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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; BELA M. TRIVEDI, JJ.

CIVIL APPEAL Nos. 474-475 OF 2022; 27.01.2022
(Arising out of SLP (Civil) Nos. 547-548 of 2021)

STATE OF MADHYA PRADESH *VERSUS* **R.D. SHARMA AND ANR.**

Service Law - "Equal pay for equal work" is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government." *[Referred to State of Haryana and Anr. Vs. Haryana Civil Secretariat Personal Staff Association 2002 (06) SCC 72] (Para 14)*

Service Law - The equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court's interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. *[Referred to Secretary, Finance Department Vs. West Bengal Registration Service Associations and Ors. 1993 Supl. 1 SCC 153] (Para 14)*

Constitution of India, 1950- Article 227- The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. *(Para 15)*

(Arising out of impugned final judgment and order dated 28-04-2017 in WP No.14940/2013, 17-09-2019 in RP No.1386/2018 passed by the High Court Of M.p Principal Seat At Jabalpur)

Counsel for the Parties: Mr. Saurabh Mishra, AAG Ms. Mrinal Gopal Elker, AOR Mr. Manish Yadav, Adv. Mr. Vikramjit Banerjee, ASG Mr. Nachiketa Joshi, Adv. Mr. B.K. Satija, Adv. Ms. Indira Bhakar, Adv. Mr. Udai Khanna, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Anish Kumar Gupta, AOR Mr. Venugopal Abhay, Adv.

J U D G M E N T

BELA M. TRIVEDI, J.

1. Leave granted.

2. The appellant-State of Madhya Pradesh by way of present appeals filed under Article 136 of the Constitution of India has assailed the Judgments and Orders dated 28.04.2017 and 17.09.2019 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur in W.P. No. 14940 of 2013 and R.P. No. 1386 of 2018 respectively.

3. The respondent no. 2 herein i.e. Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), in exercise of the powers conferred by sub-section 1 of section 3 of All India Services Act, 1951 and in supersession of the Indian Forests Service (Pay Rules 1968) had made the Rules namely the Indian Forests Service (Pay) Rules 2007). The said Rules of 2007 came to be amended by the respondent no. 2 vide the notification dated 27the September 2008. The said Amended Rules were called the Indian Forests Service (Pay) Second Amendment Rules, 2008 (hereinafter referred to as the Amended Rules of 2008). Sub-Rule 1 of the Rule 3 of the said Amended Rules of 2008 provided for the upgradation of one existing post of Principal Chief Conservator of Forest (PCCF), to be designated as the Head of Forest Force in the each State cadre. The said rule further provided for the apex scale at Rs. 80,000/- (fixed) for the said upgraded post designated as the Head of Forest Force. It also provided that the said upgradation was to be made w.e.f. the date of issue of the notification of the Amended Rules, 2008 i.e. 27th September, 2008, and that the said upgraded post was to be filled by "selection" from amongst the officers holding the post of PCCF in the State cadre in the HAG+ scale of Rs. 75,500 - Rs. 80,000.

4. The respondent no. 1 (the petitioner before the High Court) retired from the post of PCCF on 31st December, 2001. On 2nd April, 2011, the respondent no. 1 made a representation to the Government of India requesting it to revise his pension from Rs.37,750/- (50% of HAG Scale 75000-80000) to Rs. 40,000/- (50% of apex scale 80000) as per the Indian Forests Service (Pay) Second Amendment Rules, 2008. The said representation came to be rejected by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare vide the order dated 24th June, 2011. The aggrieved respondent filed an O.A. being No. 1142/2011 before the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal'), Jabalpur, Madhya Pradesh on 27th November, 2011. The said O.A. came to be dismissed by the Tribunal vide the order dated 17th May, 2013. However, the Writ Petition being No.14940 of 2013 filed by the respondent challenging the said order passed by the Tribunal, came to be allowed by the High Court of Madhya Pradesh, Jabalpur vide the order dated 24th August, 2013. The High Court by the said order held that the respondent no. 1 was eligible to get the benefit of Rs. 40,000/- as pension at par with the other officers, as per the Rules of 2008.

5. The aggrieved appellant-State of MP challenged the said order passed by the High Court before this Court by filing the special leave petition (Diary) No. 36531 of 2017. The said SLP came to be disposed of by this Court vide order dated 1st December, 2017, which reads as under:

"Delay condoned.

In the judgment it is observed as follows:-

"It is an admitted fact that the petitioner retired from the post of Principal Chief Conservator of Forests, Head of the Forest Department…..".

According to the learned counsel appearing for the State this is not true to facts.

If that be so, it is for the petitioner to go back to the High Court and get the records corrected.

With the liberty, as above, the special leave petition is disposed of.

We make it clear that we have not otherwise considered the matter on merits.

Pending application(s), if any, shall stand disposed of."

6. The appellant availed the liberty granted by this Court and approached the High Court by filing a review petition being R.P. No. 1386 of 2018. The said review petition however came to be dismissed by the High Court vide impugned order dated 17th September, 2019. The aggrieved appellant, therefore, has challenged both the orders dated 28.04.202017 and 17.09.2019 passed by the High Court, by way of these appeals.

7. In the instant appeals, the question that falls for consideration before this court is, whether the High Court while exercising its powers of superintendence under Article 227 of Constitution of India, had misdirected itself by applying the principle of "equal pay for equal work" to the case of respondent no. 1 who had already retired as the PCCF on 31.12.2001, for the purpose of granting him the benefit of the apex scale fixed for the upgraded post of Head of the Forest Force, MP Cadre, as per the Amended Rules of 2008 which came into effect from 27the September 2008 and fixing his pension accordingly?

8. However, before adverting to the rival contentions raised by the Ld. Advocates for the parties, let us first deal with the preliminary objection raised by the Ld. Advocate Mr. Anish Kumar Gupta appearing for the respondent no. 1 as regards the maintainability of the appeals. According to Mr. Gupta, the appellant having earlier challenged the order dated 28th April, 2017 passed by the High Court by filing the SLP before this court and this court while disposing of the said SLP vide the order dated 1st December, 2017 having not granted any liberty to approach this court again after the disposal of Review Petition by the High Court, the present appeals are not maintainable. The court does not find any substance in the said preliminary objection raised by Mr. Gupta. As discernible from the earlier order dated 1st December, 2017 reproduced hereinbefore, this court while disposing of the SLP had granted a liberty to the appellant to go back to the High Court and get the records corrected, as according to the Ld. Counsel appearing for the appellant-State, certain facts were not correctly recorded by the High Court in the impugned order. This court also clarified that it had otherwise not considered the matter on merits. As rightly submitted by Ld. AAG Mr. Saurabh Mishra for the appellant-State, since this court had granted a liberty to the appellant to approach the High Court and had disposed of the SLP without expressing any opinion on merits, it was intended to keep all the issues open for being considered by the High Court in the Review Petition, and to permit the appellant to

approach this court, in case the appellant was aggrieved by the order passed by the High Court in the Review Petition as well as in the Writ Petition. In the opinion of the court, the observations made by this court in the latest decision in case of ***Sudhakar Baburao Nangnure Vs. Noreshwar Raghunathrao Shende 2020 (11) SCC 399*** clinch the issue, in which the Supreme Court in almost similar issue as raised in the present appeals, has observed as under:

"It is well settled that if a submission which has been urged before the High Court has not been noticed or considered, it is to the High Court that the aggrieved litigant must turn for the rectification of the record. But, apart from this, the observation in the order dated 12 December 2017 that this Court had not considered the matter on merits is of crucial significance. The purpose of that clarification was to ensure that the issues which were raised (in any event with regard to the catch-up rule) were entirely open, to be urged before the High Court in the first instance and thereafter, if the appellant were to be aggrieved, in further proceedings before this Court. The above observation of this Court was not merely intended to keep the issue of the non-consideration of the catch-up rule open to be urged before the High Court. That this issue was kept open, is evident from the last part of the order dated 12 December 2017 which specifically keeps open the contentions of the parties to be urged before the High Court. In addition, the order of this Court carefully enunciates that we have not considered the matter on merit.

In view of this clear clarification, it is impossible to accept the preliminary objection that a recourse to this Court is barred after the High Court decided the review petitions. To take any other view would effectively deny access to justice to the appellant. Evidently, the grievance of the appellant was not considered by this Court on merits on 12 December 2017. To adopt a construction which would deprive the appellant of the remedy of moving this Court after the decision of the High Court in review would lead to an egregious failure of justice. Such a construction must be eschewed."

In view of the clinching observations made by this court in the afore-stated decision, no further elaboration is required for holding that the present appeals are legally maintainable.

9. So far as the merits of the appeals are concerned, Ld. AAG Mr. Mishra for the appellant strenuously urged placing reliance upon the Rules of 2008 that the said rules having come into force w.e.f. 27th August, 2008, and the respondent no. 1 having already retired as PCCF in 2001, the respondent no. 1 could not have been granted the benefit of the apex scale as erroneously granted by the High Court, applying the principle of "equal pay for equal work". According to him, the said principle had no application to the upgradation of post of PCCF as the Head of Forest force in the apex scale which had to be filled up by "selection" and that too with effect from 27th August, 2008. He also drew the attention of the court to the Rules of 2007 and of 2008 to submit that the respondent no. 1 was working as PCCF and was not working on the upgraded post of Head of the Forest Force which was designated for the first time in the year 2008, and that the High Court had erroneously observed in the impugned orders that the respondent no. 1 was working as the PCCF, Head of the Forest Force.

10. The Ld**.** ASG Mr. Vikramjit Banerjee for the respondent no. 2 Union of India, supplementing the submissions made by the Ld. AAG Mr. Mishra for the appellant State, submitted that the benefit of upgradation of one existing post cannot be given

to the pensioner who had already retired before such upgradation. In this regard, he had relied upon ***K.S. Krishnaswamy & Ors. Vs. Union of India & Anr. Reported in 2006 (13) SCC 215***.

11. Per contra, the Ld. Advocate Mr. Anish Kumar Gupta appearing for the respondent no. 1, taking the court to the various appointment orders issued by the appellant in case of other officers submitted that the officers appointed as PCCF, MP were also appointed as the Head of the Forest Department, M.P. before the Amended Rules came into force and that the respondent was also shown as the PCCF, M.P., in the list of members of IFS, which meant that the respondent was also the PCCF, Head of the Forest Department in the State of Madhya Pradesh. Invoking the principle of "equal pay for equal work", he submitted that the work and responsibility of a PCCF, M.P. and the upgraded post of PCCF, Head of Forest Force were the same and therefore the High Court had rightly granted the benefit of the apex scale as per the Amended Rules of 2008. He further submitted that the post of PCCF, Head of Forest Force in IFS was not a newly created post but was upgraded from the existing post of PCCF in the department, by virtue of the Amended Rules, and therefore also though the respondent had retired in 2001, he was required to be treated as eligible for the pension as per the apex scale of Rs. 80,000/-.

12. In order to appreciate the rival contentions raised by the learned counsel appearing for the parties, it would be beneficial to reproduce the relevant Amended Rules of 2008 which came into effect from 27th September, 2008. The relevant sub-rule (1) of Rule 3 of the said Amended Rules, 2008 reads as under:

(1) Pay-Bands and Grade Pays: - The pay bands and grade pays admissible to a member of the Service and the dates with effect from which the said pay bands and grade pays shall be deemed to have come into force, shall be as follows:

A to C …….

D Above Super Time Scale: -

(i) Additional Principal Chief Conservator of Forest –

Pay-Band – 4: Rs.37400-67000; plus Grade Pay Rs.12000;

(ii) HAG +: Rs.75500- (annual increment @ 3%)- 80000;

Grade Pay: Nil;

(iii) Apex Scale: Rs.80000 (fixed), Grade Pay: nil (by upgradation of one existing post of Principal Chief Conservator of Forest as head of Forest Force in the each State Cadre);

(With effect from the date of issue of notification of the Indian Forests Service (Pay) Amendment Rules, 2008);

Note 1: …….

Note 2: The post of Principal Chief Conservator of Forest in the apex scale shall be filled by selection form amongst the officers holding the post of Principal Chief Conservator of Forest in the State cadre in the HAG + Scale of Rs. 75500-(annual increment @ 3%)-80000.

From the above quoted rules, it is abundantly clear that one existing post of PCCF

was to be upgraded as the Head of Forest Force in each State cadre, fixing the apex scale at Rs. 80,000/- w.e.f. the date of the issue of Notification of the said Amended Rules i.e. 27th September, 2008, and that the said post of PCCF in the apex scale was to be filled up by selection from amongst the officers holding the post of PCCF in the State cadre in the HAG + scale of Rs.75,500/- (annual increment @ 3%) – 80,000/.

13. Since the respondent no. 1 had retired as the PCCF in the year 2001 that is much prior to the coming into force of the Amended Rules, 2008, his claim to get the benefit of the apex scale as per the said rules was thoroughly misconceived. The apex scale of Rs. 80,000/- was fixed for the upgraded post designated as the Head of Forest Force w.e.f. 27th September, 2008 and was to be filled up by way of selection and not as a matter of course. It is needless to say that filling up a post by selection would always require a process of screening the eligible employees, and cannot be automatic on the basis of seniority. The contention raised by Mr. Gupta for the respondent no. 1 that even prior to the amendment in the rules in the year 2008, the officers working on the post of PCCF were the Head of the Forest Force and the respondent no. 1 was also working as such, cannot be accepted, for the simple reason that if all the officers working on the post of PCCF were also working as the Head of the Forest Force, there was no need to upgrade one existing post of PCCF in the apex scale of Rs. 80,000/- and designate it as the Head of the Forest Force, w.e.f. 27th September, 2008, as specifically provided in Sub-Rule 1 of Rule 3 of the Amended Rules of 2008. Rule 11 of the said Amended Rules of 2008 also specifically reiterates the said position about upgradation and designation of the post of PCCF as the Head of Forest Force in the State of Madhya Pradesh, as in other States and Union Territories.

14. The High Court in the impugned orders passed in Writ Petition as well as in the Review Petition had thoroughly misdirected itself by applying the principle of "equal pay for equal work" placing reliance on the decision of this court in case of ***State of Punjab and Ors. Vs. Jagjit Singh and Ors. 2017 SCC 148,*** which had no application to the facts of the present case. It may be noted that this court has consistently held that the equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court's interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. A beneficial reference of the observations made in this regard in case of ***Secretary, Finance Department Vs.***

West Bengal Registration Service Associations and Ors. 1993 Supl. 1 SCC 153 be made. As held in ***State of Haryana and Anr. Vs. Haryana Civil Secretariat Personal Staff Association 2002 (06) SCC 72*** "equal pay for equal work" is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government.

15. Pertinently the Administrative Tribunal after considering the relevant factual and legal aspects had rightly rejected the claim of the respondent no. 1 for granting the apex scale on the basis of "equal pay for equal work" in the O.A. filed by him. The said well-considered, just and proper order of the Tribunal was wrongly set aside by the High Court on extraneous grounds applying the principle of "equal pay for equal work", while exercising the power of superintendence under Article 227 of the Constitution of India. It is well-settled legal position that the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. In the instant case, the Tribunal had not committed any jurisdictional error, nor any failure of justice had occasioned, and hence the interference of the High Court in order passed by the Tribunal was absolutely unwarranted.

16. In that view of the matter, the impugned orders passed by the High Court being thoroughly misconceived in law and in facts, deserve to be quashed and set aside and the same are hereby set aside. The appeals are allowed accordingly.
