

KUNNASHADA MUTHUKOYA

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ADMINISTRATOR U.T. OF LAKSHADWEEP AND ANR.
(Civil Appeal No.3537 of 2001)

AUGUST 29, 2008

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[R.V. RAVEENDRAN AND P. SATHASIVAM, JJ.]

Service Law – Pay revision – Of Government servant –
Held: Should be with reference to the pay scale earlier applicable to him and not with reference to the class of post held by him – r.5 did not mean that if a government servant was in a post classified as a Group 'C' post with an existing pay scale shown as a Group 'D' pay scale, the government servant would get the pay scale applicable to a Group 'C' post – Central Civil Services (Revised Pay) Rules, 1986 – r.5.

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Appellant was a lineman in the Electricity department. As per the Central Civil Services (Revised Pay) Rules, 1986, made for implementing the recommendations made by the Fourth Pay Commission, the pay scale of Appellant was revised from Rs.210-290 to Rs.800-1150.

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Appellant, however, sought higher pay scale contending that the post of lineman was classified as a group C post, hence, he should be given benefit of the minimum of the pay scales prescribed for group 'C' posts under the said Revised Pay Rules, i.e. Rs.825-1200.

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The Tribunal upheld the claim of Appellant holding that though the pay scale of Rs.800-1150 was a group 'D' pay scale but since Appellant was in a Group 'C' post, he was entitled to the minimum pay scale applicable to group 'C' posts after revision of pay scales i.e. Rs.825-1200.

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High Court, by following the decision of this Court in Hariharan's case, held that as the pay scale applicable to Appellant before the pay revision was Rs.210-290, he was

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- A entitled only to the corresponding revised pay scale of Rs.800-1150 under the Revised Pay Rules, and that he was not entitled to a higher pay scale and accordingly set aside the order of Tribunal.
- B Before this Court, the Appellant contended that having regard to Rule 5 of the said Revised Pay Rules, the revision of pay of a government servant should be with reference to the class of post held by him and not with reference to the pay scale earlier applicable to him and as the appellant held a Group 'C' post, the pay scale
- C applicable to Group 'C' government servants should be extended to him. He contended that the decision in *Hariharan* should be considered as having been rendered *per incurium*, as it ignored Rule 5 of the Revised Pay Rules and a decision rendered *per incurium* is not a binding
- D precedent.

Dismissing the appeal, the Court

- HELD:1.1. The First Schedule to the Central Civil Services (Revised Pay) Rules, 1986 consists of two parts.
- E Part A relates to "revised scales for posts carrying present scales in Groups D, C & B except posts for which different revised scales are notified separately" while Part B relates to "revised scales of pay for certain other categories of staff." From a combined reading of the provisions of the Revised Pay it follows: (i) From 1.1.1986, the scale of pay of every post specified in column (2) of the First Schedule was as specified against it in column (4) of the First Schedule. (ii) Part A of the First Schedule did not individually name the several posts for which the revised pay scales were prescribed. It grouped the posts, with reference to the existing (pre-revision) pay scale and prescribed a single revised pay scale. Therefore in regard to posts covered by Part A (that is posts excluding those specified in Part B) the entitlement of a government servant to the revised scale of pay was with reference to
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the existing scale of pay (that is pre-revised scale A applicable to him as on 1.1.1986 when the revised scales of pay came into effect). All posts carrying a particular pay scale before the revision, were given the corresponding revised pay scale shown in the First Schedule. The pay revision was thus with reference to the existing pay scale drawn by the government servant and not with reference to the 'post' held by him. (iii) Part B of First Schedule, on the other hand, specifically described certain posts, as for example, Junior Engineer, Technical Supervisor etc., while prescribing the revised pay scales. In regard to posts described in Part B, both the 'post' and the existing scale of pay became relevant for finding out the corresponding revised scale of pay. (iv) The Revised Pay Rules did not change the classification of posts. The fact that the First Schedule classified the pay scales for convenience under the headings 'Group D' and 'Groups C & B' did not mean that a government servant working in Group 'C' but whose existing scale of pay was shown under the heading Group 'D', could ignore his existing scale and claim the benefit of a revised scale corresponding to some other higher pre-revised scale of pay. (v) The object and intent of r.5 was to bring all government servants covered by the Revised Pay Rules to the revised scales except those who elected to continue to drawing pay in the existing scales. [Paras 7.3, 9] [925-C; 926-E,F,G,H; 927-A to F]

1.2. The contention of appellant that pay revision should be with reference to post held and not existing pay scales, if accepted would have lead to confusion, uncertainty and inconsistency. Its effect, in the case of appellant, would have been to first upgrade the existing pay scale from Rs.210-4-226- B-4-250-EB-5-290 to Rs.225-5-260-6-290-EB-6-308 and then grant the revised pay scale corresponding to such upgraded higher pay scale with effect from 1.1.1986. Rule 4 read with First Schedule made

- A it clear that the government servant was only entitled to the revised pay scale corresponding to his existing pay scale (and not any other revised pay scale corresponding to some higher pre-revised scale). Rule 5 does not mean that if a government servant was in a post classified as a
- B Group 'C' post with an existing pay scale shown in the First Schedule as a Group 'D' pay scale, the government servant would get the pay scale applicable to a Group 'C' post. In fact there are several revised pay scales in Part A of the First Schedule for Group 'C' posts. If the
- C contention of the appellant was to be accepted, and the revised pay scale to be given to him was to be delinked from the existing pay scale, then he could have chosen any of the several revised pay scales corresponding to pay scales shown as Group 'C' scales (that is Rs.825-1200 or Rs.950-1400 or 950-1500 or 975-1540 etc) as he did not fit into any of the existing pay scales of Group 'C'. Obviously such a course was clearly impermissible. All that Rule 5 provided was that except those who exercised option to continue to draw pay in the existing pay scale, others should draw their pay only in the revised pay scale corresponding to his existing pay scale and that he could not draw any other pay scale. Further a person who fell under part A of First Schedule could not draw the pay provided in Part B of First Schedule and vice versa. [Para 10] [927-G & H; 928-A,B,C,D & E]

- F 1.3. Rule 5 in the Revised Pay Rules is not a new provision, but same as Rule 5 of the Central Civil Services (Revised Pay) Rules, 1973 relating to the earlier pay revision. The said rule had never been interpreted in the
- G manner suggested by the Appellant. The contention, that *Hariharan* ignored Rule 5 and should therefore be considered as *per incuriam*, is untenable. [Paras 11,12] [928-F & G]

Union of India v. P.V. Hariharan, 1997 (3) SCC 568-
H referred to.

Case Law Reference

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1997 (3) SCC 568 referred to Para 3

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3537
of 2001

From the final Judgment and Order dated 27.1.2000 of
the High Court of Kerala at Ernakulam in Original Petition No.
13965 of 1998 (S)

Mathai M. Paikeday, Shishir Pinaki, Anuj Prakash and
Sanjay Jain for the Appellant.

Ashok Bhan, Varuna Bhandari Gugnani and D.S. Mahra
for the Respondents.

The Judgment of the Court was delivered by

R.V.RAVEENDRAN, J. 1. The appellant was promoted
as a lineman, a group 'C' post, in the Lakshadweep Electricity
department, on 2.2.1985. The pay scale of lineman was initially
Rs.85-2-95-3-110 which was revised to Rs.210-4-226-EB-4-
250-EB-5-290. The pay scale was further revised to Rs.800-
15-1010-EB-20-1150 as per Central Civil Services (Revised
Pay) Rules, 1986 (for short 'Revised Pay Rules'). The appellant
gave a representation dated 1.10.1994 requesting a higher
pay scale. He contended that as the post of lineman was
classified as a group C post, he should be given the benefit of
the minimum of the pay scales prescribed for group 'C' posts
under the Revised Pay Rules, that is Rs.825-15-900-EB-20-
1200.

2. By Office Memorandum dated 9.8.1995 the respondent
rejected the representation of appellant for grant of the higher
pay scale of Rs.825-1200. The said memorandum stated that
though the post of lineman was a group 'C' post, the revised
pay scale applicable to the said post was that which
corresponded to pre-revision pay-scale of Rs.210-290 drawn
by linemen and therefore appellant was entitled only to the
revised pay scale of Rs.800-1150. It was also stated that the

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A duties and responsibilities of linemen in the Electricity Department differed substantially from linemen in other departments (that is Linemen/Wireman in telecommunications, Postmen/ Mailguards in Postal department etc.); that the Fourth Pay Commission had recommended the higher pay scale of

B Rs.825-15-900-EB-20-1200 only for linemen and wiremen in the Telecommunication Department on the specific condition that their recruitment qualifications should be raised; and that the revised pay scale of Rs.800-1150 given to the appellant was therefore in accordance with the fourth pay commission's

C recommendations.

3. Feeling aggrieved the appellant approached the Central Administrative Tribunal, Ernakulam Bench. The Tribunal allowed the application by order dated 28.6.1997 and quashed the O.M. dated 9.8.1995. The Tribunal held that as the appellant was in

D a group 'C' post, he was entitled to the minimum pay scale applicable to group 'C' posts, after the revision of pay scales; that under the CCS (Revised Pay) Rules, 1986, the pay scale of Rs.800-1150 was a group 'D' pay scale and the lowest pay scale applicable to group 'C' posts was Rs.825-1200; and that

E therefore the appellant was entitled to the revised pay scale of Rs.825-1200 from 1.1.1986 with all consequential benefits. The respondents challenged the said order in a writ petition (O.P.No.13965/1998) before the High Court of Kerala. The High Court allowed the writ petition by order dated 27.1.2000

F following the decision of this Court in *Union of India v. P V Hariharan* [1997 (3) SCC 568]. The High Court held that as the pay scale applicable to the appellant before the pay revision was Rs.210-290, he was entitled only to the corresponding revised pay scale of Rs.800-1150 under the Revised Pay Rules, and that he was not entitled to a higher pay scale. The said order is challenged in this appeal by special leave. The only question that therefore arises for our consideration is whether the appellant was entitled to the benefit of higher pay scale of Rs.825-1200 as he was holding a Group 'C' post.

H 4. In *Hariharan* (supra), this Court considered a similar

claim by Tool Room Assistants in the Fisheries department, A whose pay scale was initially Rs.85-128, revised to Rs.210-290. After the Fourth Pay Commission recommendations, they were given the revised pay scale of Rs.800-1150. The Tribunal held that as the post held by them was included in Group 'C', they were entitled to the higher pay scale of Rs.1150-2900. B Reversing the said decision, this Court held:

"We are unable to appreciate the reasoning or approach of the Tribunal. The pay scale of Tool Room Assistant in IFP is Rs.800-1150. ... Assuming that the said post was mentioned under Group C, it may be – or may not be – an error. What is material is that the classification cannot result in change of pay scale from Rs.800-1150 to Rs.1150-2900. This is simply unimaginable. Pay scales are what are prescribed for each post by the Government which is very often done on the basis of recommendations of a Pay Commission or a similar expert body. Classification of posts has nothing to do with fixation of pay scales; it only classifies posts into several groups based upon the pay scales already fixed. *Classification and prescribing pay scales for several posts are two different and distinct functions.* The Tribunal's order is, in our opinion, wholly unsustainable in law." C D E

(Emphasis supplied)

5. The learned counsel for the appellant fairly conceded that if the ratio of *Hariharan* is applied, the appellant's claim is liable to be rejected. But he contended that the decision in *Hariharan* should be considered as having been rendered *per incurium*, as it ignores Rule 5 of the Revised Pay Rules. Relying on the decisions of this Court in *Nirmal Jeet Kaur v. State of M.P.* [2004 (7) SCC 558] and *Central Board of Dawoodi Bohra Community v. State of Maharashtra* [2005 (2) SCC 673], he submitted that a decision rendered *per incurium* is not a binding precedent. According to the appellant, having regard to Rule 5 of the Revised Pay Rules, the revision of pay of a government servant should be with reference to the class of post held by him and not with reference to the pay scale earlier applicable F G H

A to him. He therefore contended that as the appellant held a Group 'C' post, the pay scale applicable to Group 'C' government servants should be extended to him.

6. The principles enunciated in *Hariharan* is that 'classification of posts has nothing to do with fixation of pay scales' and "classification and prescribing pay scales for different posts are two different and distinct functions". These are well settled principles of service jurisprudence. The question therefore is whether Rule 5 of CCS (Revised Pay) Rules, 1986 carves out any exception to the said general principles of service law, or lays down a different principle, and if so whether Rule 5 had been wrongly ignored.

7. The Revised Pay Rules were made to implement the recommendations made by the Fourth Pay Commission. A brief reference to the relevant provisions of the said Rules will be necessary to consider the appellant's contention.

7.1) Sub-Rules (2), (3), and (5) of Rule 3 define the terms 'Existing Scale', 'Present Scale' and 'Revised Scale'. 'Existing Scale' in relation to a Government servant means the present scale applicable to the post held by the Government servant as on 1.1.1986. 'Present Scale' in relation to any post specified in Column 2 of the First Schedule, means the scale of pay specified against that post in Column 3 thereof. 'Revised Scale' in relation to any post specified in column (2) of the First Schedule means the scale of pay specified against that post in column (4) thereof unless a different revised scale is notified separately for that post. Rule 4 provides that from the date of commencement of the revised pay rules (1.1.1986), the scale of pay of every post specified in column (2) of the First Schedule shall be as specified against it in column (4) thereof.

7.2) Rule 5 relied on by the appellant, relating to drawal of pay in the revised scales is extracted below :

"5. *Drawal of pay in the revised scales* : Save as otherwise provided in these rules, a Government servant shall draw pay

in the revised scale applicable to the post to which he is A appointed.

Provided that a government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale. B

Explanations 1, 2, 3 : x x x x x (omitted as not relevant)"

Rule 6 provides how the option under the proviso to Rule 5 should be exercised.

7.3) The First Schedule to the Revised Pay Rules consists of two parts. Part A relates to "revised scales for posts carrying present scales in Groups D, C & B except posts for which different revised scales are notified separately." Part B relates to "revised scales of pay for certain other categories of staff." The relevant entries in the First Schedule are extracted below: D

THE FIRST SCHEDULE (See Rules 3 & 4) – PART A

(Revised scales for posts carrying present scales in Group D, C & B except posts for which different revised scales are notified separately)

SI.No. (1)	Post (2)	Present scale (3)	Revised scale (4)
GROUP 'D' XXXXX			
3.	All posts carrying present scales specified in Column 3.	(a) x x x x x (b) x x x x x (c) 210-4-226-EB-4-250-EB-5-290	800-15-1,010-EB-20-1,150
GROUPS 'C' AND 'B'			
4.	All posts carrying present scales specified in column 3.	225-5-260--6-290-EB-6-308 x x x x x	825-15-900-EB-20-1,100

8. The Central Government has issued an Explanatory Memorandum to understand and implement the CCS (Revised

A Pay) Rules, 1986. The explanation given therein in regard to Rule 5 is extracted below:

"Re : Rule 5. The intention is that all Government servants should be brought over to the revised scales except those who elect to draw pay in the existing scales. Those who exercise the option to continue on the existing scales of pay will continue to draw the dearness pay, dearness allowance, ad hoc dearness allowance and interim reliefs at the rates in force on the 1st January, 1986 and the dearness pay will count towards house rent and compensatory allowances, emoluments for pension, etc. to the extent it so counted on the said date. If a Government servant is holding a permanent post in a substantive capacity and officiating in a higher post or would have officiated in one or more posts but for his being on deputation etc., he has the option to retain the existing scale only in respect of one scale. Such a Government servant may retain the existing scale applicable to a permanent post or any one of the officiating posts. In respect of the remaining posts he will necessarily have to be brought over to the revised scales."

E 9. The position that emerged from a combined reading of the provisions of the Revised Pay Rules in the context of the question raised by the appellant was as follows :

(i) As from 1.1.1986, the scale of pay of every post specified in column (2) of the First Schedule was as specified against it in column (4) of the First Schedule.

(ii) Part A of the First Schedule did not individually name the several posts for which the revised pay scales were prescribed. It grouped the posts, with reference to the existing (pre-revision) pay scale and prescribed a single revised pay scale. Therefore in regard to posts covered by Part A (that is posts excluding those specified in Part B) the entitlement of a government servant to the revised scale of pay was with reference to the existing scale of pay (that

is pre-revised scale applicable to him as on 1.1.1986 when the revised scales of pay came into effect). All posts carrying a particular pay scale before the revision, were given the corresponding revised pay scale shown in the First Schedule. The pay revision was thus with reference to the existing pay scale drawn by the government servant and not with reference to the 'post' held by him.

(iii) Part B of First Schedule, on the other hand, specifically described certain posts, as for example, Junior Engineer, Technical Supervisor etc., while prescribing the revised pay scales. In regard to posts described in Part B, both the 'post' and the existing scale of pay became relevant for finding out the corresponding revised scale of pay.

(iv) The Revised Pay Rules did not change the classification of posts. The fact that the First Schedule classified the pay scales for convenience under the headings 'Group D' and 'Groups C & B' did not mean that a government servant working in Group 'C' but whose existing scale of pay was shown under the heading Group 'D', could ignore his existing scale and claim the benefit of a revised scale corresponding to some other higher pre-revised scale of pay.

(v) The object and intent of Rule 5 was to bring all government servants covered by the Revised Pay Rules to the revised scales except those who elected to continue to drawing pay in the existing scales.

10. The contention of appellant that pay revision should be with reference to post held and not existing pay scales, if accepted would have lead to confusion, uncertainty and inconsistency. Its effect, in the case of appellant, would have been to first upgrade the existing pay scale from Rs.210-4-226-EB-4-250-EB-5-290 to Rs.225-5-260-6-290-EB-6-308 and then grant the revised pay scale corresponding to such

- A upgraded higher pay scale with effect from 1.1.1986. Rule 4 read with First Schedule made it clear that the government servant was only entitled to the revised pay scale corresponding to his existing pay scale (and not any other revised pay scale corresponding to some higher pre-revised scale). Rule 5 does
- B not mean that if a government servant was in a post classified as a Group 'C' post with an existing pay scale shown in the First Schedule as a Group 'D' pay scale, the government servant would get the pay scale applicable to a Group 'C' post. In fact there are several revised pay scales in Part A of the First
- C Schedule for Group 'C' posts. If the contention of the appellant was to be accepted, and the revised pay scale to be given to him was to be delinked from the existing pay scale, then he could have chosen any of the several revised pay scales corresponding to pay scales shown as Group 'C' scales (that is Rs.825-1200 or Rs.950-1400 or 950-1500 or 975-1540 etc) as he did not fit into any of the existing pay scales of Group 'C'. Obviously such a course was clearly impermissible. All that Rule 5 provided was that except those who exercised option to continue to draw pay in the existing pay scale, others should draw their pay only in the revised pay scale corresponding to his existing pay scale and
- E that he could not draw any other pay scale. Further a person who fell under part A of First Schedule could not draw the pay provided in Part B of First Schedule and vice versa.

- F 11. It is also of some relevance to note that Rule 5 in the Revised Pay Rules is not a new provision, but same as Rule 5 of the Central Civil Services (Revised Pay) Rules, 1973 relating to the earlier pay revision. The said rule had never been interpreted in the manner suggested by the Appellant. Be that as it may.

- G 12. For the reasons aforesaid, the contention that *Hariharan* (supra) ignored Rule 5 and should therefore be considered as *per incuriam* is untenable. The said contention is rejected. The appeal is therefore dismissed as having no merit.