

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5481 OF 2011
[Arising out of SLP (C) No. 8403 of 2009]

Jagdish Parwani

.... Appellant

Versus

Union of India & Ors.

.... Respondents

WITH

CIVIL APPEAL NO. 5482 OF 2011
[Arising out of SLP (C) No. 8404 of 2009]

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.
2. The appeal is directed against the judgment and order dated 11.09.2009 passed by the High Court of Madhya Pradesh Bench at Gwalior in Review Petition No. 185 of 2009. The said review petition was filed by the appellant herein against the

order dated 16.04.2009 passed by the High Court of Madhya Pradesh, Gwalior Bench, in Writ Petition (s) No. 882 of 2003. Appellant has also preferred a separate appeal [arising out of SLP(C) No. 8404 of 2009] against the said decision of the High Court of Madhya Pradesh in the Writ Petition No. 882 of 2003. By this order we propose to dispose of both the appeals filed by the appellant.

3. The facts leading to filing of the aforesaid appeals are that the appellant being a graduate engineer appeared for Indian Engineering Services examination which was held pursuant to an advertisement issued by the Union Public Service Commission in the year 1987 for filling up the post of Assistant Executive Engineer [Buildings and Roads] in Military Engineering Service, Ministry of Defence. The appellant was working as an Assistant Engineer in Uttar Pradesh State Electricity Board [for short "UPSEB"], w.e.f., 1st January, 1988. He having qualified in the aforesaid competitive examination, the appellant was offered an appointment as Assistant Executive Engineer [Buildings and Roads] in the Military Engineering Services by an appointment letter issued by the Ministry of Defence dated 06.09.1989. Consequently,

he resigned from the UPSEB and as per his last pay certificate from UPSEB, he was drawing a basic pay of Rs. 2750/-. His resignation was accepted and he was released from the service of UPSEB on 19.02.1990.

4. Pursuant to the aforesaid letter of appointment issued by the Ministry of Defence the appellant joined the Military Engineering Service Department on 23.02.1990 in the pay scale of Rs. 2200-4000. In the appointment letter issued on 06.09.1989 the appellant was also informed that his pay would be fixed at the minimum of the pay scale, viz., Rs. 2200. The aforesaid appointment of the appellant was against a temporary post but the same was likely to continue indefinitely. The appellant was also placed on probation for a period of two years from the date of his appointment with a clear stipulation that his appointment could be terminated at any time on one month's notice given on either side without assigning any reason. The appellant continued to receive the aforesaid pay as fixed by the respondents till the month of September, 1991, i.e., for a period of more than one and a half years and thereafter he submitted three representations on 11.09.1991, 12.02.1992 and 14.12.1992 respectively claiming

pay protection on the basis of a notification issued by the Ministry of Personnel, Public Grievances and Pensions [Department of Personnel & Training] dated 07.08.1989. In the said representations the appellant claimed that he was entitled to receive a salary of Rs. 3000/- per month, w.e.f., 23.2.1990 and not Rs. 2200/-.

5. While the aforesaid representations of the appellant were being considered by the respondents, another notification came to be issued on 28.02.1992 by the Department of Personnel & Training extending grant of pay protection to the employees of State Government Undertakings joining service in Central Government on and after 01.02.1990.
6. By a Communication dated 14.02.1995 the appellant was informed by the respondents that he is not entitled to such pay protection as claimed by him in the representations submitted by him.
7. Being aggrieved by the aforesaid communication dated 14.02.1995 communicating the rejection of the representations of the appellant for pay protection, the appellant filed an Original Application before the Central

Administrative Tribunal [Jabalpur Bench], Jabalpur [for short “Tribunal”] claiming and seeking an order for giving him the pay protection which was last paid to him by the UPSEB. The Tribunal issued an order on 01.10.2002 directing the respondents to fix pay of the appellant by giving him pay protection within six months and also to pay him the arrears of pay and allowances.

8. Aggrieved by the said order of the Tribunal the respondents-Union of India filed a Writ Petition which was registered as WP(S) No. 882 of 2003 before the Madhya Pradesh High Court, Gwalior Bench. The High Court after considering the facts of the case passed judgment and order dated 16.04.2009 holding that the appellant is not entitled to pay protection and, therefore, his claim was rejected. It was further held by the High Court that the Tribunal committed grave error in granting pay protection to the appellant. The appellant aggrieved by the aforesaid order of the High Court, preferred a Review Petition before the Madhya Pradesh High Court which was dismissed by order dated 11.09.2009 holding that there is no mistake apparent on the face of the records in the order impugned in the review petition. The aforesaid orders are

challenged in the present appeals on which we heard the learned counsel appearing for the parties and also perused the records.

9. The facts, which are stated hereinbefore, leading to filing of the present appeals are not disputed. The appellant joined the UP State Electricity Board on 01.01.1988 and while working with the Board he resigned from the service and at that time he was drawing the basic pay of Rs. 2750/- per month. Thereafter his resignation was accepted and he was released from the service of the UPSEB on 19.02.1990. The appellant was given the appointment to the post of Assistant Executive Engineer [Buildings and Roads] in Military Engineering Service [for short "MES"], Ministry of Defence and he joined the said post on 23.02.1990 and at the time of appointment his terms and conditions of appointment were clearly set out in the order of appointment whereby his pay was fixed in the pay scale of Rs. 2200-4000 with a stipulation that he would be paid basic salary of Rs. 2200 plus dearness allowance.

10. Reliance was placed by the appellant on the contents of the Memorandum dated 06.09.1989 which was in the nature of

guidelines issued by the Ministry of Defence fixing the pay. A copy of the said memorandum is annexed to the memorandum of appeal as Annexure-P1.

11.Paragraph 1 of the said guidelines provided that as per the extant rules/orders, on fixation of pay, pay protection is granted to candidates who were appointed by the method of recruitment by selection through the Union Public Service Commission if such candidates are in Government service. It was also stipulated in the said paragraph 1 of the memorandum that no such pay protection would be granted to candidates working in public sector undertakings, universities, semi-Government institutions or autonomous bodies, when they are so appointed in Government.

12.Paragraph 2 thereof on which reliance was placed by the counsel appearing for the appellant provided that the question as to how pay protection can be given in the case of candidates recruited from the public sector undertakings, etc., has been engaging the attention of the Government for sometime and that after careful consideration of the same the President was pleased to decide that in respect of candidates

working in public sector undertakings, universities, semi-Government institutions, autonomous bodies, who were appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly their initial pay could be fixed at a stage in the scale of pay attached to the post so that the pay and DA already being drawn by them in their parent organisation. It was also stipulated therein that in the event of such a stage not being available in the post to which they have been recruited, their pay may be fixed at a stage just below in the scale of the post to which they have been recruited, so as to ensure a minimum loss to the candidates.

13. It is evident from the aforesaid stipulation in the relevant clause that such pay scale received is protected in the case of only Central Government Public Sector Undertakings, etc., inasmuch as the decision to grant such benefit was restricted specifically to Central Government employees and also employees of central government public sector undertakings. This position got fortified and clearly explained by the issuance of the subsequent notification dated 28.2.1992, to which reference is made immediately hereafter.

14. Reliance was placed by the counsel appearing for the appellant on the subsequent OM issued by the Department of Personnel and Training issued on 28.02.1992. The contents of the said notification/memorandum is extracted hereinbelow for easy reference and for better understanding: -

“DoPT OM NO.12/ 1/88-Estt (Pay-I) dated 28.2.1992.

*“PAY PROTECTION ALSO TO CANDIDATES FROM
STATE PSUs RECRUITED BY PROPER SELECTION TO
CENTRAL GOVERNMENT”*

The Undersigned is directed to say that question of inclusion of employees of State Government undertakings within the purview of this Department's OM No. 12/1/88-Estt (Pay-I), dated 7.8.1989 has been engaging the attention of the Government for some time. The matter has been carefully considered and the president is pleased to decide that provisions of this Department's OM of even number dated 7.8.1989, may be extended to the employees of State Government Undertakings selected for posts in Central Government on direct recruitment basis as in case of Central Public Undertakings.

These orders take effect from the first of the month in which this OM is issued.”

A bare perusal of the Memorandum would make it crystal clear that the employees of the State Government Undertakings selected for posts in Central Government on direct recruitment basis on and after 01.02.1992 were also extended the benefit of

pay protection, as was provided in the case of the employees of Central Government Public Undertakings as per notification dated 07.08.1989.

15. In the aforesaid notification, it was clearly stipulated that the said benefit of pay protection is effective only from the first of the month in which the OM is issued, i.e., from 01.02.1992, which means that the said OM was given prospective effect only. Therefore, the said OM could even be said to be a clarification on the issue which is sought to be raised in the present case. It was clearly pointed out in the said notification that employees like the appellant would be entitled to get such pay protection, as employees of the State Government Undertakings on their appointment in Central Government service only from the effective date of 01.02.1992. If the appellant would have been appointed for a post in Central Government on direct recruitment basis after 01.02.1992 such benefit of pay protection could have been made available to him. But since the appellant was selected and appointed to a post in Central Government on 23.02.1990 after working as an employee of the State Government Undertaking, viz., UPSEB, the notification dated 07.08.1989 was not applicable

to him and, therefore, he could not have legally claimed for any pay protection.

16. Being fully aware of the aforesaid position the appellant accepted the appointment without any demur or protest on the issue of pay being given to him under the appointment order issued to him by the Military Engineering Service, Ministry of Defence, fixing his pay scale at the minimum of the pay scale of Rs. 2200. He accepted the said pay scale without raising any grievance and continued to receive the same till 11.09.1991, when for the first time he submitted his first representation for pay protection as per notification dated 07.08.1989.

17. The position with regard to the entitlement or otherwise of the appellant for getting pay protection was made clear by issuing the notification dated 28.02.1992 clearly stipulating therein that an employee of the State Government Undertaking selected for post in Central Government on direct recruitment basis would be entitled to pay protection upon appointment in Central Government only effective from 01.02.1992. The appellant having joined the MES, Ministry of Defence prior to

the aforesaid date was not entitled to the benefit of the aforesaid notification which was issued much after his joining date and, therefore, the benefit of the aforesaid notification is not available to the appellant.

18. Counsel appearing for the appellant however sought to submit that to deny the benefit of the notification dated 28.02.1992 to the appellant was discriminatory in nature and in support of the said contention the counsel relied on the decision of this Court in the case of **T.S. Thiruvengadam v. Secretary to Government of India, Ministry of Finance, Deptt. of Expenditure, New Delhi** reported in **(1993) 2 SCC 174**. In our considered opinion the ratio of the aforesaid decision was rendered in respect of case of pension which is a continuing cause of action. Facts of the said case are clearly distinguishable from the facts of the present case and, therefore, the ratio of the said decision is not applicable to the case in hand. There is an inherent clear distinction between the two concepts of pay protection and pension. So far getting pay protection is concerned, the said issue arises as soon as an employee joins his new post, where he gets his new pay scale and if he is entitled to any pay protection that is the

stage and date when it is granted by whatever notifications, memorandums which are available and applicable at that stage laying down such rules regarding pay protection. At that stage what was operating in the field was the notification issued on 07.08.1989 which was not applicable to the appellant. The appellant also clearly understood the position and therefore based his entire claim and right on the subsequent notification dated 28.02.1992, although appointed to the post of Central Government on 23.02.1990.

19. In the present case it cannot be said that a notification issued after two years of the appointment of the appellant which is also specifically stated to have been issued with prospective effect is applicable in his case.

20. Consequently, we hold that the High Court was justified in setting aside the order of the Tribunal as the Tribunal has misread and misinterpreted the facts as also the legal principles in law.

21. We, therefore, find no merit in these appeals, which are dismissed, but, leaving the parties to bear their own costs.

.....J
[Dr. Mukundakam Sharma]

.....J
[Anil R. Dave]

New Delhi,
July 15, 2011.

