

Gajendra Kumar Singh & Others Vs Union Of India & Others

Court: Central Administrative Tribunal Principal Bench, New Delhi

Date of Decision: Feb. 10, 2021

Acts Referred: Delhi Municipal Corporation Act, 1957 " Section 59, 98

Hon'ble Judges: L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench: Division Bench

Advocate: Ajesh Luthra, Himanshu Gautam, M.D. Jangra, R.V. Sinha, Amit Sinha, R.K. Jain, Manjeet Singh Reen, Amit Yadav

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J

1. In this batch of O.As., common questions of law and fact arise. Hence, they are disposed of through a common judgment.

2. The applicants joined the service of North Municipal Corporation of Delhi (North DMC) as Lower Division Clerk or similar posts. Thereafter, they

were promoted. By the year 2008, they were holding the posts of Administrative Officer, Junior Accounts officer and other equivalent posts, in the

pay scale of Rs.5000-8000. A proposal was mooted by the Commissioner, before the Corporation, i.e., the elected body, for enhancing the pay scale

of such group of employees from Rs.5000-8000 to Rs.5500-9000. In anticipation of the approval by the Corporation, the pay scale was revised, as

indicated above, through order dated 28.12.2007. In its meeting held on 08.10.2008, the Corporation passed a Resolution No.428 approving the revision

of pay scale. This was followed by the extension of the corresponding benefit under the recommendations of 6th Central Pay Commission and some

administrative changes in the nomenclature of the posts etc. In the year 2014, the benefit was extended to the Superintendents, Senior Stenographers

and Head Clerks/Junior Stenos respectively, through administrative orders.

3. On 30.03.2017, the Additional Commissioner (FA&AP), North DMC directed all the Departments to put on hold, the matter pertaining to

upgradation of the pay scales. This was on the basis of the objections raised in the special audit by the Chief Municipal Auditor. There was, however,

some discrepancy about the approach in this behalf among various Municipal Councils of Delhi.

4. Through Office Order dated 03.04.2018, the Additional Commissioner (FA&P) directed the Accounts Officers to withdraw the benefits of

upgradation of the pay scales to various category of employees. This is said to have been objected to by the Mayor of the concerned Corporation. The

applicants have also made representations on 24/25.04.2018 and on some other dates. Since no tangible results were forthcoming, they filed these

O.As. with a prayer to set aside the orders dated 30.03.2017 and 03.04.2018, through which the benefits of upgradation of benefits was withdrawn.

Prayer is also made for restoration of the benefits, that were extended to them, through various orders, on the basis of the Resolution passed by the

Corporation.

5. The applicants contend that the Corporation is vested with the power to decide various matters, including the one of fixation of pay scales for its

employees and it was in exercise of such powers under the relevant provisions, that the Corporation passed the Resolution and extended the benefits.

They submit that the Commissioner of the Corporation was part of the decision making process, inasmuch as he not only initiated the proposal, but also

apprised the Corporation when the decision was taken. It is stated that as long as the Resolution passed by the Corporation remains, there was

absolutely no basis for withdrawal of the benefits, and the impugned orders amount to nullifying the Corporation. Reference is made to the relevant

provisions of law.

6. On behalf of the respondents, separate counter affidavits are filed in the respective O.As. They state that though the Corporation passed the

Resolution, the ultimate Executive power vests in the Commissioner, as per Section 59 of Delhi Municipal Corporation Act, 1957 (for short "DMC

Act") and in the instant case, the impugned orders came to be passed on account of the serious disparity in revision of the pay scales, as pointed

out by the Chief Municipal Auditor. By making reference to the judgment of Hon'ble Delhi High Court in Municipal Corporation of Delhi v. C M

Vij & another, (2013) SCC OnLine Del 3793, they state that though the power to fix the salaries and allowances vests in the Corporation, it is always

subject to the conditions of prior consultation and approval, and the power of the Commissioner. Reference is also made to certain other judgments.

7. We heard Mr. Ajesh Luthra, learned counsel for applicants in O.A. No.1734/2018, Mr. Himanshu Gautam, learned counsel for applicants in O.A.

No.2053/2018, Mr. M D Jangra, learned counsel for applicants in O.A. No.911/2020, Mr. R V Sinha with Mr. Amit Sinha, Mr. R K Jain, Mr. Manjeet

Singh Reen and Mr. Amit Yadav, learned counsel for respondents, in detail.

8. The controversy in this batch of O.As. is very limited. The applicants, who held various posts at the relevant point of time, were extended the

benefit of the enhancement of pay scale from Rs.5000-8000 to Rs.5500-9000. Initially, this was extended in anticipation of the approval by the

Corporation. Thereafter, the Corporation passed a Resolution extending the benefit of pay scale. There is no denial of the fact that the Corporation is

vested with the power under Section 98 the DMC Act, to fix the salary and emoluments of its employees. It is true that the Corporation cannot pass a

Resolution at its whims and fix the emoluments of its employees, at its discretion. The facts and figures, and the relevant provisions of law are

required to be taken into account, before a Resolution in this behalf is passed. The public funds cannot be permitted to be squandered at the whims of

the Corporation.

9. In the instant case, extensive verification and exercise has taken place before the benefit of pay scale was granted. It is also necessary to mention

that the Commissioner himself mooted the proposal and submitted a comprehensive note. That, in turn, was approved by the Corporation. It is not as if

the Resolution passed by the Corporation was implemented straightway. The Executive Authority has also taken into account, various asserts and

issued necessary orders in this behalf. The arrangement remained in force for years together.

10. In case any serious defect or flaw is noticed in the revision of the pay structure, the same was required to be brought to the notice of Corporation,

so that it may take its own decision in that behalf. By referring to the objection raised by the Audit Section, the respondents have issued the Office

Order dated 03.04.2018. For the sake of convenience, the entire order is reproduced:

“Office Order

Whereas vide corporation resolution no. 289 dated 08.12.2014, the pay scale of Head clerk, jr. Steno, Supdt. And Sr. Steno were upgraded as under:

(i) Head Clerk (ASO) & Jr. Stenographer (PA) : 5500-9000 to 7450-11500 with grade pay of 4600 in place of GP of Rs. 4200/-

(ii) Supdt. (SO) and Sr. Steno (PS) : Rs. 6500-10500 to Rs. 7500-12000 with GP of Rs. 4800 in place of 4600.

The office orders were issued vide No. UDC-II/AO/CED/NDMC/2014/33 dated 02.01.2015 & No. Supdt. IV/AC/CED/NDMC/2016/3477 dated

06.12.2016.

Whereas, on the analogy of the Head Clerk, the pay scale of Junior Accounts officers were also upgraded from 5500-9000 to Rs. 6500-10500 further

upgraded in the pay band PB-2 (9300-34800) with Grade pay of Rs. 4600 (corresponding to equivalent upgraded pay scale of pre-revised pay scale

vide corporation resolution No. 2017 dated 17.10.2016 issued vide office order No. DCA(FAG)/2016/333 dated 08.11.2016.

Whereas on the analogy of Supdt. (SO) and Sr. Stenographer (PS), the pay scale of Translator was also upgraded vide corporation resolution No. 289

dated 08.12.2014 issued vide office order No. AC/CED/NDMC/2015/3549 dated 20.10.2015.

Whereas, after having received many complaints from different corners, the matter was taken up by the Chief Auditor/MCD for audit in this regard.

The Municipal Chief Auditor had categorically mentioned that the enhancement was not in order as well as implementation of this order had created a

huge gap between the pay scale of junior as well as senior.

The conclusion of detailed compliance audit report is reproduced as under: -

The study of reports of 5th & 6th CPC shows that pay scales of Assistants working in Central Secretariat and Head Clerks / Assistants working in

organizations outside secretariat were different even since evolution of administrative set up in India. The matter of parity between post of Central

Secretariat and similarly placed post in field offices was / is a decade's long demand / dispute, but the government has never given full parity to posts

of field offices (subordinate offices) due to considering (1) higher qualification (i) submission of files directly to decision making authority (ii)

considering policy making more significant job of Assistants / Stenos equivalent working under Secretariat than Assistants / Stenos equivalent working

outside Secretariat organizations.

6th CPC vide Para No.3.1.14 recommended for up gradation of scale of all the executive staff working in the middle hierarchy of administration and

upgrade the scale of 4500-7000 / 5000-8000 to the level 6500-10500 and give Grade Pay of 4200 to Head Clerk/Assistants/Stenos Grade-II and

equivalent staff. 6th Central Pay Commission was of a view to maintain parity between field offices and secretariat services as, in Commission's view,

equal emphasis has to be given to the field offices in order to ensure better delivery. Accordingly, Commission recommended merging the pay scales

of 5000-8000, 5500-9000, 6500-6900 and 6500-10500. However, government accepted the merger of pay scales proposed; however, the existing

higher status of Secretariat services remained continued as government granted G.P. of Rs.4600/- corresponding to pre-revised pay scale 7450-11500

to those posts only which was in the scale of 6500-10500 as on 01.01.2006 and accepted similarity between similar posts only on the ground of

recruitment rules/qualifications and similar service conditions.

After scrutiny of up gradation files of pay scales of Head Clerks, Junior Stenographers, Junior Accountant and Translators & Superintendent it seems

that all the facts in the matter was not brought to the notice of the Competent Authorities leading misunderstanding of spirit of report of pay

commissions and Office Memorandum issued by Government resulting a huge financial burden on Municipal exchequer, The matter of giving parity

between Secretariats and Non-Secretariats organizations was/is a decade's long policy matter to be resolved and Pay Commissions/Government only

could take appropriate decision/manner of giving parity in the matter and Local Bodies like Corporations have not such expertise/dedicated staff to

decide such matters. Hence, it would be appropriate if facts mentioned above are considered with reference to 5th & 6th CPC and Office

Memorandum issued on the subject before taking any decision in the matter".

Whereas, a letter was issued to DOPT for clarification regarding correctness of pay fixation. The D^yPT vide letter dated 11.04.2017 has clarified

that the instructions issued by them are applicable to Central Government Civilian employees and post only and these are not directly suo-moto

applicable to autonomous bodies which are governed by their own set of rules.

Whereas, a letter dated 21.02.2018 was sent to the Jt. Secretary, Ministry of Finance, Deptt. Of Expenditure for certain clarification regarding

upgradation of pay of Head Clerk, Jr. Stenographers, Jr. Accounts Officers, Translators and Supdts. in the North Delhi Municipal Corporation at par

with Assistants of CSS Cadre.

The Joint Secretary, Ministry of Finance has vide letter No.F.No.19 / 5/2018 / E-III.B dated 23.03.2018 has send the reply. Point No.2 of the reply is

reproduced as under: -

So far as the issue of grant of higher and upgraded grade pay of Rs.4600 is concerned, CCS (RP Rules) clearly provide different and specific pay

structure in case of office staff working in organizations outside the secretariat. In the Central Govt., staff in the Secretariat and outside Secretariat

are on two, different footings., since the CCS (RP) rules specifically state the merger of post of Head Clerk etc. in the pre-revised pay scale of

Rs.4500-7000 and Rs.5000-8000 are to be granted grade pay of Rs.4200 in organizations outside the secretariat, granting of higher grade pay of

Rs.4600 is not within the e rules. As per this department's OM dated 13.11.2009, Grade Pay of Rs.4600 has to be granted only to those posts which

were in the pre revised pay scale of Rs.6500-10500 and not the post which were in the lower pay scale and given grade pay of Rs.4200 based to the

pre-revised pay scale of Rs.6500-10500

Whereas, after considering all the above and facts, i.e. the Audit Report of Municipal Chief Auditor, clarifications received from DOP&T and

Ministry of Finance, following orders are hereby issued to all concerned for strict compliance with immediate effect.

Head Clerk (ASO)), Jr. Steno (PA), Junior Accounts Officer, Supdt. (SO) & Sr. Steno (PS), Translator:

1. The upgraded pay scales/Grade pay in respect of Head Clerk (ASO), Jr. Steno (PA), Junior Accounts Officers, Supdt. (SO) & Sr. Steno (PS) &

Translators issued vide above office orders are hereby withdrawn immediately.

2. The pay fixation of each and every employees pertaining to these cadres may be amended/re-fixed and the overpayment/arrears paid to them may

be recovered in equal installments as have already been paid to them;

3. The cases of retired employees may be re-examined and their pension may be revised as per new pay fixations. Necessary recovery may be

effected immediately to avoid further loss.

This issues with the approval of the competent authority.

All the DDOs, Dy. Chief Controllers of Accounts Officers are hereby directed to implement this office order immediately.

11. The order extracted above, in fact, reveals the entire background of the case. It was clearly mentioned that the Corporation passed a Resolution

No.289 dated 08.12.2014 providing for enhancement of the pay scales of certain categories of employees and that, in turn, was implemented. The gist

of the entire audit report was also furnished in the impugned order.

12. When the audit has raised an objection, the only course open to the Executive Authority was to bring it to the notice of the Corporation. However,

even while keeping the Corporation in dark, the officials have corresponded with the Department of Personnel & Training and thereafter the Ministry

of Finance. Ultimately, the Additional Commissioner (F&G) issued the order, in a way, annulling the Resolution of the Corporation.

13. The entire exercise, that led to the passing of impugned orders, is clearly violative of the specific provisions of the DMC Act. There was no way,

that the Additional Commissioner or even the Commissioner could have annulled the decision taken by the Corporation that too, when it was

implemented already.

14. The reasons mentioned by the respondents in the counter affidavit are totally unacceptable. The Executive powers of the Commissioner cannot

override the legislative powers of the Corporation. It is a different matter that even where a Corporation passed the Resolution, the Commissioner,

being the Executive Authority, can apprise the Corporation, of the difficulties in implementation thereof, duly citing the relevant provisions of law. In

such a case, the Corporation may re-visit its own decision. Once the Resolution was passed and implemented by the Executive Authority, the reversal

thereof, without reference to the Corporation, would lead to serious legal and administrative problems. In a way, the very competence of the

Corporation comes to be challenged by its employees. We are of the view that the impugned orders are violative of the provisions of the DMC Act

and they cannot be sustained in law.

15. The O.As. are accordingly allowed and the impugned orders are set aside. It is, however, left open to the concerned Executive Authority to place

the matter before the Corporation for its consideration. The exercise in this behalf shall be completed within a period of two months from the date of

receipt of a copy of this order. The further course of action would depend upon the decision, which the Corporation may take.

16. Pending M.As., if any, shall stand disposed of.

There shall be no order as to costs.