

A STATE OF UTTAR PRADESH & ORS.

v.

VIJAY SHANKAR DUBEY

(Civil Appeal No. 1757 of 2020)

B MARCH 19, 2020

**[ASHOK BHUSHAN AND
MOHAN M. SHANTANAGOUNDAR, JJ.]**

Service Law:

- C *Pay Scale – Claim for benefit of higher pay-scale – Entitlement – Superannuation of employee on 31.1.1997 who was holding post of Joint Director, Prosecution – On recommendation of Fifth Pay Commission, enhanced pay scale granted w.e.f. 1.1.1996 and accordingly pension revised – By order dated 2.2.2007 a Committee considering the anomalies in the Fifth Pay Commission further upgraded the pay w.e.f. 1.4.2001 – Representation of employee claiming revision of pension on the basis of order dated 2.2.2007 – Employer denied the benefit – Writ petition claiming revised pension on the basis of enhanced pay scale w.e.f. 1.1.1996 – Allowed by High Court – Appeal to Supreme Court – Held: Analogy Committee amended the pay scale on the analogy in the CBI – When a benefit is extended to a category of employees for the first time, State can fix a rational cut-off date – It was not obligatory for the State to extend the benefit of such analogy w.e.f. 1.1.1996 i.e. the date of recommendations of Fifth Pay Commission – The employee was not covered by order dated 2.2.2007.*
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Allowing the appeal, the Court

- HELD: 1. The respondent was extended the benefit of Fifth Pay Commission Report from 01.01.1996 and his pension was thus revised accordingly. The State Government accepted the recommendations of Fifth Pay Commission vide Government order dated 23.12.1997 and decided to revise the pay scale from 01.01.1996. [Para 11] [988-H; 989-A]**
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- 2. The Government order dated 02.02.2007 had enclosure in tabular form having columns- Designation, General Revised**
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Pay Scale with effect from 01.01.1996, Amended Pay Scale with effect from 01.04.2001 and Recommendation. The enclosure indicates that pay scales of all the officers of Prosecution Department were not amended, amendments were made only for the Senior Prosecution Officer (Senior Scale)/Deputy Director Prosecution and Joint Director (Law)/Joint Director (Prosecution) with effect from 01.04.2001. [Paras 12 & 13] [990-A; 991-A]

3. The cut off date, 01.04.2001 for amendment of pay scale of the post of Joint Director, Prosecution on the basis of the recommendation of the Committee of the Chief Secretary was a conscious decision, the amendment in the pay scale was made following the analogy in the CBI organisation of the Center. When a benefit for the first time is extended to a category of employees, the State can always fix a rational cut off date and it was not obligatory for the State to extend the benefit of analogy of the CBI organisation of the Center with effect from 01.01.1996 which was the date of the recommendations of the Fifth Pay Commission. The respondent being not covered by the Government order dated 02.02.2007 was rightly informed that he was not entitled for the benefit of amendment in the pay scale he having already retired on 31.01.1997. [Para 19] [993-H; 994-A-B]

Purshottam Lal and Others v. Union of India and Another (1973) 1 SCC 651 – distinguished.

Case Law Reference

(1973) 1 SCC 651 distinguished Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1757
of 2020

From the Judgment and Order dated 01.11.2017 of the High Court of Judicature of Allahabad, Lucknow Bench, Lucknow in Writ A No 18687 of 2013 G

V. Shekhar, Sr. Adv., Ankur Prakash, Adv. for the Appellants.

P.N. Misra, Rajeev Kumar Dubey, Ms. Saroj Tripathi, Advs. for the Respondent.

- A The Judgment of the Court was delivered by
ASHOK BHUSHAN, J.
1. This is an appeal filed by the State of Uttar Pradesh and others challenging the judgment of Division Bench of the Allahabad High Court, Lucknow Bench dated 01.11.2017 by which writ petition filed by the respondent seeking the benefit of higher pay scale with effect from 01.01.1996 has been allowed.
2. The brief facts of the case for deciding this appeal are:
- The respondent was initially appointed as Assistant Public Officer
- C on 11.02.1963. On 12.06.1964 the respondent was promoted as Joint Director, Prosecution, Class I post. The respondent attained the age of superannuation on 31.01.1997. At the time of retirement he was in the pay scale of Rs.3700-5000 as per Fourth Pay Commission Report. On the recommendations of the Fifth Pay Commission Report the pay scale for the post of Joint Director, Prosecution was revised upward to Rs.12000-16500 in place of Rs.3700-5000. Accordingly, pay scale of respondent was revised and he was given revised pension also.
3. To consider various representations and objections regarding the pay scale consequent to Fifth Pay Commission Report, accepted by the Government on 02.02.1997, a Committee under the Chairmanship of Chief Secretary was constituted. It is also referred as Committee to consider anomalies. The said Committee considered the amendment in the pay scale of the post of the Prosecution Branch also. The Committee recommended that the pay scale of various categories of Prosecution cadre should be upgraded as per the analogy
- D of the post existing in the CBI Organisation of the Center with effect from 01.04.2001. For the post of Joint Director, Prosecution the pay scale was recommended to be revised into Rs.14300-18500 with effect from 01.04.2001. The recommendation of the said Committee was accepted by the Government and an order dated 02.02.2007 was issued
- E accepting recommendation for amending the pay scale of Joint Director, Prosecution as Rs.14330-18500 with effect from 01.04.2001. The amendments in the pay scales with regard to other categories, were also amended from the same date i.e. 01.04.2001. The respondent who had retired on 31.01.1997, after the Government order dated 02.02.2007 submitted a representation on 21.07.2011 praying that he be given the
- F benefit of the Government order dated 02.02.2007 and his pension be

revised with effect from 01.01.1996. On 30.11.2012, the Director, Pension, Uttar Pradesh informed the respondent that he is not entitled for any revised pension since he has already retired from the services on 31.01.1997 and the amendment in the pay scale was enforced from 01.04.2001. A

4. The respondent filed a Writ-A No.18687 of 2013 in the High Court. The High Court by the impugned judgment allowed the writ petition relying on two earlier judgments of the High Court i.e. judgments of the High Court in Special Appeal (D) No.870 of 2009 (State of U.P. and others vs. Anand Kumar Mishra and others) and Special Appeal No.115 (SB) of 2009 (State of Uttar Pradesh and others vs. Ghanshayam Singh and another). The High Court held that the respondent's case being fully covered by the judgment of the High Court in State of U.P. and others vs. Anand Kumar Mishra and others, the respondent is entitled to the benefit of amended pay scale with effect from 01.01.1996. The aggrieved with the judgment of the High Court this appeal has been filed by the State of U.P. and others. B C D

5. We have heard Shri V. Shekhar, learned senior counsel appearing for the appellants and Shri P.N. Misra, learned senior counsel appearing for the respondent. E

6. Shri V. Shekhar, learned senior counsel for the appellants contends that the State Government after considering the recommendations of the Committee decided to amend the pay scales of various posts in the Prosecution Department of the State of U.P. with effect from 01.04.2001 which decision was consequent to the recommendation made by the Committee. Shri Shekhar submits that the date 01.04.2001 was fixed for amending the pay scales following the analogy in the Centre with regard to CBI organisation. The analogy of CBI Organisation was adopted for the first time for making pay scales of different posts in the Prosecution Branch of the State according to the pay scales in the CBI. Hence, date for implementation of said benefit was fixed as 01.04.2001. He submits that the Government order dated 02.02.2007 does not indicate that there was any error in the pay scale which was granted to the respondent on the basis of Fifth Pay Commission Report. He submits that there was a rational basis in fixing the date 01.04.2001 which cannot be validly challenged by the respondent. The High Court relied on the earlier two judgments of the High Court in the case of State of U.P. and others F G H

- A vs. Anand Kumar Mishra and others which was a case of the employees of U.P. Police Radio Department. Another judgment relied by the High Court in Ghanshayam Singh's case was also a case relating not to the Prosecution Wing of the State. The two judgments relied by the High Court were in different set of facts and for different posts which cannot be said to cover the case of the respondent and the High Court erred in holding that the case of the respondent was covered by the aforesaid judgments.
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7. It was further submitted that another Division Bench vide its judgment dated 08.05.2018 in Writ Appeal No.20754 of 2013 (Sudhir

- C Kumar Gupta vs. State of U.P. and others) where the petitioner retired from post of Joint Director(Prosecution) on 30.11.1999 and claimed the benefit of Government order dated 02.02.2007 with effect from 01.01.1996 dismissed the Writ Appeal in which judgment it was correctly held that the benefit cannot be extended to Joint Directors (Prosecution) who retired on 01.11.1999.

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8. Shri P.N. Misra, learned senior counsel appearing for the respondent refuting the submission of learned senior counsel for the appellants contends that two Division Bench judgments of the High Court relied in the impugned judgment were fully applicable. It is submitted that no appeal was filed against the judgment in Ghanshayam

- E Singh's case whereas SLP (C) No. 27765 of 2009 was filed against the judgment of the High Court dated 06.08.2009 in Special Appeal No.870 of 2009 which SLP was dismissed on 06.11.2009.

9. Shri Misra submits that when the Fifth Pay Commission recommendations were implemented from 01.01.1996, the pay scale

- F of respondent was not properly fixed and that is why the Committee for anomalies came into existence which recommended the revision and amendment of pay scale into Rs.14300 to 18500 which ought to have been implemented with effect from 01.01.1996.

10. We have considered the submissions of the learned counsel

- G for the parties and perused the records.

11. Between the parties there is no dispute that Fifth Pay Commission revised pay scale of Joint Director, Prosecution from Rs.3700-5000 to Rs.12000-16500. The respondent was extended the benefit of Fifth Pay Commission Report from 01.01.1996 and his pension

- H was thus revised accordingly. The State Government accepted the

recommendations of Fifth Pay Commission vide Government order dated 23.12.1997 and decided to revise the pay scale from 01.01.1996. Several objections and representations were submitted by several Departments including Officers working in the Directorate of Prosecution. The relevant portion of the Government order dated 02.02.2007 is as follows:

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“From,

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(illegible)

Under Secretary U.P. Government,

To,

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The Director General Prosecution,
Directorate of Prosecution U.P.,
Lucknow.

Letter No.246/VI-P-9-07-31(49)/2000 dated 02.02.2007.

Sub: Regarding amendment in the Pay Scale of the various posts existing in the Prosecution Department in the State of Uttar Pradesh.

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This is with reference to the captioned matter. I have been directed to say that on the basis of the recommendations of the Pay Committee 1997-99 constituted for revision of pay scales etc. of the Government Personnels employed in the various Departments of the State Government of Uttar Pradesh and after taking into consideration such recommendations, the Committee headed by the Chief Secretary was constituted for taking decision in cases of incidents of anomalies in the pay scales etc. On the basis of the recommendations of the said Chief Secretary Committee. His Excellency the Hon'ble Governor of Uttar Pradesh is pleased to sanction a revised Higher Pay Scale, for the various posts, in the Prosecution Department as referred in Column-2 of the chart annexed with this Government Order, in place of the General Revised Pay Scales applicable with effect from 01.01.1996, as shown in column-3 of the said chart, to be implemented with effect from 01.04.2001.

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A 12. The Government order dated 02.02.2007 had enclosure in tabular form having columns- Designation, General Revised Pay Scale with effect from 01.01.1996, Amended Pay Scale with effect from 01.04.2001 and Recommendation. It is useful to extract the enclosure to the Government order dated 02.02.2007 which is to the following effect:

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Sl.No.	Designation	General Revised Pay Scale with effect from 01.01.1996	Amended Pay Scale with effect from 01.04.2001	Recommendation
1	2	3	4	5
1.	Prosecution Officer	7450-11500	8000-275-13500	--
2.	Senior Prosecution Officers (Ordinary Scale)	8000-13500	10000-325-15200	--
3.	Senior Prosecution Officer(Senior Scale)/Deputy Director Prosecution	10000-15200	12000-375-16500	The designation of Senior Prosecution Officer (Senior Pay Scale)/Deputy Director shall be re-designated as Joint Director Prosecution.
4.	Joint Director (Law)/Joint Director (Prosecution)	12000-16500	14300-400-18400	The designation of Joint Director (Prosecution) and Joint Director (Law) shall be re-designated as Additional Director (Prosecution) and Additional Director (Law)

Sd/-

Manju Chandra
Special Secretary”

13. A perusal of the above enclosure indicates that pay scales of all the officers of Prosecution Department were not amended, amendments were made only for the Senior Prosecution Officer (Senior Scale)/Deputy Director Prosecution and Joint Director (Law)/Joint Director (Prosecution) with effect from 01.04.2001 as mentioned in column No.4. A

14. Learned counsel for the appellants, during the course of submissions, has submitted that date, 01.04.2001 was recommended by the Committee of the Chief Secretary due to accepting the analogy in the CBI organisation of the Center. Learned counsel for the appellants referring to the recommendation of the Committee of the Chief Secretary contented that the higher pay scale sanctioned to the Joint Director in the Prosecution Department was on the basis of analogy of CBI organisation of the Center. In the written submission which has been submitted by the learned counsel for the appellants recommendation of Chief Secretary's Committee on consideration of amendment in the pay scale of the post of the Prosecution Branch has been placed for perusal which indicates that the recommendations of the Committee were: B

“.....In view of the above situations, the Committee recommends that the pay scales of the various categories of the prosecution cadre should be upgraded as per the above general decision on the analogy of the existing posts in the CBI organisation of the Center from 01.04.2001 as follows.....” C

15. The recommendations of the Committee of Chief Secretary were accepted and consequent Government order was issued on 02.02.2007 accordingly. D

16. The High Court in the impugned judgment relying on two earlier judgments of the High Court, in Ghanshyam Singh and Anand Kumar Mishra and others, held that the case of the respondent is covered by the said judgments, hence, the writ petition is to be allowed. The High Court had not opined as to how the cut off date was fixed as 01.04.2001 is unsustainable. The Report of anomaly of the Committee with regard to different Departments recommending different pay scales is based on pay structure of different Departments and merely because employees of wireless department has been given higher scale with effect from 01.01.1996 that cannot be the ground to declare the date, 01.04.2001 fixed for implementation of the amendment of pay scale of G

- A the Joint Director, Prosecution illegal. We find substance in the submission of the learned counsel for the appellants that amendment in the pay scale of Joint Director, Prosecution was recommended by the Committee of the Chief Secretary on the analogy of the CBI organisation of the Center. Thus, the benefit of upgradation of pay scale as per pay scale in CBI organisations was accepted for the first time.
- B The representation of Prosecution Wing was accepted by the Committee of the Chief Secretary agreeing to extend the benefits of the CBI organisation of the Center. When the amendment in the pay scale is being affected, we do not find any arbitrariness in fixing uniform date, 01.04.2001. The submission of Shri Misra that amendment of the pay
- C scale ought to relate back from 01.01.1996 which was the date fixed by the Fifth Pay Commission cannot be accepted in the facts of the present case.

17. Shri Misra has also placed reliance on the judgment of this Court in **Purshottam Lal and others vs. Union of India and another, (1973) 1 SCC 651**. In the above case, the petitioners were employed with the Forest Research Institute and Colleges, Dehra Dun which was a department of the Government of India, Ministry of Food and Agriculture. The Second Pay Commission submitted its report and made recommendations with regard to Scientific Staff. The revision of the pay scale of the Scientific Staff in the Forest Research Institute was with effect from 21.06.1962 whereas recommendation of Second Pay Commission was accepted by the Government with effect from July 1, 1959 with regard to similar sister Institutions. The said Scientific Staff of Forest Research Institute protested and submitted representation and thereafter filed the writ petition under Article 32 in this Court. Before this Court arguments were raised on behalf of the Government that Second Pay Commission did not deal with the case of the petitioners and they were not entitled for the benefit with effect from July 1, 1959 which submission was not accepted. In paragraphs 14,15 and 17 this Court laid down following:

- G “**14.** Mr Dhebar on behalf of the Government maintains the same position and he says that the Pay Commission Report did not deal with the case of the petitioners. We are unable to accept this contention. The terms of reference are wide, and if any category of government servants was excluded material should have been placed before this Court. The Pay Commission has clearly stated that for the purposes of their enquiry they had taken all persons
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in the Civil Services of the Central Government or holding civil posts under that Government and paid out of the Consolidated Fund of India, to be Central Government employees. It is not denied by Mr. Dhebar that the petitioners are paid out of the Consolidated Fund of India.

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15. Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all government employees or it has not. But if it has made a reference in respect of all government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned.

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17. In the result the petition is allowed and it is directed that the revised pay-scales of the petitioners will have effect from July 1, 1959, in accordance with the recommendations of the Pay Commission. We further direct that the petitioners should be paid the amount payable to them as a consequence of the revision of the pay-scales with effect from July 1959. The petitioners will have the costs of this petition.”

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18. In the above case, this Court has considered a case which was also covered by the Second Pay Commission but benefits were not extended whereas benefits to the similar sister Institutions were extended. This Court, thus, allowed the writ petition and directed the benefit to writ petitioners also with effect from July 1, 1959. The above case has no bearing on the facts of the present case. The sequences and events in the present as noted above are based on different set of facts and the above judgment does not help the respondent in the present case.

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19. We, thus, are of the view that the cut off date, 01.04.2001 for amendment of pay scale of the post of Joint Director, Prosecution on the basis of the recommendation of the Committee of the Chief Secretary was a conscious decision, the amendment in the pay scale

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- A was made following the analogy in the CBI organisation of the Center. When a benefit for the first time is extended to a category of employees, the State can always fix a rational cut off date and it was not obligatory for the State to extend the benefit of analogy of the CBI organisation of the Center with effect from 01.01.1996 which was the date of the recommendations of the Fifth Pay Commission. The respondent being not covered by the Government order dated 02.02.2007 was rightly informed that he was not entitled for the benefit of amendment in the pay scale he having already retired on 31.01.1997.
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20. In the foregoing discussions, we are of the view that the judgment of the High Court is unsustainable and is hereby set aside. The appeal is allowed.

Kalpana K. Tripathy

Appeal allowed.