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T. I. JOSE AND ORS.

v.

MANAGING DIRECTOR, KERALA WATER
AUTHORITY AND ANR.

B

(Civil Appeal No. 4676 of 2012)

FEBRUARY 13, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

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Service Law:

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Pay scale – Of the post of Head Operators in the respondent department – In the line of promotional posts viz. ‘Operator’, ‘Head Operator’ and ‘Mechanical Superintendent’, a post of ‘Senior Operator’ was inserted between the posts of ‘Operator’ and ‘Head Operator’ by an administrative order – Decision of creation of the intermediate post was set aside by High Court – Pursuant to the order of High Court, State deleted the post of ‘Senior Operator’ and refixed the scales of pay corresponding to the existing pre-revised scales of pay – Review petition by the respondent-Authority dismissed – Writ appeals allowed by Division Bench of High Court – In review High Court held that there shall be no recovery of amounts already disbursed to the employees or pensioners of the respondent- Authority – On appeal, held: The higher pay scale which was given to Head Operators was occasioned by creation of an intermediate post of Senior Operators – Once the intermediate post was abolished since it was found to be ultra vires by the High Court, the pay scale of Head Operators was restored to the exactly corresponding pay scale under the revised scales of pay – This action was consistent with law.

Dismissing the appeal, the Court

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HELD: On the analysis of the pay revision, it has emerged before the Court that Head Operators were drawing a pre-revised scale of Rs 1455-2440. The equivalent revised scale of pay under the third pay revision was Rs 4710-7710. Since an intermediate post of Senior Operator was created by an administrative decision, the scale of pay for that post was fixed at the pay scale allowable

to the next higher post of Head Operator. Consequently, the pay scale for the post of Head Operator was made equivalent to that which was drawn in the next higher post of Mechanical Superintendent. The High Court held that an intermediate post could not have been created by an administrative order and would require an amendment to the statutory rules. Following this, the State Government in its GO dated 18 March 2004 abolished the intermediate post. Upon the abolition of the intermediate post, all that was done by the GO dated 18 March 2004 was to clarify that Operators, Head Operators and Mechanical Superintendents would be entitled to draw equivalent revised scales of pay corresponding to their pre-revised pay scales. The higher pay scale which was given to Head Operators under note 13 was occasioned by the creation of an intermediate post of Senior Operators. Once the intermediate post was abolished since it was found to be *ultra vires* by the High Court, the pay scale of Head Operators was restored to the exactly corresponding pay scale under the revised scales of pay. This action was consistent with law. The High Court has fairly issued a direction that no recoveries shall be made. [Paras 13,14,15] [615-C-H; 616-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4676 of 2012.

From the Judgment and Order dated 16.11.2004 of the High Court of Kerala at Ernakulam in W.A. No. 1465 of 2004 and dated 15.12.2005 in R.P. No. 200 of 2005.

A. Raghunath, Adv. for the Appellants.

Nishe Rajen Shonker, Anu K. Joy, Alim Anvar, P. S. Sudheer, Jogy Scaria,, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

1. This appeal arises from a judgment of a Division Bench of the High Court of Kerala dated 16 November 2004.

2. The appellants were working at the material time as Head Operators and Operators under the Kerala Water Authority¹, a statutory

¹KWA

A body established by the State of Kerala on 1 April 1984. KWA implemented three pay revisions:

(i) The first pay revision was on 13 February 1990, with effect from 1 July 1988;

B (ii) The second pay revision was on and with effect from 24 April 1995; and

(iii) The third pay revision was on 19 August 1999, with effect from 1 March 1997.

C 3. Qualified operators were entitled to three grade promotions on the completion of 10, 18 and 25 years of service. Under the pay revision of 1999, the period of service for the third grade promotion was reduced from 25 to 23 years.

D 4. Prior to the third pay revision, there was a post of Operator. The next higher post was of Head Operator. The next available promotional post was that of Mechanical Superintendent. Their pre-revised scales of pay were:

(i) Operators: Rs 1090-1695;

(ii) Head Operators: Rs 1455-2440; and

E (iii) Mechanical Superintendents: Rs 1760-3050.

5. During the course of the third pay revision, an intermediate post of Senior Operator was created. Note 13 in Annexure 2 provided as follows:

F “Note.13: The post of Senior Operator/Head Operator having the same scale of pay will be separate as the Senior Operator and the Head Operator with two different scales of pay. The post of the Senior Operator will be the ratio promotion post for all the Operators. The ratio between the Operator and the Senior Operator will be 5:1. The Senior Operator will be allowed the scale of pay equal to the existing scale of pay of Senior Operator/

G Head Operator. The post of the Head Operator will be the promotion post from the post of the Senior Operators who have the requisite qualifications for the post of Mechanical Superintendent. The ratio between the Senior Operator and the Head Operator will also be 5:1. The Head Operator will be allowed

H the scale of pay equal to the existing scale of pay of the Mechanical

Superintendent (Existing scale Rs.1760-3050 and the revised scale Rs.5635-9135). However, total of the existing strength of Operators/Senior Operators/Head Operators should not exceed on this account. These modifications will take effect from 1-3-1997.” A

6. The above note indicates that as a result of the creation of the intermediate post of Senior Operators, that post would be allowed a scale of pay equal to the existing scale of pay of Head Operators. Consequently, Head Operators would be allowed a scale of pay equivalent to that of a Mechanical Superintendents. The above note also prescribes the ratios to be maintained. In consequence, the following revised scales of pay were given: B C

- (i) Operators: Rs 3440-5385;
- (ii) Senior Operators: Rs 4710-7710
(equivalent to the revised pay scale for Head Operators); and D
- (iii) Head Operators: Rs 5635-9135
(equivalent to the revised pay scale of Mechanical Superintendents).

7. The decision of the State Government to create an intermediate post was challenged in a Writ Petition² before the Kerala High Court. By a judgment dated 12 April 2002, a Single Judge of the High Court came to the conclusion that the introduction of an intermediate post could have only been carried out by means of an amendment to the Special Rules and not by an administrative order. Consequently, the Single Judge held that the notification introducing the post of Senior Operator between Operators and Head Operators shall not work against the appellants and their normal chance of getting grade pay in accordance with the prevailing orders and according to the Special Rules. The Court held that, while the appellants could not be prevented from availing of the benefit of the pay revision, the existing benefit under statutory rules could not be taken away without amending the Rules. E F G

8. On 12 March 2003, the Single Judge granted revised pay scales to the petitioners in OP 4490 of 2000 with effect from 1 March 1997. The order was followed on 3 September 2003 in OP 22119 of 2003.

²OP 6961 of 2000

A 9. Following the above decisions of the High Court, a Government Order³ was issued by the State Government on 18 March 2004. By the GO, the post of Senior Operator was deleted and the scales of pay were refixed corresponding to the existing pre-revised scales of pay. The tabulated chart contained in the GO is as follows:

Sl.No.	Category	Scales of Pay	
		Existing (Rs.)	Revised (Rs.)
1.	Operator	3440-5385	No change
2.	Senior Operator	4710-7710	Deleted
3.	Head Operator	5635-9135	4710-7710
4.	Mechanical Superintendent	6935-11460	5635-9135
5.	Mechanical Superintendent (Higher Grade)	-	6935-11460

Paragraph 8 of the GO reads as follows:

D “The issues raised by the petitioners in Ext.p7 representation dated 16.11.01 O.P.No.19752/02 is disposed of on the above basis. These orders are issued without prejudice to the directions/orders already issued by the Hon’ble High Court in the other related O.Ps and subject to the orders of the Hon’ble Court in the O.Ps pending in the matter.”

E 10. Review Petitions were filed by KWA before the High Court against the orders dated 12 March 2003 and 3 September 2003 on the ground that the scale of pay drawn by the appellants will be lowered in light of the GO. The Review Petitions were dismissed on 8 July 2004 by the High Court on the ground that the GO cannot affect the right of the appellants flowing from the judgment.

G 11. The State and KWA preferred Writ Appeals against the original judgments of the learned Single Judges as well as the decision in review. The Division Bench allowed the Writ Appeals. In review, the High Court held that there shall be no recovery of amounts already disbursed to the employees or the pensioners of the KWA on the basis of the pay revision order, which would not have been payable on account of GO(P) No.18/04/WRD, but which was disbursed on or before the date on which the judgment sought to be reviewed was passed.

H ³ GO(P) No.18/04/WRD

12. The grievance which has been urged on behalf of the appellants by Mr. C.S. Rajan, learned senior counsel, is that as a result of the GO dated 18 March 2004 the pay scales of Head Operators were reduced from Rs 5635-9135 to Rs 4710-7710. Learned senior counsel submitted that the State Government, in the process of complying with the judgment of the learned Single Judge holding that an intermediate post could not have been created by an administrative circular, not only deleted the post, but reduced the pay scale which was being drawn by the Head Operators. This, it has been submitted, was an arbitrary exercise of power.

13. On a careful analysis of the pay revision, it has emerged before the Court that Head Operators were drawing a pre-revised scale of Rs 1455-2440. The equivalent revised scale of pay under the third pay revision was Rs 4710-7710. Since an intermediate post of Senior Operator was created by an administrative decision, the scale of pay for that post was fixed at the pay scale allowable to the next higher post of Head Operator. Consequently, the pay scale for the post of Head Operator was made equivalent to that which was drawn in the next higher post of Mechanical Superintendent. The High Court held that an intermediate post could not have been created by an administrative order and would require an amendment to the statutory rules. Following this, the State Government in its GO dated 18 March 2004 abolished the intermediate post. Upon the abolition of the intermediate post, all that was done by the GO dated 18 March 2004 was to clarify that Operators, Head Operators and Mechanical Superintendents would be entitled to draw equivalent revised scales of pay corresponding to their pre-revised pay scales.

14. We are in agreement with the view of the High Court that the higher pay scale which was given to Head Operators under note 13 was occasioned by the creation of an intermediate post of Senior Operators. Once the intermediate post was abolished since it was found to be *ultra vires* by the High Court, the pay scale of Head Operators was restored to the exactly corresponding pay scale under the revised scales of pay. This is clear from the following pre-revised scales of pay and the equivalent revised pay scales which have been granted to the above categories

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S.No.	Existing Scales of Pay	Revised Scales of Pay
S5	1090-35-1230-45-1500-65-1695	3440-80-3600-85-3940-90-4210-100-5010-125-5385
S10	1455-45-1500-65-1760-85-2440	4710-100-5010-125-5635-150-6235-175-7110-200-7710
S14	1760-85-2440-90-2710-105-2920-130-3050	5635-150-6235-175-7110-200-7710-225-8385-250-9135

This action was consistent with law. The High Court has fairly issued a direction that no recoveries shall be made.

In consequence, we see no merit in the appeal. The appeal is accordingly dismissed. No costs.

Kalpana K. Tripathy

Appeal dismissed.