

(2013) 12 AHC CK 0131
In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 60451, 63990, 65708, 67251, 69217, 69673, 69901, 69971, 72064, 73627, 74291 of 2010, 1180, 1600, 5706, 9522, 10770, 20188, 30108, 31371 of 2011, 5159, 46231 of 2012, 9522, 11139, 11209, 15851, 20973, 25949, 25953, 29464, 300

Vishwanath Verma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) 4 ADJ 764

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Vijay Gautam and Sri A.R. Chaurasiya, learned Counsels for petitioners, Sri S.P. Gupta, learned Senior Advocate, assisted by Sri Pankaj Rai, learned Addl. Chief Standing Counsel for respondents and perused the record. Rest of the counsels for petitioners in this bunch of writ petitions have adopted the arguments advanced by Sri Gautam and Sri Chaurasiya. In all these matters, common question of facts and law are involved and, therefore, as agreed and requested by learned counsel for parties, have been heard together and are being decided by this common judgment.

2. It is also worthy to notice that there are three writ petitions in which detailed arguments have been advanced, i.e., Writ Petition No. 9522 of 2013 (hereinafter referred to as "first petition", Writ Petition No. 11139 of 2013 hereinafter referred to as "second petition") and 25949 of 2013 (hereinafter referred to as "third petition") and the record of these three cases have been referred interchangeably during the course of arguments.

3. As requested and agreed by learned counsels for the parties, the counter and rejoinder affidavit filed in first petition has been read in all other matters.

4. In fact pleadings have been referred to by respective counsels interchangeably with the consent of parties and it is in these facts and circumstances, as agreed and requested, these matters have been heard for final disposal at this stage under the Rules of the Court without keeping them pending for the purpose of exchange of pleading separately in all other connected matters.

5. In the first petition, there are 61 petitioners. All, except petitioner No. 61, are Constables in Provincial Armed Constabulary (hereinafter referred to as "PAC") and petitioner No. 61 is Constable in Civil Police. They were appointed between 1987 to 1994 and by now have completed 19 to 25 years of service.

6. The dispute in short involves whether petitioners, who are receiving Grade Pay of Rs. 2400/-, are entitled to get Grade Pay of Rs. 2800/- as next Assured Career Progression (hereinafter referred to as "ACP") or 4200/-. Those petitioners, who became due for the next ACP grade after 2400/- have been placed in the Grade Pay of Rs. 2800/- while the claim is that 2800/- is not a Grade Pay admissible in the hierarchy of subordinate Police Force officials, therefore, they should be placed in the Grade Pay of Rs. 4200/-.

7. To understand the entire controversy in respect to hierarchy as also the pay scales, permissible ACP, a few facts in retrospect about the provisions relating to pay revision etc. need be referred hereat.

8. In the subordinate ranks of Police Officers, the lowest rank is "Constable" and next higher promotional rank is "Head Constable", "Sub-inspector" and lastly "Inspector".

9. Before implementation of 6th Pay Commission's recommendation in State of U.P. with effect from 1.1.2006, and prior thereto, the Constables were in the pay scale of 3050-4590, Head Constables in 3200-4900 and Sub-inspectors in the Scale of Rs. 5000-8000.

10. In the past, due to lack of promotional avenues, the Government felt that a large number of serving officials were stagnating in the initial pay scale and the rank in which they entered the service. This stagnation was creating a serious dissatisfaction affecting services. Hence, after the implementation of recommendation of 4th Pay Commission, a scheme of additional increment and promotional scale was implemented so as to provide some respite to those who were stagnating in the same pay scale. A Government Order dated 3.6.1989 was issued which provided one increment after rendering 10 years of satisfactory service to those Government employees who were in the scale maximum whereof was Rs. 3500. After rendering a total 16 years of satisfactory service, next promotional pay scale was provided if the Government servant had not been promoted earlier or in the 16th year. This benefit of additional increment and promotional scale was admissible to all Government employees.

11. This scheme was revised vide Government Order dated 1.3.1995, as follows:

i) After rendering 8 years of satisfactory service, one increment in the same pay

scale;

ii) After next 6 years and total 14 years of satisfactory service, next promotional scale.

iii) After next 5 years and total 19 years of satisfactory service, on the post one increment in the first promotional pay scale which was given on 14 years of service.

iv) After next 5 years and 24 years of satisfactory service, on the post, second promotional pay scale.

12. These promotional pay scales contemplate the pay scale of next promotional post to which the incumbent could have been promoted but grant of these pay scale did not result in actual promotion to higher post(s). Judicial cognizance can be taken of the fact that pay scale were revised with effect from 1.1.1996 on the recommendation of 5th Pay Commission but above scheme of increment and promotional scales as such continued to all those employees who were below scale of Rs. 8000-13500/-.

13. Again pay was revised with effect from 1.1.2006 implementing 6th Pay Commission recommendation vide Government Order dated 8.12.2008 but the aforesaid scheme continued as such.

14. It is also worthy to mention that 6th Pay Commission drastically reduced various pay scales and comparatively lesser number of pay scale have been prescribed with term "Pay Band" and attached thereto a "Grade Pay" which is connected with the concept of "financial upgradation".

15. Prior to 1.1.2006, there were 25 pay scales which have now been substituted by Pay Band 1S, Pay Bands 1, 2, 3 and 4, and a fixed pay at the highest level. In regard to the posts falling in Pay Bands, there attached a "Grade Pay" which is in 18 stages. The existing structure, as it was on 31.12.2005 and the revised structure which came into force on 1.1.2006 vide Government Order dated 8.12.2008 is reproduced as under:

16. Vide Government Order dated 4.5.2010, the aforesaid scheme of promotional scale and increment was done away with effect from 1.12.2008 and a new scheme of "ACP" was introduced for all Government employees. Here the words "Promotional Pay Scales" have now been changed by the words "Financial Upgradation" The first financial upgradation is admissible after completion of 10 years of satisfactory service, second financial upgradation on completion of 16 years of satisfactory service and third is admissible on completion of 26 years of satisfactory service.

17. This is the general scheme of promotional scales or ACP, as the same may be.

18. It is not in dispute that in the revised pay, Constables and Head Constables were placed in the same Pay Band i.e. Rs. 5200-20200 with Grade pay of Rs. 1900/- and 2000/- respectively. However, their Grade Pay was modified vide

Government Order dated 28.11.2010 which came into force with effect from 1.1.2006, and instead of 1900/- the Grade Pay provided to the Constables was 2000, while Head Constables were provided Grade Pay of Rs. 2400 instead of 2000/-. This Government Order, which modified Grade Pay of Constables and Head Constables has been placed on record along with a brief note of submission filed on behalf of State of U.P. in the first petition.

19. It is not in dispute that as a revision of pay scale, the Sub-inspectors are now in the Pay Band-II, i.e., Rs. 9300-34800 with Grade Pay of Rs. 4200/-. What has been contended by petitioners is that the grant of ACP at next stage should admit the Grade Pay of Sub-Inspector to petitioners for the reason that no other Grade Pay is admissible in their hierarchy after 2800/- and Grade Pay of 2800/- is not at all admissible to any of post available to the Members of Police Force in Civil Police and PAC. A lot of arguments have been advanced referring to various Government Orders but to my mind there is no scope of any further discussion on various other Government Orders since the issue in question is clinched by the Government Order dated 4.5.2010, which has introduced the system of ACP. This itself is clear to find out what is to be provided to petitioners at different stages of ACP. From para. 2 of the Government Order dated 4.5.2010, it is evident that on completion of satisfactory service of prescribed period, i.e. 10 years, 16 years and 26 years, as the case may be, the benefit admissible to a Government Official is the next "financial upgradation" and not "promotional pay scale" or "promotional upgradation". In contradiction to what was provided in earlier Government Orders, under old scheme which contemplated first or second promotional pay scale, now the scheme of ACP has changed the scenario in entirety by referring to the words "financial upgradation" instead of "promotional pay scales".

20. A promotional pay scale could have been conceded with reference to hierarchy available in the service concerned inasmuch when a Constable has to be provided first promotional pay scale, he could have claimed pay scale of Head Constable without getting benefit of status and rank and similarly second promotional pay scale would have allowed him the pay scale admissible to Sub-Inspector but when the term "promotional pay scale" has been changed by the words "next financial upgradation", this Court finds no reason to continue to adhere to the scheme of pay scale of next higher post. Here it talks of the next "Grade Pay" since that is the "financial upgradation" provided in the scheme. As I have already noticed, Constable and Head Constable are in the same Pay Band-I but the admissible Grade Pay makes difference in their status and rank. The Constables have been provided Grade Pay of Rs. 2000 and Head Constables Rs. 2400/-. Therefore, the Constable working in Grade Pay of Rs. 2000/- whenever would be entitled, the next financial upgradation which would be given in Rs. 2400/-. Similarly, the second financial upgradation would be Rs. 2800/- being the next financial upgradation available in the scheme of Pay Bands and Grade Pay attached thereto. It is irrespective of what is available in the particular service. It is only third promotional upgradation, if admissible, that would go to Rs. 4200/-

since after 2800/- the next Grade Pay is Rs. 4200/-.

21. Petitioners sought to refer to para. 2 of the government Order dated 4.5.2010 which is on Page 52 of the first petition, but a bare reading thereof shows that it is a clarification in respect to those who have to get benefit under old scheme applicable and operable upto 30.11.2008. The cases covered thereunder, how that benefit will be attached vis-?-vis ACP, this aspect has been discussed therein.

22. However, so far as scheme of ACP, applicable in para. 2 of the Government Order dated 4.5.2010 which is on page 49 and 50 of the first petition, there is no confusion or doubt that it talks of "next financial upgradation" instead of "next promotional pay scale". Learned counsels for petitioners could not dispute this fact that, if, instead of promotional pay scales, it is to be financial upgradation, then the benefit would stand confined to different Grades Pay and those who are in the Grade Pay of Rs. 2000/- would go to the next Grade Pay of Rs. 2400/- and then to 2800/- and onwards.

23. In the third writ petition, petitioners are claiming third financial upgradation and instead of 4200/- they are claiming 4600/-. Here also that is not admissible in view of discussion made above and the grant of 4200/- Grade Pay therein is just, valid and in accordance with the scheme, as discussed above.

24. In view thereof, I find no merit in any of these writ petitions and without hesitation I hold that the Constables in the Grade Pay of Rs. 2400/- are entitled for next financial upgradation under ACP scheme to the Grade Pay of Rs. 2800/- and not 4200/-.

25. In the result, all these writ petitions being devoid of merit, are dismissed, accordingly. No costs.