
(2015) 04 AHC CK 0227

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32284 of 2011

Surendra Prasad Dixit and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2015) 6 ADJ 82 : (2015) 4 AWC 3283 : (2015) 2 UPLBEC 1632

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Manoj Kumar (Sharma), for the Appellant

Final Decision : Allowed

Judgement

Pradeep Kumar Singh Baghel, J—The two petitioners have joined this writ petition, who have retired as a Senior Clerk in the Irrigation Department. They are aggrieved by the order dated 1.4.2011 passed by respondent No. 2, Superintending Engineer, Gandak Sichai Karya Mandal-I, Gorakhpur and order dated 14.3.2011 passed by the respondent No. 4, Executive Engineer, Barh Karya Khand, Deoria whereby the petitioners' claim for the second promotional pay-scale has been rejected. The essential facts are that the petitioner No. 1 was appointed as a Junior Clerk on 10.1.1973 in the Irrigation Department. He got his promotion on the post of Senior Clerk on 1.9.1983. According to the petitioner No. 1, in the revised pay, his pay was fixed in the pay-scale of Rs. 4500-7000 in 1987 in terms of the Government Order dated 23.12.1987. The petitioner No. 1 has completed his 24 years of service on 9.1.1997. His grievance is that in terms of the Government Order dated 3.9.2001, he is entitled for the next promotional pay-scale of Rs. 5000-8000 as in the entire career, he was given only one promotion. The petitioner No. 1 retired on 31.3.2008 on attaining the age of superannuation in the pay-scale of Rs. 4500 to 7000.

2. The petitioner No. 2 was also appointed as Junior Clerk on 13.1.1969 in the same department on 14.10.1978, he was promoted as a Senior Clerk and his pay

was fixed in Rs. 4500-7000 in the year 1997. His grievance is also the same as that of the petitioner No. 1 that having completed 14 years of service on 1.10.1992 he was entitled to higher scale as per Government Order dated 3.9.2001 in the pay-scale of Rs. 5000-8000.

3. It is averred by the petitioners that in their service tenure of more than 24 years they were given only one promotion in the pay-scale of Rs. 4500-7000. Their posts were re-designated as Senior Assistant but their pay-scale was same with the Rs. 4500-7000.

4. It is stated that the State Government took a policy decision that to avoid stagnation to its employees, who were not promoted on the next post in the absence of the promotional avenue, they were granted time scale and the promotional pay-scale. Accordingly, a Government Order dated 3.9.2001 was issued wherein it was directed that all those employees, who were directly appointed and completed their tenure of 24 years of service and who were granted only one" promotion in 24 years, they are entitled for grant of time scale as provided in clause IV of the said Government Order. The previous and revised time scale and next pay-scale are given hereinbelow.

5. The aforesaid benefit was made available to the eligible persons with effect from 1.5.2000.

6. From the record it transpires that some of the eligible persons who could not get the benefit of the said Government order, preferred the writ petition No. 36816 of 2004 (Ram Chandra Verma v. State of U.P. and others) and the writ petition No. 5934 of 2009 (Amar Bahadur Singh v. State of U.P. and others). Similar other petitions were also filed.

7. The writ petition filed by Ram Chandra Verma and another was allowed on 21.4.2008 and the order of the State Government whereby their claim was rejected, was quashed and a direction was issued to the respondents to grant benefit of time pay-scale in terms of the Government Order dated 3.9.2001 to the petitioners.

8. Other writ petitions for the same relief were also allowed by a Division Bench of Lucknow Bench of this Court in writ petition No. 5934 of 2009 (S/S) on 17.9.2009.

9. Aggrieved by the aforesaid order, the State preferred a Special Appeal No. 8 of 2012 (State of U.P. and others v. Ram Chandra Verma) and Special Appeal No. 291 of 2012 (State of U.P. and others v. Malik Shakil Ahmad). Both the Special Appeals were dismissed on 20.5.2014. The Division Bench found that the petitioners have completed 24 years of satisfactory service prior to their retirement and they were entitled to second promotional pay-scale vide Government Order dated 3.9.2001. There is nothing on record to indicate that any Special Leave Petition was filed in Supreme Court against the order of the special appeal.

10. A counter-affidavit has been filed wherein the respondents have taken a stand that the petitioner No. 1 retired from Sinchain Khand-II, Deoria. It is also stated that the petitioner was appointed on the post of Junior Clerk on 10.1.1973 and he was promoted on the post of Senior Clerk on 1.9.1983 and thus the petitioner No. 1 completed 24 years of service on 9.1.1997 and according to the provisions of Government Order dated 3.9.2001, petitioner is not entitled to pay-scale of Rs. 5000-8000. The similar stand has been for petitioner No. 2 also. It is also stated the competent authority has passed the order dated 21.4.2008 in accordance with law.

11. A supplementary counter-affidavit has been filed. The stand taken in the supplementary counter-affidavit is that both the petitioners were appointed on the post of Junior Clerk by way of direct recruitment. The Petitioner No. 1 was promoted on the post of Senior Clerk on 1.9.1983 and has completed 24 years of service on 9.1.1997. The petitioner No. 2 before completing 10 years of service was promoted on the post of Senior Clerk on 14.10.1978 and the petitioners are not entitled for higher pay-scale of Rs. 5000-8000 according to Government Order dated 21.6.2007. The second promotional pay-scale of Rs. 5000-8000 cannot be given to the petitioners because the pay-scale of Rs. 5000-8000 is third promotional pay-scale. Copy of the Government Order dated 21.6.2007 is annexed as Annexure SCA-1. It is further averred in the counter-affidavit that the Executive Engineer Irrigation Division-II, Deoria issued order dated 23.2.2012 regarding grant of the second promotional pay-scale of Rs. 5000-8000 to the divisional clerk in which it has been mentioned that after completion of 24 years of service on the post of Senior Clerk, some of the persons were granted pay-scale of Rs. 5000-8000.

12. In paragraph No. 8 of the supplementary counter-affidavit it is averred that on 24.2.2012 Superintending Engineer, Gandak Sichai Karya Mandal-I, Gorakhpur issued a notification stating that according to the Government Order dated 26.1.2012, the pay-scale of Rs. 5000-8000 which was granted as second promotional pay-scale be cancelled.

13. The petitioners have filed rejoinder-affidavit and the stand taken by the respondents in the counter-affidavit has been denied. It is stated in the rejoinder-affidavit that the Government Order dated 30.6.1989 was amended by the Government Order dated 10.8.1989. According to new pay-scale, the pay-scale of Senior Assistant, Senior Clerk and Junior Clerk have been revised and the pay-scale of Rs. 4500-7000 is a revised pay-scale of Rs. 1350-2200, therefore, it is not a second promotional pay-scale but it is a revised pay-scale. It is also stated that the Special Appeal filed against the order of the Learned Single Judge has been dismissed.

14. Heard learned counsel for the petitioner, Sri Manoj Kumar Sharma and the learned Standing Counsel.

15. Learned counsel for the petitioners submits that both the petitioners were

entitled for second promotional pay-scale in terms of paragraph No. 4 of the Government Order dated 3.9.2001. The relevant paragraph of the Government Order dated 3.9.2001 is extracted hereinbelow :

16. Earlier the pay-scale of Senior Clerk was Rs. 430-685 which has been revised in the year 1989 vide Government Order dated 10.8.1989. The enclosures of Government Order dated 10.8.1989 indicate that the pay-scale of Rs. 430-685 of the Senior Clerk mentioned at item No. 94 has been revised as Rs. 1200-2040 and the pay-scale of Rs. 354-550 of Junior Clerk mentioned at item No. 95 has been revised as Rs. 950-1500. It is important to note that at item No. 93, the post of Senior Assistant is also mentioned and its pre-revised pay-scale of Rs. 470-735 has been revised as Rs. 1200-2040 which is same pay-scale of the Senior Clerk. This fact is evident from the enclosures of the Government Order dated 10.8.1989 which is on the paper book at page 130.

17. On 19.10.1991 the State Government amended the previous Government Order dated 10.8.1989 and by the said amendment the pay-scale of the Senior Assistant and Head Clerk was revised from Rs. 1200-2040 to 1350-2200.

18. The State Government in compliance of the VIth Pay Commission issued a Government Order dated 23.12.1997, which is on the record. The pay-scale of Rs. 1350-2200 has been shown at serial No. 10 which was revised as Rs. 4500-125-7000 from 1.1.1996. It is evident from the Government Order dated 23.12.1987 that the petitioners' pay-scale Rs. 1350 to 2200 was revised to Rs. 4500-7000 with effect from 1.1.1996. This fact has been considered by this Court in the writ petition No. 36816 of 2014 the Court while allowing the writ petition has issued the following directions.

Accordingly, this writ petition stands allowed. The order dated 13.1.2003 is quashed in so far as it relates to the petitioners. It is directed that the respondents shall grant the petitioners the benefit of the time pay-scale in terms of the Government Order dated 3.9.2001. Necessary orders may be passed by the respondent-authorities within two months. The arrears shall be paid to the petitioners within three weeks thereafter. However, the current enhanced salary shall be paid to the petitioners immediately. However, there shall be no order as to costs.

19. Being dissatisfied with the judgment of Learned Single Judge, a Special Appeal was filed. The Division Bench has extracted the ground Nos. 4 and 5 of the said Special Appeal. Incidentally, the same stand has been taken in the impugned order. Paragraph No. 4 of the judgment of the Division Bench is extracted hereinbelow.

"4. In the memo of appeal of Special Appeal No. 8 of 2012 it is stated in ground Nos. 4 and 5 as follows :

4. Because, admittedly here in the instant case the petitioner/respondent No. 1 was initially appointed on the post of Junior Clerk on 11.9.1973 in the pay-scale

of Rs. 3050-4590 and where after the petitioner/respondent No. 1 was given first promotion on the post of Senior Clerk in the pay-scale of Rs. 4000-6000, where-after on completion of 14 years satisfactory service the petitioner/respondent No. 1 was further granted second promotional pay-scale of Rs. 4500-125-7000 w.e.f. 1.9.1997, which is admissible to Senior Assistant. Keeping in view the aforesaid facts and reasons the petitioner/respondent No. 1 was not eligible for the benefit of Time Pay-scale as he has already been granted two promotional pay-scale, but the learned Single Judge in ignoring to consider it has committed a manifest error of law causing grave injustice to the State.

5. Because, admittedly the petitioner/respondent No. 2 was initially appointed on the post of Junior Clerk on 11.8.1972 in the pay-scale of Rs. 3050-4590 and thereafter, the petitioner/respondent No. 2 was further promoted on the post of Senior Clerk in the pay-scale of Rs. 4000-6000 on 27.6.1979 and where-after on completion of 14 years satisfactory service the petitioner/respondent No. 2 was granted second promotional pay-scale of Rs. 4500-7000 admissible to Senior Assistant. Keeping in view the aforesaid facts and reasons the petitioner/respondent No. 2 was also not eligible for the benefit of the Time Pay-scale."

20. The said plea has been rejected by the Court on 20.5.2014 in the following terms :

"7. By the Government Order dated 19.10.1991 the post of Senior Assistant at serial No. 93 was given the pay-scale on its revision from Rs. 1200-2040 to Rs. 1350-2200. The pay-scale of Senior Clerk was not changed and remained the same as Rs. 1200-2040. The pay-scale of Rs. 1200-2040 was revised on 3.12.1997 w.e.f. 1.1.1996 to the pay-scale of Rs. 4500-7000. This pay-scale was thus the first promotional pay-scale for the Senior Clerks. It was a revised pay-scale and was not the promotional pay-scale."

"The words "the pay-scale of Senior Clerk was not changed and remained the same as Rs. 1200-2040" and "1989" occurring in 2nd, 3rd and 4th line of para-7 of the judgment dated 20.5.2014 shall be read as "the pay-scale of Senior Clerk was also changed from Rs. 1200-2040 to Rs. 1350-2200" and "1996".

This order shall be treated as part of the order dated 20.5.2014. A certified copy of this order shall be issued alongwith the copy of order dated 20.5.2014."

21. The fact of the case of Ram Chandra Verma, which has been affirmed in the Special Appeal, is applicable to the case in hand. In the present case also, the petitioners were granted only one promotion although their designation was changed as a Senior Assistant but they remained in the same pay-scale of Rs. 4500-7000. They were granted only one promotion. The second promotion of the petitioners in pay-scale of Rs. 5000-8000 was denied although they were entitled for the same in terms of paragraph No. 2-A of the Government Order dated 3.9.2001.

22. The contention of the learned Standing Counsel that since the petitioners

were promoted on the post of the Senior Assistant, therefore, they have got the promotion is misconceived. From a perusal of the Government Order dated 10.8.1989 it is manifestly clear that the pay-scale of the Senior Assistant, Senior Clerk is same i.e. Rs. 1200-2040 which was revised by the Government Order dated 19.10.1991 to Rs. 1350-2200. vide Government Order dated 23.12.1997, the pay-scale of Rs. 1350-2200, which was the pay-scale of Senior Assistant and Senior Clerk, was revised to Rs. 4500-7000.

23. In view of the above, the submission of the learned Standing Counsel that the petitioners were granted second promotion is not correct.

24. After careful consideration, I am of the view that the petitioners are entitled to benefit of Ram Chandra Verma's judgment which has been affirmed in appeal and for the law laid-down in the above judgment. The impugned orders dated 1.4.2011 passed by the respondent No. 2 (Annexure-8 to the writ petition) and 14.3.2011 passed by the respondent No. 4 (Annexure-9 to the writ petition) are unsustainable under law that need to be set aside. Accordingly, the writ petition succeeds and is allowed and both the orders dated 1.4.2011 and 14.3.2011 are set aside.

25. For the reasons stated above, direction is issued to the State Government to pay the second promotional pay-scale i.e. Rs. 5000-8000 to both the petitioners as this Court has directed in the case of Ram Chandra Verma, which has been affirmed in Special Appeal. The State Government shall pay regard to the fact that both the petitioners have retired, therefore, the next promotional pay-scale of Rs. 5000-8000 shall be given to the petitioners expeditiously but not later than three months from the date of communication of this order.