
(2013) 02 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1810 of 2012

Raghunath Sahoo and Others

APPELLANT

Vs

Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) LabIC 3509

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Judgement

A.K. Sikri, C.J.—These two writ petitions arise out of common judgment dated 26.08.2011 rendered by the Chandigarh Bench of the Administrative Tribunal (CAT) in two Original Applications (O.As.) which were preferred by the petitioners of these two writ petitions. Since the grievance was common, it was decided by the said judgment, of course dismissing both the O.As. as time barred. It is for this reason that we heard both the writ petitions altogether and are proposing to decide the same by way of present judgment, common to both the cases. Commonness of the facts and law is the reason that the facts of Civil Writ Petition No. 1810 of 2012 are taken note of which would automatically cover the second case as well.

2. Some junior Physiotherapists of Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh, had filed O.A. No. 90/CH/2010 titled as Amritpal Sood and others Vs. Union of India and others which was decided by the Central Administrative Tribunal-Chandigarh Bench on 17.02.2010. Allowing that O.A., the Tribunal had directed up-gradation of the post of "Junior Physiotherapist" from grade pay of Rs. 2000 in PB-1 (pre-revised Rs. 5500-9000) w.e.f. the date of issuance of the orders by PGIMER, Chandigarh and merger plus re-designation of the post of Junior Physiotherapist in PGIMER, Chandigarh.

3. That order was complied with. However, these petitioners filed second O.A. (out of which present writ petitions arise). This time their grievance was that the admissibility of the revised grades ought to have been made to them w.e.f. the

date those grades were made available to their counter parts in other departments of the Government of India w.e.f. 01.01.1996 i.e. the date when the recommendations made by the 5th Central Pay Commission were implemented.

4. The respondents contested the O.As. taking the position that the grant of grades as well as from which date such monetary benefits were to be admissible was the discretion of the competent authority. It was stated that the benefits were ordered in accordance with the instructions received from the Ministry of Health & Family Welfare vide letter dated 24.09.2010. The respondents pointed out that the Ministry had advised for modification of Recruitment Rules for the post of Physiotherapist after merging the post of Junior Physiotherapist and Physiotherapist with a common grade pay of Rs. 4200/- in PB-2, Rs. 9300-34800/- which was placed before the meeting of the Governing Body/ Institute Body held on 17.01.2011 and necessary orders for merger of the post of Junior Physiotherapist and Physiotherapist in the grade pay of Rs. 4200/- in PB-2 Rs. 9300-34800 and further re-designation as Physiotherapist were issued on 21.02.2011.

5. The respondents also argued that as per the recommendations of 6th Central Pay Commission, Modified Assured Career Progression Scheme (MACP) came into force w.e.f. 01.09.2008 under which an employee is entitled to three financial up-gradation on completion of 10, 20 & 30 years of regular service, respectively. It was stated that the petitioners would be entitled to the benefit of said MACP and they were also entitled to be eligible for promotion to the post of Senior Physiotherapist as and when vacancies would arise. It was also argued that the O.As. filed were time barred.

6. Accepting the aforesaid defence of the respondents to the O.As. filed, the learned Tribunal has dismissed the same giving the following reasons:-

Since the PGI is governed by an autonomous society, they are liberty to grant the pay scales to its employees according to availability of resources or the grants received from the Government of India. Moreover, the applicants have never questioned either their induction as Junior Physiotherapist all these years nor claimed higher pay scale from the date recommendations of 5th Central Pay Commission were implemented (i.e. 1.1.1995) nor sought parity with the Physiotherapist of AIIMS New Delhi all these years nor Pay Commission has recommended their case in particular. We are of the view that the claim of the applicants is hopelessly time barred.

7. The petitioners had filed Review Petition as well which was dismissed.

8. Questioning the aforesaid rationale, learned counsel for the petitioners submitted that when the pay scales of Rs. 5500-9000 was given to their counter parts in All India Institute of Medical Science w.e.f. 01.01.1996, there was no reason for the employees of PGIMER to grant these scales from the latter date i.e. 08.10.2010. It was submitted that the petitioners had joined PGIMER as Junior Physiotherapists after competing regular selection in the year 1997 on

different dates and at the time of joining the service they were given the pay scales of Rs. 4500-125-7000 which was equivalent to the Junior Physiotherapists working in the AIIMS. However, later on AIIMS had issued memo dated 23.05.2011 granting pay scale of Rs. 5500-175-9000 to the Junior Physiotherapists working in AIIMS w.e.f. 1.1.1996 when the recommendations of the 5th Pay Commission were accepted. Since this pay scale was not given to the petitioners they had made representations and thereafter filed O.A. No. 90-CH/2010, pursuant to which orders dated 08.10.2010 were passed granting them the pay scales from the date of that order by merging two posts of Junior Physiotherapists and Physiotherapists and not from 01.01.1996 when Junior Physiotherapists in AIIMS were given the pay scales. It is submitted that the Tribunal dismissed their O.As. on wrong facts presuming that it was a case of pay revision and the Tribunal failed to appreciate that it was a case of removal of anomaly and anomaly had to be removed w.e.f. the date when the pay scales were implemented i.e. 01.01.1996.

9. Reference was drawn to Regulation 40 of the PGIMER Regulations, 1967 which mandates it to give the pay scales to its employees at par with Central Government Employees.

10. Learned counsel for the petitioners further argued that when the posts of Junior Physiotherapists had been merged with Physiotherapists by fiction, the petitioners were to be treated as deemed appointed to the posts of Physiotherapists from the date of their initial appointment.

11. Learned counsel for the respondents, on the other hand, argued that the petitioners were appointed as Junior Physiotherapists and were rightly given the pay scales of Rs. 4500-125-7000. It was also contended that the question of merger of the post of Junior Physiotherapist was considered after the instructions were received from the Ministry of Health & Family Welfare vide letter dated 24.09.2010. The Governing Body/Institute Body in its meeting held on 17.01.2011 decided to merge the post of Junior Physiotherapist and Physiotherapist in the grade pay of Rs. 4200/- in PB-2 Rs. 9300-34800 and re-designated Junior Physiotherapist as Physiotherapist. These orders were issued on 21.02.2011. Since by that time, 6th Pay Commission recommendations had been accepted and the Modified Assured Career Progression Scheme (MACP) came into force w.e.f. 01.09.2008 making the employees entitled to three financial upgradation on completion of 10, 20 and 30 years of regular service.

12. Whenever revision in pay scales takes place, while taking such a decision, the Government fixes the date from which the pay revision is to take place. While giving effect to the recommendations of the Pay Commissions, as accepted by the Government, many times anomalies also arise. It is also a practice/procedure adopted by the Government to appoint anomaly committees to look into the purported anomalies which are pointed out. Exercise which is done by the anomaly committee is to find out whether there is actually an anomaly in the implementation of the pay scale of a particular category. If it is so, the anomaly

committee recommends giving of appropriate pay scale by removing the anomaly. Once anomaly is accepted and decision is taken to remove the same, it has to be from the same date when the pay revision takes place and not from the date when decision is taken to remove the anomaly at a later date. There can also be a situation when the pay was rightly revised corresponding to the pre revised pay scale, but on consideration of various other factors and the Recommendations of anomaly committee or some other expert committee, the Government takes the decision to accord better pay scale for which justification is found for certain other reasons. In this situation, which is not a case of removal of anomalies, further revision can take place from a later date and such a date can be fixed by the Government which may not necessarily be a date on which general revision of pay scale had taken place. The afore-stated principle finds enunciation in the case of *State of Rajasthan Vs. Gopaldas*, in the following words:-

7. The Rules providing for the revised pay-scales were made by the State Government as a result of the recommendation of the Pay Commission which was headed by Mr. B.P. Beri, a former Chief Justice of the Rajasthan High Court. In the process of consideration of the recommendations of the Pay Commission and its implementation, the likelihood of various anomalies and omissions cannot be ruled out. An Anomalies Committee is normally appointed to straighten the discrepancies and deal with the omissions which might come to the notice of the Government after the initial process of pay revision. This was precisely what was done by the State of Rajasthan by issuing the fourteen notifications relating to different departments whereunder the revised pay scales, which could not be included under the Rules, were provided and enforced. So far as the notification dated February 23, 1985 relating to the UDCs of subordinate office is concerned, it was not with a view to remove any anomaly or to make any provision for a category which was left out of the Rules. It was a notification issued as a result of the acceptance of the demand of the UDCs of the subordinate offices for grant of higher pay scale which was given to their counterparts in the Secretariat. The High Court failed to appreciate that the factual basis for issuing the notification dated January 23, 1985 and the fourteen notifications relied upon by the High Court was entirely different. No fault could be found with the notification dated January 23, 1985 and the State Government was justified in granting revised S-10 to the respondent and other UDCs of subordinate offices with effect from February 1, 1985.

13. The moot question, therefore, is as to whether the merger of two grades is done to remove anomaly or it is a result of decision taken by the Governing Body on a particular date.

14. Few facts which need to be elaborated for determining this aspect may need a mention. The petitioners had initially joined as Junior Physiotherapists in the pay scale of Rs. 4500-125-7000 on 26.02.1997, 28.2.1997 and 04.12.1997 respectively and not in the pay scale of Rs. 4500-125-9000. The petitioners No.

1 and 2 were further promoted as Physiotherapists vide order dated 05.07.2003 and as such petitioner No. 1 joined as Physiotherapist on 05.07.2003 and petitioner No. 2 joined on 22.05.2004 after expiry of study leave. Further, petitioner No. 3 was promoted as Physiotherapist on 31.03.2009 in the pay scale of Rs. 5500-175-9000 vide order dated 31.03.2009.

15. Further, the Cadre of Junior Physiotherapist/Occupational Therapists is existing in the PGIMER, Chandigarh and AIIMS, New Delhi. As per the recommendations of 5th Central Pay Commission, under Part-B at Sr. No. XIX, Junior Physiotherapist and Senior Physiotherapist were allowed higher pay scale of Rs. 5500-9000 and Rs. 8000-13500 after the approval of the bodies of the Institute and the Central Government. The Government of India agreed to the upgradation of pay scale of Junior Physiotherapist with the condition that the post of Junior Physiotherapist and Physiotherapist would be merged. As such the posts of Junior Physiotherapist and Physiotherapist in AIIMS New Delhi and PGIMER, Chandigarh have been merged and placed in the pay scale of Rs. 5500-9000 revised to Rs. 9300-34800 with grade pay of Rs. 4200/-.

16. It is also pertinent to mention here that with the grant of same pay scale to Junior Physiotherapist and Physiotherapists, the Physiotherapists represented for grant of higher pay scale to that of Junior Physiotherapist in the year 2001 in PGIMER and wanted this pay scale at par with AIIMS New Delhi as per the recommendations made under Part-B of Schedule-1 of 5th Central Pay Commission. The matter was referred to the Ministry vide letter dated 12.10.2011. Ministry of Health sought a number of clarifications which were sent to them from time to time. The Government of India vide letter dated 21.02.2011 advised to place the matter before the Standing Finance Committee of the Institute at the first instance. Accordingly, the matter was placed before the Standing Finance Committee vide agenda item No. 30 on 08.05.2004 and the Standing Finance Committee agreed to the proposal. Further, the matter was placed before the Governing Body in its meeting held on 02.10.2004 but the Governing Body agreed to the proposal subject to clearance of Ministry of Finance. As per decision of the bodies of the Institute, the matter was referred to the Ministry of Health for examination and the Government of India sought a number of clarifications/informations which were supplied to them from time to time. The Ministry of Health vide letter dated July, 2006 intimated that the proposal was taken up with the Ministry of Finance, Department of Expenditure. However, the Ministry of Finance has returned the proposal and advised the Ministry to refer the matter to 6th Central Pay Commission which is being constituted shortly. The matter was again referred to the Ministry for taking up the matter with the 6th Central Pay Commission. In the meantime, the Junior Physiotherapist of the Institute approached the Central Administrative Tribunal, Chandigarh Bench and the Tribunal vide order dated 17.02.2010 directed to examine the case of the petitioners with regard to upgradation of their pay scales at par with that of AIIMS, New Delhi and passed the following orders thereon:-

Needful be done within a period of four weeks from the date of receipt of copy of this order. The order so passed by the respondents be communicated to the petitioners. However, if some adverse order is passed, the same shall be supported with reasons and in such circumstances, the petitioners will be at liberty to pursue the appropriate legal course, if so required.

17. Accordingly, the matter was referred to the Ministry along with the direction given by the Tribunal. The Ministry of Health & Family Welfare conveyed its approval for up-gradation of pay scale of Junior Physiotherapists with prospective date subject to the merger of the post of Junior Physiotherapist and Physiotherapist and as such orders were issued vide order dated 12.10.2010. From the aforesaid, it would be clear that the grant of higher pay scale to the petitioners was not because of any anomaly which was to be removed. On the contrary, it was the result of merger of the post of Junior Physiotherapist and Physiotherapist which was taken by the Governing Body/Institute Body in its meeting held on 17.01.2011 and the posts of Junior Physiotherapist and Physiotherapist were re-designated as Physiotherapists. Similarly, revised Recruitment Rules were also issued vide orders dated 21.02.2011.

In such a scenario it was always permissible for the PGIMER to fix the date from which these scales were to be upgraded. We thus, do not find any fault with the judgment of the Tribunal. These writ petitions are accordingly dismissed.