
(2013) 05 AHC CK 0041
In the Allahabad High Court
Case No : Writ Petition No. 6672 of 2012

Vedmani Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Citation : (2014) 2 ALJ 770

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri. S.K. Kalia, learned Senior counsel assisted by Sri. Vidu Bhushan Kalia, learned counsel for petitioner in Writ Petition No. 5498 (SS) of 2011, Sri. M.N. Rai, learned counsel for petitioner in Writ Petition No. 6672 (SS) of 2012 and Sri. A.N. Trivedi, learned Additional Chief Standing Counsel. With the consent of parties, as the point involved in Writ Petition No. 5498 (SS) of 2011 and Writ Petition No. 5498 (SS) of 2011 are identical and similar so both the writ petitions are heard and decided by a common judgment.

Facts of Writ Petition No. 5498 (SS) of 2011

2. On 01.09.2001, an advertisement was issued by the O.P. No. 4/ Superintendent of Police (Training and Security), Lucknow for selection/ appointment against 799 (male) and 89 (female) posts of Sub-Inspector/Platoon Commander in the Police Department, State of U.P. Subsequently, the posts which advertised were increased to 1003 from 88 adding both (male and female) for backlog vacancies.

3. Selection process is to govern by Government Order dated 19.05.1998 as well as by an office memorandum dated 08.06.1998, the clause No. 1 of the office memorandum provides as under:--

(Vernacular matter omitted...Ed.)

4. Thereafter, in pursuance to the Government Order dated 19.05.1998, the State Government issued an order dated 17.09.2002 providing the office memorandum dated 08.06.1998, relevant portion quoted hereinbelow:--

(Vernacular matter omitted...Ed.)

5. Petitioners in pursuance to the advertisement submitted their candidature for appointment on the post of Sub-Inspector/Platoon Commander, appeared in written test by order dated 03.09.2005 declared successful, sent for training on 29.11.2005, started from 01.12.2005 to 29.09.2006, during the training period they had been paid the stipend to the tune of Rs. 1,000/- for first four months and for remaining period Rs. 3500/- per month.

6. After completing the training, the petitioners were assigned law and order duty from 26.09.2006 to 04.10.2006, on 05.10.2006, posting orders were issued thereafter the competent authority on 10.11.2006 issued the appointment order, thereby appointing petitioners on the post of Sub-Inspector/Platoon Commander in the pay scale of Rs. 5500-9000/-.

7. Further, in the year 1999, an advertisement was issued for appointment on the post of Sub-Inspector and the persons who were recruited/selected were sent for training during the training period, paid salary as per the office memorandum dated 08.06.1998. Subsequently, the same was recovered on the ground that they were not entitled for the same but for stipend and an order of recovery has been issued against them. The said order challenged by them by filing a writ petition before this Court at Allahabad, the recovery proceeding has been stayed.

8. Aggrieved by the said fact, the State of U.P. and others filed a Special Appeal (Special Appeal No. 20 (Defective) of 2007, (State of U.P. and others v. Nagesh Upadhyaya and others), disposed of by order dated 12.08.2008 (Reported in 2009 (1) ALJ 165), relevant portion quoted as under:--

From the record as it stands before us following facts are undisputed:

(a) The writ petitioners were selected after open market competition for the post of Sub-Inspector Civil Police/Platoon Commander PAC in the year 2001. They were offered appointment on the post of Sub-Inspector Civil Police/Platoon Commander PAC in terms of the Government Order dated 08th June, 1998, which held the field on the relevant date.

(b) After such appointment, the Sub-Inspector Civil Police/Platoon Commander PAC were sent for training and for this period of training they were paid minimum of the pay scale admissible to the post.

(c) The aforesaid candidates/trainees completed the training successfully and thereafter joined on their respective posts.

9. Thereafter, on 27.05.2011, Government order issued in pursuance to the abovesaid direction to bring uniformity amongst all similarly situated persons and

to remove the anomalies granted the pay scale in place of stipend to all those Sub-Inspectors/Platoon Commanders who had undergone training between 08.06.1998 to 17.09.2002 and also an office memorandum dated 06.06.2011 was issued.

10. Keeping in view the said facts, the present petitioners represented to the opposite parties for giving the pay of Rs. 14,430/- to them. On their representation, by an order dated 22.09.2009 the pay scale of Rs. 14,430/- given to them from the date of their appointment.

11. Thereafter, by the impugned order dated 07.06.2011 (Annexure No. 1) passed by O.P. No. 4 the pay scale of Rs. 14,430/- paid to the petitioners from their date of appointment, reduced to Rs. 13,500/-, and order for recovery of the excels amount was also, passed, communicated to them by order/letter dated 08.07.2011 passed by Dy. Inspector of Police Establishment, P.A.C. Lucknow.

Facts of Writ Petition No 6672 (SS) of 2012

12. The facts and circumstances of the present are similar and identical of the facts of Writ Petition No. 5498 (SS) of 2011. However, in the present case, by means of the impugned order dated 07.06.2011 passed by O.P. No. 4, the salary paid to the petitioners from at the pay scale of Rs. 14,430/- reduced to the pay scale of Rs. 13,500/-, the excess salary paid for the period 06.04.2006 to 30.06.2007 is sought to be recovered.

Submission made on behalf of the petitioners

13. First argument advanced by Sri. S.K. Kalia, Senior Advocate on behalf of the petitioners is that in pursuance to the advertisement issued in the year 2001 (01.09.2001) for appointment on the post of Sub-Inspector/Platoon Commanders, the petitioners submitted their candidature, selected by order dated 03.09.2005, sent for training by order dated 29.11.2005 for the period 01.12.2005 to 26.09.2005, so the training is a "service training", in view the Clause-1 of Government Order dated 08.06.1998, as such they are entitled for salary for the post of Sub-Inspector/Platoon Commander, not for the stipend given to them as per Government Order dated 17.09.2002, as such, the official respondents be directed to pay the salary to the petitioners for the training period instead of stipend.

14. Next argument advanced on behalf of petitioners is that admittedly the petitioners, by order dated 03.09.2005 selected for appointment on the post of Sub-Inspector/Platoon Commander, sent for training on 29.11.2012 for a period 01.12.2005 to 26.09.2006 completed successfully, assigned the law and order duty for the period 26.09.2006 to 04.10.2006 and on 05.10.2006 posting orders issued, only thereafter appointment orders dated 10.11.2006 issued to them appointing on the post of Sub-Inspector/Platoon Commander in the pay scale of Rs. 5500-9000/-, as such their date of appointment on the post in question will be 03.09.2005 as per the Clause-I of the Government Order dated 08.06.1998.

15. Sri. S.K. Kalia, learned Senior Counsel further submits that as the date of the petitioners' appointment is 03.09.1995, so as per the recommendation of the Six Pay Commission, the pay scale of the petitioners rightly fixed as Rs. 14,430/- as per clause 6 of the Government Order dated 08.12.2008 which reads as under:--

(Vernacular matter omitted...Ed.)

16. Accordingly, it is submitted that the petitioners have been rightly given the pay scale of Rs. 14,430/- w.e.f. their date of appointment by the authorities, so the action on the part of opposite party No. 4 to pass the impugned order on the ground that they are not entitled for the said pay scale after 01.01.2006 as per Government Order dated 08.12.2008, in conformity to law cannot sustain in law as the said classification is unjust because the benefit of pay revision as per Sixth Pay Commission report is also available to them, as such the impugned order is illegal, arbitrary and violative of Article 14 of the Constitution of India and as the said order has been passed without providing any opportunity whatsoever to the petitioners, as such the same are violative of principles of natural justice, iniquitous, irrational, violative of petitioners fundamental rights granted under the Constitution of India, liable to be set aside.

Submission of State counsel

17. Sri. A.N. Trivedi, learned Additional Chief Standing Counsel submits that an advertisement has been issued on 01.09.2001 for appointment on the post of Sub-Inspector/Platoon Commander, in the department and one of the condition mentioned in the advertisement is that incumbents would be selected for training and only after successful completion of training, the incumbent would be appointed and shall be placed in the pay scale of Rs. 5500-9000/-. So, the reliance placed by the petitioners on the office order dated 08.06.1998 is wholly misconceived as the Rules governing the selection of Sub-Inspectors and Constables of Civil Police and Rules pertaining to selection of Platoon Commanders and Constables of PAC were not promulgated, as the selection is to be conducted as per Government Order dated 19th May, 1998 for appointment of Sub-Inspectors and Constables of Civil Police and Platoon Commanders and Constables of PAC.

18. He further submits that the harmonious reading of paragraph Nos. 11 to 13 of the Government Order dated 19.05.1998 particularly paragraph No. 12 it is apparently clear that only after successful completion of training the incumbent would be appointed and salary would be paid to the post holder. Keeping in view the abovesaid fact, the Government Order dated 17.12.2002 issued by which it is provided that during the training period the petitioners are entitled for stipend, hence the submission made on behalf of the petitioner that they were entitled for full salary during training period treating as service training instead of stipend in view of the order dated 08.06.1998 is wholly misconceived, liable to be rejected.

19. Sri. A.N. Trivedi, learned Additional Chief Standing Counsel further submits that in order to extend the benefit of Sixth Pay Commission Government Order

dated 08.12.2008 by State Government, paragraph 6 of the same provided that the incumbents who are appointed subsequent to 01.01.2006, (like the petitioners) the benefit of the revised pay scale in terms of the recommendations of the Sixth Pay Commission to be given to them by placing the said incumbent in the corresponding revised pay scale as indicated in Annexure No. 2 of the Government Order dated 08.12.2008 and as per the same incumbent appointed after 01.01.2006 in the pay scale of Rs. 5500-9000/-, and as well the petitioners were appointed after 01.01.2006, so they were entitled for the benefit of Sixth Pay Commission by placing them in the pay scale of Rs. 5500-9000/-, so the petitioners were granted the pay scale of Rs. 9300/- + 4200 = Rs. 13,500/-.

20. He further submits that on wrong calculation, the petitioners were given pay scale of Rs. 14,430/-, accordingly, by means of the impugned order the said mistake has been rectified, the order was passed for re-fixation of petitioners' pay scale and recovery of the amount from their salary, so the impugned orders are in accordance with law. In support of his argument, he has placed reliance on the judgment given by Hon'ble the Apex Court in the case of Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, , in the case of Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others, and in the case of Haryana Power Generation Corporation Limited and Others Vs. Harkesh Chand and Others, .

21. Sri. A.N. Trivedi, learned Additional Chief Standing Counsel submits that as per the facts of the instant case that the principle of natural justice is not applicable because as per the admitted or undisputed facts of the present case which clearly speaks for themselves that the petitioners were appointed on 10.11.2006 on the post completing the training successfully in terms of the advertisement, so they are neither entitle for full salary during the training nor they are entitle for the salary in the pay scale of Rs. 14,430/- in view of the recommendation as made by Sixth Pay Commission implemented by the State Government by an order dated 08.12.2008 as the petitioners are appointed after 01.01.2006. In support of his argument, he has placed reliance on the judgment of the Apex Court in the case of S.L. Kapoor Vs. Jagmohan and Others, , and in the case of Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another, , accordingly, the submission made on behalf of the petitioners that the impugned orders are in violation of principles of natural justice and violative of Articles 14 and 16 of the Constitution of India is misconceived argument, liable to be rejected, and writ petitions be dismissed.

22. Sri. M.N. Ray, learned counsel appearing on behalf of petitioner in Writ Petition No. 6672 (SS) of 2012 has adopted the argument advanced by Sri. S.K. Kalia, learned Senior Counsel appearing on behalf of petitioners in Writ Petition No. 5498 (SS) of 2011.

23. I have heard learned counsel for parties and gone through the record.

24. Appointment is effected by the employer through a contract of employment. As in every contract, so in a contract of public employment an offer of

appointment to the candidate sought to be employed and his acceptance of the offer forms the, basis of appointment. Appointment is made to a vacancy and in a post. It is, therefore, made by a positive and deliberate act of engagement creating a relationship between employer and employee. Appointment is the starting point of a career in public employment. It confers a status and ensure all the rights that are attached to public service, including confirmation, seniority, promotion, and so on tenure.

25. In the case of Baldev Raj Vs. State of Punjab and Another, while interpreted the date of appointment it has been held as under:--

I am led to an irresistible conclusion that the terms "recruitment" and "appointment" are not synonymous and connote different meanings. The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment and not actual appointment or posting in service while "appointment" means an actual act of posting a person to a particular office.

26. Hon"ble the Supreme Court in the case of Prafulla Kumar Swain (1993 AIR SCW 671) (supra), held as under:--

At this stage, we will proceed to decide as to the meaning and effect of the words "recruitment" and "appointment". The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word "appointment" means an actual act of posting a person to a particular office.

27. In the case of Haryana Power Generation Corporation Limited and Others Vs. Harkesh Chand and Others, in which the petitioners who are apprentice and sent for apprenticeship: training, successful after completing the apprenticeship training were given appointment and they had agitated their claim that their date of appointment should be treated from the date when they sent for training and not from the date of their actual appointment order. Hon"ble the Supreme Court held that the date of appointment in that case will be the date on which they were given appointment and not the date on which they were sent for training.

28. Thus, appointment to the post counts from the date of assumption of charge and for the said purpose the positive order for appointment is to be passed, (see. Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, , Jagdish Ch. Patnaik and Others Vs. State of Orissa and Others,).

29. In the instant case, the advertisement for appointment on the post in question was issued on 01.09.2001 for appointment on the posts of Sub-Inspector and Platoon Commanders (male and female), in which it was categorically provided that incumbents would be selected for training and only after successful completion of training, the incumbent would be appointed and shall be placed in the pay scale of Rs. 5500-9000/-.

30. At that point of time the Rules known as Sub-Inspector/Platoon Commander known as Uttar Pradesh Sub-Inspector/Inspector (Civil Police) Rules, 2008 has

not been promulgated, thus, the selection in question is to be conducted by the Government Order dated 19.05.1998, lay down the procedure for selection/appointment on the post of Sub-Inspector and Constable of Civil Police, Platoon Commander and Constable, PAC police.

31. Bare reading of the paragraph 11 to 13 of the Government Order dated 19.05.1998, it is clear that only after the successful training, an incumbent would be appointed and thereafter admissible salary be paid to the post holder, the said Government Order has been issued in terms of the provisions as contained under Article 162 of the Constitution of India read with section 2 of the Police Act, 1861 which provides as under:--

Section 2 Constitution of Police Force the entire police establishment under a State Government shall for the purpose of this Act, be deemed to be one police force, and shall be formally enrolled, and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act the pay and other conditions of service of members of the subordinate ranks of police force shall be such as may be determined by the State Government.

32. In view of the abovesaid facts, the office order dated 08.06.1998 which provides that the petitioners are entitled for salary during the training period is contrary to the Government Order dated 19.05.1998, and the case of the petitioners would be governed by the Government Order dated 17.08.2002, and in terms of the same during the training period the petitioners who are selected for appointment on the post of Sub-Inspector/Platoon Commander and sent for training are entitled for stipend as the Government Order dated 17.08.2002 by which the stipend has been given to the petitioners during the training period is not under challenge in the instant case.

33. Next submission made on behalf of petitioners that in pursuance to advertisement issued on 01.09.2001, they were selected on 03.09.2005 sent for training by order dated 29.11.2005 for a period 01.12.2005 to 26.09.2006, so the said training is a service training as per the office Order dated 08.06.1998 and after completing the training the petitioners were assigned law and order duty from 29.09.2006 to 04.10.2006, thereafter posting order dated 05.10.2006 was also issued, so keeping the said facts, their date of appointment on the post would 03.09.2005 is not a correct fact in view of the facts that as stated above in terms of the advertisement, incumbents would be selected for training and only after successful completion of training, the incumbent would be appointed and shall be placed in the pay scale of Rs. 5500-9000/- read with Clause 12 of the Government Order dated 08.12.2008, the date of petitioners' appointment on the post would be 10.11.2006 when the competent authority has issued the appointment orders thereby appointing them on the post of Sub-Inspector/Platoon Commander in the pay scale of Rs. 5500-9000/-.

34. Further, after the recommendation of the Six Pay Commission, the State Government issued a Government Order dated 08.12.2008 by which the benefit of Sixth Pay Commission was provided to the State employees and para 6 of the said Government Order provides that the incumbents who are appointed prior to 01.01.2006 are entitled the pay scale of Rs. 14,430/-. However, in the instant case as stated hereinabove, the petitioners were appointed after 01.01.2006, so as per the recommendation of Six Pay Commission of the pay scale by Government Order dated 08.12.2008 (Clause-6) they are entitled for pay scale of Rs. 13,500/- (Rs. 9300 + Rs. 4200/- = Rs. 13300/-).

35. So far as the argument advanced on behalf of the petitioners that there is a violation of principles of natural justice in the present case as no opportunity has been provided to them prior to passing of the impugned orders under challenge in the present case by which their pay scale has been reduced from Rs. 14430/- to Rs. 13500/- and the order of recovery of the excess amount has been passed.

36. There cannot be any doubt whatsoever that the "audi alteram partem" is one of the basic pillar of natural justice which means no one should be condemned unheard.

37. It is also, well-settled that the said principle cannot be put in any straight jacket formula. It may not be in a given case applied unless a prejudice is shown. It is not necessary where it would be a futile exercise. However, a court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. As mentioned in the in Wade Administrative Law, (5th Ed. PP. 472-475) as follows: (para 31)

....it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent....There must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth.

38. Hon"ble Apex Court in the case of S.L. Kapoor Vs. Jagmohan and Others, , held as under:--

Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non observance of natural justice but because Courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.

39. In Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , the law is stated in the following terms:

25. The useless formality theory, it must be noted, is an exception. Apart from the class of cases of admitted or indisputable facts leading only to one Conclusion referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and-also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others Have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

40. In Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another, , this Court held:

The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given.

41. Hon''ble the Supreme Court in the case of Punjab National Bank and Others Vs. Manjeet Singh and Another, , this Court opined:

The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in-view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice.

42. In P.D. Agrawal Vs. State Bank of India and Others, , Hon''ble Apex Court observed as under:--

The principles of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent times also undergone a sea change.

It was further observed:

Decision of this Court in S.L. Kapoor Vs. Jagmohan and Others, , whereupon Mr. Rao placed strong reliance to contend that non-observance of principles of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in State Bank of Patiala and others Vs. S.K. Sharma, and Rajendra Singh Vs. State of Madhya Pradesh and others, , the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula. [See Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, and State of U.P. Vs. Neeraj Awasthi and Others, . See also Mohd. Sartaj and Another Vs. State of U.P. and Others, .]

43. In the instant case, as stated above, as per the terms advertisement and Government Order dated 19.05.1998, the date of appointment of the petitioners on the post of Sub-Inspector/Platoon Commander, the petitioners were appointed by order dated 10.11.2006 passed by competent authority in the pay scale of Rs. 5500-9000/-.

44. Thereafter, in order to implement the recommendation of Sixth Pay Commission, the State Government issued a Government Order dated 08.12.2008. As per the undisputed facts of the case, present petitioners in order to get the benefit of the Sixth Pay Commission in terms of Government Order dated 08.12.2008 have given an undertaking that if after fixation of their salary as per the recommendation of Sixth Pay Commission later on it is found that the same has been wrongly fixed, the excess amount so paid may be recovered/adjusted from their salary.

45. Subsequently, the competent authority after scrutiny of the record found that the petitioners were appointed after 01.01.2006, so they are not entitled for the revised pay scale of Rs. 14,430/- but for pay scale of Rs. 13,500/- in view of the Government Order dated 08.12.2008 as per the recommendation of Sixth Pay Commission, so by means of impugned orders, their salary has been fixed in the pay scale of Rs. 13,500/- and the order for recovery of excess amount, so paid

was also passed.

46. Thus, keeping in view the abovesaid facts, even if, the opportunity of hearing is given to the petitioners as per the requirement of principles of natural justice as per the abovementioned facts, then only one conclusion is possible that the petitioners as per the recommendation of Six Pay Commission, by Government Order dated 08.12.2008 (clause-6) they are entitled for the revised pay scale of Rs. 13,500/- and not for Rs. 14,430/-, so by non-observation of principles of natural justice, no prejudice have been caused to the petitioners, so there is no illegality or infirmity in the impugned orders in the instant case. In the result, both writ petitions lack merit and are dismissed.