

PETITIONER:
FERTILIZER CORPORATION OF INDIA LTD. AND ANR.

Vs.

RESPONDENT:
SARAT CHANDRA RATH AND ORS.

DATE OF JUDGMENT: 23/08/1996

BENCH:
KIRPAL B.N. (J)
BENCH:
KIRPAL B.N. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
JT 1996 (7) 366 1996 SCALE (6)154

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL, J

This appeal by special leave arises from the judgment of the Orissa High Court which had allowed the writ petition filed by 23 workmen of the appellants, respondents 1 to 23, and while striking down a paragraph of a circular according to which their pay was fixed, a direction was issued for re-fixation of the pay in manner indicated by the High Court.

The respondents 1 to 23, prior to 1st January 1987, were employed as workmen by the appellants. On 20th January 1982 a seven years stagnation scheme was introduced by the appellants whereunder its employees in the highest workman's pay scale, who had been stagnating for seven years, were promoted to the lowest officer's scale. These employees, who were workmen and were called senior operators, senior technicians etc. were, on their placement in the lowest officer's scale, designated as Assistant Foremen (AFM 'D'), Junior Officer (JO 'D') etc. On such placement in the officer's grade these erstwhile workmen were treated as officers and they received all the facilities admissible as officers.

On 30th October, 1983 a draft of settlement under Section 18 of the Industrial Disputes Act, 1947 (for short 'the Act') for the pay revision was finalised between the management and the workmen. Based on this on 25th February, 1984 a further settlement under Section 18 of the Act was entered into between the management of the FCI Talchar unit, the appellants herein and its workmen. This settlement was, inter alia, for revision of various pay scales. The revised pay scales so fixed were to be effective from 1st January 1983 to 31st December, 1986, the highest scale of workmen being Rs. 915 - 1520. The agreement further contemplated that the next ways agreement was to be effective from 1st January, 1987. It also sought to touch upon some of the anomalies which were prevailing with

respect to the implementation of seven years stagnation scheme. The relevant salient features of this agreement/settlement were that with effect from 11th August, 1986 the workmen in the higher scale of fulfilling eligibility conditions under the stagnation scheme were only to be placed (not promoted) from their existing scale of Rs. 915-1520 to the lowest officer's scale of Rs. 960-1610 and on such placement they were to be given the designation of Junior Foreman 9 (w). On such placement the said persons were entitled to D.A. as admissible to officers but all other allowances, benefits, union membership etc., which they had as workmen, were to remain unaltered.

As a result of the aforesaid settlement dated 11th August, 1986 there were, as on 31st December 1986, employers who had already undergone placement from the highest workers scale of Rs. 915-1520 to the lowest officer's scale of Rs. 960 - 1610 on account of the fact that they had fulfilled the eligibility conditions under the seven years stagnation scheme on some dates before 31st December, 1986. However, workmen like the respondents who had not fulfilled the aforesaid eligibility conditions under the stagnation scheme as on 31st December 1986 continued to remain in the workmen's category, as on that day, in the pay scale of Rs. 915-1520.

The earlier agreement whereby pay scales were fixed from 1st January 1983 to 31st December, 1986 having come to end, the Government of India, by an order dated 4th February, 1987, decided that negotiations should take place between the management and the companies so as to bring into existence the new wage settlement to be made effective from 1st January, 1987. Pending fresh fixation of pay scales the workmen and the officers with effect from 1st January, 1987 continued to get their salaries in the existing pay scales, i.e. the respondents 1 to 23 in the pay scales of Rs. 915-1520 and the persons placed in the lowest pay scale of the officers category in the pay scale of Rs. 960-1610.

The said respondents 1 to 23 fulfilled the eligibility conditions under the seven years stagnation scheme on 1st September, 1987. By office memorandum dated 7th November, 1987 these respondents were placed in the officers pay scale of Rs. 960-1610 with effect from 1st September, 1987.

A draft agreement dated 1st July, 1987 for the purpose of revising the workmen's pay scales from 1st January, 1987 was finalised between the management and the workmen at their inter company's level. The Government of India approved the aforesaid agreement on 23rd March, 1990 a settlement under Section 18 of the Act was entered into between the respondents. The salient features of the said settlement are as follows :

- i) The settlement i.e. the new pay scales for workmen were effective from 1.1.1987 to 31.12.1991.
- ii) In the case of workmen placed in the officers' category of JFM(W) on any date after 1.1.1987, fixation was to be done in the revised workmen's pay scale from 1.1.1987 upto the date they remained in the workmen category in the pre-revised scale of 915-1520 and the arrears were to be paid to them till that date in accordance with the revised scale of 1580-2842. (However, such employees were to continue to draw for future i.e.

from the date on which they were placed in the officers' pay scale the same pay as they had been drawing after that date in that scale, namely, 960-1610).

iii) The workmen who were already enjoying the officers' grade under stagnation scheme before 1.1.1987 were to continue in their current officers scale i.e. 960-1610; however, when the revised pay scales for officers would become available, the appropriate scale was to be made applicable to them."

Respondents 1 to 23 got the benefit of this agreement while those employees who were in the officers' grade prior to 1st January, 1987 had to wait till their scales were revised and, till then, continued on the pre-revised scales of pay.

With regard to the officers' category, the Government of India issued a communication on 25th March, 1991 approving the revision of their pay scales.

That on 18.4.1991, based on the aforesaid communication/approval of the Government of India, the Central office of FCI issued an office memorandum for revision of pay scale and fringe benefits for officers in FCI. The consequences of the said office Memorandum are summarized below :-

i) "the revises scales of pay were to remain in operation with effect from 1.1.1987 for a period of 5 years.

ii) the officers' scale of 960-1610 was revised to 2200-3600 inclusive of fitment amount of Rs. 400/-, the new scale being effective from 1.1.1987.

iii) the officers (including JFM (W) s) who were on the rolls of the company on 1.1.1987 were to be fitted into the corresponding revised pay scale as per the formula given in para 5.1 which included a fitment amount also."

This para 5.1 of the said circular is as follows :-

" The Executives who were on the rolls of the company on 1st January, 1987 will be fitted into the corresponding revised scales of pay as per the following fitment method :-

Basic pay in the existing scale of pay as on 1.1.1987

plus

First ad hoc relief related to actual basic on 1.1.1987

plus

Industrial DA Rs. 838.35 at AICPI 685 as on 1.1.1987

Plus

Fitment amount as applicable.

On the aggregate arrived at, pay will be fixed in the revised scale of pay, where the total does not

fit in a stage of the revised scale of pay, the pay will be fixed at the next higher stage.

While fixing pay as per the above method, annual increment/advance increment falling on 1.1.1987 in the old scale, if any should be excluded. Hence the first ad hoc relief should be related to the Basic Pay in the existing scale as on 31.12.86. In other words, the annual increment falling on 1.1.1987 will be given in the revised pay scale.

iv) for the officers (including JFM (w)s who had undergone placement only on a date for after 1.1.1987, a different fitment formula was stipulated in para 5.3 and the same did not include any fitment amount."

The said para 5.3 of the same circular is as follows :-

" METHOD OF FIXATION OF PAY OF SUCH OF THE EMPLOYEES WHO HAVE BEEN PROMOTED FROM THE HIGHEST CATEGORY OF WORKMEN TO THE JUNIOR MOST CATEGORY OF OFFICERS ON OR AFTER 1.1.1987.

The pay of such category of employees will be fixed in the revised pay scale of Rs. 2200-100-3600 as per procedure elaborated below :

5.3.1 Take basic pay of workmen category in the revised pay scale of Rs.1580-2842 on the date of promotion.

5.3.2 Find out the quantum of DA i.e. fixed DA + VDA as admissible to workmen category on the date of promotion.

5.3.3 Allow one notional increment in the revised scale of Rs. 1580-2842 attached to the workmen category.

5.3.4 Add(i), (ii) & (iii) from the aggregate amount thus arrived, deduct revised DA applicable to officers category as on date of promotion (Annexure-II).

5.3.5 On the aggregate now arrived at, pay will be fixed in the revised pay scale of Rs. 2200-100-3600 attached to the post of Asst. Foreman/Jr. Officer equivalent. Where the total does not fit in a particular stage, the pay will be fixed at the next higher stage in the revised scale of Rs. 2000-100-3600."

That from time to time certain ad hoc advances were being drawn by the Junior Foreman (w) under adhoc arrangement between the parties. These advances were required to be adjusted against future benefits on revision of pay scales etc. However, when the pay scales of the said

respondents were fitted into the revised pay scale of officers under the office Memorandum dated 18th April, 1991, such employees started drawing lower emoluments, prior to the revision of the officers' pay scales. On 31st October, 1991, as a special gesture for them the differential amount was made payable as personal pay to be adjusted against future increments, promotional benefits or benefits on revision of pay scales, whichever came earlier. When, however, the personal pay started being adjusted and recovered against the next increments due to such employees, they demanded that adjustments be made only from the benefits which pay become due on promotion or revision of pay scales and not against increments.

The appellants did not accede to the aforesaid demand relating to the adjustment. Consequently the said respondents filed a writ petition being OJC No. 1742 of 1993 in the Orissa High Court seeking a relief that the personal pay should be adjusted only against the benefits available on promotion or revision of pay scales and not against the next increment due to them. In the writ petition there was no prayer for quashing the fitment formula for post 1.1.1987 Junior Foreman(W) should also be awarded to post 1.1.1987 Junior Foremen (W).

In the counter-affidavit the case of the appellants was that pre 1.1.1987 and post 1.1.1987 Junior Foreman (W) were two different classes of employees and there was no discrimination between them in the matter of fitment or revision of pay scales having regard to the date of 1st January, 1987. It was also categorically stated that post 1.1.1987 Junior Foreman (W) like the respondents had been given the benefit of revised workmen's pay scales of Rs. 1580-2842 for the period of 1st January, 1987 to the date of their placement, which was 31st August, 1987 in the case of the respondents.

The High Court, while allowing the writ petition, observed that there were two questions which essentially arose for its consideration. The first was whether the fitment amount indicated in the circular dealing with the revision of pay scales and fringe benefits of officers of the appellants was a part of the pay scale. The second question was whether the impugned circular as well as the method of fixation of pay of Junior Foremen, who were placed in the officers grade prior to 1st January, 1987 and those placed in the officers grade after 1st January, 1987, was hit by the principle of discrimination. The High Court did not address itself or decide the question with regard to the manner in which the adjustment of the personal pay was to be made. Presumable this contention was not urged at the time of arguments.

While considering the aforesaid two questions the High Court observed that the counsel for the appellants herein had conceded that the respondents/writ petitioners had not been paid their arrears on the revision of workmen's pay scales from Rs. 915 - 1520 to Rs. 1580 - 2842 for the period of 1st January, 1987 to 31st August, 1987. Having recorded this concession the High Court considered that " on the aforesaid conceded position, we would now examine the two questions posed by us answer the same."

In the special leave petition filed by the appellants it was specifically stated that no such concession was made by the counsel for the appellants before the High Court. In support thereof affidavit of Sh. B.S. Tripathi, Advocate who appeared for the appellants before the High Court was filed in which it was, inter alia, stated that he had not made any

concession as recorded by the High Court. During the hearing of this appeal Sh. Tapas Ray, learned senior counsel for the respondents, very fairly stated that the said observation of the High Court was probably not correct and in fact the respondents were paid their arrears on the revision of their pay scale from Rs. 915 - 1520 to Rs. 1580 - 2842 with effect from 1st January, 1987 to 31st August, 1987. Thereafter with effect from 1st September 1987, though they were initially placed in the lowest of the then prevailing officers grade of Rs. 960 -1610, but on retrospective revision of this scale they were placed in the revised scale of Rs. 2200 - 3600.

The High Court having thus proceeded on a wrong assumption of an essential fact has, possibly for this reason, incorrectly answered the aforesaid two questions posed by it. The High Court was wrong in coming to the conclusion that there has been violation of Article 14 of the Constitution and that in the method of fixing the pay of these employees who have been promoted from the highest category of workers to the Junior most category of officers on or after 1st January, 1987 must be held to have been grossly discriminated.

From the facts enumerated hereinabove it is quite evident that the question of discrimination or violation of Article 14 of the Constitution does not really arise in the present case. What has happened is that by reason of two orders dated 23rd March, 1990 and 1st April, 1991 the pay scales of the workmen and officers of the appellant company were revised. The earlier settlement of fixation of pay between the management and the employees was for the period of from 1st January, 1983 to 31st December, 1986. Therefore, with effect from 1st January, 1987 a new pay structure had to be fixed. As normally happens on 1st January, 1987, or prior thereto, no order revising the pay scales was actually issued. On 23rd March, 1990 the pay scales of the workers were first revised and this was followed by order dated 18th April, 1991 whereby the pay scales of the officers were revised. Both these orders revised the pay scales with effect from the date, i.e., 1st January, 1987. What is, therefore, to be seen is as to what was the position of the respondents 1 to 23 as on that date, i.e. 1st January, 1987. From the facts stated hereinabove it cannot be disputed that respondents 1 to 23 as on 1st January, 1987 had not acquired the officers grade and were working as Assistant Foremen. On the other hand those of the workers who were in the highest grade and had been placed in the lowest scale of the officers grade had by 1st January, 1987 already acquired the officers grade. These two categories of employees, keeping in view their designation as well as the pay scales which they actually were drawing as on 1st January, 1987, were clearly in different classes. Employees like respondents 1 to 23, for the period 1st January, 1987 to the date on which they were placed in the officers pay scale on 1st September, 1987, were given the benefit of the revised pay scale of Rs. 1580-2842 (instead of the old scale of Rs. 915 - 1520) and were also paid arrears for the said period on the revised basis. For the period subsequent to the date of their placement in the officers scale the said respondents actually continued in the officers unrevised pay scale of Rs. 960 - 1580 till they were given the benefit of the revised pay scale of Rs. 2200 - 3600 with effect from 1st September, 1987 as a result of the aforesaid order dated 18th April, 1991. On the other hand pre 1st January, 1987 Junior Foreman (W) who were already in the officers' scale of Rs. 960 - 1610 as on 31st

December, 1986 continued to really in the same scale as on 1st January, 1987. They were not given the advantage and were only placed in the revised workmen's pay scale of Rs. 1580 - 2842 which was made available to writ petitioners for the period of 1st January, 1987 to 31st August 1987. However, when the revised pay scale of Rs. 2200 -3600 for the officers was made available vide order dated 18th April, 1991, the same became applicable to them. It was in order to off set this disadvantage that by para 5.1 of the impugned circular to such pre 1st January, 1987 Junior Foreman(W).

From the aforesaid it is clear that the two categories of Junior Foreman (W) were dealt with by two different sets of rules because as on 1st January, 1987 they were not similarly situate. Whereas the respondents herein were Assistant Foremen, those who were placed in the officers' grade prior to 1st January, 1987 were regarded as officers. There could thus be no comparison between these two categories of persons. These two categories were unequal and respondents could not, in law, make any grievance of different principles were adopted in the fixation of their respective pay scales.

The effect of the High Court Judgment is that the fixation of pay of post 1st January, 1987 Junior Foremen (W) like the respondents in the revised officers pay scales has been done on the basis of their revised grade of Rs. 1580 - 2842. On the other hand the fixation of pay of pre 1st January, 1987 Junior Foreman (W) has been done on the basis of unrevised officers grade of Rs. 960 -1610 after giving them a fitment of Rs. 400/-. The direction to grant the additional fitment benefit of Rs.400/- to the post of 1st January, 1987 Junior Foremen (W) whose pay has been done on revised on the basis of the grade of Rs. 1580 - 2842, would result in an undue and unjust double advantage would in, effect, be a reverse discrimination in as much as it the judgment of the High Court is given effect to then the respondents would get more emoluments than their seniors who were placed in the officers scale prior to 1st January, 1987. It has been rightly contended on behalf of the appellants that the High Court's judgment will result in the treatment of the unequals as equals, which was clearly not contemplated.

Apart from the fact that these two classes of the employees are different and are governed by different rules, it is open to the State or appellants to change the conditions of service unilaterally. As observed in the State of West Bengal and Ors. Vs. Ratan Behari Dey and Ors. [(1993)] 4 SCC 63] at page 65 " the employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revision of pay scales of or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, behalf." In the present case the rules regarding fixation of pay of the officers and of the workers were different. With effect from 1st January, 1987, therefore, fresh fixation had to take place. Workers and officers belong to two different and distinct classes. The respondents who were not officers as on 1st January, 1987 could not claim parity with the persons who were in the category of officers as on that date. This being so the appellants could fix the pay scale of workmen on his appointment after 1st January, 1987 in the officer class on

a principle different than one which was adopted in revising the pay of an officer who was adopted in revising the pay of an officer who was in position as on 1st January, 1987. Whereas with regard to the respondents it would be a case of initial fixation of their salaries on their placement in the officers grade, in the case of pre 1st January, 1987 Junior Foremen it would be a matter of revision of their salaries in the same grade. It was open to the appellants to follow different principles in these two cases.

There is also considerable force in the contention of Sh. V.R. Reddy, learned Additional Solicitor General, appearing for the appellants, that the High Court ought not have granted relief to the respondents which they had not even prayed for in as much as relief prayed for in the writ petition was only with regard to adjustment of the personal pay against the incremental benefits. But as the case had been argued at length on the points decided by the High Court, we need not advert further on this aspect.

From the aforesaid discussion it follows that para 5.3 of the Office Memorandum dated 13th April, 1991 which contained the principle on the basis of which pay of the respondents was fixed in the lowest scale of the officers grade, is not invalid and the High Court fell in error in striking it down. This appeal is accordingly allowed, the judgment of the High Court is set aside the effect of which could be that the writ petition filed by respondents to 23 is dismissed. The parties will bear their own costs.