
(2015) 10 AHC CK 0014
In the Allahabad High Court
Case No : Service Single No. 7246 of 2013

Murlidhar Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 LLN 606

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : Sudhir Kumar Mishra, for the Appellant

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Shri Sudhir Kumar Mishra, learned counsel for the petitioner, learned Standing Counsel and perused the record.

2. By means of the present writ petition, the petitioner has challenged the order dated 12.08.2012 passed by Superintendent of Police, District-Shrawasti.

3. Facts in brief of the present case are that petitioner was recruited as a Constable in the Arme Police and after completing the training from RTC, he was posted at 11th Battalion, Sitapur. Thereafter, in the year 1978, he was selected for the post of driver and worked in different places of the State of U.P. In the year 1986, after enforcement of the 4th Pay Commission, he was granted first promotional pay scale. Lastly, in the year 1992, as super selection grade has not been provided in the 5th Pay Commission, so the petitioner has not been given 2nd promotional pay scale after completing 24 years his service and also not given next promotional on the post of Inspector in pay scale Rs. 5500-9000/- and 6500-10500/- after completing 30 years of his service as per the existing Government Order in view of the 5th pay commission.

4. After completing 37 years of his services, the competent authority has not provided financial benefits in the grade pay of Rs. 4800/- of the service benefit

ACP in 6th Pay Commission. Accordingly, he approached this Court by filing Writ Petition No. 1915 (SS) of 2012, disposed of with a direction that the case of the petitioner be considered. Accordingly, by order dated 12.08.2012 passed by Superintendent of Police, District-Shrawasti, the case of the petitioner has been rejected with the following finding:-

5. Accordingly, the same has been challenged by filing the present writ petition.

6. Learned counsel for the petitioner while challenging the impugned order submits that the service benefit which is detained since 1991 without any reason i.e. Super Selection Grade ought to be granted in the year 1991 and thereafter 5 years satisfactory service the second promotional pay scale take into consideration in the year 1996 and count the further satisfactory service period of the petitioner in the year 2002 for next higher pay scale and further grant the benefit of ACP which is provided in the 6th Pay Commission and applicable since December 2008 by which the petitioner is entitled for the grade pay of Rs. 4800.

7. The petitioner who has completed utmost his 37 years satisfactory service in the police department as constable/driver is entitled for second promotional pay scale of the Sub-Inspector and after completing the satisfactory 24 years service, he is further entitled of next higher pay scale on the post of Inspector of. After completing 36 years, he is entitled for the next higher pay scale of next post in the grade pay of Rs. 4800/- as per government order in view of the report of 6th Pay Commission. In the government order dated 04.05.2010, three financial up gradation have been provided on completion of 10 years, 18 years and 26 years of satisfactory services to a government employee.

8. The petitioner is getting the pay scale of Rs. 4500-7000/- and revised pay band-1 Rs. 5200-20200/- grade pay Rs. 2800-. It is clarified that this scale is of the post of Asst. Sub-Inspector (Ministerial Cadre) which is a separate cadre. The said pay scale is not a promotional pay scale of promotional post representing the pay scale of Inspector on which the petitioner has been entitled for granting promotional pay scale on the grade pay of Rs. 4800/- in the pay scale of Rs. 5500-9000/-.

9. Accordingly, it is submitted by learned counsel for the petitioner that the impugned order is liable to be set aside.

10. Learned Standing Counsel while defending the impugned order submits that the increment of salary has already been given to the petitioner on 22.05.2005 after completion of 19 years service, but benefits of A.C.P. After completing of 24 years service was not provided to the petitioner as punishment was awarded to him. As per the provisions of the Government Orders dated 25.03.1994 as well as the directions issued vide order dated 09.05.2002 of the U.P. Police Headquarters, Allahabad, the Superintendent of Police, Siddharthnagar vide his order dated 18.07.2003 H.O.B. No. 611 dated 20.07.2003, one increment was given to the petitioner as time scale after 06 years satisfactory services i.e. on 01.07.1991 first promotional pay scale was admissible to him, but as per the

service records; in the year 1991 his integrity was withheld; in the year 1992 reversion to 01 stage lower in the pay scale, hence the first higher pay scale was not given to him. Thereafter, on completion of further 04 years satisfactory services w.e.f. 22.05.2000 first higher pay scale of Rs. 3200-85-4900/- was given to the petitioner in the following manner:-

"Rs. 4200.00 w.e.f. 22.05.2000;

"Rs. 4305.00 w.e.f. 01.07.2000;

"Rs. 4390.00 w.e.f. 01.07.2001;

"Rs. 4475.00 w.e.f. 01.07.2002; and

"Rs. 4560.00 w.e.f. 01.07.2003;

11. As per the provisions of the Government Order dated 02.12.2000, 03.09.2001 on completion of 05 years services after the sanctioning of the first higher pay scale i.e. on completion of total 19 years satisfactory services one additional increment was given on 22.05.2005. According to the Government order dated 02.12.2000 and the Government Order dated 03.09.2001, the benefit of second higher pay on completion of 24 years service was admissible only till 30.11.2008.

12. Due to punishment order dated 24.03.2008 passed under the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, whereby the punishment of penalty equal to the one month's salary was awarded was effect till 24.03.2011 which became ineffective on 25.03.2011, as such, according to the Government Order dated 22.12.2011, the pay of the petitioner was fixed vide order dated 26.06.2011 in the upgraded scale w.e.f. 01.01.2006 and arrears were also paid to him as per the Government Order dated 28.11.2010.

13. Second Promotional pay scale was admissible to the petitioner in the year 2008 but after completion of 22 years satisfactory services, since the petitioner was again awarded punishment, therefore the same could not be given to him. As per the Government order issued on the basis of the recommendations of the sixth pay commission, the petitioner completed 24 years satisfactory services in the year 2011 therefore the same could not be given to him. Now under the Assured Career Progression Scheme, Third Assured Career Progression pay scale is admissible to the petitioner on completion of 26 years satisfactory services which the petitioner was going to attain 22.05.2013.

14. Therefore, in accordance with the new Government Order, the petitioner would be entitled for next, ACP after completion of 26 years of satisfactory service. Therefore, in view of the aforesaid facts, the application of the petitioner dated 30.04.2012 has been considered by the Superintendent of Police, Shravasti and the same has been decided by means of an order dated 12.08.2012.

15. Accordingly, it is submitted by learned Standing Counsel that the present writ

petition is liable to be dismissed.

16. I have heard learned counsel for the parties and gone through the records.

17. As per recommendations of the Fifth Central Pay Commission, the Government has introduced the Assured Career Progression (in short ACP) Scheme, which provides for higher pay scales without assigning higher responsibility. The scheme is required to be viewed as a "Safety Net" against frustration. Unlike the in situ promotion scheme, the new scheme is applicable even where provision for promotion is made in the rules or an employee has already obtained a promotion, but did not get another during more than a decade.

18. The Scheme has the effect of granting pay of the promotion post although the incumbent continues in his own post and cadre. The benefit is to obviate the shortage of promotion posts in public service. The scheme provides that in a service career an employee may obtain two such upgradation in pay-one after 12 years and the other after 24 years. The benefits of the scheme has been extended to all who fulfills the parameters. The introduction of the scheme was made on 09.08.1999. The application of the Scheme shall take effect from the date of its issue. The Instructions in the O.M., inter alia, contain that the benefits may be extended to all classes of civilian employees. An extracts from the said Scheme is given below:-

"Group "A" Central services:

2.1 In respect of Group "A" Central Services (Technical/Non-Technical), no financial upgradation under the Scheme is being proposed for the reason that promotion in their case must be earned. Hence, it has been decided that there shall be no benefits under the ACP Scheme for Group "A" Central Services (Technical/Non-Technical). Cadre Controlling Authorities in their case would, however, continue to improve the promotion prospects in organizations/cadres on functional grounds by way of organizational study, cadre review, etc., as per prescribed norms.

Group "B", "C" and "D" Service/Posts and Isolated posts in Group "A", "B", "C" and "D" Categories:

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has therefore been decided to grant two financial up-gradations (as recommended by Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group "C" and "D" employees) under the ACP Scheme to Group "B", "C" and "D" employees on completion of 12 years and 24 years of regular service respectively. Isolated posts in Group "A", "B", "C" and "D" posts which have no promotional avenue shall also qualify for similar benefits under the

aforesaid Scheme for Grant of financial up-gradation.

19. The Scheme is not to affect opportunities of normal promotions through the DPC procedures. However, for granting the up-gradation of pay in terms of the ACP, it will be necessary that a Screening Committee, which is equal in powers with a DPC clears an employee as fit for the benefits. Such Screening Committees need not however be chaired by the UPSC. The Departmental Secretaries or other authorities may head the Committees.

20. In view of the above said facts and taking into consideration the reasoning given by Superintendent of Police, Shravasti/opposite party No. 3 thereby rejecting the case of the petitioner vide order dated 12.08.2012, I do not find any illegality or infirmity in the same because power of judicial review under Article 226 of the Constitution of India does not exercise appellate powers. It is not intended to take away from administrative authorities the powers and discretion properly vested in them by law and to substitute courts as the bodies making the decisions. Judicial review is a protection and not a weapon.

21. In the case of Council of Civil Service Unions (CCSU) V. Minister 11 for the Civil Service (1984) 3 ALL ER 935, Lord Diplock has observed the scope of judicial review in the following words:-

"Judicial Review as I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality" the second "irrationality" and the third "procedural impropriety".

22. Moreover, judicial review has certain inherent limitation. It is suited more for adjudication of disputes than for performing administrative functions. It is for the executive to administer the law and the function of the judiciary is to ensure that the Government carries out its duty in accordance with the provisions of the rules and statute.

23. In the case of Chief Constable of the North Wales Police V. Evans, (1982) 3 ALL ER 141, it was observed by Lord Hailsham as under:-

"Purpose of judicial review is to ensure that individual receives fair treatment and not to ensure that the authority, after according fair treatment reaches on a matter which it is authorized by law to decide with its conclusion which is corrected in the eyes of the Court."

24. In the same case, Lord Brightman observed that:-

"Judicial review as the words imply is not an appeal from a decision but a review of the manner in which a decision was made," and held, that "it would be an error to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

25. The aforesaid observations made by the Lord Hailsham and Lord Brightman

were quoted with approval by their Lordships of Supreme Court in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, , and while upholding that the judicial review is directed not against the decision, but is confined to the examination of the decision making process, it was held by the Supreme Court as under:-

"When the issue raised in judicial review is whether a 12 decision is vitiated by taking into account irrelevant, or neglecting to take into account, relevant factors or is so manifestly unreasonable that no reasonable authority entrusted with the power in question could reasonable have made such a decision, the judicial review of the decision making process includes examination, as a matter of law, of the relevance of the factors."

26. In the case of Tata Cellular Vs. Union of India, the Supreme Court stated that:-

"Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made but the decision making process itself," and enumerated some broad grounds upon which an administrative action is subject to control by judicial review and classified them under the heading of "illegality", "irrationality" and "procedural impropriety." In their supervisory jurisdiction as distinguished from the appellate one, the Courts do not themselves embark upon rehearing of the matter but nevertheless courts will, if called upon, act in a supervisory capacity and see that the decision making-body acts fairly. If the decision making body is influenced by considerations which ought not to influence or fails to take into account the matters which ought to have been taken into account the Courts will interfere. If the decision making body comes to its decision on no evidence or comes to a finding so unreasonable that a reasonable man could not have come to it then again the Courts will interfere.

Further, if the decision making body goes outside its power or misconstrues the extent of its power, then the Courts can only interfere, if the decision making body acts in a bad faith or with ulterior object which it is not authorized by law, its decision will be set aside in supervisory jurisdiction. A decision of a public authority will be liable to be quashed or otherwise dealt with by appropriate order in judicial review proceedings, where the Courts concludes that the decision is such that no authority properly directing itself on the relevant law and fact acting reasonably could have reached it".

27. Thus the decision by the appropriate authority to grant or not to grant a particular relief to a person is not open to Judicial review by the High Court under Article 226 of the Constitution of India but the power of judicial review is circumscribed to scrutiny of the decision making process only and is to be exercised in the light of the principles laid down above and applying the said principles to the facts of the present case, I do not find any irregularity, infirmity in the impugned.

28. For the foregoing reasons, the writ petition lacks merit and is dismissed.