

(2022) 08 J&K CK 0053

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 394 Of 2017

Ghulam Mohammad Palla & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 26-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2022) 08 J&K CK 0053

Hon'ble Judges : Ali Mohammad Magrey, J; Mohd Akram Chowdhary, J

Bench : Division Bench

Advocate : Z. A. Shah, A. Hanan, T.M. Shamshi

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. This petition challenges the judgment and order dated 07.06.2016 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in the petitioners' OA No.062/00018/2015 titled 'Ghulam Mohammad Palla & ors v Union of India & ors.', dismissing the same.

2. The petitioners claim to be working as Valvemen in the MES Department. Their counter parts at Jammu who were then working as semi-skilled category in the grade of Rs.210-290, relying on the judgment dated 31.07.1991 of the Supreme Court passed in writ petition No.40/1991, had filed a writ petition, SWP No.1393/1994, seeking up-gradation to the category of skilled employees with grade of Rs.260-400 with effect from 16.10.1991. That writ petition was allowed by the High Court of J&K at Jammu vide judgment and order dated 12.03.1997. The intra Court appeal against the judgment was dismissed. However, the Supreme Court vide order dated 06.10.2005 passed in Civil Appeal No.5825 of 2000 remitted the matter to the Division Bench. The Division Bench vide its detailed judgment dated 19.08.2010 held and directed as under:

"43. Since the Government itself has accorded sanction for implementation of

judgments and directions of the various Courts and Tribunals including this Court, as reflected in the above communications, there shall be no impediment in up-gradation of the respondents' grade to skilled category in the scale of Rs.260-400, as prayed for.

44. In consideration of the above and having taken note of the facts and circumstances of the case in its entirety, we are of the view that the respondents, who are undisputedly also performing their duties as are assigned to the skilled workers, are entitled to skilled grade of Rs.260-400 with effect from October 16, 1981, in the light of the principle of 'equal pay for equal work, which itself is a concomitant of Article 14 of the Constitution of India.

45. In view of the above discussion and observations, these appeals are, accordingly, dismissed."

Complying the aforesaid judgment dated 19.08.2010, the appellants before the Division Bench vide order dated 05.01.2012 initially sought to grant re-fixation on notional basis, restricting the actual arrears only to 18 months from the date of filing of the respective OA. However, on the orders dated 31.03.2015 passed by the Division Bench in Contempt (LPA) No.5/2012, the concerned authority issued amendment to the earlier order by order dated 13.04.2015, reading that "the pay shall be re-fixed and the arrears shall be paid w.e.f. 16 Oct 1981, subject to filing of SLP in Hon'ble Supreme Court and decision thereon".

3. It appears that, meanwhile, another group of employees filed a similar petition at Srinagar Wing of the High Court, being writ petition SWP no.1656/2012. That petition was disposed of by order dated 05.11.2012 with direction to the respondents therein to accord consideration to the petitioners' claim in accordance with rules. The concerned authority in consideration of the claim of those petitioners, by order dated 30.11.2012, inter alia, directed that they should approach the Central Administrative Tribunal (the Tribunal), Chandigarh for getting an appropriate order from the Tribunal.

4. The petitioners filed contempt petition COA No.34/2013 before the High Court in which the Court vide order dated 06.02.2013 is stated to have sought compliance report from the respondents. In consequence thereof, it is stated that the Engineer-in-Charge issued order dated 26.03.2013, according approval to the grant of skilled grade to the petitioners with effect from the date of their initial appointment or date of promotion as Valveman or with effect from 16.10.1981, whichever would be later with a rider that re-fixation of pay shall be notional and the actual arrears shall be restricted for 18 months prior to the date of filing of the case.

5. Feeling aggrieved of the aforesaid order dated 26.03.2013 inasmuch as they were granted actual arrears only for 18 months, the petitioners herein approached the Tribunal, Chandigarh, through OA No.062/00018/2015 challenging the aforesaid order dated 26.03.2013, and sought a direction to the respondents to grant the actual benefit of pay fixation to them in the pay scale of

Rs.260-400 with effect from 16.10.1981. As already said, the Tribunal dismissed the petitioners' OA. Hence this writ petition.

6. The respondents in their reply have vehemently supported the judgment of the Tribunal.

7. We heard learned counsel for the parties and considered the matter.

8. The Tribunal has in the impugned judgment and order observed and held as under:

"4. At the very outset, both the litigating parties were in agreement that the benefit of revised pay fixation to the Valveman has emerged out of High Court of Jammu and Kashmir order dated 18.10.2012 wherein it has been held that the applicants would be entitled to benefit of pay scale of skilled Caneman notionally, but the arrears would be confined to the period of 18 months preceding the date of filing of the OA. This order has attained finality as the SLP filed by the respondents against this order was dismissed by the Hon'ble Apex Court. It is an admitted fact that the issue of benefit of revised pay fixation has been settled through several orders of the Tribunal and the judgments of the High Courts. The issue of arrears to be granted from the date of initial appointment was also adjudicated by the Tribunal and consequential benefits were ordered to be given from the date of initial appointment in some cases. However, in an order dated 18.10.2012, the High Court of Jammu and Kashmir has held that the similarly placed applicants-respondents before the High Court would be entitled to the benefit of pay-scale notionally, but the arrears will be confined to eighteen months preceding the date of filing of the OA. This basic principle has neither been set aside or altered in any subsequent judgment. In the light of this fact, it will only be just and proper that we get guided by the ratio laid down in the judgment of High Court of J&K dated 18.10.2012."

9. Perusal of the above passage of judgment clearly establishes that the petitioners were held entitled to the benefit as emerged out of the order passed by this Court on 18.10.2012 in SWP No.1698/2012. The findings recorded and observations made are based on the discussion related to the judgment made by the Tribunal in similarly situated cases.

10. We are in agreement with the conclusion drawn by the Tribunal in terms of order dated 07.06.2016 passed in OA No. 062/00018/2015 titled 'Ghulam Mohammad Pala & ors v Union of India & ors'.

11. In the above background, this Writ Petition is found to be without any merit, as a sequel thereto, the same shall stand dismissed. Consequently, the judgment and order of the learned Tribunal dated 07.06.2016 passed in the petitioners' OA No.062/00018/2015 titled 'Ghulam Mohammad Palla & ors v Union of India & ors.' is maintained.

12. No order as to costs.