

State Of Haryana & Ors vs M.P. Mohla on 10 November, 2006

Equivalent citations: AIRONLINE 2006 SC 509

Author: S.B. Sinha

Bench: S.B. Sinha, Dalveer Bhandari

CASE NO.:

Appeal (civil) 4772 of 2006

PETITIONER:

State of Haryana & Ors.

RESPONDENT:

M.P. Mohla

DATE OF JUDGMENT: 10/11/2006

BENCH:

S.B. Sinha & Dalveer Bhandari

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) No. 12389 of 2004) S.B. SINHA, J.

Leave granted.

Respondent was appointed as veterinary surgeon in the cadre of Haryana Veterinary Service (Grade I) on or about 5.8.1965. He was promoted to the post of Assistant Director cum Sub-Divisional Officer on 1.6.1980. In the year, 1986, he was granted a pay scale of Rs. 2375- 3600. The State, however, implemented grant of Selection Grade Scale in the scale of Rs. 2000-3500 which was revised to Rs. 2200-4000 and Selection Grade Scale of Rs. 4100-5300 to 20% of the posts of Veterinary Surgeons who had completed 12 years of service. He was placed in the said pay scale by an order dated 20th September, 1993 with retrospective effect from 1.4.1992. In the meantime, however, an intermediary senior scale of Rs. 3000-4500 was introduced which became applicable upon completion of five years of regular service. He became entitled thereto. He was promoted to the post of Deputy Director in the pay scale of Rs. 3000-4500. On 9.4.1996 he was drawing Rs. 4500/- and Rs. 100/- for personal pay.

Haryana Civil Services (Revised Pay) Rules, 1998 (for short "the Revised Rules") came into force on 7.1.1998 in terms whereof the pay scales were revised. In terms of the said Rules, the pay scales of the posts of Deputy Director and Joint Director/ Project Director were said to have been revised from Rs. 3000-4500 and Rs. 3000-5000 to Rs. 10000-13900 and Rs. 10000-15200 respectively.

Another rules known as Haryana Civil Services (Assured Career Progression) Rules, 1998 (for short "the ACP Rules") came into force with effect from 7.1.1998 in terms whereof the pay scales of Rs. 3000-4500 and Rs. 4100-5300 were revised respectively to Rs. 10000-13900 and Rs. 12000-375-16500 with effect from 1.1.1996. In terms of ACP Rules, the pay of Respondent was fixed at Rs. 12000-16500. By a letter dated 15.4.1998, Respondent asked for grant of a certificate of performance of higher responsibility so as to enable him to claim the benefit of promotional increments in the pay scale of Rs. 12000-16500. Therein, he also cited the instances of other persons who had been granted similar benefit.

Pay of Respondent was fixed in the pay scale of Rs. 13500-17250 by an order dated 12.10.1998. A certificate of higher responsibility was also issued to him pursuant where to he claimed promotional increment in the revised scale of Rs. 13500-17250. The claim of Respondent was rejected by an order dated 16.4.1999 stating:

"While inviting your attention on the subject cited above, it is informed that you are already working in the higher pay scale of Rs. 4100-5300 before your promotion. Your pay, therefore, has been correctly fixed under Clause 2 of Note 7 of Rule 15 of A.C.P. Rules, 1998. The Govt. letter dated 7.3.88 is not applicable in respect of pay fixation with effect from 1.1.1996."

A writ petition was filed by Respondent claiming inter alia the following reliefs:

"(i) a writ in the nature of certiorari may kindly be issued in favour of the petitioner and against the respondents quashing the order dated 16.4.1999 (Annexure P/13) whereby claim of the petitioner for fixation of his pay in the higher promotional revised pay scale of Rs. 14300-400-18300 has been rejected on a totally erroneous premise ignoring the fact that the petitioner was already drawing the Selection Grade of Rs. 4100-5300 with effect from 1.4.92 (Annexure P/2) and which Selection Grade scale now has been revised to Rs.

13500-17250 with effect from 1.1.1996 and consequently on his promotion to the next higher post of Dy. Director w.e.f. 29.3.1996, the petitioner is entitled to be placed in the next higher revised pay scale i.e. of 14300-400-18300.

(ii) a writ in the nature of mandamus may kindly be issued in favour of the petitioner and against the respondents directing the respondents to fix the pay of the petitioner in the revised pay scale of Rs. 14300-400-18300 from the date of his promotion as Dy. Director, instead of fixing in the pay scale of Rs. 13500-17250, i.e., the pay scale which the petitioner would have continued to draw even while working on the post of Assistant Director-

cum-Sub Divisional Officer and alternatively the respondents may be further directed to fix the pay of the petitioner on the promotional post of Deputy Director w.e.f. 9.4.1996 on the next stage in the existing pay scale of Rs. 13500-17250 in accordance with Rule 4.4 (c)(i) of CSR Vol. I and to grant all other consequential benefits."

By an order dated 4.12.2000, the said writ petition was allowed directing:

"Accordingly we accept this writ petition and quash the impugned order. It is directed that the petitioner would be promoted in the present corresponding scale of Rs. 4100-5300 and on promotion will be given one increment. The arrears should be paid within four months from today. We deem it necessary to observe that the State should take necessary steps and remove the said anomaly that might arise in case of many other officers."

A Special Leave Petition filed by Appellants thereagainst was dismissed by this Court by an order dated 10.8.2001. In the meanwhile Respondent filed a Contempt Petition claiming a higher scale of pay corresponding to Rs. 14300-18300 wherein Appellants filed their reply stating that the order of the High Court had been complied with. It is not in dispute that the question as regards purported anomaly in the applicability of the Revised Rules and the ACP Rules had not been determined by the court.

The said contention indisputably was raised by Appellants in the special leave petition stating:

"Because the Respondent is not entitled to be fixed in the corresponding pay scale of Rs. 4100-5300 as contained in First Schedule, Part II, of H.C.S. (Revised Pay Rules), 1998 by way of rule 2(h) and the ACP Rules are applicable as contained under Sr. No. 6 in Schedule 1, part 1 of H.C.s (Assured Career Progression) Rules, 1998. Therefore, the order passed by High Court is in contravention of H.C.S. (Revised Pay Rules), 1998 and also not in accordance with H.C.s (A.C.P.) Rules 1968"

It is not in dispute that in its counter-affidavit an admission was made by Appellants stating:

"That this para is wrong and misleading. The Petitioner was working on the post of Deputy Director in the pre-revised scale of Rs. 3000-4500 and selection grade of Rs. 4100-5300 and his pay was protected in the scale of Rs. 4100-5300. His pay was fixed in the pre-revised scale of Rs. 3000- 4500 and his pay was protected in the scale of Rs. 4100-5300. After granting new pay scales by the govt. the pay of the Petitioner was re-fixed in the scale of Rs. 13500-17250, for which he was entitled. The pay fixed by the respondent department is in accordance with the revised pay scale which is correct."

A review application was filed before the High Court despite dismissal of the special leave petition by this Court seeking purported clarifications in the matter of the applicability of the Rules. It was contended that the purported admission made was on a wrong reading of the provisions of the Rules. It was further contended that Respondent is governed by the ACP Rules and not the Revised Rules.

Respondent, on the other hand, contended that the ACP Rules has no application as he had already been promoted twice prior to coming into force thereof.

The said review application has been dismissed by reason of the impugned order.

Before we embark upon the rival contentions of the parties, we may notice that a Division Bench of the High Court passed the following order on 2.3.2004:

"The petitioner was in the scale of Rs. 4100-5300, which was withdrawn vide order dated 4.12.2000, the same was ordered to be restored, dispute arose as to what is the corresponding scale to the said scale in the light of 5th Pay Commission.

Learned Counsel for the parties are not clear as to what corresponding scale was being applied prior to its withdrawal. Stand of the Learned Counsel for the state is that corresponding scale should be Rs. 12000-16500/-, while according to the petitioner corresponding scale should be Rs. 13500-17250/-.

Since Writ Petition has been disposed of and this issue was not adjudicated upon, strictly speaking the controversy raised cannot be the subject matter of the Review Petition. However, this issue will be decided on the next date of hearing."

We may at this juncture also take note of a letter issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department which is in the following terms:

"I am directed to invite your attention on the subject noted above and to say that it has come to the notice of the Finance Department that the various departments are not allowing replacement pay scales of Selection Grade (Pre-revised) as prescribed under Ist Schedule Part II of the Haryana Civil Services (Revised Pay) Rules, 1998 issued vide Finance Department notification dated 7.1.1998.

This matter has been examined by Government in detail and have decided that wherever Selection Grades were existing in the pre-revised scales as a definite percentage of the posts and after stipulated years of service, they would carry the Selection Grade also in the revised scales and the replacement of such Selection Grade would be the replacement scale prescribed under Ist Schedule Part II of the Haryana Civil Services (Revised Pay) Rules, 1998 if the same has not been mentioned separately. This would hold good in case of all the concerned Government employees for whom specific ACP scales have not been provided."

Contention of Mr. R. Srivastava, learned senior counsel appearing on behalf of Appellants is that the High Court despite observing that the question with regard to the applicability of the Rules as also the effect of the purported admission made on behalf of application shall be examined, failed to do so as would appear from the impugned order.

In the functioning of the Executive Government mistake can always take place and if a wrong rule is made to apply by reason thereof, the same ordinarily should not only be allowed to be perpetrated as the same may have a huge financial repercussion. Ambiguity in the matter of applicability of scale of

pay, it was urged, should have been determined by the High Court.

Mr. Prabhjit Jauhar, learned counsel appearing on behalf of Respondent, on the other hand, submitted that the ACP Rules which were issued in 1998 with retrospective effect from 1996 have no application in the instant case. It was admitted that Respondent's pay was fixed in the pay scale of Rs. 13500 - 17250 at the Directorate level and in that view of the matter Appellants cannot be permitted to resile from the said admission.

A judgment as is well-known must be read in its entirety. The judgment of a court must also be implemented. But what would be the effect of a judgment must be considered from the reliefs claimed in the writ petition as also the implications thereof which has to be deciphered from reading the entire judgment. A judgment may also have to be read on the touchstone of pleadings of the parties.

In *State of Karnataka and Others v. C. Lalitha* [(2006) 2 SCC 747], this Court observed:

"A judgment, as is well known, is not to be read as a statute. But, it is also well known that the judgment must be construed as if it had been rendered in accordance with law."

It was noticed:

"In *Gajraj Singh v. State of U.P.* this Court held:

(SCC p. 768, para 8) "A doubt arising from reading a judgment of the Court can be resolved by assuming that the judgment was delivered consistently with the provisions of law and therefore a course or procedure in departure from or not in conformity with statutory provisions cannot be said to have been intended or laid down by the Court unless it has been so stated specifically."

We, as at present advised, do not intend to go into the question as to whether the Revised Pay Rules or the ACP Rules will apply in the case of Respondent. The dispute between the parties has to be decided in accordance with law. What, however, cannot be denied or disputed that a dispute between the parties once adjudicated must reach its logical conclusion. If a specific question which was not raised and which had not been decided by the High Court the same would not debar a party to agitate the same at an appropriate stage, subject, of course, to the applicability of principles of *res judicata* or constructive *res judicata*.

It is also trite that if a subsequent cause of action had arisen in the matter of implementation of a judgment a fresh writ petition may be filed, as a fresh cause of action has arisen.

In *J.S. Parihar v. Ganpat Duggar and Others* [(1996) 6 SCC 291], this Court held:

" The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act "

[See also State of Orissa & Anr. v. Aswini Kumar Baliarsingh, 2006 (7) SCALE 610] The law as regards the effect of an admission is also no longer res integra. Whereas a party may not be permitted to resile from his admission at a subsequent stage of the same proceedings, it is also trite that an admission made contrary to law shall not be binding on the State.

Reliance has been placed on Sangramsinh P. Gaekwad and Others v. Shantadevi P. Gaekwad (Dead) Through LRS. and Others [(2005) 11 SCC 314] but therein the court was considering the effect of an admission made in the pleadings which was binding on the party proprio vigore in the subsequent proceedings.

A review petition filed by Appellants herein was not maintainable. There was no error apparent on the face of the record. The effect of a judgment may have to be considered afresh in a separate proceeding having regard to the subsequent cause of action which might have arisen but the same by itself may not be a ground for filing an application for review.

Mr. Srivastava submitted that an application for review in effect and substance was an application for clarification of the judgment of the High Court. We do not think so. An application for clarification cannot be taken recourse to to achieve the result of a review application. What cannot be done directly, cannot be done indirectly. [Ram Chandra Singh v. Savitri Devi and Others, (2004) 12 SCC 713] If the ACP Rules were applicable in the case of Respondent, it was the duty of Appellants to bring it to the notice of the High Court and ask for adjudication on the said question. But the effective order passed as against it could not have been sought to be nullified by raising a question which had not been raised in the writ petition. There might not have been an adjudication on a question which was relevant for determination of the issue directly or indirectly but in a case of this nature such a contention could not have been entertained in a review proceeding which would have the effect of taking away the benefit granted by a court upon adjudication.

It may not also be open to a party to the lis to ask for a clarification contrary to or inconsistent with its stand taken by it in the writ proceedings. Our attention has been drawn to a decision of this Court in Board of Control for Cricket in India and Another v. Netaji Cricket Club and Others [(2005) 4

SCC 741] wherein this Court opined:

"It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9- 2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake."

Therein a review proceeding was entertained as the court accepted its own mistake in understanding the nature and purport of the undertaking given by the learned senior counsel appearing on behalf of the Board. It was in that context opined that the subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake. Subsequent event may have some relevance but the same must have a direct nexus with the judgment sought to be reviewed. It has been noticed hereinbefore that before us an endeavour has been made to urge that the review application was in effect and substance an application for clarification.

In this case the purported subsequent event is the filing of the contempt petition. Appellants' specific stand in the contempt petition is that the order of the court stood complied with. If the order of the court stood complied with, there was no subsequent event which was necessary to be taken into consideration. Filing of an application under the provisions of the Contempt of Courts Act, 1971 itself cannot be a ground to deny the benefit under a judgment. It is one thing to state that the judgment of the court has been implemented, but it is another think that the effect of the judgment is not that what was being contended by Respondent. It is in that sense, this Court times without number has laid down the law that such subsequent events may give rise to a fresh cause of action.

Reliance has also been placed on a decision of this Court in National Housing Coop. Society Ltd. v. State of Rajasthan and Others [(2005) 12 SCC 149] wherein following Kunhayammed and Others v. State of Kerala and Another [(2000) 6 SCC 359] a Division Bench of this Court opined that when a special leave petition is dismissed by a non-speaking order, the High Court could be moved for a writ for review.

Submission of Mr. Jauhar, however, is that if a review petition is permitted to be filed and allowed, the same would nullify the order of this Court dismissing the special leave petition filed by Appellants. This may be so but we are of the opinion that keeping in view the facts and circumstances of this case it is not necessary for us to make an endeavour to reopen a binding precedent particularly when no such action arises therefor.

We, therefore, are of the opinion that this appeal has no merit and, thus, must be dismissed accordingly. However, the question as regards applicability of one or the other Rules if arises in future, the same has to be determined on its own merit in accordance with law and having regard to the fact situation obtaining in each case. In the facts and circumstances of this case, there shall be no order as to costs.