

(2006) 07 AHC CK 0204

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 46872 of 1999

Raghuveer Singh Jain

APPELLANT

Vs

The Secretary, U.P. Power
Corporation Ltd. and Others

RESPONDENT

Date of Decision: July 20, 2006

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2006) 6 AWC 5761 : (2006) 111 FLR 20

Hon'ble Judges: V.C. Misra, J

Bench: Single Bench

Advocate: S.P. Singh and Party in Person, Pankaj Mithall and Madan Mohan, for the Appellant; Nishant Mehrotra and A.K. Mehrotra, for the Respondent

Final Decision: Allowed

Judgement

V.C. Misra, J.

Sri Raghuveer Singh Jain-petitioner in person and Sri Nishant Mehrotra, Advocate, holding brief of Sri A.K. Mehrotra, learned Counsel for the respondents are present. Counter and rejoinder affidavits have been exchanged between the parties. On the joint request of learned Counsel for the parties, this writ petition is being disposed off at the admission stage.

2. This writ petition has been filed by the petitioner being aggrieved by impugned order dated 4.10.1999 (Annexure No. I to the writ petition), passed by respondent No. 4 rejecting the representation of the petitioner moved on the direction dated 16.7.199 issued by this Court in writ petition No. 10446 of 1996, claiming retiral benefits taking into account the services rendered with the ex-licensee and not to recover the difference of salary after exparte revision of salary and pension by the respondents.

3. The facts of the case in brief are that the petitioner was appointed as a clerk on 21.8.1958 in the Electric Supply Company Ltd., Saharanpur (hereinafter referred to as the Company) and his services were confirmed on 1.2.1959 after the petitioner had put in 14 years of service in the Company, the U.P. State Electricity Board (hereinafter referred to as the Board) took over the charge of the Company and he was appointed as noter and drafter under the employment of the Board on the same pay scale, which he was getting in the Company at the time of taking over the charge of the Company through Board's order No. 296. As per paragraph 5 of the covering letter dated 28.12.1975 (Annexure No. 4 to the writ petition), the Board granted usual draw of increments to the petitioner w.e.f. 1st April of every year and since then the petitioner has been paid due increments in his revised pay scale from time to time. Paragraph 5 of the aforesaid letter, reads as under:

The date of increment in case of the employees in their present pay scales from earlier than 1.4.1969 will be kept as 1st April year and for other employees the date of increment shall be as applicable to them under the ex-licencees.

4. The services of the petitioner were confirmed w.e.f. 1.4.1976 with the Board and he was denoted as a cashier at Sl.No.16 of the confirmation list. During the employment of the petitioner with the Board, the petitioner's pay scale was revised and fixed from time to time in accordance with the rules. A scrutiny/revision/fixation of the pay scale first time took place on 20.11.1978 w.e.f. 1.4.1974 in pursuance of the Board's order No. 302 Wage Cell/SEB/78 followed by Board's order No. 336 dated 20.11.1978. This fixation was subsequently checked and verified by the Regional Accounts Officer on dated 20.3.1978, 1.4.1979, 1.4.1992 and thereafter by Deputy Chief Accounts Officer on dated 22.1.1988, dated 7.2.1991 and dated 27.4.1992 under Board's Order No. 252, dated 11.3.1992 and entered into the service book (Annexures No. 5,6,7, 8 & 9 to the writ petition) and the petitioner was paid his salary alongwith increment as usual without any interruption and deduction. The petitioner on attaining the age of superannuation retired on 31st January, 1996. On 11.8.1995 (Annexure-11 to the writ petition and C.A.-11) without issuing any show cause notice or without affording any opportunity of hearing respondents re-fixed the salary of the petitioner w.e.f. 1.4.1979 in the pay scale of Rs. 1650-2690 and fixed Rs. 2390/- as on 1.4.1995, whereas on the said date the salary of the petitioner had already been fixed and paid at Rs. 2690/- per month, thereby reducing four increments admissible to the pay of the petitioner already paid. In consequence of the same, the concerned Executive Engineer vide its letter dated 6.12.1995 directed deduction to be made from the salary of the petitioner as well as from the gratuity of the petitioner.

5. In the counter affidavit, it has been asserted by the respondents that the petitioner appears to have procured a copy of the said chart dated 11.8.1995 and he made a representation dated 19.9.1995 to the Superintendent Engineer, regarding the said rectification, who forwarded the same to the Deputy Chief Accounts Officer

of the Board, who in response informed the Superintendent Engineer that the appointment of the employee of the erstwhile Company would be treated as fresh appointment for all practical purpose and no benefit would be given to the such employee computing the previous service rendered in the Company since the petitioner had been given retrenchment compensation and that suitable action be taken for revision of salary/pension etc. This was followed by another D.O. letter dated 31.11.1995 by the Chief Engineer, Meerut Zone, U.P. State Electricity Board on the same terms. In pursuance of the same, the petitioner, who was previously given first time scale w.e.f. 1.4.1979 was refixed w.e.f. 5.12.1981, second time scale w.e.f. 1.4.1983 was refixed w.e.f. 15.12.1988 and third time scale given w.e.f. 1.12.1987 was refixed w.e.f. 15.12.1993. Consequently, a direction was issued for recovery of the difference amount on the basis of the said revised pay fixation of the petitioner.

6. That no specific notice or opportunity of hearing was provided to the petitioner before respondents entered into the above said exercise of revision/ rectification and recovery proceedings. It has also been averred by the petitioner in writ petition that 11 persons along with the petitioner in the erstwhile Company were taken in service with the Board and all those 11 persons have retired earlier to the petitioner and there had never been any reduction in their pay scale or withdrawal of already awarded increments granted to them from time to time and it was for the first time the petitioner was singled out and treated differently from the other similarly placed 11 persons, referred to in paragraph 20 of the writ petition. These facts have not been denied in the counter affidavit filed by the respondents. It is also the case of the petitioner that the Board Order No. 1489 dated 25.2.1989 had been further revised and clarified vide Board Order No. 1702, dated 29.5.1995, providing the benefit to the officials who had been allowed two i.e. first and second time pay scale before 1.12.1987 that their pay scale matter would not be reopened. Admittedly, the petitioner had been given two time pay scale on 1.4.1979 and 1.4.1983 before the fixed date 1.12.1987 after being duly checked and verified by the Deputy Chief Accounts Officer of the Board and the Board in view of the same should not have taken any action reducing the increment at the stage of superannuation. Reference has been made by the petitioner to the Board's Orders (Board Order No. 2939, dated 5.8.1977(Annexure No. 15 to the writ petition) by which the ex-licensee of the other undertaking, whose fitment on the Board's cadre post have been finally fitted in the Board service for computing the period of 10 years for granting benefit of the next higher scale in III and IV class employee was also extended to the similar categories of ex-licensee employee, and that their earlier service period with ex-licensee and that with the Board will be added together provided the nature of duties with both under the ex-licensee and the Board have been identical. As per Board's Order dated 16th June, 1975 (Annexure No. 16 to the writ petition), it was directed that while considering inter-se seniority among ex-licensee employees and the Board's employees, their respective seniority with the company in the cadre would be maintained. The petitioner has pleaded that all these Board's Orders

applied to the case of the petitioner as the nature of duties of the petitioner were identical with the company and the Board and the Board keeping in view the said Board's orders allowed the time pay scales to the petitioner from time to time. The petitioner has filed the relevant documents issued by the respondents regarding checking and verification by the concerned accounts section providing final fixation of the salary of the petitioner of Rs. 2690 per month alongwith other benefits at the time of his retirement, which have not been denied by the respondents. However, in the counter affidavit the respondents have asserted that the fixation and salary and time scale of the petitioner had been wrongly made right from the beginning and the revision and rectification have been validly made and the basic salary of the petitioner has been rightly fixed at Rs. 2390 instead of Rs. 2690.

7. Being aggrieved the petitioner has filed the writ petition mainly on the grounds, inter alia, that the impugned order rejecting the representation is not supported by any reasons and has been passed without application of mind and the procedure adopted by revising his the salary and the time pay scale right from the initial date of his appointment and further initiating the recovery proceedings at the fag end of his service was highly malafide, unjustified, discriminatory and not tenable in the eyes of law.

8. Heard the petitioner and in person, learned Counsel for the respondents at length and perused the record of the case.

9. The petitioner has relied upon the decision of Hon"ble the Apex Court rendered in the case of [Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others](#), . A reference has been made to paragraphs 21, 23, 24 & 25 and it has been asserted that the basic principle laid down therein are fully applicable in the present case of the petitioner also. Paragraph 21 reads as under:

21. It can, therefore, be said that a rule which operate in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being viola five of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

10. In paragraph 23, reference has been made to the case of [State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others](#), quoting the following paragraph, reads as under:

The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do"s and don"ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy, the requirements of the Constitution today taking into account the accrued or acquired rights of the parties

today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years, We are concerned with today's rights and not yesterday's. The legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history.(319-320)

11. In paragraph 24, reference has been made to several other similar decision of Hon"ble the Apex Court. In paragraph 25, reference has been made to the expression "vested rights" or "accrued rights" which reads as under:

In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse affect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby Inking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra), U.S. Yadav (Supra) and Raman Lal Keshav Lal Soni and Ors (Supra).

12. Learned Counsel for the respondents has relied upon the decisions in the case of [Union of India and Others Vs. Smt. Sujatha Vedachalam and Another](#), in the case P.H. Reddy and Ors. v. N.T.R.D. and Ors. reported in 2002 (4) E.S.C. 23 and in the case of [Union of India and others Vs. Keshab Lal Roy and others](#), The decisions cited by the learned Counsel for the respondents do not apply to the present facts of the case. In the case referred to in [Union of India and Others Vs. Smt. Sujatha Vedachalam and Another](#), the petitioner requested for her transfer on settled terms and conditions and that she would join as direct recruitment to a lower post, but by mistake her pay was erroneously fixed at higher pay scale. The Hon"ble Apex Court upheld the refixation and recovery of excess amount. In the case reported in 2002 (4) HSC (S.C) 23, it has been held that salary of ex-serviceman on reemployment erroneously fixed on higher pay scale it could be refixed on correct scale subsequently. However, their Lordships held that the employees who have received the higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn and the direction of the appropriate authority requiring reimbursement of the excess amount drawn was annulled. In both these cases the higher pay scale was fixed erroneously and it could be rectified, whereas in the present case there is no erroneous fixation of the pay scale or even of

wrongly granting time bound pay scale or miscalculation, rather, in the annual increment and fixation of time bound pay scale of the petitioner was noticed and duly considered and acted upon in terms of the relevant Board's Orders issued from time to time. If the mistake has been committed inadvertently then it can be corrected at later stage in accordance with law. However, if a final decision has been taken after considering each and every fact and duly acted upon then it would not amount to a mistake and it cannot be revisited again and modified to the detriment of the employee at a later stage that too without affording him any opportunity of hearing. In the present case, the impugned orders are amount to revision and reassessment by way of modification and not mere correction of the whole process of the earlier final decision taken after full consideration of all the facts and relevant Board's Orders, while granting annual increment and time bound pay scale from time to time.

13. On perusal of the record and relevant Board's Orders issued from time to time, I also find that the petitioner was taken into service by the respondents-Board and paid salary which was being paid to the petitioner by the ex-licensee at the time the petitioner ceased to remain in service with the company i.e. at Rs. 210/- per month in the pay scale of Rs. 150-345 on terms and conditions of service to be governed by the rules and regulations of the Board from time to time. Vide its letter dated 19th August, 1975 issued from the Office of Chief Engineer (Annexure No. C.A.2) in respect with the guideline laid down by the Board, as per paragraph 5 of the guideline, the yearly increment in case of the petitioner would be from 1st April of every year and the pay scale of the petitioner was revised from time to time on the basis of Board's order dated 5.8.1977, providing the benefit of next higher pay scale on having put in more than 10 years of service rendered by him with the Board and the company (ex-licensee) was granted first time pay scale from 1.4.1979, second time, from 1.4.1983 and third time, from 1.12.1987.

14. From the counter affidavit, it is found that in the year, 1975 some objections were raised by the concerned Joint Secretary of the Board, vide its letter dated 4.7.1975 (Annexure No. C.A.8) in respect with the entitlement of the annual increment of the employees of the company taken over by the Board, treating it as new employment as they had been paid retrenchment compensation by the ex-licensee, wherein a reference has been made to the Board's order dated 30.7.1971 regarding general decision for taking into account the entire length of qualifying service rendered by such employees with the ex-licensee for the purpose of payment of gratuity to them. However, the concerned authority of the respondents after consideration of all such objections and the relevant Board's orders issued from time to time some of which have been referred to hereinbefore, fixed the petitioner's salary accordingly from time to time and lastly on 1.4.1975 at Rs. 2690/-, and similarly situated other 11 employees of the company taken over by the Board alongwith the petitioner were also provided similar annual increment and the time pay scale from time to time till the date of their retirement. But, the

petitioner was singled out and his pay scale right from initial stage was revised on the basis of the terms and conditions laid down in the Board's order No. 489 dated 25.2.1989 (Annexure No. C.A. 15) vide office memorandum No. 1/920 dated 11.8.1995.

15. In the impugned order dated 4.10.1994 (Annexure No. 1 to the writ petition) while disposing off the representation of the petitioner reliance has also been placed on the said Board's order No. 489 dated 25.2.1989. Three points has been placed while rejecting the representation, firstly that the petitioner got suitable retrenchment compensation from the company, therefore, there appeared no reasonable point to count his service rendered with the company (ex-licensee) and accordingly for the purpose of calculation of length of service for allowing time scale, the service rendered with the company could not be taken into account. Secondly, consequently for other purpose like annual increment etc the said service period with the company of the petitioner could also not be taken into account. Thirdly, the Board vide its order No. 489 dated 25.2.1989 had issued instructions to fix the pay and allow time scale to different categories of the employees and accordingly the pay of the petitioner was fixed, which was ultimately found to be correct being suitable and vetted by the Deputy Chief Accounts Officer. The first two points on not counting the service of the petitioner rendered with the company and adding the same to his present service with the Board on the ground of suitable retrenchment compensation having been given by the company is baseless as retrenchment compensation has nothing to do with the terms and conditions of the petitioner's service with the Board, rather, the Board itself vide its decision referred to hereinbefore issued from time to time allowed the earlier service of the petitioner with the company to be added with the Board's service. The compensation paid by the company to the petitioner due to retrenchment of his service with it has no nexus with the subsequent service with the Board. The Board was free to have treated the service of the employees for being considered along with service of the Board or not. Once it agreed to count the said service for the purpose of annual increment, time pay scale and payment of gratuity etc then after providing the said facilities in those terms and having acted thereupon it could not withdraw the same and reassess the amount paid to the petitioner to his detriment taking away the right which had accrued to the petitioner in terms of the earlier Board's orders. More so, on perusal of the Board's order No. 489 dated 25.2.1989 relied upon the impugned order, it is found in paragraph 11 that the time bound pay scale mentioned therein was made applicable from 1.12.1987 and that the pay shall be accordingly assessed, provided that in case any employee had been given two higher pay scale in terms of time bound pay scale prior to 1.12.1987 then the benefit having accrued in excess to the said policy would not be withdrawn and would not be revised and recovered. In the present case, admittedly, the petitioner had been granted higher pay scale as time bound pay scale twice. Firstly, on 1.4.1979 and thereafter on 1.4.1983 and thirdly on 1.12.1987 then in terms of the said provision of

the Board's Order No. 489 dated 25.2.1989 it could not be revised. It seems, the respondents failed to take into consideration and apply correctly the said provisions laid down in paragraph 11 of the said Board's order. The respondents thus were stopped from refixing/ reassessing the pay scale of the petitioner vide office memorandum No. 1/920 dated 11.8.1995.

16. Under above the said facts and circumstances of the case, reasons and observations made herehiabove, the order dated 4.10.1999 (Annexure No. 1 to the writ petition) and the office memorandum No. 1/920, dated 11.8.1995 (Annexure No. 11 to the writ petition) are hereby quashed. The respondents are directed to release the entire pension, gratuity and other retiral benefit etc after recalculating the monthly salary of the petitioner at the rate of Rs. 2690 per month payable at the time of retirement alongwith other consequential benefits for which the petitioner is entitled to accordingly along with interest at the rate 10 % per annum within a period of three months from the date the certified copy of this order is served on them.

17. With these directions, the writ petition is allowed with cost quantified at Rs. 5000/- to be paid by the respondents to the petitioner.