

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2014

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.2947 of 2014

Srilatha Rao

...Petitioner

versus

1. Union of India
Through the Director General
Government of India
Department of Archaeological Survey of India
Janpath
New Delhi.
2. The Director (Science)
Department of Archaeological Survey of India
No.29, New Cantt Road
Dehradun.
3. The Deputy Superintendent
Department of Archaeological Survey of India
Fort St. George
Chennai-600 009.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 18 November 2013 in O.A.No.1428 of 2011 passed by the Hon'ble Central Administrative Tribunal, Madras Bench confirming the Letter No.3/10/2011 Adm-329 dated 19 July 2011 and Letter NO.3/10/2011 Adm-392 dated 30 August 2011 passed by the third respondent, quash the said orders and direct the respondents to restore the benefits given to the petitioner vide order dated 21 July 2010 passed by the first respondent.

For Petitioner : Mr.B. Ravi

For Respondents : Mr.S.M. Deenadayalan

ORDER

Introduction:

The action taken by the department of Archaeological Survey of India in reducing the Grade Pay granted to the petitioner, on the basis of a subsequent Government Order, issued long after restructuring the post and revision of Grade Pay by adopting uniform grade for the feeder and promotional cadre post compelled her to approach the Central Administrative Tribunal and thereafter this Court during the fag end of her service.

The facts:

2. The writ petitioner was initially appointed as Chemical Assistant on 25 November 1985. The post of Chemical Assistant was subsequently re-designated as Assistant Archaeological Chemist. The petitioner was promoted as Assistant Superintending Archaeological Chemist vide order dated 26 December 2003. The petitioner was given first financial upgradation after completion of ten years of service. Subsequently she was given second upgradation and her Grade Pay was fixed at Rs.5400/-. Thereafter the Ministry of Finance reduced the Grade pay of Assistant Archaeological Chemist from Rs.4600/- to Rs.4200/- and the Grade Pay of Assistant Superintending Archaeological Chemist was fixed at Rs.4800/-. The respondents 2 and 3 immediately after restructuring the post of Assistant Archaeological Chemist and revising the Grade Pay of Assistant Superintending Archaeological Chemist, reduced the Grade Pay of the petitioner from Rs.5400/- to Rs.4800/-. The said order was challenged by the petitioner before the Central Administrative Tribunal. The Tribunal without independently considering the issue, followed the earlier order passed by the Cuttack Bench of Central Administrative Tribunal dated 2 August 2013 in O.A.Nos.416 & 417 of 2011 and dismissed the Original Application. The said order is under challenge in this writ petition.

Submissions:

3. The learned counsel for the petitioner contended that the petitioner was promoted as early as on 26 December 2003 as Assistant Superintending Archaeological Chemist and she was also given second financial upgradation. The Grade Pay of Rs.5400/- granted to the petitioner was reduced to Rs.4800/- on account of subsequent events. According to the learned counsel, the respondents misconstrued the notification dated 8 March 2011 and the related office orders dated 8 April 2011 and 19 July 2011 and passed the office order dated 30 August 2011. According to the learned counsel, the respondents erred in reducing the Grade Pay of the petitioner from Rs.5400/- to Rs.4800/-. This aspect was not considered by the Central Administrative Tribunal and as such the order is liable to be set aside.

4. The learned counsel for the respondents by placing reliance on the notification dated 8 March 2011 and the consequential orders passed by the concerned respondents contended that the Modified Assured Career Progression Scheme ("MACPS" in short) provides guidelines in the matter of grant of Grade Pay on completion of a particular period of service. The Government have re-fixed the pay scale of Assistant Archaeological Chemist. According to the learned counsel, it was only as a consequential action, the Grade Pay of the petitioner was reduced from Rs.5400/- to Rs.4800/-.

Discussion:

5. The petitioner was initially appointed as Chemical Assistant. The said post was later re-designated as Assistant Archaeological Chemist. The Government of India approved two financial upgradations under Assured Career Progression Scheme ("ACPS" in short) one each after completion of 12 years and 24 years of regular service, in case the employee was not given regular promotion. This benefit is equivalent to the financial benefit which would be given on account of regular promotion as per the prevailing promotional hierarchy in the concerned department. The Government of India later approved three financial upgradations under MACPS, one each after completion of ten years of regular service on the basis of VI Pay Commission Report modifying the ACP with effect from 1 September 2008. In the case of MACPS the financial benefit is restricted to Grade Pay - a new concept introduced by the VI Pay Commission. If there is any difference in the Grade Pay between regular promotion and financial upgradation, the difference of pay will be allowed at the time of regular promotion. This is the sum and substance of MACPS.

6. The petitioner was promoted as Assistant Superintending Archaeological Chemist vide order dated 26 December 2003. Thereafter she was granted second financial upgradation and the related Grade Pay of Rs.5400/-. It is the admitted case of the parties that long after granting second financial upgradation and fixing the Grade Pay of Rs.5400/- to the petitioner, the Government issued a notification dated 29 August 2008, whereby and whereunder, both cadres viz., Assistant Archaeological Chemist (which is the Feeder Cadre) and Assistant Superintending Archaeological Chemist (which is the Promotional Cadre) were placed in the same Grade Pay of Rs.4,600/-. Subsequently, the Government of India issued a notification vide G.S.R.NO.184(E) dated 8 March 2011 deleting the entry of Assistant Archaeological Chemist (Feeder Cadre). In the case of Assistant Superintending Archaeological Chemist (Promotional Cadre), the Grade Pay of Rs.4600/- was retained. Since both the Feeder Cadre and Promotional Cadre were in the same Grade Pay of Rs.4600/-, the respondents were of the view that the Grade Pay of the petitioner should be re-fixed at Rs.4800/-.

7. The respondents have contended that in the first upgradation, the petitioner was given the Grade Pay of Rs.4800/- which is the next higher pay to Rs.4600/- Grade Pay and in second upgradation, she was given Grade Pay of Rs.5400/- which is next higher to Rs.4800/- - Grade Pay. The Ministry of Finance later clarified the issue. According to the Ministry, Grade Pay of Assistant Archaeological Chemist was re-fixed at Rs.4200/- and the Grade Pay of Assistant Superintending Archaeological Chemist was fixed at Rs.4600/-. The petitioner is therefore entitled to the next higher pay only, which is Rs.4800/-. It was only on the said basis the respondents have reduced the Grade Pay of the petitioner.

8. The only question that arises for consideration is whether the subsequent orders restructuring the post and revising the Grade Pay would affect the Grade Pay of Rs.5400/- given to the petitioner subsequent to her promotion as Assistant Superintending Archaeological Chemist.

9. Re-structuring the posts, reduction of Grade Pay of Assistant Archaeological Chemist from Rs.4600/- to Rs.4200/- and related actions were all taken long after the order granting promotion to the petitioner and the related order granting Rs.5400/- as Grade Pay. The petitioner was rightly given the Grade Pay of Rs.5400/- initially. It was reduced only on account of subsequent events. The Grade Pay already given to the petitioner by way of second upgradation cannot be reduced on account of a subsequent clarification issued by the department pursuant to the order re-structuring the post. When the petitioner was granted second financial upgradation, she was correctly given the Grade Pay of Rs.5400/-.

10. The counter affidavit filed by the respondents before the Central Administrative Tribunal very clearly shows that the Grade Pay of Assistant Archaeological Chemist was reduced from Rs.4600/- to Rs.4200/- and the Grade Pay of Assistant Superintending Archaeological Chemist was reduced from Rs.5400/- to Rs.4800/-. Such reduction would operate only prospectively. It should not cause prejudice to the employees who were given the benefit at an earlier point of time. The respondents by misinterpreting the notification issued by the Finance Ministry and the concerned office orders, reduced the Grade Pay of the petitioner. The petitioner has been enjoying the Grade Pay of Rs.5400/- even before re-structuring the posts and reduction of Grade Pay. This aspect was not considered by the Central Administrative Tribunal.

11. The respondents proceeded on a wrong premise that subsequent actions regarding restructuring posts and revision of Grade Pay would operate retrospectively and it would nullify earlier promotions and award of higher Grade Pay. In the counter affidavit filed before the Tribunal, the respondents have taken up such a plea of nullity to

reduce the Grade Pay of the petitioner.

12. There is no dispute that it is open to the Government to amend the service regulations with retrospective operation.

13. The Supreme Court in J.S. Yadav v. State of U.P., (2011) 6 SCC 570, while considering the amendment with retrospective effect, observed that retrospective nature of amendment must be evident from the amendment itself. The Supreme Court said :

"24. The legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the legislature is qualified further that such a unilateral alteration of service conditions should be in conformity with legal and constitutional provisions."

14. The petitioner was given promotion along with others by order dated 26 December 2003. It was based upon the recommendations made by the Departmental Promotion Committee, she was also given the consequential benefits from time to time. Subsequent amendments made to the Recruitment Rules restructuring the post or amendment made to the Central Civil Services (Revised Pay) Rules, would not operate retrospectively.

15. The petitioner is not aggrieved by the notification dated 29 August 2008 placing both Assistant Archaeological Chemist (Feeder Cadre) and Assistant Superintending Archaeological Chemist (Promotional Cadre) in the very same Grade Pay of Rs.4600/-. Similarly she is not aggrieved by the amendment made to the Rules by notification dated 8 March 2011. The respondents proceeded as if the subsequent orders would apply to the case of petitioner, who was promoted long ago and granted the Grade Pay of Rs.5400/-. The wrong interpretation of Government Order by the third respondent resulted in passing the office order dated 19 July 2011 and office note dated 30 August 2011.

16. The Tribunal simply followed the order passed by the Cuttack Bench without analysing the facts of the present case independently. The Tribunal omitted to consider the material fact that not even a notice was issued to the petitioner before reducing the Grade Pay

which she has been receiving for a considerable period. In any case, the Tribunal erred in dismissing the original application.

Disposition:

17. The orders challenged in the Original Application and the order dated 18 November 2013 in O.A.No.1428 of 2011 are set aside. The respondents are directed to restore the benefits to the petitioner forthwith.

18. In the upshot, we allow the writ petition. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Tr/

To

1. Union of India
Through the Director General
Government of India
Department of Archaeological Survey of India
Janpath
New Delhi.
2. The Director (Science)
Department of Archaeological Survey of India
No.29, New Cantt Road
Dehradun.
3. The Deputy Superintendent
Department of Archaeological Survey of India
Fort St. George
Chennai-600 009.

1 CC to Mr.R.Subramanian, Advocate SR.No. 51880

2 CCs to Mr.S.M.Deenadayalan, Advocate SR.No. 51450

W.P. No.2947 of 2014

LRS (CO)
PSI (18.11.2014)