
(2015) 12 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 660 of 2008

Soma L. Raut and Others

APPELLANT

Vs

The State of Goa and Others

RESPONDENT

Date of Decision : 22-12-2015

Acts Referred:

Citation : (2016) 2 BomCR 102

Hon'ble Judges : F.M. Reis and C.V. Bhadang, JJ.

Bench : Division Bench

Advocate : S.D. Lotlikar, Senior Advocate and M. Furtado, Advocate, for the Appellant; V. Rodrigues, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Bhadang, J.—By this petition, the petitioners are challenging the order dated 01/09/2008, whereby, the claim of the petitioners for upgradation to the pay scale of Rs. 4000-6000 applicable to Head Constables (Executive) with effect from 01/01/1996 and upgradation of pay scale of Assistant Sub-Inspector (ASI) to a scale higher than Rs. 4000-6000, has been refused.

2. The petitioner Nos. 1 to 3 were at the relevant time working as ASIs while the petitioner Nos. 4 to 6 were working as Head Constables (ACPS). Indisputably, the petitioner Nos. 4 to 6 were getting pay scale of Rs. 4000-6000 under the Assured Career Progression Scheme (ACPS). The petitioner Nos. 1 to 3 have been promoted as ASI (Executive) from the post of Head Constable (Executive) in the year 2007. The post of Head Constable (Executive) was carrying a pay scale of Rs. 3200-4900, whereas the promotional post of ASI was carrying pay scale of Rs. 4000-6000.

3. The material contention is that Head Constables (Executive) are entitled to pay scales on par with their counterparts i.e. Head Constables (Driver) and the Upper Division Clerks (UDCs), who were drawing the pay scale of Rs. 4000-6000; whereas the Head Constable (Executive) were placed in the pay scale of Rs.

3200-4900.

4. It appears that the petitioners had approached this Court in W.P. No. 137/2006, inter alia, seeking a direction to the State for removing the anomaly in the pay scale of Head Constable (Executive) in the Police Department. That petition was disposed of by this Court in view of a statement on behalf of the State that the proposal forwarded by the Superintendent of Police, Panaji for upgradation of the scale of Head Constable (Executive) was under consideration. It appears that in January, 2007, the Under Secretary (Home), Government of Goa, informed the Director General of Police that parity in the pay scales of Head Constable (Executive) and Head Constable (Driver) may be effected from the date of implementation of 6th Pay Commission i.e. from 01/01/2006. Feeling aggrieved by this, the petitioners took up the matter with the Government, which only bore partial results, in as much as, by an order dated 15/02/2008, the Government upgraded the pay scale of the Head Constable (Executive) from Rs. 3200-4900 to 4000-6000, w.e.f. 01/01/2001.

5. Thus, it is the material contention that the upgradation of the pay scale of the Head Constable (Executive) ought to have been made effective from 01/01/1996 instead of 01/01/2001. The petitioners also contend that ASIs (Executive) being the promotional post, was required to be fixed in a scale higher than the pay scale of Rs. 4000-6000. The petitioners made a representation to the Government, seeking upgradation of the pay scale of Head Constable (Executive) from 01/01/1996 and also upgradation of the pay scale of ASI from the pay scale of 4000-6000 to a higher pay scale, which was rejected by the Government on 01/09/2008. It is, in these circumstances, that the petitioners have approached this Court in the instant petition.

6. The respondents have filed an affidavit-in-reply. It is contended that the petition suffers from the vice of serious and unexplained laches. It is contended that the discrepancy in the pay scale of Head Constable (Executive) and Head Constable (Driver) arose for the first time on account of Government of Goa approving 5th Pay Commission Recommendations on 27/10/1997. It is contended that the petitioners did not take any steps in this regard till filing of the W.P. No. 137/2006. It is, thus, contended that the petitioners cannot now claim for enforcement of the upgraded and revised pay scale to the post of Head Constable (Executive) with effect from 01/01/1996. It is contended that ordinarily, the petitioners would have been entitled to any such benefit for a period of three years prior to filing of the petition, even if the petitioners would have demonstrated any case on merits. However, the Government, in its wisdom and magnanimity, has granted the pay scales from January, 2001. In so far as the issue of the post of ASI and Head Constable (Executive) carrying the same pay scale after the grant of upgraded pay scale, is concerned, it is contended that such anomaly has been resolved by virtue of an order dated 22/01/2014, by which, while adopting the Office Memorandum dated 07/01/2013, issued by the Government of India, Ministry of Finance, the pay scale of ASI has been revised

with effect from 01/01/2006. It is, thus, contended that the petition is without any merit.

7. We have heard Shri Lotlikar, the learned Senior Counsel for the petitioners and Shri. Rodrigues, the learned Government Advocate for the respondents. With the assistance of the learned Counsel for the parties, we have gone through the record and the impugned order passed.

8. It is submitted by Shri Lotlikar, the learned Senior Counsel for the petitioners that although the Head Constables (Executive) discharge duties of a more onerous nature than the Head Constables (Driver) and UDC, the post of Head Constables (Executive) was carrying a lower pay scale than the post of Head Constables (Driver) and UDC. It is submitted that the Government had also acknowledged the existence of this discrepancy and anomaly, however, has failed to redress the same from 01/01/1996 i.e. the day from which the 5th Pay Commission Recommendations were implemented. It is submitted that the reasons given by the Government while rejecting the representation by order dated 01/09/2008 cannot be accepted, in as much as the order does not contain any reasons, worth the name, for not implementing the upgraded pay scales from 01/01/1996.

9. In so far as the anomaly as regards the promotional post, namely, the post of ASI and the post in the feeder cadre i.e. Head Constable (Executive), carrying the same pay scales (after the upgradation), is concerned, it is submitted that the Government ought to have revised the pay scales of ASI in as much as the promotional post and the post in the feeder cadre cannot, conceivably, carry the same pay scale. The learned Senior Counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of Delhi Veterinary Association Vs. Union of India (UOI) and Others, , in order to submit that ordinarily, such revision/upgradation has to be made from the date on which the recommendations of the Pay Commission are implemented. It is contended that the anomaly having arisen in the year 1990, the immediate next implementation of the Pay Commission i.e. the 5th Pay Commission was from 01/01/1996 and as such, the upgradation in the pay scale of the Head Constable (Executive) ought to have been implemented from 01/01/1996. The learned Senior Counsel has then placed reliance on the unreported decision of this Court in M/s. Anthony Noronha and others versus State of Goa and others (W.P. No. 86/2001, dated 11/03/2008), in order to submit that the pay scales of the promotional post and those in the feeder cadre, cannot be the same. He submitted that the Government has also accepted the existence of this anomaly, however, has failed to redress the same from the time it arose and has removed the anomaly from only 01/01/2006. He, therefore, submitted that the petition deserves to be allowed.

10. On the contrary, it is submitted by Shri Rodrigues, the learned Government Advocate that there is gross delay and laches on the part of the petitioners in approaching this Court or even filing representation. The learned Government

Advocate, in all fairness, would not dispute that such an anomaly between the pay scales of Head Constable (Executive) and the Head Constable (Driver) arose from the year 1990. It is submitted that the petitioners have first approached this Court in the year 2006. The learned Government Advocate would submit that the revision/upgradation of the pay scales at this distance of time, would have serious consequences as the pay scales of several others (who are not the petitioners before this Court in the writ petition and who might have retired and ceased to be in service), would be required to be revised, entailing financial implications, both, on account of payment of revised salary and pension. It is submitted that this will also have a consequent and cascading effect on the pay of several others.

11. In so far as the merits are concerned, it is submitted that the Government has, in fact, implemented the upgraded pay scale of the post of Head Constable (Executive) from 01/01/2001, which is more favourable than the petitioners could have got, had they succeeded before this Court, as normally the Court would restrict the benefits for a period of three years, prior to the filing of the petition. It is submitted that even so far as the removal of anomaly between the pay scale of a promotional post and the post in the feeder cadre is concerned, the same is removed by order dated 27/10/2014, with effect from 01/01/2006. It is submitted that this is in accordance with the Office Memorandum dated 07/01/2013 of the Ministry of Finance, Government of India, which, in turn, is based on the provisions contained in Rule 13 of CCS(RP), Rules, 2008, which provides for the method of fixation of pay on promotion on or after 01/01/2006. The learned Counsel has placed reliance on the decision of the Hon"ble Supreme Court in the case of New Delhi Municipal Council Vs. Pan Singh and Others, , in order to submit that where the petitioners approach the Court late, they cannot claim parity and would not be entitled to the relief as claimed. He, therefore, urged that the petition be dismissed.

12. We have given our anxious consideration to the rival circumstances and the submissions made.

13. At the outset, it needs to be stated that it is not in dispute that the anomaly arose between the pay scales of the Head Constable (Executive) on one hand and the Head Constable (Driver) and the UDC on the other, as far back as, in the year 1990. Indisputably, the petitioners approached this Court for the first time in the year 2006, seeking removal of the anomaly from 01/01/1996. The only ground, on which the enforcement of the upgraded pay scales to post of Head Constable (Executive) is claimed from 01/01/1996, is that the 5th Pay Commission Recommendations are enforced from that date. We do not find that for any such reason, the petitioners can justifiably insist for the upgradation of the pay scale of the Head Constable (Executive) from 01/01/1996 instead of 01/01/2001, as has been done by the Government. The Government has set out the following reasons in the order dated 01/09/2008, while rejecting the representation on this aspect :

"Initially, under IVth Pay Commission the drivers in the Police Department were designated as drivers grade I and drivers grade II in the scale of Rs. 950-1400 and Rs. 950-1500 respectively. To bring these drivers on par with the prevailing pattern in Delhi, restructuring was done and they were categorized as: Driver III (PC), Driver Grade II (HC) and Driver Grade I (ASI) and placed in the scale of Rs. 950-1500, Rs. 1200-1800 and Rs. 1320-2040 respectively w.e.f. 01/10/1990. During Fifth Pay Commission these scales were revised to Rs. 3050-4500, Rs. 4000-6000 and Rs. 4000-6000 respectively. As such the pay scale of Driver Grade II (HC) and Grade I (ASI) were clubbed together on implementation of the Fifth Pay Commission and placed in the pay scale of Rs. 4000-6000.

Pay scale of the PC, HC and ASI during Fourth Pay Commission was Rs. 950-1400, Rs. 975-1660 and Rs. 1320-2040 respectively. As such while initially during the Fourth Pay Commission the pay scale of HC (Executive) was Rs. 975-1600 and that of Driver was Rs. 975-1660, in the year 1990 by restructuring and giving different pay scales to the Police Drivers difference in pay scales came to exist.

The anomaly in the pay scale of HC (Driver) and HC(Executive) was in existence since 1.10.1990 and not as a direct result of the Fifth Pay Commission recommendations.

The Govt. decided to upgrade the pay scale of the HC (Executive) from Rs. 3200-4900 to Rs. 4000-6000 vide decision dated 15/02/2008 and magnanimously implemented w.e.f. 1.1.2001. There is no case to do it from the date of 1.1.1996 the date of Fifth Pay Commission as the difference in pay scale did not occasion as a direct result of the recommendations of the Pay Commission."

(Emphasis supplied)

14. It can, thus, be seen that the said anomaly was in existence from 01/10/1990 and has nothing to do with the enforcement of the 5th Pay Commission Recommendations. In that view of the matter, in our considered view, the petitioners cannot claim the enforcement of the upgraded pay scales from 01/01/1996 on the ground that the 5th pay Commission Recommendations are implemented from that date. The decision in the case of Delhi Veterinary Association (*supra*), cannot take the case of the petitioners any further. In that case, Veterinary Assistant Surgeons, were claiming parity of pay with their counterparts employed by the Union Territory of Chandigarh or by the Central Government in the Indo-Tibetan Border Police (ITBP) and in the Border Security Force (BSF). It further appears that the Development Commissioner of Delhi had filed a counter affidavit, justifying the impugned pay scales and praying that the matter be allowed to be examined by the 4th Pay Commission. It was, in these circumstances, that the issue was directed to be examined by the 4th Pay Commission. The Hon'ble Apex Court, having regard to the long delay in approaching the Court, after fixation of their pay scale earlier, did not grant any

relief in respect of the earlier period.

15. In the case of New Delhi Municipal Council (*supra*), it was found that the respondents had approached the High Court after 17 years and had not agitated their grievance for a long time. It was found that the respondents did not claim parity for the 17 workmen at the earliest possible opportunity and thus, having regard to the delay and laches, it was found that the High Court should not have exercised its discretionary jurisdiction in favour of the respondents therein. The Hon'ble Apex Court has referred to its earlier decision in the case of Shiv Dass Vs. Union of India (UOI) and Others, , in which, it has been held thus :

"9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K.V. Rajalakshmiah Setty and Another Vs. State of Mysore and Another, . There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa Vs. Pyarimohan Samantaray and Others, making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others, also).

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

16. We, thus, find that the petitioners cannot claim upgradation of the pay scales of the Head Constable (Executive) from 01/01/1996 (instead of 01/01/2001), both on account of the delay and laches in raising of the grievance and approaching this Court and also on account of the date of implementation of the 5th Pay Commission being irrelevant for the said purpose.

17. This takes us to the consequent aspect of the pay scales of the promotional post of ASI and the feeder post of Head Constable (Executive), carrying the same pay scale. In this regard, it would be significant to examine the pay structure/pay scales of the Police Personnel (Executive) and the Pay scales of Police Personnel (Driver) as existing under the 5th Pay Scales and the 6th Pay Scales, which is as under :

18. Although we are presently concerned with the claim of the ASI (Executive) for a higher pay scale than the pay scale of Rs. 4000-6000, it may not be out of place to mention here that in so far the Head Constables (Drivers) and the Assistant Sub-Inspectors (Drivers) are concerned, under the 5th Pay

Commission, they also carry the same pay scales, namely Rs. 4000-6000. Under the 6th Pay Scales also, the Head Constable (Driver) and the Assistant Sub-Inspector (Driver) as also the Head Constable (Executive) and the Assistant Sub-Inspector (Executive) carry the same pay band, namely Rs. 5200-20200 as also the same grade pay of Rs. 2400/-. The 6th Pay Commission, while making recommendations, could not be oblivious of the fact that the post of Assistant Sub-Inspector (Executive) is the promotional post from the post of Head Constable (Executive). Nonetheless the same pay scale and the grade pay was recommended and has been accepted with effect from 01/01/2006. It appears that under the Office Memorandum dated 07/01/2013 of the Central Government, this aspect was attempted to be remedied. It would be worthwhile to reproduce clause Nos. 1, 2 and 3 of the said Office Memorandum as under :

"(1) The undersigned is directed to invite an attention to the provisions contained in Rule 13 of the CCS(RP) Rules, 2008, which provides for the method of fixation of pay on promotion on or after 1.1.2006 in case, inter-alia, of promotion from one grade pay to another. The Rule provides for fixation of pay by way of addition of one increment equal to 3% of the sum of the pay in the pay band and the existing grade pay (rounded off to the next multiple of 10) to the existing pay in the pay band and then fixing the pay in the promotional post as per the procedure prescribed therein.

(2) In terms of this Ministry's OM No. 169/2/2000-IC dated 24.11.2000, dealing with the situation whereby both the feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 5th Central Pay Commission, it was provided, inter alia, that only in cases where it was not found feasible to appropriately restructure cadres in question on functional operational and administrative considerations, extension of the benefit of fixation of pay under FR 22(I)(a)(1) could be considered on the merits of each case, provided all the conditions precedent for the grant of this benefit were fully satisfied and promotion to the post in question actually involved assumption of higher responsibilities.

(3) In view of the provisions, which existed prior to 01/01/2006, the matter has been considered and the President is pleased to decide that in cases of promotion from one post to another, where the promotional post carries the same grade pay as the feeder post, the fixation of pay in such cases will be done in the manner as prescribed in Rule 13(i) of the CCS(RP) Rules 2008, provided fixation of pay in such cases was done prior to 01/01/2006 in terms of this Ministry's aforesaid OM dated 24/11/2000."

19. It can, thus, be seen that, by the aforesaid Office Memorandum, a situation, whereunder the 5th Central Pay Commission placed the feeder and the promotional grades in the identical pay scales (prior to 01/01/2006), is dealt with in accordance with the Fundamental Rule 22(I)(a)(1) and Rule 13(1) of the CCS(RP) Rules, 2008. The situation in hand would be squarely covered by the said Memorandum, in as much as, on account of the revision of the pay scale of

the Head Constable (Executive) with effect from 01/01/2001, the same pay scale i.e. Rs. 4000-6000 was applicable to the post of Head Constable (Executive) and Assistant Sub-Inspector (Executive). Under the 6th Pay Commission, both these posts carry the same pay band and the grade pay. By an order dated 22/01/2014, the Government of Goa has fixed the pay of Assistant Sub-Inspector as per the Office Memorandum No. 8/7/2008, Finance R&C, dated 14/02/2003 as the post of ASI carries higher duties and responsibilities, than the post of Head Constables.

20. We, thus, find that the Government has taken steps for appropriately revising the pay scales of ASIs (Executive) in terms of applicable Rules and the Office Memorandum issued by the Central Government, under the 6th Pay Commission from 01/01/2006. It is, thus, not possible to direct the revision of the pay scales of the ASI from the date, from which the pay scales of the Head Constable (Executive) were revised and they were brought in the pay scale of Rs. 4000-6000.

21. In the case of Anthony Noronha (*supra*), the question was whether the Government could have revised the pay scale for the post of workshop instructor, which was a feeder post for the post of Technical Assistant, without revising pay scale from the post of Technical Assistant. It would appear that the Technical Assistants drew their pay in the scale of Rs. 425-700 while that of the Workshop Instructors was Rs. 380-560. By an order dated 28/11/1991, the Government revised the pay scales of the Workshop Instructor from Rs. 380-560 to Rs. 440-750, as a result of which, the posts in the feeder cadre, were carrying pay scale higher than that of the promotional post. Thus, in our considered view, the facts would be clearly distinguishable.

22. In such circumstances, although at one point of time, we were inclined to direct the revision of pay scales of the ASI (Executive) to a scale higher than Rs. 4000-6000 at least with effect from 01/01/2001, for the reasons as aforesaid, we are not able to persuade ourselves to grant the said relief.

23. In such circumstances, the petition is hereby dismissed, with no order as to costs.