactory service.

6. It appears that the Chief Engineer Karmik by letter dated 8.10.2001 directed all the concerned authorities that the scale of Draughtsman/Head Draughtsman fixed as per the Government Order dated 2.12.2000 read with amended Government Orders dated 10.4.2001 and 3.9.2001 be given to all the eligible persons. The operative part of the aforesaid letter dated 8.10.2001 is as under:

Uprokt mamlon men vetan nirdharan evam bhugtan adi ki samasta karyawahi shasanadesh sa.ve.aa.-2-560/Das-45(Em)/89 Dinank 2.12.2000 Evam usme sandarbhit shasanadeshon ke saath sapathit yatha sansodhit shasanadesh dinank 10 April 2001 wa 3 September 2001 ke anusar sunischit ki jayegi. Sulabh sandarbh hetu shasanadesh ki pratiyan sanlagna hai.

Sanlagnak-Uproktanusr. Has. /Apathaniya (Sd/- Illegible) 8.10.2001 (Mahendra Kumar) Mukhya Abhiyanta Karmik

7. The petitioner has relied upon the Government Orders dated 2.12.2000 and 3.9.2001 issued by the Chief Secretary (Finance), Lucknow as Annexure 4 to the writ petition. Reliance has also been placed by the petitioner upon letter dated 29.8.2001 of the Superintending Engineer, Public Works Department, Allahabad. On the basis of the aforesaid G.Os. and the letters it is urged by the learned Counsel for the petitioner that the aforesaid letter clearly shows that the directions contained in Government Order dated 2.12.2000 have been followed in fixation of salary of the Draughtsman/Head Draughtsman after completing 14 years of service in the pay scale of Rs. 5000-150-8000 and after completing 24 years of service in the pay scale of Rs. 8000-275-13,500.

8. On the basis of averments made in paragraph 11 of the writ petition, it is urged that the Chief Engineer, P.W.D., Bareilly following the Government Order dated 21.12.2000 regarding fixation of pay scale of Draughtsman/Head Draughtsman granted the pay scale to them at Bareilly.

9. The petitioner-Association filed representation dated 24.8.2002 before the Chief Engineer Karmik, respondent No. 3, inter alia, that its members holding the posts of Draughtsman/Head Draughtsman are discharging functions of a technical category but are not being paid their rightful pay scale of the post.

10. Similarly the Chairman, U.P. Jal Nigam vide letter dated 26.7.2003 has fixed the pay scale of Assistant Engineers as per Government Order dated 2.12.2000. The letters of the Chief Engineer, P.W.D., Bareilly and the Chairman, U.P. Jal Nigam have been appended as Annexures 7 and 8 respectively to the writ

petition.

11. It is urged that the Managing Director, U.P. Jal Nigam, Lucknow has also issued a letter dated 11.11.2003 by which the pay scale of all the Executive Engineers of U.P. Jal Nigam have been fixed as per Government Order dated 2.12.2003 but the petitioners are illegally being discriminated by the respondents and their pay scales are not being fixed in pursuance of the aforesaid Government Order dated 2.12.2000. It is also urged that surprisingly the Chief Engineer Karmik instead of following the directions contained in letter dated 3.10.2002 for fixing the pay scale in pursuance of Government Order dated 2.12.2000 contained in Annexure 10 to the writ petition suddenly issued a letter dated 12.12.2001 directing that after completion of 14 years of service the Draughtsman/Head Draughtsman will be given only the next increment in lieu of promotional grade.

12. The petitioner again filed a representation before the Managing Director/Chairman dated 20.1.2004 against the letter dated 12.12.2001 issued by the Chief Engineer Karmik but in the mean time the Executive Engineer monitoring the U.P. Jal Nigam Allahabad issued a letter dated 23.2.2004 directing for recovery of the alleged excess amount paid to the Draughtsman/Head Draughtsman.

13. The learned Counsel for the petitioner has vehemently urged that the amount which has already been paid to the Draughtsman/Head Draughtsman is not excess amount as alleged by the respondents in view of the Government Order 2.12.2000 and in fact they are legally entitled to the pay scale of Rs. 5000-150-8000 after completion of 14 years of service and to the pay scale of Rs. 8000-275-13,500 after completion dated of 24 years of service. It is submitted by the learned Counsel for the petitioner that if any excess amount has been paid to the Draughtsman/Head Draughtsman by the fault of the respondents the same cannot be recovered from them, as the petitioners have not got the amount by any fraud or misrepresentation. It is stated that aggrieved by the illegal and arbitrary action of the respondents the petitioner filed Writ Petition No. 21799 of 2004, Draughtsman Computer Association, Allahabad Unit of Jal Nigam v. State of U.P. and Ors., which was disposed of by order dated 30.7.2004 directing the Managing Director, U.P. Jal Nigam, Lucknow (respondent No. 2) to decide the representation of the petitioner. In pursuance of the aforesaid order of this Court dated 30.7.2004, the Managing Director, respondent No. 2, decided the representation of the petitioner vide order dated 16.9.2004.

14. It appears from the record that the Board of Directors of U.P. Jal Nigam granted approval to fix the salary of Draughtsman/Head Draughtsman as per Government Order dated 2.12.2000 and a Committee was constituted on 16.6.2004 for redressal of their grievance regarding grant of time scale to them, but no decision appears to have been taken by the Committee. It also appears that the time scale has been granted to other similarly situated incumbents who belong to Class 1 and Class II (Officer Cadre) in anticipation of approval from the

State Government. On the other hand the time scale or promotional pay scale is not being paid to the Draughtsman/Head Draughtsman who are situated in similar circumstances.

15. In paragraphs 4 and 7 of the counter affidavit filed on behalf of respondents 2, 3, 4 and 5 it is stated that the posts of Draughtsman/Head Draughtsman and Computer Operator in the office of U.P. Jal Nigam have been sanctioned from time to time since its establishment. The pay scale and other benefits are granted to each post according to the rules and regulations. It is also stated that payment of salary to the employees of the Jal Nigam including the Draughtsman/Head Draughtsman is made by the Jal Nigam and not by the State Government and that the employees of Jal Nigam are not governed by the rules and regulations of the State Government. The contents of paragraphs 4 and 7 of the counter affidavit are quoted as under for ready reference: -

4. That it is submitted that the post of Draughtsman, Head Draughtsman and Computer in the office of U.P. Jal Nigam have been sanctioned from the time of its establishment and the pay scale and other facilities have been fixed for each post according to rule and regulation and it has no concern with the State of Uttar Pradesh. The correct fact is that after establishment in the year 1975 of Jal Nigam, there was option to every employees and officers to work according to Rule and Regulation framed by Jal Nigam, hence the payment of salary is being made from the Jal Nigam and not by the State Government. The Board of Directors of the Jal Nigam in which members are being selected from the office of the Jal Nigam and all the matters were decided by them.

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7. That in reply to the contents of paragraph 3 of the writ petition, it is submitted that the posts of Draughtsmen, Head Draughtsman and Computer in the Department of Jal Nigam have been sanctioned much before its establishment and after the establishment of Jal Nigam they have got their pay and other facilities according to Rules. It is not admitted that their services are governed by the Rules and Regulation of the State Government, which was made from time to time by the State Government. The correct fact is that in the year 1975 after the establishment of Jal Nigam, officers and employees of all the categories were given option to work under the rule and regulation of Jal Nigam. and therefore the salary of the employees have not been paid by the State Government but are paid by the Jal Nigam. It is wrong to say that in the Board of Directors, representatives of the State Government are also members and under their supervision Committee has been made, in which decision has been taken in respect of services of the employees and officers of circle and head office of Jal Nigam.

16. Paragraphs 4 and 7 of the counter affidavit have been replied in paragraphs 4 and 6 of the rejoinder affidavit as under: -

4. That the contents of paragraph No. 4 of the counter affidavit are not admitted as given by the respondents. It is further submitted by the deponent, that there is no service rules and regulations framed by U.P. Jal Nigam which applies in the service matter of employees of U.P. Jal Nigam. The rules and regulation of the sendees of the employees of U.P. Jal Nigam are governed by the State Government employees' service rules and regulation which was amended time to time by the U.P. Government, hence the payment of salary is being made to employees of the U.P. Jal Nigam as per State Government service rules and regulation and its government order. It is further pertinent to mention here, that Board of Directors of Jal Nigam take the decision in pursuance of the service rules and regulations and Government order issued by the State Government regarding the service and payment of salary.

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6. That in reply of the contents of paragraph no 7 of the counter affidavit, it is admitted to the extent of the deponent that salary of the petitioner is being paid by the U.P. Jal Nigam but their salary was fixed and increased time to time as per Government Order issued by the State Government and their services were also governed by the State Government service rules and regulations, because there is no service rules and regulations was framed by the U.P. Jal Nigam regarding their employees till the date. It is further admitted to the extent that any decision, in regarding the payment of salary, appointment, promotion etc. of the petitioner has been taken by the Board of Directors in pursuance of the Government order service rules and regulations of State employees, It is further relevant to point out here that regarding the fixation of time scale of the petitioner after working period of 14 years of Rs. 5000-150-8000 and after working period of 24 years 8000-275-13500 was approved and recommended by the Board of Directors and sent to the State Government for kind approval in pursuance of Government order dated 02.12.2000 issued by the Chief Secretary Finance of the State Government of U.P. (as Annexure No. 4 of the Writ Petition) but the salary is being not paid by the respondent to the petitioner as per Government order dated 02.12.2000 which shows illegal, arbitrary and discriminatory action of the respondents. The contents of paragraph No. 3 of the writ petition are reiterated and reaffirmed.

17. Since the Jal Nigam claims that the payment of salary to its employees is made by the Jal Nigam itself and not by the State Government and there is no question for taking approval from the State Government to grant the pay scale to its employees, hence Sri V.K. Singh, learned Counsel for the respondents was directed to file supplementary counter affidavit to clarify his stand.

18. The respondents have filed the U.P. Jal Nigam Manchitrak Seva Niyamawali, 1978 along with the Supplementary Counter Affidavit, inter alia, that by the Government Order dated 2.12.2000 time pay scale of Draughtsman/Head Draughtsman has been fixed on completion of 8 years, 14 years, 19 years and 24 years of service and to this effect a letter dated 25.5.2004 had been issued,

but the petitioner had not challenged the order of recovery dated 23.2.2004, as such it is liable to be maintained. It has been lastly stated in the Supplementary Counter Affidavit that having received the report of the Committee constituted on 16.6.2004 sanction is to be given by the State Government after considering it and after sanction has been granted by the State Government, the report is to be approved by a resolution of Nideshak Mandal. The Draughtsman/Head Draughtsman became entitled to the amended pay scale after issuance of notification in this regard.

19. In the Supplementary Counter Affidavit the respondents have completely failed to justify their stand as to why the Draughtsman/Head Draughtsman may not be paid the salary when similarly situated incumbents are being paid the pay scale in pursuance of Government Order dated 2.12.2000 particularly in view of the fact that the Jal Nigam has given the pay scale to all other employees except the petitioners in anticipation of approval of the State Government. In any case the Jal Nigam cannot be permitted to take varying stand. On the one hand the Jal Nigam has come out with the case in its counter affidavit that the employees are entitled to the pay scale as per service regulations and that they have no right to claim the wages in pursuance of Government Order dated 2.12.2000 on the other hand it is contended that the other employees except the Draughtsman/Head Draughtsman have rightly been granted the pay scale though prior sanction has not been obtained from the State Government. The petitioners have worked on the post for which they have been paid wages and recovery cannot be made from them. The action of the respondents is squarely hit by Article 14 of the Constitution and the impugned order in the circumstances cannot be sustained.

20. For the reasons stated above, the petition is allowed. The impugned order dated 16.9.2004 is quashed. No order as to costs.