
(2015) 07 SC CK 0100

In the Supreme Court Of India

Case No : Civil Appeal No. 1123 of 2015 (Arising out of SLP (C) No. 321 of 2015), Civil Appeal No. 1124 of 2015 (Arising out of SLP (C) No. 342 of 2015), Civil Appeal No. 1126 of 2015 (Arising out of SLP (C) No. 461 of 2015), Civil Appeal No. 1127 of 2015 (Arising

State of Rajasthan and Others

APPELLANT

Vs

Mahendra Nath Sharma

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Rajasthan Civil Services (Pension) Rules, 1996 — Rule 165, Rule 3
Rajasthan Civil Services (Revised Pay Scale for Government College Teachers including Librarians, PTIs) Rules, 1999 — Rule 5

Citation : (2015) 8 AD (SC) 55 : (2015) 4 AWC 4116 : (2016) 1 JLJR 55 : (2016) 1 PLJR 264 : (2015) 7 SCALE 221 : (2015) 9 SCC 540 : (2015) 2 SCC(L&S) 787 : (2015) 6 SCJ 705 : (2015) 3 SCT 457 : (2015) 3 SLJ 289

Hon'ble Judges : Dipak Misra, J;Abhay Manohar Sapre, J

Bench : Division Bench

Advocate : Ranjit Kumar, SG, S.S. Shamsheery, AAG, Amit Sharma, Sandeep Singh, Varun Punia, Sweta Rani and Ruchi Kohli, for the Appellant; Shobha, Saransh Saini, Akanksha Kaushik, Raghav Pandey, Ranbir Singh Yadav, Puran Mal Saini and Anzu K. Varkey, Advocates for th

Final Decision : Dismissed

Judgement

Dipak Misra, J—The Respondents were working on different posts of Lecturers, Librarians and PTIs, who retired prior to 1.1.2006. It is not in dispute that all of them were appointed in different years from 1950 to 1976 and all of them retired between 1991 to 2004. It is also not in dispute that all of them had been granted Lecturers (Selection Scale) on or before 1.1.1986. Thus, all of them had completed three years of service in the said pay-scale prior to 1.1.2006. After the pay revision took place, on the basis of the recommendation of the 4th Pay Commission, the Respondents/similarly situated employees got the benefit of revision of the pay scale with effect from 1.1.1986 vide notification dated 3.6.1988. As per the Rajasthan Civil Services (Revised Pay Scales for

Government College Teachers) Rules, 1988, (for short, "the 1988 Rules"), the schedule indicates the existing pay scale and the revised UGC pay scale. A chart in that regard would indicate as follows:

In the present case, we are only concerned with serial No. 3 to 5.

2. From the aforesaid schedule, it is quite clear that in the year 1986, the post of Lecturer (Selection Scale) was introduced for the purpose of revision of pay scale and the Respondents since then had been drawing the pay scale of the post of Lecturer (Selection Scale).

3. As the factual matrix would unfurl, the Government of Rajasthan vide Rajasthan Civil Services (Revised Pay Scale for Government College Teachers including Librarians, PTIs) Rules, 1999, (for short, "the 1999 Rules") revised the pay scales of Government College Teachers/Librarians w.e.f. 1.1.1996. The Schedule appended to the said Rule mentioned the post of Lecturer (Ordinary Scale), Lecturer (Senior Scale) and Lecturer (Selection Scale) showing the existing revised pay scale as against the said post, as a result of which the Respondents who retired prior to the year 1996 or for that matter in the year 1999 were granted revised pension on the basis of the revised pay scale w.e.f. 1.1.1996 meant for the grade of Lecturer (Selection Scale).

4. In the year 2008, the Government of Rajasthan issued a circular/memorandum dated 12.09.2008, which envisaged that the pension/family pension of all the pre 1.9.2006 State pensioners/family pensioners be revised w.e.f. 1.9.2006 as per the provisions made therein. Paragraph 3 of the said Circular/Memorandum provides the dictionary clause, which reads as under:

(a) "Existing Pensioner" or "Existing Family Pensioner" means a pensioner who was drawing/entitled to pension/family pension as on 31.08.2006.

(b) "Existing Pension" means the basic pension/consolidated pension inclusive of commuted portion, if any, due on 31.08.2006.

(c) "Existing Family Pension" means the basic family pension/consolidated family pension drawn on 31.08.2006.

(d) "Existing Dearness Relief means the dearness relief @ 24% on original pension of family pension plus dearness pension.

(e) "Bank" means the branch of the Bank from which the pensioner is getting his pension Consolidation/Revision of Pension.

5. Paragraph 4 provides that the pension/family pension of existing pre-1.9.2006 pensioners/family pensioners will be consolidated w.e.f. 1.9.2006 by adding together the following:

(i) The existing pension/family pension

(ii) Dearness Pension @ 50% of original pension/family pension/consolidated family pension under FD order No. F. 6(3) FO (Rule 5) 12004 dated 24.05.2004,

where applicable.

(iii) Dearness Relief @ 24% of original pension/family pension/consolidated pension/consolidated family pension plus Dearness Pension.

(iv) Fitment weightage @ 40% of the existing pension/family pension.

Where the existing pension in (i) above includes the effect of merger of 50% of dearness relief w.e.f. 01.07.2004, the existing pension for the purpose of fitment weightage will be recalculated after excluding the merged dearness relief of 50% from the pension.

6. It has also been stipulated therein that the amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.9.2006. The relevant part of Paragraph 5 of the said circular/memorandum reads as follows:

The consolidated pension (treated as final "Basic Pension") as on 01.09.2006 of pre-01.09.2006 pensioner shall not be lower than 50% of sum of the minimum pay of the post in the running pay band plus grade pay introduced w.e.f. 01.09.2006 corresponding to the pre-revised pay scale of the post from which pensioner had retired, subject to the condition that the existing provisions in the rules governing qualifying service for grant of pension and minimum pension shall continue to be operative.

7. At this juncture, it is apt to note that the aforesaid clause is central to the controversy calling for interpretation. The learned Single Judge of the High Court vide judgment and order dated 20th September, 2011 considering many an aspect had granted relief to the Respondents herein. The said order was challenged in Intra-Court appeal before the Division Bench. The Division Bench reproduced para 6.3.9 of the UGC Regulations as relied by the State, which stipulates as follows:

6.3.9 The incumbent teacher must be on the roll and active service of the Universities/Colleges on the date of consideration by the Selection Committee for Selection/CAS Promotion.

On behalf of the Respondents therein, reliance was placed on a communication dated 31.3.2010 issued by the Pension and Pensioners Family Welfare Department, Government of Rajasthan, Jaipur as well as the communication of the Government of India (Ministry of Human Resources Development, Department of High Education) dated 15.12.2009 by which the Central Government had decided to extend the benefits of pay band of Rs. 37400-67000 to those who had completed three years of service in the pre-revised pay scale of 12000-420-18300 and the order dated 15.12.2009 was made applicable to those pensioners who were drawing pension/family pension on 1.1.2006 under the Central Civil Services (Pension) Rules, 1972. Another communication dated 1.7.2010 issued by the Government of India, Ministry of Human Resource Development to the Secretary, UGC was also placed reliance upon. The Division Bench adverted to the submissions of the learned Advocate General for the State

which was mainly focussed on the aspect that certain documents and guidelines were not filed before the learned Single Judge, as a consequence of which an erroneous decision had been rendered. On the basis of the said submissions, the Division Bench passed the following order:

When Schedule is part of the Rules and extension of the pay scale of 37400-67000 depends upon the aforesaid aspects, the question was required to be examined by the Single Bench whether in view of the provisions made in the rules and the guidelines particularly contained in para 6.3.9, the Respondents could have been extended the benefit. The decision issued by the Finance Department was also not placed for consideration before the Single Bench. Single Bench has not taken into consideration the guidelines which were required to be taken into consideration before reaching any decision. Similarly, the stand of the State Government is that newly upgraded pay scale has been introduced for the first time on 1.1.2006, whether it would be applied to the persons who have already retired on the date it has been created with the certain riders. This aspect would also be required to be examined that Finance Department has not accepted the proposal for enhancement. The financial liability is to be borne by the State Government. It is also to be taken into consideration whether the pay scale in running pay band 37400-67000 and grade pay 9000/- is admissible to Lecturers who have completed three years in selection scale on or after 01.01.2006 only. The dispensation is allowed under CAS selection scale or ACP admissible to State Government Employees on completion of 9, 18 and 27 years service; it is not a regular line promotion or automatic. In various other States also, similar revision of pension has not been allowed due to the financial condition. All these aspects are required to be taken into consideration. When documents, final order of State Government and guidelines referred in Schedule were not placed before the Single Bench, obviously, they could not have been taken into consideration. As guidelines were admittedly prevailing, same ought to have been brought to the notice of the Single Bench of the purpose of effective adjudication by the parties.

Consequently, we have no hesitation in setting aside the order passed by the Single Bench as material aspects/documents were not placed for consideration before it. The decision of the Central Government was applicable to its own employees governed by the Central Civil Services Rules, 1972. It could not have been made applicable ipso facto to the State Government employees. The decision taken by the Finance Department was unfortunately not brought to the notice of Single Bench which has now been submitted. All these aspects are also required to be considered by the Single Judge.

8. Being of this view, the Division Bench set aside the order passed by the learned Single Judge and remitted the matter to the writ Court to decide the matter afresh after considering the guidelines and various other aspects of the case.

9. After the remit, the learned Single Judge adverted to the rival submissions,

considered the Regulations of 2010, paragraph 5 of the Memorandum dated 12.9.2008, Notification dated 12.10.2009, Letter dated 15.12.2009 issued by the Government of India, Ministry of HRD wherein it was clarified that pay band of Rs. 37400-67000 is to be given to all those who had already completed three years of service in selection grade prior to 1.1.2006 and, more specifically, the pensioners and on that analysis allowed the writ petitions.

10. Being dissatisfied with the decision of the learned Single Judge, the State of Rajasthan and its functionaries preferred Intra-Court appeals before the Division Bench. The Division Bench noticed that the learned Single Judge has awarded the benefit as per existing guidelines of UGC to the Respondents who had retired prior to 1.1.2006. That apart, the Division Bench took note of certain other factors, namely, that there were three pay-scales applicable to the Respondents, namely, Rs. 8000-275-13500, Rs. 12000-420-15300 and Rs. 12000-420-18300; that the Sixth Pay Commission had recommended to revise these pay scales to Rs. 15600-39100 with Academic Grade Pay (hereinafter referred to As "AGP") of Rs. 6,000/- to the first existing pay scale, Rs. 7,000/- as AGP as Senior Scale, to second existing pay scale, and Rs. 8,000/- as AGP as Selection Scale to the third pay scale; and that it had also recommended for bifurcation of pay scales of Lecturers (selection scale) into two, namely, Rs. 15600-39100 with AGP of Rs. 8000/- for those lecturers (selection scale), who have not completed 3 years of service in the existing pay scale as on 01.01.2006 and the pay scale of Rs. 37400-67000 with AGP of Rs. 9000/- for all those, who had completed 3 years service in the existing pay scale as on 01.01.2006 and onwards, subject to the guidelines issued in this regard.

11. After so stating, the Division Bench opined that the Respondents were entitled as per paragraph 5 of the Memorandum dated 12.9.2008 for fixation of their pension at the minimum of 50% in the running pay band plus grade pay of the post introduced vide notification dated 12.10.2009. It took note of the fact that the pension was revised as per notification dated 12.10.2009 but out of the two pay bands of Lecturers (Selection Scale), the lower pay band of Rs. 15,600-39,100/- was taken into consideration for fixation of pension on the ground that the Respondents had not completed three years of service in the selection scale prior to their retirement. The Division Bench appreciated the reasoning of the learned Single Judge that the consolidated pension as on 1.9.2006 should not be lower than 50% of the minimum pay of the post in the running pay band plus grade pay introduced w.e.f. 1.9.2006. Elucidating the reasons ascribed by the learned Single Judge, the Division Bench stated that since the pay scales were revised with effect from 01.09.2006, it was clear that such revised pay scales were to be taken note of in the revision of the pension; that the pay scale was revised pursuant to the Notification dated 12.10.2009, with effect from 01.01.2006 instead of 01.09.2006; that it was clear that revision of pay scale would be at the minimum of 50% of the sum of the pay in running pay band plus grade pay so introduced from the year 2006; that the University Grants Commission Regulations of 2010 notified on 30.06.2010, with special

reference to para Nos. 1.3, 6.3, 6.3.9, 6.4.0 to 6.4.8, were applicable to the Teachers, who were in active service; and that these Regulations did not have any retrospective effect. Thereafter the appellate Bench observed that notwithstanding anything contained in the Regulations of 2010, if any candidate was eligible for promotion under Career Advancement Scheme (hereinafter referred to as "CAS") prior to 31.12.2008, the promotion under CAS would be as per Regulations of 2000, as amended from time to time, read with Notification and guidelines issued by the UGC from time to time. It further observed that the promotion in the selection scale could not be nullified, even if it was given prior to the Notification of 200 and if any Teacher/Librarian/PTI was given Selection Scale prior to the enforcement of the Regulations of 2010, it was not necessary for him to be considered for again giving the Selection Scale in accordance with the Scheme of the Regulations of 2010 as the Regulations did not take away the Selection Scale awarded under the earlier provisions. The Division Bench clarified by way of example that if a teacher was awarded Selection Scale in the year 2002 or prior to it under the old Regulation and was continuing, then the benefit of Revised Pay Scale Rules, could not be denied to him.

12. After so stating, the Division Bench referred to the decision rendered by the Punjab and Haryana High Court in the case of State of Haryana and Anr. v. Satyapal Yadav and Anr. LPA No. 1955 of 2012 decided on 14.1.2013. Thereafter, the Division Bench referred to the written arguments submitted by the Joint Director, Pension and Pensioners Welfare Department, Government of Rajasthan, considered the submissions of the Respondents, referred to paragraph 5 of the memorandum dated 12.9.2008 and dealt with the submission that reasoning given in the memorandum did not entitle the Respondents revision of pension in the corresponding pay scale of Rs. 37400-67000 with AGP of Rs. 9000, and declined to accept the same. Eventually, the Division Bench ruled thus:

It is admitted that all the Respondents were serving as Lecturers in the Selection Scale on the date of their retirement, which is prior to 01.01.2006 when the recommendations of the Sixth Pay Commission were enforced. It is also admitted that all the Respondents were considered for grant of Selection Scale pay in accordance with the then prevailing UGC guidelines, under which they were, after completing 3 years of service subjected to screening including consideration of their refresher and orientation courses and research material. They were drawing their pay in Senior Scale prior to their retirement and thus they were entitled for revision of their pay scale in accordance with the corresponding pay scale applicable to their post. The Sixth Pay Commission recommended for two pay scales of Lecturers (Selection Scale). The first was applicable to those, who had not completed three years of service in the existing pay scale as on 01.01.2006, and the second category was of those, who have completed 3 years of service in the existing pay scale as on 01.01.2006 and onwards, subject to the guidelines issued in this regard. The University Grants Commission Regulations of 2010 could not be given retrospective effect and further these guidelines were not applicable to those, who were already placed in the Selection Scale. The

Respondents, therefore, after the award of the pay scales applicable of Lecturer (Selection Scale), could not be treated in the lower pay scale as they had completed 3 years of service prior to 01.01.2006. They could not be artificially placed back into the Selection Scale which was applicable, to those who had not completed 3 years service in the existing pay in the Selection Scale as on 01.01.2006.

13. We have heard Mr. Ranjit Kumar, learned Solicitor General of India, on behalf of the Appellants and Ms. Shobha and Mr. Ranbir Singh Yadav, learned Counsel for the Respondents.

14. Learned Solicitor General has submitted that the order of High Court of Punjab and Haryana has no application in the present case inasmuch as the State of Haryana had adopted/incorporated the recommendations of the 6th Pay Commission completely, which is not the case with State of Rajasthan; and more importantly the order that was challenged before the Punjab and Haryana High Court was that of Higher Education Commissioner, dated 07.09.2010, which reversed the grant of benefit of extending the pay band of Rs. 37400-67000 with AGP of Rs. 9000 to those Lecturers who had retired before 01.01.2006, as decided by the High Level Committee constituting of Chief Secretary, Finance Secretary and Education Secretary of Govt. of Haryana vide order dated 27.08.2009.

15. Learned Solicitor General further submitted that the High Court has failed to appreciate that in terms of Rule 165 of Rajasthan Civil Service (Pension) Rules, 1996 as well as Rule 3 of Notification dated 12.10.2009, if any doubt arises as to the interpretation of the said Rules it shall be referred to Finance Department and the Finance Department has, vide its letter dated 22.01.2010 and Memorandums dated 18.06.2013 and 26.05.2014, clarified the said issue and the said clarifications have not been challenged. It is further urged by him that the notifications issued by the Ministry of Human Resource Development dated 31.12.2008 and 15.12.2009 relating to Revision of Pay and Revision of Pension are not binding on the State of Rajasthan as they are specifically for lecturers in Central Universities/Colleges, and moreover the State can decide its own policy and not to act in accordance of what the Central Government has decided. It is further urged by him that there is a difference between Revision of Pay and Revision of Pension, and the notification dated 12.10.2009 relating to revision of pay is only applicable to the existing employees and not to those who had retired prior to 01.01.2006.

16. Learned Counsel for the Respondents, while rebutting the submissions of the learned Solicitor General appearing for the Appellants, would submit that the claim of the Appellants that 2009 Rules notified on 12.10.2009 are meant for employees who were on the roll as on 01.01.2006 is fallacious and contrary to the scope and object of the 2009 Rules and Paragraph 5 of the Memorandum dated 12.09.2008 inasmuch as the Division Bench as well as the Single Bench has recorded that the pension of Respondents has been revised pursuant to the

revision of pay scale as per the Notification dated 12.10.2009. The learned Counsel would further submit that there is no justification in the submission of the Appellants that the Respondents would be eligible for pension in terms of the pay band of Rs. 15,600-39,100 with AGP of Rs. 8000 and not Rs. 37,400-67,000 with AGP of Rs. 9000, for the Respondents who have been granted the lecturer (Selection Scale) have already completed more than 3 years of service in the said post. While refuting the submission of the Appellants that the order of Punjab and Haryana High Court is not applicable in the present case, the learned Counsel for the Respondents would submit that the rules are similar and the controversy raised before the Punjab and Haryana High Court and this Court are identical. In this regard, the counsel for the Respondents has relied on Clause 6 of the Haryana Revised Pension Rules which is identical to Paragraph 5 of the memorandum dated 12.09.2008.

17. To appreciate the controversy in proper perspective, we think it appropriate to compare in juxtaposition Rule 6(1) of the Haryana Civil Services (Revised Pension) Part-I Rules, 2009 and paragraph 5(i) of the Memorandum dated 12.9.2008 and accordingly they are reproduced hereunder:

18. We are absolutely conscious that we had already reproduced paragraph 5(i) earlier but we have quoted it hereinabove to appreciate the impact and import of the same in juxtaposition of the Haryana Rules. There is no shadow of doubt that the language employed in 2009 Rules of Haryana and the Circular/Memorandum dated 12.9.2008 are slightly different but the import and impact is the same. It is appropriate to note here that placing reliance on the same, the State of Haryana, vide memorandum dated 10.7.2009 had denied the benefit of pension to the retired employees. The High Court had quashed the same which has been affirmed by this Court. Similarly, in the present case, the benefit is deprived vide order dated 22.1.2010. There is no cavil over the fact that the Respondents have been fitted into a pay band and extended the benefit of pension under the revision of pay from 2006 as the Respondents had completed three years of service. Paragraph 5 clearly lays the postulate that the consolidated pension (treated as final basic pension) as on 1.9.2006, all pre-1.9.2006 pensioner shall not be lower than 50% of sum of the minimum pay of the post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the pre-revised pay scale of the post from which pensioner had retired. The only rider is the minimum qualifying service and all the Respondents have the experience of three years by 1.9.2006. As the factual score would depict, the Respondents were paid pension on a lower band after the revision of the pay scale despite the fact that the persons who were already in service with the similar qualification have been kept in the higher pay band plus grade pay.

19. Paragraph 5 requires to be scrutinised and on such a scrutiny it becomes graphically clear that pension of a pre-1.9.2006 pensioner shall not be lower than 50% of sum of the minimum of post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the pre-revised scale of the post. If

the pay scale is taken into consideration, the corresponding pay revision would be Rs. 37400-67000 with Rs. 9000 AGP. The only qualifier is three years service in that scale. There is no scintilla of doubt that all the Respondents meet that criteria. It is a well known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career. In D.S. Nakara and Others Vs. Union of India (UOI), AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 , D.A. Desai, J. speaking for the Bench opined that:

18. The approach of the Respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench Deokinandan Prasad Vs. The State of Bihar and Others, AIR 1971 SC 1409 : (1971) 1 LLJ 557 : (1971) 2 SCC 330 : (1971) SCR 634 Supp wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Another Vs. Iqbal Singh, AIR 1976 SC 667 : (1976) LabIC 474 : (1976) 2 LLJ 377 : (1976) 2 SCC 1 : (1976) 3 SCR 360 : (1976) 8 UJ 260 .

20. We may hasten to add that though the said decision has been explained and diluted on certain other aspects, but the paragraphs which we have reproduced as a concept holds the filed as it is a fundamental concept in service jurisprudence. It will be appropriate and apposite on the part of the employers to remember the same and ingeminate it time and again so that unnecessary litigation do not travel to the Court and the employers show a definite and correct attitude towards employees. We are compelled to say so as we find that

the intention of the State Government from paragraph 5 of the circular/memorandum has been litigated at various stages to deny the benefits to the Respondents. It is the duty of the State Government to avoid unwarranted litigations and not to encourage any litigation for the sake of litigation. The Respondents were entitled to get the benefit of pension and the High Court has placed reliance on the decision of another High Court which has already been approved by this Court. True it is, there is slight difference in the use of language in the Haryana Pension Rules 2009 and the circular/memorandum issued by the State of Rajasthan, but a critical analysis would show that the final consequence is not affected.

21. It is urged before us that it will put a heavy financial burden on the State. The said submission has been seriously resisted by the learned Counsel for the Respondents by urging that hardly 200-250 retired lecturers in the selection scale are alive in praesenti and the State cannot take a plea of financial burden to deny the legitimate dues of the Respondents.

22. In view of the aforesaid analysis, we do not perceive any merit in this batch of appeals and accordingly, the same stands dismissed. The benefit shall be extended to the Respondents within a span of three months from today failing which the accrued sum shall carry interest @ 9% per annum till realisation. There shall be no order as to costs.