
(2022) 05 CHH CK 0038

In the Chhattisgarh High Court

Case No : Writ Appeal No. 166, 167, 168, 169, 170, 173, 171 Of 2017

Vishnu Prasad Chandrakar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Chhattisgarh Revised Pay Scale Rules, 2009 — Rule 2, 14
Chhattisgarh Municipal Corporation (Appointment And Conditions Of Service Of Officers And Servants) Rule, 2007 — Rule 3(2), 13, 13(1), 13(2)
Chhattisgarh Municipal Corporation Act, 1956 — Section 43, 53(1), 58(1)(i)

Citation : (2022) 05 CHH CK 0038

Hon'ble Judges : Arup Kumar Goswami, CJ;Gautam Chourdiya, J

Bench : Division Bench

Advocate : Dr. N.K. Shukla, Sourabh Sharma, Rashika Soni, H.S. Ahluwalia, Apurv Goyal, Rajnish Singh Baghel, Pankaj Agrawal

Final Decision : Dismissed

Judgement

1. Heard Dr. N.K. Shukla, learned senior counsel for the appellants in all the writ appeals. Also heard Mr. H.S. Ahluwalia, learned Deputy Advocate General, appearing for the State/respondents No.1 to 3 in all these appeals, Mr. Apurv Goyal, learned counsel, appearing for respondent No.4 in Writ Appeal Nos.171 of 2017, 168 of 2017 and 169 of 2017, Mr. Rajnish Singh Baghel, learned counsel, appearing for respondent No.4 in Writ Appeal No.166 of 2017 and Mr. Pankaj Agrawal, learned counsel, appearing for respondent No.4 in Writ Appeal No.173 of 2017.

2. These writ appeals are presented against a common order dated 28.03.2017 passed by the learned Single Judge in Writ Petition (S) Nos.1502 of 2014, 677 of 2016, 5622 of 2016, 5598 of 2016, 5617 of 2016, 5625 of 2016 and 5669 of 2016, .

3. Writ Appeal No.171 of 2017 is preferred in respect of Writ Petition (S) No.1502 of 2014.

4. The writ petitioners, namely, Vishnu Prasad Chandrakar in Writ Petition (S) No.1502 of 2014, Rameshwar Prasad Chandrakar in Writ Petition (S) No.677 of 2016 and Vijay Kumar Sherkar in Writ Petition (S) No.5669 of 2016 were the employees of Municipal Corporation, Bhilai; the writ petitioner, namely, Shiv Kumar Sharma in Writ Petition (S) No.5622 of 2016 was an employee of Municipal Corporation, Durg; the writ petitioner, namely, Abdul Hamid in Writ Petition (S) No.5598 of 2016 was an employee of Municipal Corporation, Ambikapur; the writ petitioner, namely, Ajay Kumar Verma in Writ Petition (S) No.5625 of 2016 was an employee of Municipal Corporation, Raipur and the writ petitioner, namely, Abhimanyu Sinha in Writ Petition (S) No.5617 of 2016 was an employee of Municipal Corporation, Dhamtari.

5. For the purpose of disposal of these batch of writ appeals, we will rely upon and refer to the appeal papers in Writ Appeal No.171 of 2017 as well as writ petition papers in Writ Petition (S) No.1502 of 2014.

6. The facts presented in Writ Petition (S) No.1502 of 2014, inter alia, are that the petitioner in Writ Petition (S) No.1502 of 2014 was appointed as Daily Wager in the year 1985 and his services had been regularized in the post of Time Keeper in the year 1996 and thereafter, he was working with Municipal Corporation, Bhilai. Prior to 2007, there were no rules governing the service conditions of the employees of the Municipal Corporation and only in the year 2007, Chhattisgarh Municipal Corporation (Appointment and Conditions of Service of Officers and Servants) Rule, 2007 (for short, 'Rules of 2007') had been framed by the Government in exercise of power conferred under Section 43 read with Section 53(1) of the Chhattisgarh Municipal Corporation Act, 1956 (for short, Act of 1956). The Rules of 2007 was enforced with effect from 24.01.2008. In the year 2009, the State Government had framed Chhattisgarh Revised Pay Scale Rules, 2009 (for short, 'Rules of 2009') and respondent No.1 had issued a circular dated 24.03.2009 making applicable the 6th Pay Commission pay-scale to all the Departments of State of Chhattisgarh with effect from 01.01.2006. Thereafter, on 17.09.2009, respondent No.2 issued two circulars : first one in respect of the Officers of the State Municipal Service by which the benefit of 6th Pay Commission pay-scale is made applicable from 01.01.2006, providing further that the cash payment of arrears amount and grant of pay scale to the officers of the State Municipal Service would be made as per Rules of 2009. The second circular dated 17.09.2009 is in respect of the regular employees of the urban bodies of the State whereby revised pay scale is sanctioned subject to certain conditions. Subsequently, another circular dated 07.10.2009 was issued providing that Rules of 2007 would be applicable in such local bodies where establishment expenditure is less than 65% after the implementation of the revised pay scale. It is pleaded that employees of the Municipal Corporation, Municipal Council and Nagar Panchayat had been extended benefit of the 6th Pay Commission pay-scale vide circular dated 07.10.2009 by the State Government after obtaining permission. Subsequently, the State Government issued an order dated 25.05.2011 making applicable the

benefit of 6th Pay Commission pay-scale w.e.f. 20.05.2011 to all the employees of four Municipal Corporations, i.e., Raipur, Bhilai, Korba and Chrimiri. Another order dated 26.05.2011 was issued by respondent No.2 in respect of all local bodies that the 6th Pay Commission pay-scale would be applicable from 01.01.2006 and financial benefit would be applicable from the date which would be decided separately. Thereafter, respondent No.2 issued a memo dated 14.05.2012, whereby order dated 26.05.2011 was cancelled and a decision was communicated to all the local bodies that the 6th Pay Commission pay-scale would be applicable from 01.01.2006, but the benefit of 6th Pay Commission pay-scale revision would be made applicable from 01.04.2012 and arrears from 01.01.2006 to 31.03.2012 would not be payable, providing further that financial burden shall be borne by local bodies themselves and no grant shall be made available by the State.

7. In the background of above facts, writ petition was filed seeking a writ of mandamus directing the respondents to implement the recommendations of the 6th Pay Commission in terms of circular dated 24.03.2009 (Annexure P/2 to the writ petition) issued by respondent No.1, and to fix the pay scale and arrears of the petitioners as per recommendation of 6th Pay Commission w.e.f. 01.01.2006, and to quash the memo / order dated 14.05.2012 (Annexure P/8 to the writ petition).

8. In the reply filed by the State, it is stated that the Government of Chhattisgarh, by an order dated 14.08.2013, had constituted a Committee under the Chairmanship of the Principal Secretary, Department of Urban Administration & Development and the Committee, its meeting held on 18.09.2013, had sought for information with respect to collection of property tax for past five years from all the Corporations and Municipalities as also the amount that would be payable to the employees of these bodies on account of 6th Pay Commission pay-scale.

9. In the additional return filed, it is stated that total 154 urban bodies submitted information with respect to the details of the revenue collected by way of property tax and 149 bodies submitted the details of the arrears payable to the employees. Accordingly, the said issue in respect of the payment of arrears of 6th Pay Commission pay-scale was again discussed and it was found that the majority of the urban bodies are depending on the State Government for making their day to day expenses, such as, payment of salary, electricity and other expenses, etc. as they are not in a position to meet their daily expenses. There was a loan of Rs.878 Crores in respect of urban bodies and the loan was being serviced by the State Government. In the light of the above, it was decided in the meeting held on 25.11.2016 that payment of arrears in respect of 6th Pay Commission pay-scale to the employees of the urban bodies was not practically possible.

10. In view of the above observations of the Committee, the State Government had turned down the request for grant of arrears. It is stated that the petitioner cannot claim parity with regular Government servants.

11. The learned Single Judge held that the Rules of 2009 is applicable to the employees of the State Government and not to the employees of the Municipal bodies. The Rules of 2009 had not been made applicable mutatis mutandis to the employees of the Municipal bodies, because, the scale of pay of an employee of Municipal Corporation is determined by the Appointing Authority, which is subject to the orders issued by the State Government from time to time. The learned Single Judge observed that decision taken by the State Government dated 14.05.2012 appears to be a policy decision allowing grant of 6th pay scale to the employees from 01.01.2006 with actual benefits from a particular date but with notional fixation from 01.01.2006. It was observed at paragraph-12 as follows :

"12. The decision taken by the State Government on 14.5.2012 appears to be a policy decision allowing grant of 6th Pay Scale to the employees with actual benefits from a particular date, but the notional fixation from 1.1.2006, when the 6th pay scale came into force. Such policy decision of the Government, which prima facie does not appear to be in violation of the statutory provision, is not to be easily interfered with by the writ Court because, it has financial implications. Had it been a case that the Municipal Bodies are bound under the Rules to give benefit of arrears of 6th Pay Scale, the issue of financial burden becomes irrelevant, however, when it is at the discretion of the Government and the said discretion appears to have been exercised keeping in view the finances of the Local Bodies, the writ Court may not be entitled to interfere in such policy matters having adverse financial implications."

12. Dr. N.K. Shukla, learned senior counsel for the appellants in this batch of writ appeals, submits that the learned Single Judge committed error in holding that the pay scale of the petitioners is different from the pay scale of the employees of the State Government in same cadre / post as the Municipal employees working in a particular cadre / post draw the same pay scale with that of the employees of the State Government employees working in a particular cadre / post. Placing reliance on Rule 2 of the Rules of 2009, he contends that Rules of 2009 issued vide notification dated 23.03.2009, applies to the petitioners and therefore, arrears that accrued from 01.01.2006 to 31.03.2013 cannot be withheld. It is submitted that circular dated 24.03.2009 having not been withdrawn or cancelled, the impugned order dated 14.05.2012 is ex facie arbitrary and illegal and cannot be sustained in law. It is also contended that having regard to the Rules of 2007, all the benefits which are extended to the Government servants shall have to be extended to the petitioners and similarly situated employees. Dr. Shukla places reliance on the judgment of Hon'ble Supreme Court in the case of M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. v. Uma Shankar Dwivedi, reported in AIR Online 2018 SC 163, as well as a decision of Bombay High Court in case of Municipal Corporation, Dhule v. Smt. Indubai Sukhlal Chauvan, reported in AIR Online 2021 Bom 986.

13. Mr. H.S. Ahluwalia, learned Deputy Advocate General, appearing for the State in all the writ appeals, submits that no case is made out for interference with the

order of the learned Single Judge. He submits that petitioners cannot legitimately claim that their pay scales should necessarily be revised and enhanced when the organizations, in which they are working, is unable to meet even the day to day expenses and has to depend on the Government. He places reliance on the judgment of Hon'ble Supreme Court in the case of Punjab State Co-operative Milk Producers Federation Ltd. and Another v. Balbir Kumar Walia and Others, reported in AIR 2021 SC 3316.

14. Mr. Apurv Goyal, Mr. Rajnish Singh Baghel and Mr. Pankaj Agrawal, learned counsel, appearing for respective Municipal Corporations, submit that the urban bodies would have to abide by the directions given by the State Government from time to time in respect of payment of salary, etc. to its employees.

15. During the course of submissions, the learned counsel for the appellants as well as learned State counsel had furnished separately translated version of Annexure P/2, Annexure P/3 (two separate orders), Annexure P/4, Annexure P/8 to the writ petition as well as Annexure R/2 of the return of the State.

16. It is to be noted, at this juncture, that there is some variation in translation in the two sets furnished to the Court.

17. We have considered the submission of the learned counsel for the parties and have perused the materials on record.

18. By notification dated 23.03.2009, Rules of 2009 was deemed to have come into force from 01.01.2006. Rule 2 is under the heading of "Categories of Government servants to whom the rules applies". It lays down that save as otherwise provided by or under these rules, these rules shall apply to all Government servants under the rule making control of the State Government. It is also laid down that rules shall not be applicable to the Government servants of following categories :

- (i) persons appointed on contract;
- (ii) part time and daily rated employees;
- (iii) re-employed pensioners;
- (iv) persons paid from contingencies and work-charged employees;
- (v) persons paid on pay scales of the University Grant Commission and All India Council for Technical Education;
- (vi) persons drawing pay in the All India Service scales;
- (vii) judicial service personnel paid on pay scales recommended by the Shetty Commission; and
- (viii) any other class or category of persons as the Governor may, by order, specially specify in this behalf.

19. Rule 14 is under the heading of "Mode of payment of arrear of pay". It lays down that the arrear for the relevant period shall be paid in cash in three installments, in the following manner -

(i) Year 2009-10 - From January, 2006 to October, 2006

(i) Year 2010-11 - From November, 2006 to August, 2007

(i) Year 2011-12 - From September, 2007 to August, 2008

"Relevant Period" is defined under Rule 14(b) to mean the period commencing on the 1st day of January, 2006 and ending with 31st August, 2008."

20. Under the Rules of 2007, "Appointing Authority" means the Mayor- in-Council or the Commissioner, as the case may be, specified by the State Government by an order under proviso (i) of sub-section (1) of Section 58 of the Act of 1956. Rule 3(2) provides, amongst others, that scales of pay in respect of classification of the posts shall be determined by the Appointing Authority subject to the orders issued by the State Government from time to time.

21. Rule 13 is under the heading of "Other conditions of Service". Rule 13(1) provides that the Corporation shall be competent to prescribe the method / procedure under which decision is to be taken in respect of medical treatment, General Provident Fund and Pension. It is also provided that the other conditions of service which have not been provided in these rules or any other rules made under the Act of 1956 shall be deemed to be the same which are applicable to Government servants on the same post from time to time. Rule 13(2) provides that notwithstanding anything contained in sub-rule (1), the following rules as amended from time to time applicable to the Government servants shall be applicable to the employees of the Corporation, namely -

(a) Chhattisgarh Fundamental Rules Volumes I and II.

(b) Chhattisgarh Travelling Allowances Rules.

(c) Chhattisgarh Civil Services (Leave) Rules, 1977.

(d) Chhattisgarh Civil Service (Conduct) Rules, 1965.

(e) Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.

22. On the basis of Rule 13 of the Rules of 2007, Dr. Shukla sought to contend that the Rules of 2009 shall stand extended to the petitioners as they are enjoying the same pay scale as their counter-parts in the Government service. Even if it is assumed that the petitioners in a particular post are enjoying the same pay scale as their counter-parts in the State Government, Rule 3(2) of the Rules of 2007 specifically provides that pay scale has to be determined by the Appointing Authority subject to the orders issued by the State Government from time to time. Therefore, the contention advanced by Dr. Shukla that coming into force the Rules of 2009, the same becomes automatically applicable to the petitioners, cannot be accepted.

23. Rules of 2009 applies to the Government servants and it is not the case of the petitioners that they are Government servants.

24. Annexure P/2 of the writ petition, dated 24.03.2009, is on the subject of "Instructions regarding fixation of pay under the Chhattisgarh Pay Revision Rules, 2009".

25. By order dated 17.09.2009 (Annexure P/3 to the writ petition), revised pay scale (6th Pay Scale) was made applicable to all the Officers of the State Municipal Service w.e.f. 01.01.2006 providing that cash payment of arrears amount and pay scale to the Officers of the State Municipal Service would be made as per the Rules of 2009.

26. By another order dated 17.09.2009, amongst others, it was provided that all the regular employees of the urban bodies of the State are given revised pay scale subject to the conditions as enumerated therein. Some of the conditions are to the effect that : (i) as per Rules of 2009, it would be implemented in such urban bodies whose establishment expenditure is less than 65% after the implementation of the revised pay scale; (ii) cash payment of the revised pay scale will start from January, 2010; (iii) pay in the revised pay scale will be fixed notionally from 01.01.2006 till 31.12.2009 and cash payment will be made from 01.01.2010 and no arrears will be paid; (iv) due to acceptance of new pay scales by the urban body, the additional financial burden on the establishment will neither be borne by the State Government nor the State Government would provide any grant or allocation and that the financial burden arising out of the implementation of the new pay scale by the urban bodies will be borne from their own expenses; (v) it had to be ensured by the urban body that development works will not be affected by the implementation of the 6th Pay Commission pay-scale.

27. The order dated 07.10.2009 (Annexure P/4 to the writ petition) is applicable to the regular employees of the urban bodies. Amongst others, by the said order dated 07.10.2009, the provisions contained in the earlier order dated 17.09.2009 to the effect that cash payment of revised pay scale will be effected from January, 2010 and that the revised pay scale will be fixed notionally from 01.01.2006 till 31.12.2009, were deleted.

28. The order dated 14.05.2012 (Annexure P/8 to the writ petition) recites that the State Government would have no objection if the urban bodies, i.e., Municipal Corporations / Municipal Councils / Nagar Panchayats, subject to conditions indicated therein, want to give the benefit of the Rules of 2009 to its regular officers / employees. The conditions are to the effect that : (i) the regular officers / employees of the local urban bodies should be given financial benefits by the local bodies from 01.04.2012 by revising the salary. While calculating the salary fixation from the date 01.01.2006 to 31.03.2012 notionally, the economic benefit would be payable from 01.04.2012 and arrears would not be paid; (ii) fixation of salary should be compulsorily examined by the Local Fund Auditor;

(iii) the financial burden resulting from its implementation by the urban bodies will be borne from their own source and that the State Government will give no grant for the said purpose; and (iv) it should be ensured that development work will not be affected by the implementation of the 6th Pay Commission pay-scale.

29. The contention of Dr. Shukla that the orders dated 17.09.2009 and 07.10.2009 having not been cancelled, the impugned order dated 14.05.2012, whereby the financial benefit is allowed to be given to the regular officers / employees of the local urban bodies only from 01.04.2012 and not granting arrears from 01.01.2006 to 31.03.2012, cannot be sustained and that issuance of such an order shows non-application of mind, is without any merit.

30. Though by an order dated 17.09.2009, which was applicable in respect of regular employees of the urban bodies, revised pay scale was directed to be fixed notionally from 01.01.2006 to 31.12.2009 and the cash payment was to be done from 01.01.2010, providing that no arrears would be paid, it is to be noted that such condition was deleted by amending the order dated 17.09.2009 by the order dated 07.10.2009. Thus, after passing of the order dated 07.10.2009, there was no order specifying from which date and in what manner, 6th Pay Commission pay-scale would be made applicable to the petitioners and the similarly situated persons and it was only after issuance of order dated 14.05.2012, it was determined that salary will be fixed on the basis of Rules of 2009 notionally from 01.01.2006 to 31.03.2012 and to give the financial benefit from 01.04.2012 with no payment of arrears from 01.01.2006 to 31.03.2012. It is already noted that under the Rules of 2007, scales of pay attached to the classification of posts included in the service shall be examined by the Appointing Authority subject to the orders issued by the State Government from time to time. Therefore, the State Government was competent to direct as to how the Rules of 2009 is to be made applicable to the employees of the urban bodies.

31. Ratio of M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. (supra) and Municipal Corporation, Dhule (supra), on which reliance was placed by Dr. Shukla, is not applicable in the attending facts and circumstances of the case.

32. In M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd. (supra), the stand taken by the appellants before the Hon'ble Supreme Court was that pay revision of 2001 of appellant No.1 would not be applicable to employees of Rural Electrification Cooperative Societies absorbed in the service of appellant No.1, to whom the pre-revised pay scales were not applicable and on the basis thereof, benefit of 5th Pay Commission was not extended to Rewa Society. On the submission being made by the learned counsel for the respondent that despite such exclusion, benefit had been extended to employees of the Societies where the pre-revised pay scales were not applicable, Hon'ble Supreme Court had observed that the employees belonging to Rewa Society would not be discriminated and shall be extended the benefit of pay revision of 2001, in case the appellant No.1 had extended the benefit of Pay Revision Regulations of 2001, to whom the pre-revised pay-scale was not applicable.

33. In *Municipal Corporation, Dhule* (supra), the petitioner had taken a stand before the Bombay High Court that the respondents were not working on a sanctioned post and thus, were not entitled to the benefit of 5th and 6th Pay Commission recommendations. It was the contention of the respondents that they had been made permanent pursuant to the order passed by the Industrial Court and the only ground taken by the petitioner before the Industrial Court, decision of which was challenged in the writ petition in question, was that the petitioner is lacking in funds. Noticing that only a sum of Rs.3 Lacs is due to the respondents from the Corporation, it was held by the Bombay High Court that lack of funds cannot be a ground to deny the arrears of wages to the Class-IV employees.

34. In *Punjab State Co-operative Milk Producers Federation Ltd.* (supra), it was observed that the employees cannot legitimately claim that their pay-scales should necessarily be revised and enhanced when the organization in which they are working are making continuous losses and are deeply in the red. The Hon'ble Supreme Court, in the attending facts and circumstances of the case, observed that decision not to grant revised pay scale from 01.01.1986 was taken keeping in view the financial condition of the Federation. The question posed as to whether such a decision could have been interfered with in a writ petition in exercise of power of judicial review was answered in the negative. At paragraph-49, it was observed as follows :

"49. Thus, we find that the decision that the Federation was in financial difficulties is based upon relevant material before the Federation. The process to arrive at such decision can be said to be flawed only on the permissible grounds of illegality, irrationality and procedural impropriety. We find that neither the decision-making process, nor the decision itself suffers from any such vice."

35. The stand taken by the State Government that the local bodies are taking financial help from the State Government to meet day to day expenses is not disputed by the petitioners.

36. In view of above discussion, we see no good ground to interfere with the order of the learned Single Judge and accordingly, the writ appeals are dismissed. No cost.