

(1999) 08 SC CK 0066

In the Supreme Court Of India

Case No : C.A. No. 3329 of 1998 etc.

Rajasthan Agricultural University, Bikaner

APPELLANT

Vs

Mitha Lal Kothari and Another

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Citation : AIR 1999 SC 3302 : (1999) AIRSCW 3291 : (1999) 6 JT 196 : (1999) 5 SCALE 162 : (1999) 7 SCC 638 : (1999) SCC(L&S) 1364 : (1999) 1 SCR 676 Supp : (2000) 1 SLJ 129 : (1999) 7 Supreme 398 : (1999) 2 UJ 1379

Hon'ble Judges : Sujata V. Manohar, J;A.P. Misra, J

Bench : Division Bench

Advocate : Sushil Kumar Jain and A.P. Dhamija, for the Appellant; L.N. Rao, Braj K. Mishra, Ejaj Maaqbool, Sudhir Ranjan and Sandhya Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Sujata V. Manohar, J.—Prior to 27th of December, 1975 the respondents in all these appeals were working in the Directorate of Agriculture, Government of Rajasthan. On 27.12.1975 the State Government issued an order transferring all research activities of the Directorate of Agriculture in the Agricultural Department of the State Government to the University of Udaipur with effect from 1st of January, 1976. The appellant-University is the successor of the Udaipur University as far as the respondents are concerned. For the sake of convenience, therefore, the term "the University" is used hereafter which will cover the Udaipur University or the appellant-University, as the case may be, at the relevant time.

2. Clause 6 of the order of 27.12.1975 stated that the service of the Government servants employed in the research wing of the Directorate of Agriculture shall be transferred to the University on the terms and conditions mentioned therein. Under Sub-clause (i) of Clause 6(1), all permanent Government servants and temporary Government servants who had been regularly recruited and appointed

to the various categories of posts in the agricultural research section of the agricultural department stood transferred to the University. Pending final absorption in the University, the staff was to be on deputation to the University but no deputation allowance was to be paid. It was further provided that the personnel engaged in research in the State Directorate of Agriculture would have the choice of joining the University or in the alternative would be retrenched.

3. Sub-clause (3) of Clause (6) provided for protection of pay and scale of pay by the University while Sub-clause (4) of Clause (6) set out method of equation of posts under the Government versus posts in the University for the purpose of initial integration. These two sub-clauses are as follows:

Clause (6):

(3) Protection of pay and Scale of pay by the University;

The substantive or officiating pay and the scale of pay in which such pay is drawn immediately before the date of transfer of services shall be protected provided that the Government servant may opt for an equated scale of pay in the University specified in sub-para (4) below.

(4) Equation of posts under Government v. Posts in University for the purpose of initial integration:

(i) With a view to achieve integration of the Government servants into the cadres of the University the equation of posts under Government v. Posts under the University shall be as follows:

(ii) Initial pay of the Government servant on integration in the University scale of pay will be fixed at an equal stage if such a stage exists in the University scale of pay and in case no such stage exists fixation will be done at the next higher stage in the University scale of pay.

(v) In the event of revision of pay scale of University teachers, the revised pay scale shall be given to the transferred employees subject to the fulfilment of conditions of qualification attached to the revised pay scales.

The respondents in these appeals fell in the fifth category of persons holding posts under the Government in the scale of Rs. 250-20-25-625 which has been equated with the post under the University of Research Assistant and Lecturers with the existing pay scale of Rs. 300-25-600. Under Clause 6(3) the substantive or officiating pay as also the scale of pay in which this pay is drawn immediately before the date of transfer are protected. The Government servant is, however, given the option to choose an equated scale of pay in the University as specified in Clauses 6(3) and 6(4) which have been set out above. The respondents in these appeals chose to retain their pay and the scale of pay under the Government.

4. The respondents were accordingly sent on deputation to the University under the order of 27.12.1975. They were absorbed in the University with effect from

1.4.1977. However, in the meanwhile from 1.9.1976 the Rajasthan Civil Services (Revised New pay Scale) Rules, 1976 came into effect. Under these rules the pay of Government servants in various categories was revised. Since the respondents were drawing their pay in the pay scales of the Government, their salaries were also revised under the Rajasthan Civil Services (Revised New Pay Scale) Rules, 1976. Under these Rules the entire amount of dearness allowance, dearness pay, ad hoc relief and additional dearness allowance as admissible on 1.9.1976 was merged and treated as part of the basic pay for the purpose of fixation of pay in the revised new pay scales. The respondents were accordingly receiving their revised pay. However, on their absorption in the University with effect from 1.4.1977 they were required to be fitted in the University pay scales. The pay scales in the University had also been revised with effect from 1.9.1976 when the new University Grants Commission scales of pay came into operation. Under the new UGC scales of pay, however, the basic pay which was fixed was inclusive of dearness allowance etc. as on 31.12.1972. The dearness allowance and various other such allowance were granted from 1.1.1973 onwards in the UGC scales of pay on the basic pay newly fixed as on 1.1.1973.

5. In view of the difference in the manner in which the basic pay was fixed under the new Government scales of pay and the new UGC scales of pay, the Government of Rajasthan, Finance Department issued a Memorandum dated 21.2.1979 relating to the fixation of pay of Government servants on appointment as teachers in the colleges/universities located in Rajasthan in the new UGC pay scales to ensure that double benefit of dearness allowance was not given when a person in the new Government scales of pay was fitted in the new UGC scales of pay. The order of 21.2.1979 prescribed that for the purpose of fixation of pay in such cases, the elements of additional dearness allowance equal to nine installments of dearness allowance granted by the State Government between 1.1.1973 and 1.9.1976 and merged in the revised new pay scales, should be deducted from the pay which a Government servant was drawing on the date on which he was appointed as a teacher in the UGC scales of pay. The pay thus arrived at, after excluding the amount of additional dearness allowance as above, would be treated as pay with reference to which his pay should be fixed in the UGC pay scale. The pay in the UGC pay scale should be fixed at a stage corresponding to his pay so arrived at, and if there was no equal stage in the UGC pay scale, his pay should be fixed at a stage next above his pay. In addition to the pay so fixed in the UGC pay scale, he was to be entitled to dearness allowances admissible with UGC pay scale in the universities in Rajasthan.

6. Some of the persons transferred from the agriculture department to the University challenged the Memorandum of the Government of Rajasthan dated 21.2.1979 by filing a writ petition in the High Court. The High Court, however, said that since the University had adopted the terms of the Government Memorandum of 21.2.1979, the writ petition was premature.

7. By an order dated 28th July, 1980 issued in pursuance of the resolution of the

executive committee dated 28/29th of June, 1980, the Vice-Chancellor was pleased to order that the pay of transferred research employees who had been permanently absorbed in the University and who were drawing pay in the revised new pay scales of the Government of 1976 shall be fixed in the revised UGC scales of 1976 after deducting the element of additional dearness allowance equal to nine installments of dearness allowance granted between 1.1.1973 and 1.9.1976 and merged in the revised new pay scales 1976 from basic pay which an employee was drawing on the date of his absorption in the University. The order further stated that the pay thus arrived at after excluding the amount of additional dearness allowance will be treated as pay with reference to which the employee's pay shall be fixed in the revised UGC Scales of 1976. In addition to the pay so fixed in the UGC scales, the employees shall be entitled to dearness allowance admissible with the new UGC pay scales of pay. This order was brought into effect from 1.9.1976. In order to understand how a fixation was done under the University order of 28.7.1980, the comparative position of pay fixation of the respondent in civil appeal No. 3332 of 1998 is set out.

The respondent filed a writ petition in the High Court challenging the order of the University dated 28.7.1980. The respondent, inter alia, prayed for quashing the order of 28.7.1980. They further prayed for their fixation in the new UGC pay scales on the basis of the consolidated basic pay which they were getting under the revised new pay scales of the Government.

8. A learned Single Judge of the High Court dismissed the writ petition filed by the respondent. In appeal, however, the Division Bench of the High Court has allowed the appeal and has held that the respondents are entitled to the protection of their pay as drawn under the new Government scales. Even though it is a consolidated pay, the element of dearness allowance which has been merged in the basic pay upto 1.9.1976 should not be deducted and the fitment in the new UGC scales should be on the basis of the pay as drawn under the new Government scales. The Court has also directed payment of interest @ 12% per annum on the additional amounts to which the respondent may become entitled.

9. The short question that requires consideration is whether the fitment of the respondents in the new UGC scales is properly done and whether the order of the University dated 28.7.1980 which is in accordance with the Government Memorandum of 21.2.1979 provides as correct basis for the fitment of employees drawing revised Government scales of pay into the new UGC scales of pay. The manner in which employees getting Government scales of pay were to be fitted in the University scales of pay was set out in the initial order dated 27.12.1975 under which the employees of the research wing of the Directorate of Agriculture were transferred to the University and were absorbed thereafter in the University. The rights of the transferred employees are, therefore, governed by the order of 27.12.1975. At the date of this order neither the revised Government scales of pay nor the new UGC scales of pay had come into effect. Clause 6(4) of the order of 27.12.1975 clearly provided for the manner in which

the scales of pay under the Government and under the University were to be equated. The initial pay of the Government servant in the University scales of pay was to be fixed at an equal stage if such a stage was available under the University pay scales or at the next higher stage if an equal stage was not available. The order further provided under Sub-clause 6(4)(v) that in the event of a revision of pay scales of the University teachers the revised pay scales shall be given to the transferred employees subject to the fulfilment of any. conditions relating to qualifications. Therefore, basic pay drawn under the Government scale was to be protected under the University scales. The problem in the present case arises on account of the merger of dearness allowances in the basic scale of pay of the Government employees with effect from 1.9.1976. Had the revised UGC scales of pay also provided for such a merger of dearness allowances in the basic pay with effect from 1.9.1976, there would have been no problem. The revision of pay scales under the Government as well as under the new UGC pay scales would have been on the same basis and the ordinary principles of equation of pay when a fitment is made in a new pay scale, would have applied. However, the new UGC pay scales had merged only the dearness allowance with basic pay upto 1.3.1973. There was thus a period between 1973 and 1976 when under the UGC scales of pay additional dearness allowance was payable and it continued to be paid thereafter; While under the revised Government scales of pay dearness allowances were merged as of 1.9.1976, and only thereafter additional dearness allowance was payable. If we accept the contention of the respondents, the respondents would get the benefit of having their basic pay in the UGC scale fixed not just on the basis of their original basic pay but also by inclusion of dearness allowance in the basic pay during the period 1.1.1973 to 1.9.1976. And they would also get the benefit of dearness allowance for the period 1.1.1973 to 1.9.1976. The Government as well as the University have, therefore, rightly held that in order to have an equivalence between the revised scales of pay of the State Government and the new UGC scales of pay, it is necessary to exclude notionally the dearness allowance during the period 1.1.1973 and 1.9.1976 which were merged in the basic pay under the revised scales of pay of the Government but which were not so merged when the revised UGC scales were prescribed. Therefore, a proper equivalence between the two scales of pay can come about only when the basic pay under both the scales is calculated on a common basis. That is why the orders of the Government as well as the University exclude from calculation of the basic pay, the dearness allowance drawn by Government servants between 1.1.1973 and 1.9.1976 for the purpose of a notional calculation of basic pay to find a corresponding equivalence in the UGC revised scales of pay. The entire purpose of the University order of 28th of July, 1980 is to exclude a double benefit of dearness allowances to the Government employees who are to be fitted in the new UGC scales of pay. As the simple calculation set out earlier shows, the respondents have gained as a result of their fitment in the new UGC scales of pay. We do not, therefore see any reason for setting aside the order of the University dated 28.7.1980.

10. The appeals are, therefore, allowed and the impugned judgment and order of the Division Bench of the High Court is set aside and the original writ petition is dismissed. There will, however, be no order as to costs. We, however, make it clear that if under the impugned Division Bench judgment any monetary benefit has been actually given to any of the respondent, the same will not be recovered from him.