

(2006) 07 JH CK 0115

In the Jharkhand High Court

Case No : Writ Petition (S) No. 174 of 2004

Sudhir Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Citation : (2007) 1 JCR 135

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Sujit Narayan Prasad, for the Appellant; Faizur Rahman, for Respondent Nos. 1 and 2 and S.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Respondent No. 3 is a registered society wholly governed and controlled by the Government of India, Ministry of Human Resources and Development. Petitioner No. 1 joined the services of the Society-Respondent No. 3 on the post of Technical Assistant (Civil) on 03rd of April, 1996 whereas, petitioner Nos. 2 and 3 on being appointed to the post of Technical Assistant (Mechanical) joined on 21st of March, 1997. They were placed in the pay-scale of Rs. 1400-2300/-. The qualification prescribed for the posts in question was Bachelor's degree from a recognized university with Mathematics, Physics, Chemistry or 3 years Diploma having 2 years Laboratory/Workshop experience or I.Sc. with all around Workshop/Laboratory Training and minimum 5 years in Mechanical/Erection work. It is alleged that petitioners were qualified to hold the posts being Diploma Engineers and, accordingly, they were appointed to the posts. The 5th Pay Commission was constituted in the year 1994 and submitted its report on 30th of January, 1997. The Union of India accepted the recommendations of the 5th Pay Commission on 18th of July, 1997. It is alleged that Respondent No. 3 has implemented the 5th pay Commission Report and the pay-scales as shown in Part 1 of the First Schedule of the C.C.S. (RP) Rules, 1997 in respect to the petitioners and their pay-scales has been revised from

1400-2300 to 4500-7,000/-. The grievance of the petitioners is that under the 05th Pay Commission Recommendations and the acceptance order, whereby Pay-Rules have been notified, petitioners are required to be placed in Part B of the First Schedule of C.C.S. (RP) Rules, 1997 and not under Part A on the basis of their qualification. They, accordingly, seek a direction for their placement firstly in the pay-scale of Rs. 1600-2660/- to be revised to pay-scale of Rs. 5500-9000/-. Respondent No. 1 as also the Respondent Nos. 3 to 5 have filed their separate disclaimers to this writ petition justifying the placement of the petitioner in the pay-scale of Rs. 4,500-7,000/- as specified in Part A of the Schedule 1 of the CCS (RP) Rules on the basis of the Government of India, Ministry of Human Resources & Development Department of Education, Office Memorandum dated 08th of December, 1997. In this Memo a direction was issued to all the statutory bodies set up and funded/controlled by the State Government to place their employees in the revised pay-scale in Part 1 of the First Schedule of the CCS (Revised Pay) Rules, 1997. Though it is specifically mentioned that the recommendations of the 05th Pay Commission have been accepted and applied to all autonomous organizations, statutory bodies whose pattern of emolument structure i.e. pay scales and all other allowances are identical to those of the Central Government employees. Respondent Nos. 3 to 5 have, accordingly, submitted that they have adopted the pay-scales as directed by the Government of India and they have no discretion to deviate from the directions issued by the Government of India. Respondent No. 3 is wholly funded and controlled by the Government of India. Only question, requires determination in this case, is whether the petitioners are entitled to be placed in the pay-scales of Rs. 1400-2300/- contained in Part 1 of the C.C.S. (Pay-Revision) Rules of 1997 under part B of the said Rules.

2. With a view to appreciate the contention of the learned Counsel appearing for the parties, it is useful to refer to the relevant extracts from the said Rules:

The First Schedule containing Part 3, Part A reads as under:

Revised scales for posts carrying present scales in Group "A", "B", "C" & "D" except posts for which different revised scales are notified separately.

SL.	POST/	PRESENT	REVISED	No.	GRADE	SCALE (Rs.)	SCALE (Rs.)
1.	2.	3.	4.	8.	S-8	1350-30-1440-40-1800-50-2200	4500-125-7000
						1400-40-1800-50-2300	

Part-B REVISED PAY SCALES FOR CERTAIN COMMON CATEGORIES OF STAFF

IX. SUBORDINATE ENGINEERING CADRES

(a) Diploma Engineers 1400-40-1800-50-2300 5000-150-8000 50.23 &

50.24 1600-50-23-60-2660 5500-175-9000 50.23

Clause 50.23 and 50.24 reads as under:

50.23 We have carefully considered the demands of the Federation and the view of the administrative Ministries/Departments in the light of our general approach on the pay scales of different professional/technical groups of staff and existing relativities between technical and non-technical categories. We have, as a general rule, decided to improve the initial recruitment pay scale of diploma engineers in government. We, accordingly, recommend following pay structure for engineering subordinate cadres:

Existing	Proposed (in present terms)	(Rs.)	(Rs.)	1400-2300	1600-2660
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some of these are graduates in engineering, others are diploma holders.

50.24 These pay scales will apply mutates-mutandis for diploma engineers in different cadres depending upon the availability of specific existing pay scales. We have also recommended specific pay structure for different engineering cadres.

3. Even the Respondent No. 3 also sought some clarification from the Ministry of Human Resources and Development regarding the pay-scales for the Diploma Engineers and the reply on 16th October, 2003 was received, whereunder it is specifically mentioned that on the basis of 05th Pay Revision Commission's Report, Diploma Engineers in different cadres having an existing pay-scale of Rs. 1400-2300/- are to be replaced in the pay-scale of Rs. 1600-2660/-, which is to be replaced by pay-scale of Rs. 5000-8000/-. It is further clarified that the existing pay-scale of Rs. 1400-2300/- under CCS (Revised Pay) Rules, 1997, Part B of the First Schedule, is to be revised in the pay-scale of Rs. 5,000-8,000/- for Diploma Engineers.

4. Under the CCS (Revised Pay-Scale) Rules, 1997, Diploma Engineer's pay is specified in Part B, being Technical post and the existing pay-scales of Rs. 1400-2300/- has been revised to Rs. 5,000-8,000/-.

5. Petitioners' claim that they be firstly placed in the pay-scale of Rs. 1600-2660/- and then in the pay-scale of Rs. 5500-9,000/-, cannot be accepted. Pay-scale of Rs. 1400-2660/- has been proposed and is meant to be allowed at the time of initial recruitment as per Para 50.23 of the recommendations of 5th Pay Revision Commission (under lined portion). When these recommendations were accepted by the Government, petitioners were already in service and their initial pay-scale was Rs. 1400-2300/- and, therefore, by virtue of the revision of the pay-scale as contained in part B of the CCS (RP) Rules, 1997, they are to be placed in the pay-scale of Rs. 5000-8,000/- The Respondent's assertion that petitioners are governed by Part-A of these Rules and the pay-scale specified therein also cannot be accepted in view of Para 50.24 which clarifies the position. Separate pay-scales have been notified under Part B for the Diploma Engineers and they are governed by the these Pay-scales notwithstanding (sic) Government

of India to the contrary. Once, the Government of India has accepted the recommendations of the 5th Pay-Revision Commission and consequently notified the Pay Revision Rules, it cannot deviate from that and suggest a different pay-scale or lower pay-scale than recommended.

6. This writ petition is, accordingly, allowed partially with a direction to the respondents to place the petitioners in the pay-scale of Rs. 5,000-8,000/- being Diploma holder Engineers with effect from the date, the revised Rules have come into operation i.e. 01.01.1996 and effective from 01.04.1997. Needless to say that petitioners are entitled to interest @ 6% for the intervening period on the differential amount.