

PETITIONER:
I.C.A.R

Vs.

RESPONDENT:
SATISH KUMAR & ANR.

DATE OF JUDGMENT: 31/03/1998

BENCH:
S.C. AGRAWAL, D.P. WADHWA, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

THE 31ST DAY OF MARCH, 1998

Present:

Hon'ble Mr. Justice S.C. Agrawal
Hon'ble Mr. Justice D.P. Wadhwa
Hon'ble Mr. Justice A.P. Misra

A.K. Sikri, V.K. Rao, Ms. Madhu Sikri, Advs. for the
appellant
Dr. Aparna Bhardwaj, Rajesh Tyagi, Praveen Jain, Advs. for
the Respondents

J U D G M E N T

The following Judgment of the court was delivered:
Wadhwa, J.
Leave granted.

The appellant is a society registered under the Societies Registration Act and is engaged in the research of agriculture, animal husbandry, institutes in different parts of the country. It is aggrieved by the judgment dated August 26, 1996 of the Central Administrative Tribunal, Hyderabad ('Tribunal' for short) allowing the petition of the respondent, a scientist working with the appellant. Tribunal directed the appellant to consider the case of the respondent for promotion to the higher grade of Scientist (senior scale) from the year 1987 on the basis of five yearly assessment scheme in existence at that time and if found fit to promote him and to fix his pay in the revised scale of pay introduced as per proceedings dated March 9, 1989 nationally and to make him actual payment in that scale on the basis of above fixation from January 13, 1990 when he was actually promoted to that grade. A further direction was that the respondent be paid arrears of salary, if any, within a period of three months from the date of receipt of copy of the judgment.

The appellant introduced Agricultural Research Service with effect from October 1, 1975 and the relevant grades and pay scales of scientists working with it on December 31, 1985 were as under :-

Grade	Pay Scale
Scientists-S	Rs. 550-950
Scientists-S-I	Rs. 700-1300
Scientists-s-II	Rs. 1100-1600

Scientists-s-III Rs. 1500-2000

Respondent was appointed as Scientist S-1 by order dated January B, 1982 and he joined this post on January 13, 1982 in the pay-scale of Rs. 700-1300. Relevant service rules at the time of appointment of the respondent provided for assessment, promotion etc. on the basis of a five-yearly assessment. The respondent should have become eligible for grant of next higher grade of Scientist S-II in 1987. On July 18, 1987 respondent was asked to submit his five-yearly assessment for the period 1982-87 which he submitted but no action was taken thereon. In the meantime revised pay-scales of Scientists were introduced replacing the old Scheme of assessment by new Career Assessment Scheme of the UGC w.e.f. January 1, 1986. Old Scheme ceased to operate after December 31, 1985. Now, not only the pay-scales were revised but the Scientists were also given new designation and were brought at par of UGC as below :-

S. Grade No.	Exstring Pay Scale	New Design- ation	Revised pay Scale	Designation UOC
1. Scientist S-0	550-25-750 EB-30-900	Experimental Scientists	1740-60- 2700-EB- 75-3000	Enumerato Document
2. Scientist S-I	700-40- 900-EB- 40-1100 -50-1300	Scientist	2200-75 -2800-EB -100-4000	Lecturer
3. Scientist S-2(with total service in the ARS as on 31.12.85 upto 8 years	1100-50 -1600	Scientist (Sr.Scale)	3000-100 3500-125 -5000	Lecturer (Sr.Scale)
4. Scientist S-2 (with total service in the ARS as on 31.12.85 exceeding 8 Years	1100-50- 1600	Scientist (Slection grade	3700-125 -4950 150 -5700	Reader
5. Scientist S-3(with total service in the ARS as on 31.12.85 upto 16 years.	1500-60 1800-100	Scientist Sel.grade	3700-125-4950 150-5700	Reader
6. Scientist S-3(with total service in the ARS as on 31.12.85 upto 16 year.	1500-60 1800-100	Principal Scientist	4500-150-5700 -200-7300	Prof

January 1, 1986 is the date when the recommendations of Fourth Pay Commission were implemented. There are several streams of people working in ICAR, the appellant, and the

non-technical staff who opted for the replacement scales recommended by the Fourth Pay Commission, were given the benefits from January 1, 1986 and they drew their arrears. In the case of Scientist, the question remained pending because there were representations from them for implementation of the UGC pay package as per recommendations of Dr. N.V. Rao Committee. This Committee had seven members and had made certain recommendations. There were certain objections made against the recommendations of Dr. N.V. Rao Committee and another Committee with Dr. M.G.K. Menon as Chairman was constituted. it was thereafter that recommendations to implement UGC pay package for Scientists were adopted. The appellant issued orders on March 9, 1989 and it was mentioned that it was decided with the approval of the Government of India, Ministry of Finance (Department of Expenditure), to revise the pay-scales of the Scientists in various grades w.e.f. January 1, 1986. Detailed instructions were issued. Scientists were asked to give their option to draw salary in the revised scales in writing in the form prescribed within three months from the issue of the letter dated March 9, 1989. In para 14 of this communication it was mentioned that anomalies, hardships and doubts, if any, in the implementation of the revised pay-scales may be brought to the notice of the appellant for clarification and in para 16 it was stated that as a result of the adoption of the UGC pay package, the Scheme of assessment, recruitments, etc. stood modified w.e.f. January 1, 1986 and that comprehensive instructions in this regard would be issued shortly. With reference to this para 16 the appellant took further decision as envisaged therein and issued modified Career Advancement Scheme on October 28, 1991. In suppression of earlier procedure new procedure was prescribed for promotion. Some of the relevant rules prescribing the procedure to be followed for promotion are as under :-

"1. Suitability for promotion to the next Higher Grade will be adjudged by the Departmental Promotion Committee to be constituted at the Institute level with the following composition:

- (i) Chairman - to be nominated by the ASRB.
- (ii) One Expert to be nominated by DG, ICAR.
- (iii) DDG concerned with the Institute or his nominee.
- (iv) Director of the Institute or his nominee.

2. The recommendation of the DPC shall normally be made within a year of completion of requisite years of service and promotion if awarded will take place from a date following the date of completion of prescribed years of service.

3. The recommendations made by the DPC shall be submitted by the Director of the concerned Institute to ICAR for seeking the approval of the competent authority.

4. The posts will stand created for this purpose by upgrading the number of posts of scientists/Senior Scientists in the

respective Institute/ICAR
headquarters.

The respondent gave his option to be covered under the new Scheme by his letter dated June 8, 1989 but it was with the rider that the option was subject to the clarification in regard to his career advancement after consideration of the five-yearly assessment which was in year in the year 1987 when he became eligible for consideration for the next higher grade. The new Career Advancement Scheme had come into effect by Office Memorandum dated October 28, 1991 with retrospective effect from January 1, 1986 as stated earlier. Respondent went on study leave from September 13, 1989 to November 30, 1993. On his joining duty an office order dated March 17, 1994 was issued placing him in the next higher grade of Scientist (senior scale) in the pay-scale of Rs. 3000-5000 w.e.f. January 13, 1990 under the new Career Advancement Scheme as under the new Scheme he was to have eight years of service in Scientist S-1 grade. The respondent represented that his case be considered for promotion on the basis of earlier five-yearly assessment when he completed the service of five years in the year 1987, to promote him on that basis and to fix his pay in the revised pay-scale. Since there was no response to the representation this led to the filing of the petition before the Tribunal which, as stated above, was allowed.

The question which fell for consideration before the Tribunal was: Has the respondent acquired vested rights for promotion under the old Scheme and his case should have been considered for placing him in the higher grade of scientist (senior scale) in the year 1987 in terms of the existing rules at that time or could the amended rules given effect retrospectively w.e.f. January 1, 1986, take away the vested rights already conferred on the respondent?

It was submitted by the appellant before the Tribunal that, no doubt, under the old scheme the respondent would have become eligible for assessment for promotion to the next higher grade on completion of five years of service as Scientist Grade-S-1 on January 12, 1987 but, however, as a result of the adoption of UGC pay package by the appellant the old Scheme of assessment was replaced with the new Career Advancement Scheme of UGC w.e.f. January 1, 1986. The old assessment scheme ceased to operate after December 31, 1985 and the benefit of that old scheme was admissible to the scientists up to that date and not thereafter. It was submitted that scientists with the appellant had been allowed UGC pay package as per the decision of the Government of India, Ministry of Finance, Department of Expenditure and that was to be applied without alteration. Thus the placement of the scientists in UGC revised scales was to be done strictly as per the position/scale held by the scientist concerned as on December 31, 1985. Therefore, as per the option given by the respondent he was placed in the pay-scale of Rs. 2200-4000 w.e.f. January 1, 1986 according to his position of Scientist S-1 as on December 31, 1985.

The Tribunal relied upon the judgment of this Court in Union of India Vs. Tushar Ranjan Mohanty (1994 (5) SCC 450), in coming to the conclusion that vested rights for consideration for promotion of the respondent had already been conferred upon him in 1987 under the old Scheme and the new amended rule which was given retrospective effect from January 1, 1986 could not take away those vested rights of the appellant. The Tribunal held that it was well settled law that rights which had accrued to an employee, could not be taken away by making amendment with retrospective effect.

Aggrieved by the impugned judgment of the Tribunal the appellant has come up in appeal to this Court. It has been submitted before us that no retrospectivity was involved in the present case. After December 31, 1985 earlier assessment scheme was discontinued and there could to have been any assessment after January 1, 1986 under that scheme. No vested right accrued in favour of the respondent under the earlier scheme inasmuch as on January 1, 1986 he had rendered only four years of service as Scientist Grade S-1. It was the Scientists Forum of the appellant which had been demanding UGC system of pay-scales, etc., and the petitioner being a member of that Forum was estopped from challenging the same when it had been introduced. Appellant further submitted that there could not be two different dates, i.e., one for the revision of pay-scales and other for the purpose of assessment for promotion. The respondent had accepted the revision of pay-scales which he was given under the new Career Advancement scheme and he could not contend that while he be given revised pay-scale under the new Scheme he should be considered for promotion under the earlier Scheme. There could also not be two schemes of promotion operating during the same period. The respondent was claiming UGC pay-scales w.e.f. January 1, 1986 as per UGC pay pattern and on the other hand was contending that the Career Advancement Scheme, under which he got the revised pay-scale circulated on October 28, 1991, never operated from January 1, 1986. It was submitted that during the last eleven years w.e.f. January 1, 1986 all scientists were given promotion as per the new Career Advancement Scheme of UGC and that the impugned judgment unsettled the settled position and was bound to create undue complications. It was then submitted that no person had a right to be promoted and that a chance of promotion was not a condition of service and it was always upon the employer to lay down procedure for promotion or change the earlier procedure/norms. When UGC system of promotion, recruitment, pay package, etc. was introduced it was done in toto without any alteration and the impugned judgment amounted to altering the same. The Tribunal could not interfere with the policy decision of the appellant. It was submitted that every Scientist with the appellant had the knowledge that if ultimately the UGC Scheme was adopted it would be from January 1, 1986. It was asserted that no Scientist in the appellant had been assessed nor promoted after December 31, 1985 till March 9, 1989 under the old scheme, and that this fact had not been controverted by the respondent. Lastly, it was submitted that two Co-ordinate Benches of the Tribunal had dismissed the two petitions by the Scientists involving the same issue and that same issue was also raised by the Association of Scientists before the principal Bench of the Tribunal and their demand was rejected.

Relying on the earlier rules as applicable, the respondent submitted that a vested right for promotion had been acquired by him and that the same could not be taken away by introduction of a new scheme and it was submitted that the option given by the respondent for acceptance of new pay-scales from January 1, 1986 was conditional and that option could not have been accepted by the appellant without reference to the conditions contained therein. A vested right which had accrued on January 12, 1987 could not be taken away by the new Scheme of October 28, 1991. Reliance was placed on two decisions of this Court, which has been relied by the Tribunal in its judgment, viz., *Union of India vs. Tushar Ranjan Mohanty* (1994 (5) SCC 450) and *T.R. Kapur and ors. vs. State of Haryana & ors.* (1986 (Supp.) SCC 584).

In T.R. Kapur and ors. Vs. State of Haryana & ors. (1986 (Supp.) SCC 584), the writ petitioners before this Court were diploma holders in Engineering and were appointed to the Overseers Engineering Service (Irrigation Branch) and in due course were promoted as Sub-Divisional Officers in class II service. In an earlier decision rendered by this Court in A.S. Parmar vs. State of Haryana [1984 Supp. SCC 1] on a construction of the Rule 6(b) of the Punjab Service of Engineers Class I, PWD (irrigation Branch) Rules, 1964, it was held that a member of Class II service was not required to have university degree for promotion to the post of Executive Engineer in Class I service. The petitioners being diploma holders were thus eligible for promotion as Executive Engineers in Class I service. Just two days before the expiry of the period within which promotion of eligible persons including the petitioners was to be completed the State government issued a notification purporting to amend Rule 6(b) of the Rules of Class I Rules with retrospective effect from July 10, 1964. Under this amended Rule degree in Engineering was made essential qualification for promotion to Class I service. The petitioners challenged this notification on two counts (1) violative of Articles 14 and 16 of the constitution and (2) ultra vires the powers of the State Government by reason of the proviso to Section 82(6) of the Punjab Reorganisation Act, 1966. We are not concerned here with the second ground though the amendment was struck down by this Court as ultra vires the State Government under this count as well. On the first count this Court said :-

"It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect. it is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications

for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16(1) of the constitution."

In union of India vs. Tushar Ranjan Mohanty (1994 (5) SCC 450) respondent No.1 was a general category candidate belonging to Indian Statistical Service. Certain other respondents, who belonged to Scheduled Castes and Scheduled Tribes, were promoted under the relevant rules superseding the first respondent. This suppression was successfully challenged by the first respondent in the central Administrative Tribunal on the ground that reservation in respect of appointments by promotion was not permissible under the Rules. Subsequently, Rules were amended by notification dated February 20, 1989 retrospectively with effect from November 27, 1972 providing for reservation even in appointments made by way of promotion. On the basis of the amendment to the rules the decision of the Tribunal quashing the process of the first respondent was challenged by Union of India in this court. this Court dismissed the appeal and said that the legislatures and the competent authority under Article 309 of the constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation. The Court was of the view that the retrospective operation of the amended Rule could not be sustained and the retrospective amendment could not take away the vested right of a general category candidate senior to candidates belonging to Scheduled Castes and Scheduled Tribes. The Court struck down the amended Rule insofar and to the extent it had been made operative retrospectively to be unreasonable, arbitrary and as such violative of Articles 14 and 16 of the constitution.

In Union of India vs. P.C. Misra (1994 Supp. (1) SCC 39) referred to by Mr. Sikri, in which one of us, (S.C. Agrawal, J.) was a member, there were two grades - Grade-I (Selection Grade) and Grade II in the Delhi and Andaman Nicobar Islands Service Rules, 1971 framed under proviso to Article 309 of the Constitution. By a Memorandum dated November 26, 1987 Central Government decided to change the pay structure of the salaries w.e.f. January 1, 1986, which is as under :-

"(i) Entry Grade	Rs. 2000-3500	Existing
(ii) Selection Grade (After 8 years) (20% of APS)	Rs. 3000-4500	Existing
(iii) Junior Administrative Grade (After 12 years) [with at least 4 years in Selection Grade] (20% of APS- Subject to identification of posts)"	Rs. 3700-5000	New Scale Introduced

The Memorandum also stated that necessary amendments in the rules were being carried out and these were introduced by notification dated November 22, 1988. The Tribunal held that 1988 amendment providing for promotion to the Junior Administrative Grade from Grade-I (Selection Grade) being prospective could only govern the vacancies arising after the coming into force of the 1988 Amendment and further that

the vested rights and legitimate expectations of the respondents could not be taken away by retrospective amendment of the rules and by providing for fresh selection to the upgraded posts in the Junior Administrative Grade by adopting new criteria. The Court said :-

"We are unable to appreciate the view of the Tribunal that the 1988 Amendment could only govern vacancies arising after the coming into force of the 1988 Amendment and that the vested rights and legitimate expectations could not be taken away by retrospective amendment of the Rules. Since the Junior Administrative Grade was introduced for the first time with effect from January 1, 1986 the rule-making authority was competent to make provision for appointment to the Junior Administrative Grade after it was introduced. Amendments introduced in Rule 31 by the 1988 Amendment make provision for such appointments and we do not find any legal infirmity in the said provision."

We do not think the law laid by this Court in two judgments, relied by the respondent, in any way helps his case. In both the judgments the employees were civil servants governed by statutory rules either framed by the Legislature or under Article 309 of the Constitution. By amending the provision of law retrospective operation could be given to the Rules. However, retrospective operation of service rules could not be given by mere Executive instructions. In the present case before us the respondent is not governed by any statutory rules. Here it is the competent body of the appellant which frames rules laying down conditions of service of its employees. Rules framed by the Society are not statutory rules and they can be amended by a resolution of the competent body and any legislation or framing of rules under Article 309 of the Constitution is not required. Scientists of the appellant had been agitating for grant of UGC pay-scales. When a decision was taken on the basis of reports of the various committees and in consultation with the Ministry of Finance and UGC scales of pay were granted from January 1, 1986 the challenge to such decision could not be entertained. Moreover, no question of promotion as such is involved. Any Scientist of S-1 grade having 12 years' service could go to the next higher grade irrespective of the fact that if there is any vacancy in the higher grade or not. Of course, he cannot pick up the higher grade merely on completion of 12 years' service and his work has to be assessed. It is also not the case of the respondent that any Scientist has been treated differently than him after January 1, 1986. To all the Scientists amended rules effective from January 1, 1986 had been applied without any discrimination. Scientists including the respondent are now in a much better position. It cannot be said that action of the appellant has been in any way unreasonable, arbitrary or irrational for respondent to challenge the same as violative of Articles 14 and 16 of the Constitution.

In our opinion the Tribunal also did not address itself to another aspect of the matter, namely, whether the respondent could give a conditional option. We do not think

he could do so. The appellant was justified in ignoring any condition given in the option when respondent wanted UGC pay package from January 1, 1986. The view which the Tribunal took would certainly create chaos in the administration and the working of the appellant. Accordingly, this appeal is allowed. The impugned order of the Tribunal is set aside and the petition filed by the respondent is dismissed. We will leave the parties to bear their own costs.

JUDIS