

(2009) 07 DEL CK 0340

In the Delhi High Court

Case No : Writ Petition (Civil) 197 of 1993

J. Khushalani

APPELLANT

Vs

Badarpur Thermal Power Station and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 07 DEL CK 0340

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; S.K. Taneja Puneet Taneja and T.K. Tewari, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—By way of the present writ petition the Petitioner seeks a direction to the Badarpur Thermal Power Station, Respondent No. 1 herein, and the National Thermal Power Corporation Ltd. (NTPC), Respondent No. 2 herein, to restore the annual earned increment on due dates which have purportedly been unilaterally postponed by six months consequent upon revision of pay scales in October, 1991 w.e.f. 1st January, 1987.

2. The brief facts as are germane for determination of the present writ petition are adumbrated as follows:

(a) The Petitioner was appointed to the post of Supervisor Grade-I (Pers) on the 5th November, 1980. The Petitioner has been drawing his annual earned increment from 1st July every year. The Petitioner was at the relevant time performing his duties to the post of Senior Supervisor (Pers).

(b) The Respondent No. 2 revised the pay scales of employees including the Petitioner in October, 1991 w.e.f. 1st January, 1987 as aforesaid. The said pay scales of the employees of Respondent No. 2 were revised and clarifications issued thereon by Corporate Personnel Circulars No. 271 of 1991 dated 10th July,

1991 and 273 of 1991 dated 18th July, 1991 In the Circular dated 18th July, 1991 it was clearly postulated as to how the annual date of increment in the revised pay scales would be fixed vide Clause 3 of the said Circular. Para 3.2 being relevant in the instant case is as follows:

Where two pay stages in a pre-revised pay scale have been fixed at a single pay stage in the corresponding revised pay scale, the anniversary date of increment of supervisors at the higher stage in the pre-revised pay scale shall remain the same, while in respect of supervisors at the lower stage, the next increment shall be drawn w.e.f. 01.01.88 i.e. on completion of one full year from the effective date of pay scale revisions. Subsequent annual increments will accrue after rendering one year's service, as per conditions attached to grant of annual increment.

The said provision was necessitated as otherwise the employee at lower pay stage (junior employee) would have superseded the employee at higher pay stage (senior employee) in terms of pay since the two stages of employees hitherto drawing Rs. 1340/- and Rs. 1390/- respectively as basic pay had been merged to the revised basic pay of Rs. 2845/-.

(c) It is relevant to note that the Petitioner did not challenge the above said Circulars dated 10th July, 1991 No. 271 of 1991 and 18th July, 1991 No. 273 of 1991 and accepted the revised pay scales without protest. Consequent upon the revised pay scales and the merger of two stages, in view of Clause 3.2 above, the Petitioner was entitled to the next increment w.e.f. 1st January, 1988 i.e. on the completion of one full year of service from the effective date of pay scale revision.

(d) The Petitioner is aggrieved by the postponement by six months of his entitlement to receive the annual earned increment upon revision of pay scales.

3. The Petitioner appearing in person submitted that the unilateral postponement to 1st January every year w.e.f. 1987 onwards has the consequence of putting the Petitioner to loss in pay and allowances of six months every year and the said unilateral postponement is contrary to the already established rules/practice of the Respondents. The Petitioner next urged that if there are scales of pay then the annual increments are automatic and its postponement and advancement is not permissible and results in arbitrary exercise of powers by the Respondents.

4. The Petitioner in support of his submissions relied on the following judgments:

1. Nepal Singh Vs. State of U.P. and Others, .
2. Associated Cement Company Ltd., Chaibasa v. Their workmen (Chaibasa Cement Workers" Union) (1957) II LLJ 559
3. Union of India and Anr. v. Shyama Pada Sidhanta and Ors. 1991 SCC (L&S) 1004.
5. On the other hand, it was urged on behalf of the Respondents that the

circulars resulting in the revision of pay scales was a policy decision and cannot be the subject matter of challenge in a writ petition. It was next urged that the petition did not mount a challenge to the said circulars and as such was without merit. It was lastly urged on behalf of the Respondents that since the two pay stages in a pre-revised pay scale had been fixed at a single pay stage in the corresponding revised pay scale, the next date of increment for the lower pay stage (junior employee) was rightly fixed as accruing after rendering one year service from the date of the revision of pay scales i.e. 1st January, 1987.

6. Learned senior counsel appearing on behalf of the Respondents placed reliance on the following judgments:

1. Union of India and others Vs. Makhan Chandra Roy, .

2. Shiba Kumar Dutta and Ors. v. Union of India and Ors. 1997 SCC (L&S) 831.

3. Union of India and Anr. v. P.V. Hariharan and Anr. 1997 SCC (L&S) 838.

7. Before proceeding to consider the rival submissions made at the Bar it would be relevant to elaborate on the authorities relied upon by the parties.

1. In Nepal Singh v. State of UP and Ors. (supra) the Supreme Court held

7. It seems to us that the High Court has failed to consider the true content of the case set up by the appellant. The entire thrust of the appellant's case is that in terminating the appellant's services the competent authority treated him unfairly and arbitrarily. It is well settled that in dealing with a Government servant the State must conform to the constitutional requirements of Articles 14 and 16 of the Constitution. An arbitrary exercise of power by the State violates those constitutional guarantees, for a fundamental implication in the guarantee of equality and of protection against discrimination is that fair and just treatment will be accorded to all, whether individually or jointly as a class. When a Government servant satisfies the Court prima facie that an order terminating his services violates Articles 14 and 16, the competent authority must discharge the burden of showing that the power to terminate the services was exercised honestly and in good faith, on valid considerations, fairly and without discrimination.

2. In Associated Cement Company Ltd., Chaibasa (supra) the Labour Appellate Tribunal of India observed that:

Now comes the question of time-scale increment. The tribunal has directed that time-scale increment shall be discretionary with the management. The union objects to this. The lower tribunal observed that increase in wages must result in increased cost of production unless the workman improves his speed. This is one of the reasons for which a time-scale is not given for factory workers. The position is, however, different here. The management proposed a time-scale with annual increments. The directive of Sri Shiva Pujan Rai did not necessarily imply any time-scale. This is purely a management offer and it must be presumed that

full implication of the incremental scale and its effect on cost of production had been examined. The matter cannot be left as discretionary with the management. We, therefore, hold that annual increment shall be the normal rule. Annual increment can be withheld by the management when there is misconduct, insubordination, habitual negligence or inefficiency of the workman.

3. In *Union of India and Anr. v. Shyama Pada Sidhanta and Ors.* (supra) the Supreme Court observed that:

2. Challenging the validity of the office memorandum, the respondents moved the Central Administrative Tribunal for relief. They have succeeded before the Tribunal. The Union of India challenges the legality of the decision of the Tribunal.

3. Counsel for the State, inter alia, contended that when the pay is fixed at a stage higher than the pay drawn in the old scale, then the increment shall accrue only after completing the period of twelve months. The service rendered in the lower scale cannot be counted for earning increment in the higher scale.

6. The respondents are not covered under Rule 15(a) which is a common case of parties. Their service therefore, shall count for increments in the time-scale applicable to the post on which they hold a lien. That means in the post carrying lower pay scale. The combined effect of F.Rules 23, 22(a)(ii) and 26(b)(i) seems to be that the respondents need not wait for twelve months from the date of fixation of their pay in the new scale for earning increment in the revised scale. They are entitled to get the first increment in the new scale as on the due date in the old scale. The office memorandum dated January 9, 1984 appears to be contrary to the statutory rules and therefore, cannot be given effect to. The view taken by the Tribunal is justified and we see no merit in this petition. It is accordingly rejected, with no order as to costs.

4. In *Union of India and Ors. v. Makhan Chandra Roy* (supra) the Supreme Court observed:

The Tribunal compared the earlier pay-scales of Auxiliary Nurses and Midwife with the earlier pay-scales of the respondent and thought it fit to grant the same hike in the pay-scale which was made available under the Revised Pay Rules to Auxiliary Nurses and Midwife to respondent also. In our view that exercise was totally unauthorised as it amounted to taking a policy decision which was within the domain of the authorities themselves who are the authors of the Revised Pay-scales." The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

5. In *Shiba Kumar Dutta and Ors. v. Union of India and Ors.* (supra) the Supreme Court observed that:

3. The admitted position is that the petitioners who are working as Fitters (T&G), had sought to be fused in the category of, and to be on a par with, Jig Borers. They sought equal pay on a par with them. They contend that they were drawing higher pay scales than the Fitter; instead of elevating their cadre and placing them in the higher pay scales, they have been brought down in the category as a Fitter after removing the two nomenclatures. Thereby, it is arbitrary on account of invidious discrimination. The Third Pay Commission had gone into that aspect of the matter and fixed the scales of pay. Thereafter, admittedly, Expert Classification Committee and Anomalies Removal Committee had also gone into the matter and made distinction between them. Subsequently, nomenclature of all of them were removed and fused into one category, namely, Fitter. Nomenclature and fitment is one of executive policy of the government. Unless the action is arbitrary or there is invidious discrimination between persons similarly situated, doing same type of work, as is pointed out, 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 the Expert Committees and Government. The courts cannot go into them and evaluate the job criteria and scales of pay prescribed for each category. Under those circumstances, the Tribunal is justified in refusing to go into the question.

6. In *Union of India and Anr. v. P.V. Hariharan and Anr.* (supra) the Supreme Court observed that:

We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e. , matters asking for a higher pay scale or an enhanced pay scale as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member.

8. Now coming to the facts of the given case and the rival submissions of the parties, it is seen that the Respondent No. 2 revised the pay scales of employees

in October, 1991 w.e.f. 1st January, 1987 by way of a policy decision. The Circular dated 18th July, 1991 which contained the policy decision clearly postulated vide Clause 3 that the two stages in the pre-revised scales were fixed at a single pay stage in the revised pay scales and the date of increment of the supervisors at the higher stage would remain the same, whereas in respect of supervisors of the lower stage the next increment would be drawn on completion of one full year from the effective date of pay scales revisions i.e. 1st January, 1988. The rationale behind the said policy decision was that otherwise the employee at the lower pay stage in the pre-revised pay scale would have superseded the employee at the higher pay stage, since the two stages of employees hitherto drawing Rs. 1340/- and Rs. 1390/- respectively as basic pay had been merged to the revised basic pay of Rs. 2845/-. It is an admitted position that the Petitioner was at a lower pay stage in the pre-revised pay stage of supervisors. It is also an admitted case that the Petitioner did not challenge the circulars based on which the policy decision in this behalf had been taken and had in fact accepted the revised pay scales without protest. It is further seen that the submissions made on behalf of the Petitioner are of no avail to him since the decisions cited by him in support thereof do not support his case.

9. It is seen that in *Nepal Singh's case* (supra) the facts were that, an order of termination of service of temporary Sub Inspector of Police was set aside by the Supreme Court since it was based on mere allegations and on unspecific and vague grounds. In that factual matrix the Supreme Court held that a arbitrary exercise of power by the State violates constitutional guarantees of equality and of protection against discrimination that fair and just treatment will be accorded to all whether individually or jointly as a class. This proposition is well established. However, in the present case, the Petitioner has been unable to show that similarly situated people had been treated differently, or to demonstrate that any unequal treatment of equals or lack of good faith resulted in discrimination between them in any manner.

10. In *Associated Cement Company Ltd., Chaibasa* (supra) the Labour Appellate Tribunal of India held that annual increment shall be the normal rule. This ratio, however, cannot be extended to mean that the annual increment cannot be postponed under a policy that has understood the full implications of the incremental scale and has examined its effects on persons differently placed in the pre-revised scale viz-a-viz their placement on the post-revised scales.

11. In *Shyama Pada Sidhanta and Ors* (supra) the Supreme Court held that the combined effect of fundamental rules that were applicable to the Inspector of Central Excise were clearly violated by the impugned office memorandum and as such that office memorandum could not be given effect to. In the present case, there is no challenge to the circulars revising the pay scales and requiring the junior employee in the pre-revised pay scales to wait for 12 months from the date of fixation of his pay in the revised pay scales for earning increment. It has neither been urged nor demonstrated by the Petitioner that any statutory rules

apply to the Petitioner nor have such rules been brought to the notice of this Court.

12. On the other hand, there can be no quarrel with the decisions cited on behalf of the Respondents that judicial review of a policy ought not to take place unless a clear cut case of hostile discrimination is made out. this Court cannot but follow the ratio of the decisions cited on behalf of the Respondents to the effect that fitment and pay scale is a matter of executive policy of the Government and unless the action is arbitrary or there is invidious discrimination between persons similarly situated, it would be difficult for Courts to go into the question of equation of posts or fitment into a particular scale of pay. These are issues that must be left to be decided by the expert committees and the Government.

13. In the present case, as has been stated above no such arbitrary action or invidious discrimination between persons similarly situated has been demonstrated by the Petitioner. Therefore, the jurisdiction of this Court is limited where policy decisions within the domain of the authorities themselves are concerned.

14. For the foregoing reasons, I find no merit in the present writ petition and the same is hereby dismissed without any order, however, as to costs.