

(2014) 06 SC CK 0009

In the Supreme Court Of India

Case No : Civil Appeal No. 5854 of 2014 (Arising out of SLP (C) No. 31621 of 2012)

National Institute of Technology

APPELLANT

Vs

U. Dinakar

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 7 AD (SC) 504 : AIR 2015 SC 476 : (2015) 1 AKR 553 : (2014) 5 AWC 5043 : (2014) 143 FLR 782 : (2014) 3 JLJR 246 : (2015) LabIC 2296 : (2014) 3 PLJR 374 : (2014) 8 SCALE 243 : (2015) 1 SCC(L&S) 266 : (2014) 7 SCJ 245 : (2014) 3 SCT 427 : (2014) 3 SL

Hon'ble Judges : Sudhansu Jyoti Mukhopadhyaya, J;Kurian Joseph, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sudhansu Jyoti Mukhopadhyaya, J.—Leave granted.

2. This appeal is directed against the judgment and order dated 8th November, 2011 passed by the High Court of Karnataka, Bangalore in Writ Appeal No. 1030 of 2006. By the impugned judgment, the High Court allowed the appeal preferred by the Respondent No. 1 and held that he is entitled to the Central pay scale and denial of such scale would be bad in law.

3. The factual matrix of the case is as follows:

Respondent No. 1 was selected and appointed as Deputy Registrar of Karnataka Regional Engineering College, Suratkal (now known as National Institute of Technology, Karnataka) in March, 1979. While he was so performing the duty the Department of Education, Ministry of Human Resource Development, Government of India issued a communication bearing No. F. No. A11014/2/87/T-4 dated 5th February, 1988 to the Principals of all Regional Engineering Colleges (except Srinagar and Jaipur) revising the scales of pay attached to the Senior Administrative posts carrying the Central scales of pay on the basis of the

recommendations of the Fourth Central Pay Commission w.e.f. 01.01.1986. Thereafter, the Board of Governors of the Appellant-Institute resolved to accept the proposal of the Central Government regarding revision of pay scale attached to the Senior Administrative posts.

4. On 19th April, 1988, the Department of Education, Ministry of Human Resource Development, Government of India, issued another order to the effect that the non-academic post of Registrar, Librarian and Foremen in the Regional Engineering Colleges be given State pay scales comparable to pay scales in similar other institutions in the State. It was decided that an option may be sought from the present incumbents whether they would like to opt for the Central scales of pay or State scales of pay. Those who may opt for Central Scales of pay their posts may be convened into the State Scales of pay as and when the present incumbents to the posts leave the job or retire. In due course of time all the posts are converted into State scales of pay. Thus, for new incumbents it was ordered to give State scales of pay. The relevant extract of the order dated 19th April, 1988 which is necessary for adjudication of this appeal is as under:

In the meeting it was observed that the incumbents to the non-academic post of Registrar, Librarian and Foreman in the RECs are on Central scales of pay, put drawing D.a. and other allowances of State Government rates. The matter was discussed at length and it was observed that incumbents to these posts are mostly recruited locally. It was accordingly decided that incumbents to all these posts may be given State pay scales comparable to pay scales in similar other institutions in the State keeping in view the size of the RECs and duties and responsibilities assigned accordingly draw State scales and State Government allowances. To obviate any difficulty in implementing this decision, it was decided that an option may be sought from the present incumbents whether they would like to opt for the Central scales of pay or State scales of pay. However, for those who opt for central scales of pay, those posts may be convened into State scales of pay as and when the present incumbents to the posts leave the job or retire. Thus in due course of time all these posts be converted into State scales of pay.

5. According to Appellant, the aforesaid order dated 19th April, 1988, was adopted and applied in respect of the Appellant-Institute with respect to the Senior Administrative Posts in the Appellant-Institute.

6. The Department of Education, Government of India issued an order dated 23rd June, 1990 granting its approval to the Government of India notification dated 5th February, 1988 and giving an option to the existing incumbents either to continue in the Central pay scale or opt for State pay scale. It further provided that the State pay scale suggested therein would be applicable to the future incumbents, who will be appointed as and when, the existing incumbents would cease to hold the respective posts. The relevant portion of the letter dated 23rd June, 1990 reads as under:

Pay to the aforesaid no academic posts into the Karnataka Regional Engineering college, Surthkal, as indicated in Column 4 of the Statement below:

7. Respondent No. 1, who was working as Deputy Registrar in the Appellant-Institute opted for the Central pay scale with respect to the post of Deputy Registrar vide his letter dated 7th July, 1993.

8. Several posts, including the post of the Registrar, became vacant during this period. Therefore, the Appellant-Institute issued notification No. 5295/ESTT/12/B1 dated 29th July, 1994 inviting applications for appointment to various posts, including the post of the Registrar, by direct recruitment. The notification unequivocally stated that the scale of pay applicable to the post of Registrar is Rs. 2375-75-200-100-3700-125-4450 and that besides the basic pay in the applicable time scale of pay of the respective posts, admissible allowances in accordance with Karnataka Government Rules as in force from time to time are payable. Relevant extract of the advertisement dated 29th July, 1994 reads as under:

4. Registrar: 1 post (Principal's office) (Scale of pay Rs. 2375-75-200-100-3700-125-4450).

II. Details of qualification/Experience/specialization required:

xxx

General Instructions:

i) In case a candidate for the advertised post is not suitable for the post, the next lower position may be offered to the candidates, if he is found suitable for the lower position.

xxx

IV. Besides the basic pay in the applicable time scale of pay of the respective posts admissible allowances in accordance with Karnataka Government Rules in force from time to time are payable.

9. Pursuant to the said advertisement, Respondent No. 1 applied for the post of Registrar of the Appellant Institute. The Selection Committee of the Appellant-Institute selected Respondent No. 1 for the said post and issued the appointment letter No. 5487/ESTT/1994/91 dated 16th February, 1995.

10. As Respondent No. 1 was already holding the post of Deputy Registrar in the Appellant-Institute. It is alleged that he colluded with the officers of the Appellant-Institute to issue an appointment letter prescribing the Central scale of pay i.e. Rs. 3000-100-3500-125-4500 instead of the State pay scale of Rs. 2375-75-2900-100-3700-125-4450 as provided in the advertisement notification dated 29th July, 1994.

11. When the Appellant-Institute discovered that Respondent No. 1 was drawing a salary higher than what he was entitled to due to the anomaly in the

advertisement and the letter of appointment, it appointed a five-members Enquiry Committee, which comprised of Respondent No. 2 herein as the Chairman and 4 other Members, to look into the matter. The Enquiry Committee issued a show cause notice dated 23rd January, 1998 to Respondent No. 1 seeking explanation for the aforesaid anomaly. Later, another show cause notice was issued to Respondent No. 1 by the Appellant-Institute on 9th February, 1999 to which Respondent No. 1 sent a reply on 15th February, 1999. The Enquiry Committee considered all the aspects of the matter and submitted a report dated 24th February, 1999 recommending appropriate disciplinary action against Respondent No. 1.

12. Based on the recommendation of the Enquiry Committee dated 24th February, 1999, a show cause notice dated 10th May, 1999 was issued to Respondent No. 1 seeking an explanation as to why the pay scale of Respondent No. 1 as shown in the appointment letter should not be rectified by amending the appointment letter dated 16th February, 1995 issued to him by deleting the scale of pay of Rs. 3000-4500 and substituting the same with the scale of Rs. 2375-4450. The show cause notice also sought to fix his salary accordingly and sought explanation as to recovery of excess pay drawn by Respondent No. 1 be not made.

13. On 5th June, 1999, Respondent No. 1 submitted his reply to the aforesaid show cause notice dated 10th May, 1999.

14. Thereafter, on 6th July, 1999 the Appellant-Institute, after considering the reply filed by Respondent No. 1 issued an order rectifying the pay scale of Respondent No. 1. Accordingly, the pay scale of Rs. 3000-4500 mentioned in the appointment letter dated 16th February, 1995 was deleted and same was substituted with pay scale of Rs. 2375-4450 and the salary was refixed as per the said pay scale.

15. Aggrieved by the order dated 6th July, 1999, passed by the Appellant-Institute, Respondent No. 1 filed an appeal challenging the aforesaid order and claiming the pay scale which he was drawing under the appointment order. The Board of Governors in its 128th meeting dated 30th September, 1999/13th October, 1999 rejected the appeal filed by Respondent No. 1 and upheld the pay scale rectification order dated 6th July, 1999.

16. Pursuant to the above order, the Appellant-Institute issued an order dated 13th October, 1999 whereby the pay scale of Respondent No. 1 was fixed in the State pay scale of Rs. 2375-75-2900-100-3700-125-4450 with effect from 20th February, 1995. He was granted the revised equivalent pay scale of Rs. 7400-200-8800-260-10880-320-12320.

17. Being aggrieved, Respondent No. 1 filed a Writ Petition No. 40037/1999 before the High Court of Karnataka challenging the action of the Appellant-Institute refixing his salary on the basis of the State pay scale. Though the order of refixing was challenged, Respondent No. 1 did not challenge the Government

of India notification dated 19th July, 1988 whereby it was decided to grant State scale of pay to the newly appointed/recruited persons. During the pendency of the writ petition the Appellant-Institute issued Office Memorandum dated 7th February, 2000 requesting Respondent No. 1 to refund the excess salary of Rs. 4,763.50 paise paid to him. The Appellant-Institute also filed a counter-affidavit in the writ petition denying all the allegations and justifying the order impugned.

18. Learned Single Judge of the High Court by judgment and order dated 30th May, 2006 dismissed the writ petition.

19. Against the order of dismissal Respondent No. 1 preferred Writ Appeal No. 1030 of 2006, which was allowed by the impugned judgment dated 8th November, 2011.

20. Learned Counsel appearing on behalf of the Appellant submitted that Respondent No. 1 had not taken any plea of bias before the learned Single Judge as apparent from the judgment and order dated 30th May, 2006 passed by the learned Single Judge. However, such plea was taken before the Division Bench which allowed the writ appeal inter alia on the ground that the enquiry was tainted by bias. According to Appellant, there was a mistake in the order of appointment issued in favour of Respondent No. 1, it was open to the competent authority to rectify the mistake.

21. On the other hand, stand taken by Respondent No. 1 is that he was rightly granted Central scale of pay, the order recalling the benefit is illegal.

22. Appointment to the post of Registrar was made by the Institute by direct recruitment pursuant to notification No. 5295/ESTT/12/B1 dated 29th July, 1994. The notification unequivocally stated that the scale of pay applicable to the post of Registrar is Rs. 2375-75-200-100-3700-125-4450 and that besides the basic pay in the applicable time scale of pay of the respective posts, admissible allowances in accordance with Karnataka Government Rules as in force from time to time are payable. Pursuant to the said notification Respondent No. 1 was appointed as Registrar by letter No. 5487/ESTT/1994/91 dated 16th July, 1995. However, in the letter of appointment the Central scale of pay of Rs. 3000-100-3500-125-4500 with other allowances were mentioned.

23. It is not the case of Respondent No. 1 that the Central scale of pay of Rs. 3000-4500 as shown in his letter of appointment was notified by the Institute. The case of Respondent No. 1 is also not a case of promotion so as to enable him to claim Central scale of pay, which he was drawing against lower post of Deputy Registrar. The case of Respondent No. 1 being that of the direct recruitment pursuant to notification dated 29th July, 1994, Respondent No. 1 cannot claim that he was promoted to the post of Registrar. In the letter of appointment, it was mentioned that Respondent No. 1 i.e. "Sh. U. Dinakar is promoted and appointed as Registrar" in the office of the Karnataka Regional Engineering College, Surathkal.

24. We do not intend to go into the question whether Respondent No. 1 manipulated and inserted the word promoted in the letter of appointment. Admittedly, the appointment order has been issued pursuant to the notification of direct recruitment, therefore, it should be treated as direct recruitment. Mistake if any committed by clerical staff or any other authority in mentioning the word 'promoted and appointed' in place of 'appointed' and showing higher scale of pay of Rs. 3000-100-3500-125-4500, it is always open to the competent authority to correct the mistake.

25. However, before such correction it is incumbent to the part of the authority to inform the officer concerned that there is a mistake in his order of appointment and competent authority intends to correct the same so as to enable the officer to submit an effective reply and show that it was not a mistake but the order was genuine and in accordance with law.

26. In the present case, the authority had given notice to Respondent No. 1 and brought to his notice that there is a genuine mistake in his letter of appointment and he has been wrongly given a higher pay of scale of Rs. 3000-4500. Respondent No. 1 submitted his reply and not taken any plea that he has not applied pursuant to the notification of direct recruitment but his case was considered by way of promotion. In that view of the matter we hold that the competent authority has inherent power to correct the mistake if any committed in the order of appointment after giving proper opportunity to the concerned employee/officer.

27. In view of the aforesaid finding we hold that the Appellant had committed no error in correcting the letter of appointment by replacing the correct scale of pay to which Respondent No. 1 was entitled i.e. Rs. 2375-75-2900-100-3700-125-4450 as provided in the advertisement/notification dated 29th July, 1994.

28. The bias or malafide plea is generally raised by an interested party, the Court cannot draw any conclusion unless allegations are substantiated beyond doubt. In this connection, one may refer decision in *M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others*, . So far as the allegation of malafide against Dr. Balaveera Reddy is concerned, though he was impleaded as a party, no specific allegation was made to substantiate such allegation. The Appellant-Institute when discovered that Respondent No. 1 was drawing salary in a higher scale of pay than the scale of pay to which he was entitled constituted a five-members Enquiry Committee to look into the matter headed by Dr. Balaveera Reddy. Though allegation of bias has been made against Dr. Balaveera Reddy, no allegation has been made against rest of the four Members of the Committee. Even the other members were not impleaded as a party. In this background, it was not open for the High Court to give finding of bias against one or other member of the Committee, who decided the issue pursuant to which the notice was issued to Respondent No. 1. The Division Bench of the High Court while wrongly held that the enquiry was tainted with bias, erred in holding that

Respondent No. 1 was entitled to the Central scale of pay.

29. For the reasons aforesaid, we set aside the impugned judgment and order dated 8th November, 2011 passed by the Division Bench of the High Court of Karnataka in Writ Appeal No. 1030 of 2006. The appeal is allowed. No costs.