

(1998) 08 MP CK 0043
In the Madhya Pradesh High Court
Case No : L.P.A. No. 137 of 1997

Rabindranath Mukhopadhyay and Another APPELLANT
Vs
Coal India Ltd. and Another RESPONDENT

Date of Decision : 24-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (1999) ILR (MP) 220 : (1999) 1 JLJ 141 : (1999) 1 MPLJ 205

Hon'ble Judges : A.K. Mathur, C.J; Dipak Misra, J

Bench : Division Bench

Advocate : R. Mendiratta, for the Appellant; P.S. Nair, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Soundness of the order passed in W. P. No. 4361/96 by a learned Single Judge of this Court declining to grant relief to the petitioners is called in question by the appellants invoking the jurisdiction of this Court under Clause 10 of the Letters Patent.

The exposition of facts is as follows :

The petitioner-appellant No. 1 is working as Legal Manager in the office of the Chairman-cum--Managing Director, South Eastern Coalfields Limited, Bilaspur and is General Secretary of the Coal Mines Officers' Association, SECL, Bilaspur Branch, the appellant No. 2. SECL is one of the subsidiary company of the Coal India Limited. After nationalisation of the Coal Mines, a common coal cadre of the integrated personnel taken over from the erstwhile Private Coal Companies was formed, prescribing the rules and procedures for administration of the Executives and their integration to a common and uniform set of rules. The Common Coal Cadre was implemented in the year 1978 after the approval of the Board of Directors. The said Common Coal Cadre lays down the principles for fixation of pay of the employees belonging to the executives cadre. It was amended from

time to time.

By office memorandum dated 13-1-1986 the dates of increments of the executives were fixed as 1st January and 1st July of the year. Clause 3 of the said office memorandum provided that the increment due between January 1986 and 30th June, 1986 would be released on 1st January, 1986 and the increment due between 1st July, 1986 and 31st December, 1986 would be released on 1st July, 1986. The system was followed in the subsequent orders with the result the executives appointed or promoted between the period from 1st January to 31st June became entitled to receive increment on the 1st January of the following year and the executives appointed or promoted between the period from 1st July to 31st December became entitled to receive increment in the grade on 1st July of the following year. The grievance arose when the office memorandum No. CIL:C-5A(vi)/005/35/1133 dated 10-9-1996 was issued by the Director (P & IR) by which the payscales of the executives holding the post below the Board level was revised w.e.f. 1-1-1992. However, it changed the anniversary of date of increment to 1st April as against 1st January and 1st July. The alteration in the date of increment caused distress to the petitioners for which they invoked the extraordinary jurisdiction of this Court for quashment of the said fixation being violative of the equality clause as enshrined in Article 14 of the Constitution of India with a further prayer for issue of a mandamus to the respondents for restoration of the earlier system.

The stand of the answering non-applicants was that the payscales were approved by the Board of Directors in the 154th meeting of the Board. It was also put forth that certain representations were received from the Union and after taking into consideration the representations, the financial constraints, administrative convenience and various other factors, decision was taken with regard to the revision of the pay scale of the executives w.e.f. 1-1-1992. The Coal Mines Officers Association of India had expressed its gratitude to the Chairman and the Minister for the said revised pay scale. In fact, as stated by the respondents, request was made by the Coal Mines Officers' Association for early implementation of the decision and there was no objection with regard to alteration of the anniversary date of the increment. It was further pleaded that it was a total "package offer" and it is not open to the petitioners to accept it in part.

It was contended by the writ petitioners before the learned Single Judge that the fixation of the date of increment as 1st April of the year was violative of Article 14 of the Constitution as the same had the effect of preponing the date of the increment, in case of those executives who were earning the same on 1st July under the pre-revised scale and postponing the same in case of those who were earning increments on the 1st of January. The learned Single Judge after considering the various aspects of the matter and scrutinising the scheme contained in the impugned Office Memorandum came to hold that the fixation of a uniform anniversary date had a rational basis and the attempt was for

continuance of the said uniformity and, therefore, it was not to be faulted for it did not cause violence to the conscience of Article 14 of the Constitution.

We have heard Mr. Rajesh Mendiretta, learned counsel for the appellants and Mr. P. S. Nair, learned senior counsel for the respondents. It is contended by Mr. Mendiretta that the learned Single Judge has not appreciated the factual matrix from a proper perspective inasmuch as fixation of anniversary date of increment with retrospective effect substantially affects the vested rights of the appellants and such vested rights cannot be curtailed in the manner in which it has been done. It is further canvassed that a fixation of the anniversary date of increment or any cut of date has to have a rational foundation and cannot be picked up out of the hat to cause disadvantages to a class of employees and advantages to some others by creating a situation of disparity which is impermissible as such a classification suffers from the vice of disparity and inequality, may be over-inclusive or under-inclusive.

Resisting the aforesaid submissions of the learned counsel for the appellants, Mr. P. S. Nair, learned senior counsel for the respondents has contended that in a case of integration of services a situation has to emerge where some employees are to be benefitted and whereas some are bound to suffer, and in the case at hand, the suffering being absolutely marginal deserves acceptance and fixation of the date relating earning of increment cannot be found fault with. It is his further submission that the sanguine effort of the Coalfields Limited was to introduce uniformity in the payscale and to achieve the said purpose a date has been fixed which does not really create any discrimination or reflect an attitude of employer's arbitrariness warranting interference by this Court. It is also canvassed by him that the petitioners having been benefitted by the revised payscale cannot question the mode of its implementation.

Before we advert to the pivotal legal issues, we would like to dilate to some extent on the factual backdrop as it becomes requisite, nay, essential to appreciate the stand of the petitioners. From the pleading it is perceptible that Coal Mines Officers' Association of India had submitted series of representations with regard to revision of payscale and considering various aspects payscales were revised in various grades. This revision of payscale was implemented and it was appreciated by the Coal Mines Officers' Association of India as is apparent from Annexure R-2 to the writ petition. At no point of time, the Coal Mines Officers' Association of India representatives objected to the date of fixation of annual increments. All the executives have accepted except the petitioner who represents himself and the Coal Mines Officers' Association of India, SECL Branch. Indubitably it was a "package offer". True it is, no settlement was drawn up in accordance with the provisions of the Industrial Disputes Act, 1947 but all the beneficiaries accepted the benefit of the revised payscale with retrospective effect i.e. 1-2-1992. By virtue of such pay revision the petitioner has also been benefitted. As a part of the "package offer" has been accepted, the other part, unless totally unequitable or shocking to the judicial conscience, cannot be

refused. On a close scrutiny of the totality of circumstances, we are of the considered view that when the "package offer" regarding revision in the payscale was accepted by all concerned including the petitioner, he cannot come forward to agitate a grievance that anniversary date of increment has caused prejudice to him, *moreso*, what we are going to say at a later stage.

Now we shall proceed to deal with the contention whether such fixation is justified or not. The gravamen of contention of the learned counsel for the petitioner is that the likes of the petitioner who used to earn the increments on the 1st January have suffered because of the deferment of 1st April of the year whereas the other executives who used to earn increments on 1st July have gained advantage because of the preponement. The learned Single Judge has addressed himself at length with regard to the revised pay-structure and the benefits derived by the employees. He has opined since date of increment as 1st January and 1st July applied to two blocks, there was also a disparity in the pre-revised scale and at the time of revision of scale of pay to introduce uniformity and avoid more fluctuations a singular anniversary date has been fixed. At this juncture, we may refer to the decision rendered in the case of Reserve Bank of India Vs. N.C. Paliwal and Others, wherein their Lordships have observed that in the cases of integration of service and in cases of integration of payscale there is bound to be a situation where some persons derive the benefit and some others suffer.

In the case of State of West Bengal and Others Vs. Ratan Behari Dey and Others, their Lordships while dealing with the specification of dates for fixation of such benefits registered the view as under:-

"7. In our opinion, the principle of Nakara has no application to the facts of this case. The precise principle enunciated in Nakara has been duly explained in Krishena Kumar by a co-ordinate Bench. For reasons to be assigned hereinafter, it cannot be said that prescribing April 1, 1977 as the date from which the new Regulations were to come into force is either arbitrary or discriminatory. Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the Court in that behalf."

We may at this juncture, refer to the case of Rabindranath Mukhopadhyay and Another Vs. Coal India Ltd. and Another, wherein the employer had introduced a scheme for grant of leave travel concession once in a block of four years. The scheme was modified in which option of encashment of LTC was also provided. The option was made available prospectively w.e.f. 1-1-1997. Repelling the

contention of the appellants that choice of the date was arbitrary, the Apex Court expressed thus :

".....The petitioner appearing in person has contended in the High Court as well as before us that the fixation of date is arbitrary. We find R. F. 14 no force in the contention. It is seen that the aforesaid resolution communicated by proceedings dated 10-10-1996, postulates an employee who is entitled to avail of the facility of LTC, instead of executive class, has been given two options, viz., of actual performance of the travel once in a block of four years which would be normal one and a salutory policy to enable the employee to broaden his vision of thought and action, and to encash the same, instead of actually travelling, which is an exception and proof of production of the travel certificate and the expenses incurred therefore has been dispensed with. It being a policy decision taken by the respondent-Management, the policy was given effect to from 1-1-1997, obviously the beginning of the calendar year. It is uniformly applicable to all employees of that class. Under those circumstances, we do not think that there is any arbitrariness in fixation of the date."

At this juncture we may refer to the decision rendered in the case of Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others, wherein the date fixed (25th June, 1975) was treated as non-arbitrary and their Lordships observed that the fixation of such a date may have "some odour to some people."

Recently in the case of In the Matter of: Hari Ram Gupta (D) Thr. L.R. Kasturi Devi Vs. The State of Uttar Pradesh, the Apex Court reiterating the principles laid down in the case of Union of India Vs. P.N. Menon and others, laid down as under :

"....As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government."

Submission of Mr. Mendiretta is that a discrimination has been caused and anniversary date should have been fixed as 1st January which would not cause any grievance to any employee. As we have stated, earlier the anniversary date of increment was fixed on two dates. The Management thought it appropriate while revising the pay-structure to fix a singular date. The date which has been fixed, ex facie, does not appear to be unreasonable arbitrary or a date picked up out of the hat. On the contrary, 1st April has been chosen, to bring in uniformity and to synchronise and systematize certain payscales. It may be noted here the Financial Year commences from 1st April every year. It has its own significance. Thus, it cannot be said that a date was picked up in an arbitrary or capricious manner. The learned counsel for the petitioners has drawn our attention to the decisions rendered in the cases of Union of India v. Tushar Ranjan Mohanti 1995

LIC 1768; Chander Bhan Gill Vs. Union of India (UOI), and K. Ravindranath Pai and another Vs. State of Karnataka and another, to highlight certain aspects. In our humble view the aforesaid decisions do not render much assistance to the petitioners. It was urged with vehemence that the increments which have already been paid to the likes of the petitioners are being withdrawn by which their vested rights are affected. Mendiretta, on this score, has placed heavy reliance on the ratio of the decision rendered in the case of Tushar Ranjan Mohanti (supra) but we find that the principles laid down in the said decision have no application to the case at hand.

It was admitted by the learned counsel for the petitioners that the amount paid towards increments have been adjusted from the arrears which are due to him after the revision of the payscale. It is well settled in law, he who seeks equity must to equity. While getting better advantages in regard to revised payscale with retrospective effect the petitioner and his likes have to accept a marginal suffering so that, a uniformity is maintained. In fact, these are inevitable circumstances under these situations. One cannot conceive of a perfect situation but at the most a reasonable one, and we find the fixation of the anniversary date of increment is reasonable, unarbitrary and purposive.

In view of our preceding analysis, we concur with the view taken by the learned Single Judge and consequently dismiss this appeal. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.