REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6573 OF 2008
[Arising out of SLP (Civil) No. 4739 of 2007]

Chandrashekar A.K. …Appellant

Versus

State of Kerala & Anr. …Respondents

J U D G M E N T

S.B. SINHA, J :

1. Leave granted.

2. Whether a person who has resigned from service is entitled to the benefit of revision of scale of pay with retrospective effect is the question involved in this appeal which arises out of a judgment and order dated 11.01.2006 passed by the Division Bench of the Kerala High Court in Writ Appeal No. 2004 of 2005.

3. Appellant herein was employed as Director (Finance) in the respondent No. 2 company which is an undertaking of respondent No. 1. He was a full time employee. He resigned from services on 23.05.1995.

4. The Government of India subsequently issued an office memorandum (OM) dated 19.07.1995 whereby and whereunder the scales of pay for the top posts, i.e., 'executives holding board level posts' were revised with effect from 1.01.1992. We are concerned herein with Schedule 'C' posts in respect whereof existing scale of pay of Rs. 7500-200-8500 was revised to Rs. 10000-400-12000.

Para 8 of the said OM dated 19.07.1995, which is material for our purpose, reads as under:

> "8. The administrative Ministries are requested to fix the pay of the incumbents of the Board level posts who were in employment in their enterprises as on 1.1.92 in the manner indicated above and forward their files to the DPE for vetting as required under the existing instructions contained in BPE's DO letter No. 1/1/89-BPE (S&A) Cell dated 14.2.89 and DOPT's OM No. 27(14)/C0/89 (ACC) dated 6.12.89, and as per procedure indicated in Annexure –IV."

5. On or about 1.01.1996, appellant made a representation requesting payment of arrears of pay revision inter alia on the ground that he, having been in service on 1.01.1992, was entitled to the benefit of the said OM dated 19.07.1995. The said prayer was rejected by respondent by an order dated 31.01.1996, stating:

> "This has reference to your letter dated 1.1.96 requesting for making the pay revision w.e.f. 1.1.92 applicable to you while you were in the service of the Corporation. Please note that the Office Memorandum dated 19.7.95 issued by the Secretary to Government of India directing the revision of scales of pay of Scheduled posts w.e.f. 1.1.92 specifically contains a clause that all the Administrative Ministries/ Departments are required to issue presidential directives to the concerned Public Sector Enterprises under its administrative control to give effect to the said revision. Please note that the Industries Department of the BPE of Kerala State Government has not issued any specific directive to the Public Sector Undertakings in Kerala for making the above revision effective. Hence, we are unable to consider your request."

6. Appellant made another representation before respondent No. 1 on 14.02.1996 which has been turned down by the Government of Kerala by a letter dated 30.07.1996, stating:

> "I am to invite your attention to the letter cited and to inform that the State Government have not yet adopted the revised Central BPE schedules in respect of SLPES. As such, Government regrets their inability to concede to your request."

7. Appellant filed a writ petition upon serving a legal notice on the respondents.

By reason of a judgment and order dated 23.03.2005, a learned Single Judge of the said High Court dismissed the said writ petition stating that as appellant was not in service when the said OM dated 19.07.1995 was issued, he was not entitled to any relief.

An Intra-court appeal preferred thereagainst has been dismissed by a Division Bench of the said Court by reason of the impugned judgment, directing:

> "2. There was no response, and the original petition had come to be filed. The matter had been looked into by the learned Judge and he found no reasons to encourage the application as according to him, it suffers from laches and it is not as if settled rights automatically are there in favour of the appellant. We find no error in the reasoning so as to interfere with the findings as above."

8. Mr. K. Vishwanathan, learned counsel appearing on behalf of the appellant, submitted that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that in view of the language used in the OM dated 19.07.1995, the revised scale of pay stood incorporated with effect from 1.01.1992 and as appellant was in service on that day, there was no reason as to why the benefit of the revised scale of pay should be denied to him. In any event, the OM dated 19.07.1995 does not contain any clause in terms whereof the claim of appellant stands excluded.

9. Mr. A. Raghunath, learned counsel appearing on behalf of respondent No. 2 and Mr. G. Prakash, learned counsel appearing on behalf of respondent No. 1, on the other hand, urged that as the State had adopted the aforementioned OM dated 19.07.1995 only with effect from 1.04.1997, the

said OM is not applicable in the case of appellant. In any event, appellant having resigned from the service, was not entitled to the benefit thereof.

10. Appellant was not in a pensionable service. He resigned voluntarily. The reason for tendering resignation by him is not known.

11. Whether appellant after submitting his resignation had been working in the better scale of pay is also not known.

12. Ordinarily, a person retiring from service on pensionable post would obtain the benefit of the revision in the scale of pay. This was so held in U.P. Raghavendra Acharya and Ors. v. State of Karnataka and Ors. [(2006) 9 SCC 630] wherein this Court opined:

> "19. The fact that the appellants herein were treated to be at par with the holders of similar posts in Government Colleges is neither denied nor disputed. The appellants indisputably are governed by the UGC scales of pay. They are entitled to the pensionary benefits also. They had been given the benefits of the revision of scales of pay by 10th Pay Revision Committee w.e.f. 1.1.1986. The pensionary benefits payable to them on attaining the age of superannuation or death were also stated to be at par with the employees of the State Government. The State of Karnataka, as

> noticed hereinbefore, for all intent and purport, has treated the teachers of the Government Aided Colleges and the Regional Engineering Colleges on the one hand and the teachers of the colleges run by the State itself on the other hand at par. Even the financial rules were made applicable to them in terms of the notifications, applying the rule of incorporation by reference. Although Rule 296 of the Rules per se may not be applicable so far as the appellants are concerned, it now stands admitted that the provisions thereof have been applied to the case of the appellants also for the purpose of computation of pensionary benefits…"

The services of the appellant being not a pensionable one, in our opinion, U.P. Raghavendra Acharya (supra) has no application to the fact of the present case. In that case, the amount of pension was to be calculated. On what basis, the same was required to be done was considered in the following terms:

> "22. The State while implementing the new scheme for payment of grant of pensionary benefits to its employees, may deny the same to a class of retired employees who were governed by a different set of rules. The extension of the benefits can also be denied to a class of employees if the same is permissible in law. The case of the appellants, however, stands absolutely on a

different footing. They had been enjoying the benefit of the revised scales of pay. Recommendations have been made by the Central Government as also the University Grant Commission to the State of Karnataka to extend the benefits of the Pay Revision Committee in their favour. The pay in their case had been revised in 1986 whereas the pay of the employees of the State of Karnataka was revised in 1993. The benefits of the recommendations of the Pay Revision Committee w.e.f. 1.1.1996, thus could not have been denied to the appellants.

23. The stand of the State of Karnataka that the pensionary benefits had been conferred on the appellants w.e.f. 1.4.1998 on the premise that the benefit of the revision of scales of pay to its own employees had been conferred from 1.1.1998, in our opinion, is wholly misconceived. Firstly, because the employees of the State of Karnataka and the appellants, in the matter of grant of benefit of revised scales of pay, do not stand on the same footing as revised scales of pay had been made applicable to their cases from a different date. Secondly, the appellants had been given the benefit of the revised scales of pay w.e.f. 1.1.1996. It is now well settled that a notification can be issued by the State accepting the recommendations of the Pay Revision Committee with retrospective effect as it was beneficent to the employees. Once such a retrospective effect is given to the recommendations of the Pay Revision Committee, the concerned employees despite their reaching the age of superannuation in between the said dates and/or the date of issuance of the notification would be deemed to be getting the said scales of pay as on 1.1.1996. By reason of such notification as the appellants had been derived of a vested right, they could not have been deprived therefrom and that too by reason of executive instructions."

13. In the instant case, there is nothing on record to show that the said Office Memorandum was brought into force. It may be true that the contention of the State that the notification has been given effect to on and from 1.04.1997 was not the premise on which the High Court dismissed the writ petition, but, there cannot be any doubt whatsoever that the notification revising the scale of pay must be brought into force. Unless the notification is given effect to, the question of deriving any legal benefit in terms thereof by a former employee of respondent No. 2 did not and could not arise.

14. We have noticed hereinbefore that both the Central Government as also the State of Kerala categorically stated that the notification had not come into force on the dates on which the representations of the appellant dated 1.01.1996 and 14.02.1996 were rejected by them in terms of their letters dated 31.01.1996 and 30.07.1996, respectively. In this view of the matter, it is difficult to agree with the contention of the learned counsel for appellant that the benefit of recommendation of his pay revision committed stood implemented on the day on which appellant resigned.

15. This aspect of the matter has also been considered in State of Tamil Nadu v. Seshachalam [2007 (11) SCALE 239], stating:

> "10. It is one thing to say that the State had come up with a policy decision which is beneficial to all the employees irrespective of the fact as to whether they had reached the age of superannuation or not, the only criteria being that they were recruited to the Tamil Nadu Secretariat Service on or before 28.1.1994 but it is another thing to say that the claim petitions filed by the responders were based on the success of their colleagues before the Administrative Tribunal in the year 1994. The employees working in the Finance Department had been promoted long back. We have noticed hereinbefore that some of them retired as Additional Secretaries whereas the respondents retired as merely Assistants. Presumably, promotions to the employees of the Finance Department were given systematically over a long period of time but no such grievance was made nor any application was filed before the appropriate forum. Such grievance, in our opinion, should have been raised or proper application before the Tribunal should have been filed long long back. It was in the aforementioned situation, the Tribunal was of the opinion that their applications were barred by limitation. Assuming that the cause of action for filing such applications arose in view of the observations made by the Tribunal in its order dated 16.4.1993 passed in Original Application No. 166 of 1990, but then in terms of the Act and the Rules, the respondents were required to file a proper application within a period of one year only. It is borne out from the records that, in fact, 62 such applications were

> already pending when GOMs No. 126 was issued."

Therein U.P. Raghavendra Acharya (supra) was distinguished, stating:

> "20. Reference has also been made by Mr. Venkataramani to a decision of this Court in U.P. Raghavendra Acharya and Ors. v. State of Karnataka and Ors. 2006 (6) SCALE 23 wherein it was held that pension is not a bounty and it is a deferred salary. This Court is not concerned herein with such a situation. In the said decision, this Court was concerned with a case where an employee retiring on a particular date was to receive 50% of the pension on the enhanced salary. In the fact situation obtaining therein that as the revision of pay and consequent revision in pension had come into force and by reason of a notification, the modality of computing the pension was required to be determined, those who had fulfilled the conditions laid down therein were held to be entitled to the benefits provided for thereunder holding that the concerned employees had a vested right therein."

16. The question as to whether the scale of pay would be revised or not is a matter of policy decision for the State. No legal right exists in a person to get a revised scale of pay implemented. It may be recommended by a body

but ultimately it has to be accepted by the employer or by the State, who has to bear the financial burden.

17. This aspect of the matter has been considered by this Court in HEC Voluntary Retd. Employees Welfare Society and Another v. Heavy Engineering Corpn. Ltd. and Others [(2006) 3 SCC 708] stating:

> "19. It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company."

[See also Life Insurance Corporation of India and Others v. Retired LIC Officers Association and Others (2008) 3 SCC 321]

18. We may furthermore notice that a distinction has been made by a Division Bench of this Court between the terms "retirement" and "resignation" in UCO Bank and Others v. Sanwar Mal [(2004) 4 SCC 412]. stating:

> "9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings..."

19. Mr. Vishwanathan is correct in his submission that the Division Bench committed a serious illegality insofar as it held that the learned Single Judge has dismissed the writ petition on the ground of delay and laches. It did not do so. as it was not so, but having considered the merit of the matter in its entirety, we are of the opinion that no case has been made out for interference with the impugned judgment.

The appeal is dismissed accordingly. In the facts and circumstances of the case, however, there shall be no order as to costs.

…….J.
[S.B. Sinha]

..…….J.
[Cyriac Joseph]

New Delhi;
November 07, 2008