
(2021) 09 GAU CK 0060
In the Gauhati High Court
Case No : Writ Appeal No. 104 Of 2020

Union Of India And 5 Ors

APPELLANT

Vs

C Chandra Kumar

RESPONDENT

Date of Decision : 24-09-2021

Acts Referred:

Citation : (2021) 09 GAU CK 0060

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : S C Keyal, I H Saikia, Rkd Choudhury,

Final Decision : Dismissed

Judgement

1. This Writ Appeal is preferred by the appellants-BRO against the Judgment and Order dated 18.02.2020 passed in WP(C) No. 1537/2015 by the learned Single Judge.

2. The case in brief is that the respondent as the petitioner before the learned Single Judge is a Diploma holder in Engineering and had joined the appellant's organization on 19.06.1990 as an 'Overseer'. Subsequently, he was re-appointed as Superintendent B/R-II after due selection on 20.08.1994. The 5th CPC revised pay scales had recommended the pay scale by Rs.5,000/- to Rs.8,000/-for all posts carrying minimum direct recruitment qualification of Diploma in Engineering. The said recommendation of the 5th CPC for revision of pay came into effect from 01.01.1996 and the same was accepted by the Government. Although, the post of Overseer (Civil) was the feeder post for promotion to the higher post of Superintendent Grade-II, the next pay commission i.e. the 6th CPC recommended the posts of Overseer be upgraded and merged with the promotional post of Superintendent B/R-II. However, the recommendations of 5th CPC, although accepted by the Government was never extended to either the posts of Overseer (Civil) or the post of Superintendent Grade-II. In the 6th CPC, the issues relating to the post of Overseer (Civil) as well as the Superintendent

Grade-II were specifically dealt with by recommending the pay scale of Rs.5,000/- to Rs.8,000/- and that the same be paid to both the posts. It was also recommended that the post of Overseer be upgraded and merged with the higher post of Superintendent B/R-II and that the combined cadre be extended the scale of pay to Rs.5,000/- to Rs.8,000/- at the entry level. When the recommendations were made, the petitioner was already holding the post of Superintendent Grade-II.

3. Under the circumstances, the respondent as the petitioner before the learned Single Judge claimed that he ought to have been given the benefit of the revised pay scale of Rs.5,000/- to Rs.8,000/- as recommended by the 5th CPC and the 6th CPC. Being denied, the recommended pay scale, the petitioner initially filed the writ petition before the Madras High Court vide WP(C) No. 10758/2008. A Single Bench of the Madras High Court vide order dated 03.01.2011 allowed the writ petition by directing the respondents to revise the pay of the petitioner in the light of the 5th and 6th CPC report from 01.01.1996 and 01.01.2006 respectively and also to grant the consequential arrears as may be admissible. However, the said order passed by the learned Single Judge of the Madras High Court came to be reversed by a Division Bench of Madras High Court vide Order dated 21.08.2013 on the count that the Madras High Court did not have the territorial jurisdiction to entertain the writ petition. The respondent as the petitioner thereafter filed the writ petition before this Court. The appellant as the respondents resisted the claims of the petitioner by filing their counter affidavit wherein it was contended that the retrospective effect given by the 6th CPC in its recommendation, w.e.f. 01.01.1996 was only for the purposes of pay fixation. However, the actual benefits were to accrue only w.e.f. 01.01.2006. The appellant- BRO as the respondent before the learned Single Judge, contended that the 6th CPC did not specifically recommend the payment of arrears and therefore the actual benefit was given to the respondent-petitioner w.e.f. 01.01.2006. The appellants also contended that the claim made by the petitioner is sufficiently belated to enable him to claim any relief and on the principle enunciated by the Apex Court in the case of Tarsem Singh (supra), the appellant contended that any claim for arrears ordinarily would be for a period of 3(three) years prior to the date of filing the writ petition. The learned Single Judge vide the judgment impugned allowed the writ petition preferred by the respondent as the petitioner and the appellants herein were directed to grant revised pay scale of Rs.5,000/- to Rs.8,000/- with arrears w.e.f. 01.01.1996 in terms of recommendation of the 5th CPC and corresponding arrears of benefit w.e.f. 01.01.2006 in terms of recommendation made by the 6th CPC to the post of Superintendent B/R Grade-II, which was accepted by the Department on 25.02.2009.

4. We have heard the learned counsels for the parties and have also examined the pleadings on record.

5. The issue regarding grant of arrears of revision of pay scales came up before

this Court earlier in WP(C) No. 51/2009 in Ghanashyam Vishwakarma, GS-161752 OVSr -Vs- Director General, Border Roads Organization and Ors. The claim of the petitioner was that the revised pay scales were denied to the petitioner therein on the ground of his not possessing the minimum qualification Diploma in Engineering. This Court vide Judgment dated September 10th, 2010 allowed the writ petition and held that the recommendation of revision of pay is not with reference to the incumbents of the posts and accordingly directions were given to revise the pay scales of the petitioner at par with the revised scales. A Division Bench of this Court upheld the Judgment rendered by the learned Single Judge vide Judgment and Order dated 18th March, 2011 passed in W.A. No. 19/2010 in the appeal preferred by the Director General, Border Roads Organisation and Ors -Vs- Ghanashyam Vishwakarma, GS-161752 OVSr (GREF). The matter travelled to the Supreme Court in an SLP preferred by the BRO which however was dismissed vide Order dated 01.11.2011 in CC No. 14236/2011. As such, on the facts and circumstances of that case, this Court had held that revision of pay scales as recommended by the 6th CPC will not affect the conferment of the benefit of revision of pay notwithstanding modification of the recruitment Rules thereafter.

6. In the Judgment under appeal in the present proceedings, the learned single Judge held that the 6th CPC had specifically made the finding that the benefit of revision of pay scale of Rs.5000- 8000/-as applicable to posts where the minimum qualification required for direct recruitment is Diploma, which was accepted by the Central Government, in terms of the 5th CPC ought to have been also extended to the post of Overseer w.e.f. 01.01.1996 which, however was not done. Accordingly, the 6th CPC recommended that the post of Overseer may be upgraded and merged with their promotional post of Superintendent Grade-II and the combined cadre should be extended the pay scale of Rs.5000-8000/-.

7. When the 5th CPC as well as the 6th CPC made the said recommendation, the petitioner was already holding the post of Superintendent Grade-II having been appointed as such in the year 1994 i.e. prior to the recommendation of the 5th CPC. The said benefit was not given to the Superintendent Grade-II, which has been clearly reflected in the recommendation made by the 6th CPC by stating that even though the recommendation was accepted by the Government, it has not been extended in respect of this post (i.e. Superintendent Grade-II) because only some of the posts were filled through direct recruitment. The 6th CPC, however, made the observation that this is not the correct interpretation of the 5th CPC recommendation as per which, all posts carrying minimum qualification of Diploma in Engineering for direct recruitment had to be placed in the scale of Rs.5000-8000/- and the post of Superintendent Grade-II has an element of direct recruitment minimum qualification for which it is Diploma in Engineering.

8. The learned Single held that the 6th CPC made the recommendation in respect of Superintendent Grade-II that this post may be placed in the pay band PB-2 of Rs.8700-34800/- along with the grade pay of Rs.4200/- corresponding to the pre-

revised scale of Rs.5000-8000/- i.e. now being merged with the scale of Rs.5500-9000/- and Rs. 6500-10500/-. While making the said recommendation in respect of Superintendent Grade-II, the 6th CPC never advised the Government to implement this retrospectively from 01.01.1996 for the purpose of fixation of pay only. The learned Single Judge held that the recommendation of the pay commission to the Government to implement the revision of pay retrospectively from 01.01.1996 for the purpose of fixation of pay scale was in respect of the post of Overseer which was merged with the post of Superintendent Grade-II and as no such recommendation was made in respect of the post of Superintendent Grade-II to which the petitioner was already appointed in the year 1994. The learned Single Judge, therefore, held that the decision of the Department to grant benefit of Revision of Pay w.e.f. 01.01.1996 for the purpose of fixation of pay and to grant actual benefit from 01.01.2006 can only be in respect of persons who were holding the post of Overseer and which post will be merged with Superintendent Grade-II in terms of recommendation made by the 6th CPC. This limitation however will not be applicable in respect of incumbent like the petitioner (respondent herein) who were already holding the post of Superintendent Grade-II to which posts, the posts of Overseer were merged. The learned Single Judge correctly disagreed with the contention of the appellant that the benefit of arrear of revision of pay will be applicable only from 01.01.2006. Consequently, the writ petition filed by the respondent as petitioner was allowed holding that the benefit of arrears regarding revision of pay will be available to the respondent-petitioner in terms of this recommendations of 6th CPC w.e.f. 01.01.2006.

9. We have carefully perused the Judgment under appeal. We find that the facts and circumstances of the present case, the view arrived at by the learned Single Judge is a possible view permissible in law. We do not find any ground to come to a conclusion, different one arrived at by the learned Single Judge which will lead to a better approach on the relief granted. Insofar as the claim being considered to be time barred, we find that in *Tarsem Singh(supra)*, the Apex Court has granted an exception to those services related claims based on a continuing wrong where relief can be granted. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. The Apex Court held that if the issues relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. It is not disputed by the appellant that grant of relief to the petitioner/respondent is related to or will affect several others or that it is likely to unsettle the settled rights of any third parties.

10. In an Intra-court appeal where the learned Single Judge had taken the possible view permissible in law, the Appellate Court would not normally interfere with such a decision unless both sides agree for a fairer approach relief. The law in this respect is clearly laid down by the Apex Court in *Management of Narendra*

& Company Private Limited -Vs- Workmen of Narendra & Company reported in 2016 3 SCC 340. The relevant paragraphs of which is extracted herein below:-

"Once the learned Single Judge having seen the records had come to the conclusion that the industry was not functioning after January 1995, there is no justification in entering a different finding without any further material before the Division Bench. The Appellate Bench ought to have noticed that the statement of MW 3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order [Narendra & Co. (P) Ltd. v. Workmen, WP No. 41489 of 2002, decided on 14-3-2008 (KAR)] passed by the Single Judge, unless both sides agree for a fairer approach on relief".

11. In view of the above the grounds urged by the appellant assailing the impugned order passed by the learned Single Judge do not appeal to us to return a contrary finding on the ground perversity of the impugned judgment. Accordingly, we find no merit in the appeal and, accordingly, the writ appeal is dismissed. No order as to costs.