

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.288-289 OF 2005

YOGESHWAR PRASAD & ORS.

Appellant (s)

VERSUS

NATIONAL INST.,EDU.PLANNING & ADMN.&ORS.

Respondent(s)

WITH C.A.NO.209 OF 2007

J U D G M E N T

DALVEER BHANDARI, J.

These appeals are directed against the judgment dated 31.5.2002 passed by a Division Bench of the High Court of Delhi at New Delhi in L.P.A.NO.301 of 1997 etc. By this common judgment, we propose to dispose of Civil Appeals Nos.288-2009 of 2005 and Civil Appeal No.209 of 2007.

Brief facts which are relevant to dispose of these appeals are recapitulated as under:

The appellants in Civil Appeal Nos.288-289/2005 were working as Assistants and Stenographers with Respondent no.1-National Institute of Educational Planning and Administration, Delhi.

The appellants in Civil Appeal No.209 of 2007 were working with the Sahitya Academy, Delhi as Accounts and Administrative Assistants/Assistants/Stenographers. The appellants' were getting the pay scale of Rs.425-800 upto 1986. The Assistants in the Central Government were also getting the same pay scale. According to the IVth Pay Commission, the pay scale of Assistants and

Stenographers was revised from Rs.425-800 to Rs.1400-2600 in the Central Government.

The Anomalies Removal Committee gave its recommendation increasing the pay scales from Rs.1400-2600 to Rs.1640-2900. Though the recommendation of the Anomalies Removal Committee were accepted from 01.01.1986 but the appellants were not given the pay scale of Rs.1640-2900.

According to the appellants, they were also entitled to the pay scale of Rs.1640-2900. The Central Government vide letter dated 5.1.1990 approved the service regulations of the respondent-Institute. Regulation 4(2) provides as under :

"4(2) Group 'A' officers, other than faculty members and those on UGC grades of pay groups 'B', 'C' and 'D' employees shall draw salary and allowances in such scales of pay as may be applicable to the corresponding categories of Central Government employees and be subject to such conditions of service as are or may be applicable to Central Government employees from time to time."

According to this regulation, the appellants were also entitled to the pay scale which was extended to their counterparts in the Central Government but the appellants were not given the pay scale of Rs.1640-2900. They were compelled to approach the High Court for the relief.

The learned Single Judge of the Delhi High Court passed the following order in the case of Assistants and Stenographers of the National Institute of Educational Planning and Administration:

"IN THE HIGH COURT OF DELHI AT NEW DELHI

CW No.805/97

Heard the counsel for the parties and perused the record. The grievance of the petitioners are that they are also in the post of Assistant and Personal Assistants (Steno). Similarly situated organizations have been granting the revised pay scale for such posts as given by the Central Government to its employees whereas the respondents are not implementing the revised pay scales on account of the circular issued by the Ministry of Finance dated 11st December, 1990. This court in CW No.290/95 decided on 29th November, 1995 as well as in the case of P.S.Gopinathan Nair & Ors. Vs. All India Institute of Medical Sciences. C.W.No.4462/94 decided on 16th October, 1995, has already given directions to the similarly situated organizations to grant the pay scale at par with the employees of the Central Government. Similar directions were also given in the case of the Indian Council of Agricultural Research, Indian Council of Medical Research and University Grants Commission. The case of the petitioners is at par with the employees of other organizations.

Taking the above factors into consideration, directions are accordingly given to the respondents to give the pay scales to the petitioners as admissible to the Central Government employees for the post of Assistant and Personal Assistant(Stenographers).

With these observations the petition stands disposed of.

28.7.1997

Sd/-
Usha Mehra
Judge."

The said judgment of the learned Single Judge was based on earlier judgments of the High Court passed in Civil Writ No.290/95 decided on 29th November, 1995 and in Civil Writ No.4462/94 decided on 16th October, 1995. Respondent no.1-Institute aggrieved by the said judgment preferred a Letters Patent Appeal (for short 'L.P.A.') before a Division Bench of the High Court. By the impugned judgment, the LPA filed by the respondent no.1 was allowed by the

Division Bench along with other appeals. Against the judgment of the Division Bench, Review Petitions were filed, which were dismissed by the Division Bench of the High Court.

The appellants, aggrieved by the judgment of the High Court, preferred these appeals. It may be pertinent to mention that the respondent-Institute was pursuing the case of the appellants with the Central Government for higher pay scale. The respondent-Institute in fact sent a letter to the Secretary, Ministry of Human Resource Development, Government of India, New Delhi on December 19, 1994 praying that the appellants herein be given the revised pay scales of Rs.1640-2900. The letter reads as under :

"No.4-29-2/94-Pers.

December 19, 1994

The Secretary
Government of India
Ministry of Human Resource Development
Department of Education
Shastri Bhawan
New Delhi -110 001

Attn:Sh.R.V. Vaidhyananthan Ayyar,
Joint Secretary(Plg.)

Sub: Revision of scale of pay of Assistants/
Stenographers.

Sir,

The Ministry of Health and Family Welfare has conveyed approval of the Govt. of India of the scale of pay Rs.1640-2900 to Assistants/ Sr.Stenographers Grade 'C' in place of Rs.1400-2600 working in the Indian Council of Medical research, New Delhi. Therefore, representations from the employees of this Institute have been received to revise their scale identical to those adopted for corresponding post at par with the Central Government.

SR 6(A)(iii) stipulate that the revision of the pay scale of any post except that of Director subject to the approval of the Govt. of India and

there upon the First Schedule shall stand amended in accordance with such directions. Provided that approval of the Govt. of India would not be necessary for adoption of pay scale and allowances identical to those adopted for corresponding post at par with Central Government/UGC orders issued from time to time except in case of general revision of scales of pay of posts. Since, the pay scales of Assistant and Senior Stenographer 'C' in the Central Government is Rs.1640-2600, therefore, in accordance with the service regulations cited above, the demand of the employees appear to be genuine. It is, therefore, requested that the case may kindly be considered at your end in consultation with Internal Finance Division and approval be conveyed so that the matter is placed before the Executive committee of the Institute....."

Thereafter another letter on August 1, 1995 was sent to the Secretary, Ministry of Human Resource Development, Government of India, New Delhi and the Institute again requested the Central Government to grant pay scale of Rs.1640-2900 to the appellants. The letter reads as under :

"No.F-29-2/94-Pers.
August 1, 1995

The Secretary
Govt.of India
Ministry of Human Resource Development
(Deptt.of Education)
Shastri Bhawan
New Delhi -110 001

Attention: Dr.R.V.Vaidyanathan Ayyar,
Joint Secretary (Planning)

Subject: Revision of scale of pay of
Assistants/Senior
Stenographers from Rs.140-2600 to Rs.1640-
2900.

Sir,

Kindly refer to our letter of even number dated 23.3.1995 and subsequent reminder dated 28.4.1995 on the subject cited above (copy enclosed). Our Service Regulations, which had been approved by the Govt. of India, among other things provide that the scales of

pay of the employees of the NIEPA other than the faculty and those on UGC grades of pay shall be at par with those of the Central Government Employees.

In this regard, it may be mentioned that some of the Autonomous Organizations under Ministry of Human Resource Development had allowed the revised scale of Rs.1640-2900 to Assistants and Senior Stenographers in their organizations.

It is, therefore, requested that approval of the Govt. on the revision of scales in respect of the above categories of employees of our Institute may kindly be sent to us at the earliest.

Yours faithfully,
Sd/-Illegible 1.8.95
(O.P.Sharma)
Acting Registrar"

The Director of the respondent Institute again sent a letter on November 2, 1995 to the Education Secretary, Ministry of Human Resource Development, Government of India, New Delhi in which it is mentioned that the Assistants and Senior Stenographers of the Institute be given the pay scale of Rs.1640-2900. The said letter reads as under :

Kudleep Mathur
Director

"No.F-29-2/94-Pers.

November 2, 1995

Dear Shri Das Gupta,

Kindly refer to the Institute's letter No.F-29-2/94/Pers. Dated December 19, 1994 and the subsequent letters of even number dated 23rd March, 1994, 28th April, 1995, 29th May, 1995 and 1st August, 1995 regarding revision of pay scales of Assistants/Sr.Stenographers 'C'. In this respect it is submitted that the Ministry of Health & Family Welfare has conveyed the approval of the Govt. of India for the change of pay scales of Assistants/Sr.Stenographers 'C' working in the Indian Council of Medical research, New Delhi to Rs.1640-2900 in place of Rs.1400-2600. The JNU and other universities are also having the scales of Rs.1640-2900 for these categories of staff. It is learnt that

Kendriya Vidyalaya Sangathan have also change the pay scales from Rs.1400-2600 to Rs.1640-2900 recently.

The employees of this Institute have persistently been demanding that their pay scales may also be changed from Rs.1400-2600 to Rs.1640-2900. The Institute have only 7 posts of Assistants and 10 posts of Sr.Stenographers 'C' in position. The revision of pay scales and placement of these employees in this scale I.e. 1640-2900 will have minor financial implications and the same would be met out of the regular budget of NIEPA.

The Service Regulation 6A(C) of NIEPA provide that the revision of pay scales of any posts except that of Director subject to the approval of the Government and thereupon the First Schedule shall stand amended in accordance with such directions. Provided that the approval of the Govt. of India would not be necessary for adoption of pay scales and allowances identical to those adopted for corresponding post as per the Central Government/UGC orders issued from time to time except in cases of general revision of pay scales of posts. Since the pay scales of Assistants/Sr.Stenographers 'C' in the Central Government is Rs.1640-2900, therefore, in accordance with the Service Regulations cited above, the demand of the employees appears to be genuine.

I shall be grateful if the pay scale of Assistants/Sr.Stenographer 'C' of the Institute is also changed from Rs.1400-2600 to Rs.1640-2900 and approval of the Ministry may please be conveyed so that the matter is placed before Executive Committee for obtaining ex-post-facto approval. Necessary guidelines for effecting changes according for the posts of Sr.P.A.(presently 1640-2900) and P.S. To (sic) may also kindly be given.

Yours faithfully,
Sd/-
(Kuldeep Mathur)

Shri P.R.Das Gupta
Education Secretary
Ministry of Human Resource Development
New Delhi."

It may be pertinent to mention that all these communications were sent by respondent no.1 on the strength of the

regulations of respondent no.1 which was approved by the Central Government. The said regulation has already been set out in the preceding paragraphs.

The Vth Pay Commission has granted the pay scale of Rs.1640-2900, now revised as Rs.5500-9000 to the appellants and their counterparts working in the Central Government. We have been informed that even the VIth Pay Commission has further revised it to Rs.9300-15600 and presently the appellants and their counterparts in the Central Government are in that pay scale.

The short question which arises for consideration in these appeals is why the appellants should not be given the pay scale of Rs.1640-2900 from the date when their counterparts have been given that pay scale in the Central Government? Although the stand of the Institute has also been that the appellants are entitled for the pay scale of Rs.1640-2900 which is quite evident from the aforementioned letters sent by the respondent institute to the Central Government. The Union of India has now in the Vth and VIth Pay Commissions has given that scale to the appellants.

In our considered view, the Division Bench was not justified in setting aside the judgment of the learned Single Judge. It may be pertinent to mention that the Division Bench did not consider the service regulations of the National Institute of Educational Planning and Administration. The case of the appellant no.1 herein was not even discussed or considered in the impugned judgment.

Mr.Amitesh Kumar, learned counsel appearing for the Institute-respondent no.1 tried to make out the case that duties, responsibilities and obligations of the appellants were different to their counterparts functioning in the Central Secretariat and they were justified in not giving the same pay scale. But we do not find any merit in the submission because the respondent Institute's stand all through was that the appellants be given the pay scale of Rs.1640-2900. At this stage, respondent no.1 cannot be permitted to take a somersault in this manner. The Union of India accepted the recommendations of the Vth and VIth Pay Commissions and are giving the appellants the same pay scale which their counterparts in the Central Government are getting. It may be pertinent to observe that these appellants were getting the same pay scale as was given to the employees of their categories in the Central Government up to 1.1.1986. The Union of India accepted the recommendation of the Vth and VIth Pay Commissions and are giving them same pay scale then how only during the IIIrd Pay Commission their pay scale could be different? and how their duties, obligations and responsibilities became different only for a brief period?

In our considered view, the appellants are entitled to get the benefit of pay scale of Rs.1640-2900 which their counterparts were getting in the Central Government during the relevant period. In case this amount has not been paid, the same may be paid to the appellants by the Institute within three months from today.

Civil Appeal No.209 of 2007:

The relevant facts of the case are briefly narrated below:

The Sahitya Academy was established in the year 1952. Later on, it was registered under the Societies Registration Act, 1860. According to the Constitution of the Academy, its General Council is the highest authority, having the powers to *inter alia*, approved the budget and frame its own rules, regulations, bye-laws and rules of procedure and the Government of India does not have any role in the same. The Sahitya Academy (Service) bye-laws came into force on 4.3.1961. The rules of the Government of India with regard to recruitment, service conditions etc. of employees are fully applicable to the Academy. A bare perusal of the bye-laws would make it amply evident that so far the allowances, salaries etc. of the employees are concerned, they are absolutely at par with those of the employees of the Government of India. The employees in the cadre of Assistants/Stenographers in the Academy have been drawing the same pay scale as that drawn by the Assistant Grade of the Central Secretariat Services and Grade 'C' Stenographers of Central Secretariat Stenographers Service. This scale of pay was Rs.1400-2600 after the recommendations of the IVth Central Pay Commission (pre-revised scale of Rs.425-800).

A High Powered pay committee was constituted pursuant to the directions of the Court and its recommendations were incorporated in a government notification dated 12.06.1990. Clause 11 of the said notification stipulated 'The employees in respect of whom the recommendations of the High Power Pay Committee are not being implemented under the orders of this Court dated 3.5.1990 would get pay revision only as and when similar changes are being

affected for the central government employees.”

The Government of India on 31.07.1990 granted the revised scale of Rs.1640-2900 to the posts included in the Assistant Grade of the Central Secretariat Services and Grade 'C' Stenographers of Central Secretariat Stenographers Service, with effect from 1.1.1986. It was made clear in the order that the same revised pay scale would also be applicable to the Assistants and Stenographers in other organizations, where the posts are in comparable grade with same qualification and pay scale.

The appellants, who are working as Assistants/Stenographers/other designations in the same cadre, started representing before the concerned authorities for grant of the revised scale of Rs.1640-2900 to them.

The Government of India issued another order on 11.12.1990 which it directed that revised scale of Rs.1640-2900 granted to the Assistants/Stenographers of the Central Secretariat Services would not be applicable to the Assistants/Stenographers of autonomous organizations.

In response to an unstarred question in the Rajya Sabha on 18.1.1991 regarding revision of pay scales of Assistants/Stenographers of autonomous organizations and statutory bodies, the then Minister replied that these bodies can decide on their own, whether or not to implement the revised scale of pay.

The Central Administrative Tribunal on 21.12.1993 directed the Government of India to revise the pay scale of Stenographers and

Assistants to the same level as that of the Assistants/Stenographers of the Central Secretariat Services.

The Indian Council of Medical Research issued letter on 18.4.1994 extending the pay scale of Rs.1640-2900 to the Assistants/Stenographers.

The Government of India issued another letter on 6.1.1995 stating that the revised scale of Rs.1640-2900 granted to the Assistants/Stenographers of the Central Secretariat Services would not be applicable to the Assistants/Stenographers of autonomous organizations.

The Indian Council of Agricultural Research issued an order on 7.6.1995 conveying the sanction by the competent authority of the pay scale of Rs.1640-2900 to its Assistants/Stenographers.

The Council of Scientific and Industrial Research issued an order on 9.6.1995 conveying the sanction by the competent authority of the pay scale of Rs.1640-2900 to its Assistants/Stenographers.

The Delhi High Court passed orders directing payment of revised scale of Rs.1640-2900 to Assistants/Stenographers working in the All India Institute of Medical Sciences.

The Finance Ministry, Government of India, issued a letter on 20.6.1996 conveying the grant of revised scale of Rs.1640-2900 to Assistants/Stenographers working in the National Institute of Health and Family Welfare.

The Ministry of Urban Development, Government of India, issued an order on 7.10.1996 conveying the grant of revised scale of

Rs.1640-2900 to Assistants/Stenographers working in the Delhi Development Authority.

The appellants on 14.2.1997 sent one of the several representations seeking revised pay scale of Rs.1640-2900. However, the appellants did not receive any favourable communication.

The appellants filed a Civil Writ Petition No.559 of 1998 before the Delhi High Court seeking quashing of the Government of India order dated 11.12.1990, letter dated 6.1.1995 and for a further direction that the revised pay scale of Rs.1640-2900 be granted to them.

The aforesaid writ petition filed by the appellants was allowed by a single Judge of the Delhi High Court with a direction that the appellants be paid the revised pay scale of Rs.1640-2900, with effect from 1.1.1986. The respondent Institute gave the pay scale of Rs.1640-2900 to the appellants.

The Union of India preferred a Letters Patent Appeal (for short 'L.P.A.') bearing LPA No.92 of 1999, against the aforesaid order dated 16.10.1998.

The Division Bench of the Delhi High Court heard the aforesaid LPA as well as the other connected appeals and writ petitions filed by the Union of India. By an order dated 31.5.2002 LPA No.92/1999 was allowed as also the other appeals and writ petitions filed by the Union of India and thereby held that the revised pay scale of Rs.1640-2900 was not payable to the Assistants/Stenographers working in autonomous organizations/statutory bodies like the Sahitya Academy.

The Delhi High Court, in the impugned judgment, took into consideration the facts of the case relating to ESI corporation only and as such the individual facts relating to different organizations, including the Sahitya Academy, were not considered at all.

The appellants filed a review application before the Delhi High Court being Review Petition No.2000 of 2002. The Respondent-Union of India filed a counter affidavit in the aforesaid Review Petition No.2000/2002. The appellants then filed a rejoinder affidavit in the aforesaid Review Petition No.2000/2002. The Review Petition was also dismissed. The appellants have now approached this Court.

We have heard the learned counsel for the parties. In view of our judgment in Civil Appeal Nos.288-289 of 2005, the appellants in this appeal were fully justified in getting the benefit of the revised pay scale of Rs.1640-2900 from 01.01.1986. In the instant case the appellants have already received the benefit of the revised pay scale. The question which arose for consideration was whether the respondents can recover the additional amount paid to the appellants. In our considered view, the appellants in this appeal were fully justified in getting the benefit of the revised pay scale. Even otherwise also the additional amount cannot be recovered from them.

Mr.Amarendra Sharan, learned senior counsel appearing for the appellants in this appeal, submitted that the benefit of higher

pay scale granted to appellants cannot be recovered in view of the series of the judgments of this Court. He placed reliance on a three judge Bench judgment of this Court in Shyam Babu Verma & Ors. Vs. Union of India & Ors., (1994) 2 SCC p.521 para 11, which reads as under :

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to do adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

This judgment has been followed in the subsequent judgment of this Court in Sahib Ram Vs. State of Haryana & Ors., (1995) Suppl.1 SCC p.18 para 5, which reads as under :

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

Mr. Sharan also cited another relatively recent judgment of this Court in the case of State of Bihar & Ors. Vs. Pandey Jagdishwar

Prasad, (2009) 3 SCC p.117 para 19 which reads as under :

"It is not needed for this Court to verify the veracity of the statements made by the parties. If at all the respondent entered the second date of birth at a subsequent period of time, the authorities concerned should have detected it and there should have been a detailed enquiry to determine whether the respondent was responsible for the same. It has been held in a catena of judicial pronouncements that even if by mistake, higher pay scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee."

In view of a series of judgments of this Court, the appellants are otherwise entitled to the revised pay scale. the amount paid to the appellants-employees pursuant to the grant of higher pay scale should not be recovered unless it was a case of mis-representation or fraud. Admittedly, neither mis-representation nor fraud can be attributed to the appellants in C.A.NO.209/2007. In this view of the matter, respondent no.1-Institute would be restrained from recovering any amount which has already been paid to the appellants in C.A.NO.209/2007.

In the result, the impugned judgment is set aside and Civil Appeals Nos.288-289 of 2005 and Civil Appeal No.209 of 2007 are allowed and disposed of. However, the benefit of this order would be confined to the appellants in Civil Appeals Nos.288-289 of 2005 and Civil Appeal No.209 of 2007.

In the facts and circumstances of these cases, we direct the parties to bear their own costs.

.....J.
(DALVEER BHANDARI)

.....J.
(DEEPAK VERMA)

NEW DELHI;
21ST OCTOBER, 2010

