

CASE NO.:
Appeal (civil) 5706 of 2004

PETITIONER:
State of U.P. and Ors.

RESPONDENT:
Dr. Om Prakash Singh

DATE OF JUDGMENT: 03/09/2004

BENCH:
ARIJIT PASAYAT & B.P. SINGH

JUDGMENT:
J U D G M E N T
(Arising out of SLP) No. 13580/2004)

ARIJIT PASAYAT, J

Leave granted.

The State of U.P. calls in question legality of judgment rendered by a Division Bench of the Allahabad High Court at Lucknow, by which the High Court affirmed the order passed by the State Public Service Tribunal, Lucknow (in short the 'Tribunal').

Background facts necessary for disposal of the appeal are essentially as follows:

Respondent was appointed in the U.P. State Horticultural Produce, Marketing and Processing Corporation Ltd. (in short the 'HORTICO'). The said Corporation was closed w.e.f. 15.7.1990. At the time of closure, respondent was drawing pay in the pay scale of Rs.900-1770 and was drawing a basic pay of Rs.1060/-. On 26.4.1991 the Government issued an order providing for appointment of retrenched employees of HORTICO on posts available for direct employment and which are outside the purview of U.P. Public Service Commission (in short the 'Commission') as a compassionate measure. The Government order dated 26.4.1991, inter alia, provided that the last pay drawn by the concerned employee of HORTICO would be protected. On 1.10.1991, respondent was given temporary appointment and posted as Deputy Jailor in the U.P. Jail Services. He was placed in the pay scale of Rs.1400-2300. By order dated 3.10.1997 the Government fixed pay of the respondent at Rs.2250 in the pay scale of Rs.1400-2300 with a view to protect his pay. On 16.3.1998 the respondent made a representation stating that he should be covered by the revised pay scale of Rs.2200-4000 w.e.f. 1.1.1986 in HORTICO and pursuant to the decision of the State Government his last pay should be protected in that scale. The representation was rejected by the State Government on 24.8.1999. It was noted that the revised pay scale was not adopted by the HORTICO. In any event, HORTICO having been closed the question of accepting the prayer of the respondent did not arise.

Respondent filed a writ petition before the High Court which dismissed the same on the ground that there was an alternative remedy provided before the Tribunal. A Claim Petition No.586/2000 was filed by the respondent before the Tribunal which held that the last pay protection would be in the revised scale. The respondent was being given Rs.1060/- which was in the corresponding pay scale of Rs.515-860 and, therefore, illegal. It was held that the pay protection as envisaged by the Government

order was not done. The State of U.P. and its functionaries filed a writ petition before the High Court which by the impugned order dismissed the same. It was, inter alia, observed as follows:

"From the record, it is evident that the scale of Rs.900-1770 stood revised and respondent No.2 became entitled for the revision of the pay scale with effect from 1.1.1986. His claim for the revision of pay scale could not be defeated simply because actual revision of pay scale was not done for couple of years and in the meantime closure of the corporation was declared. It is not the case of the petitioners that the pay revision or the revised pay scale could not be given to the petitioner for want of funds for any other valid reason, or that the said benefit of revision of pay scale was not given to any other employee of the Hortico".

Learned counsel for the appellants submitted that when the revised pay scale was not adopted by HORTICO, the question of extending benefits of the revised pay scale did not arise. The basic pay of Rs.1060/- as per the pay scale operative at the time of closure of the Corporation was given to the respondent. By a hypothetical conclusion the Tribunal came to hold that the same was relatable to the revised pay scale of Rs.515-860. The High Court's reasoning that closure of the Corporation was irrelevant cannot be maintained in law.

Per contra, learned counsel for the respondent submitted that the pay protection in respect of last pay drawn was assured by the Government. The natural corollary is that when the pay scale was revised the same should have been made applicable to the respondent and, therefore, the conclusions of the Tribunal and the High Court do not suffer from any infirmity.

We find that both the Tribunal and the High Court have fallen in grave error by overlooking the basic fact that at no point of time HORTICO had adopted the revised scale of pay. Mere prescription of a revised scale of pay is really of no consequence unless adopted by the concerned employer. In the instant case as found by both the Tribunal and the High Court revised scale of pay was not adopted by the time the Corporation was closed. That being so, the claim of the respondent that he is entitled to the revised scale of pay is clearly untenable. The Tribunal seems to have proceeded on the basis that the basic pay of Rs.1060/- as was given to the respondent is relatable to the revised scale of pay of Rs.515-860. This is clearly erroneous. Unless the revised scale of pay was adopted the question of such presumptuous conclusion is indefensible. The High Court's conclusion that mere closure of the Corporation would not deprive the respondent of the revised scale of pay is equally unsustainable. It has to be noted that the respondent's services were terminated on the closure of HORTICO. He was given compassionate appointment subsequently. When the Additional Inspector General (Jail), U.P., Lucknow brought to the notice of the U.P. administration about the claim of respondent it was clearly indicated in reply that the revised pay scale was not applicable to the Corporation and, therefore, the question of salary fixation in the revised scale does not arise. It further appears from records that the pay scale of Deputy Jailor was revised from 25.11.1994 and the same was made Rs.1400-2600. The respondent benefited from the fixation of pay scale and his salary was fixed at Rs.2420/- w.e.f. 1.10.1995. In accordance with the recommendations of the subsequent Pay Commission the pay scale of Deputy Jailor stood revised to Rs.5000-8000 w.e.f. 1.1.1996 and consequently the pay of respondent was fixed at Rs.7850/- w.e.f. 1.1.1997. The benefit of another pay enhancement w.e.f. 1.10.1998 was extended to the respondent and his basic pay was fixed at Rs.8000/-. The respondent has thus been granted various benefits as available in law after his appointment as Deputy Jailor in the Jail Department of the State.

In the aforesaid background, the inevitable conclusion is that both the Tribunal and the High Court had not considered the controversy in the

proper perspective and their conclusions cannot be sustained. The orders of the Tribunal and the High Court are set aside. The appeal is allowed with no order as to costs.

JUDIS