

(2008) 09 CAL CK 0066

Calcutta High Court

Case No: F.M.A. No. 956 of 2007

Smt. Prativa Biswas and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 23, 2008

Citation: (2008) 4 CALLT 192 : (2009) 1 CHN 101

Hon'ble Judges: Tapan Mukherjee, J; Pranab Kumar Chattopadhyay, J

Bench: Division Bench

Advocate: Kallol Bose and Arijit Ganguly, for the Appellant; R.N. Majumder and P. Basu, for the Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.

This appeal has been preferred at the instance of the writ petitioners assailing the judgment and order dated 12th April, 2006 passed by the learned single Judge whereby and whereunder the said learned Judge refused to grant any relief to the writ petitioners.

2. The writ petitioners are the Nursing staff of the hospitals which were previously under the administrative control of the Coal Mines Labour Welfare Organisation and subsequently, transferred to the Eastern Coalfields Ltd. a subsidiary of Coal India Limited.

3. In view of abolition of the Coal Mines Labour Welfare Organisation, Government of India decided to transfer the hospitals which were under the administrative control of the said Coal Mines Labour Welfare Organisation to the subsidiaries of Coal India Limited. The appellants/writ petitioners were also given option to join in the services of the Coal Company. The writ petitioners joined the Coal Company upon exercising their option.

4. It was made clear by the respondent authorities that after joining the services of the Coal Companies upon exercising option the pay and other allowances of the

erstwhile employees of the Coal Mines Labour Welfare Organisation including the writ petitioners herein would be protected.

5. After joining the services in the Coal Company the writ petitioners found that their pay was not protected and therefore, an application was filed by the said writ petitioners before this Hon"ble Court which was finally disposed of by the earlier order dated 29th August, 2002 wherein the learned single Judge of this Court specifically observed that pay of the writ petitioners/ appellants herein could not be reduced since pay protection was assured. The relevant portions of the aforesaid order passed by the learned single Judge are set out hereunder:

...In my view when the petitioners were enjoying the Central Government scale of pay and when they were converted and fitted in the Coal India Pay scale, their pay In any event could not be reduced, inasmuch as, pay protection was assured to them.

6. In spite of the aforesaid order passed by this Court the respondent authorities reduced the basic pay of the writ petitioners.

7. Challenging the aforesaid reduction in basic pay, subsequent writ petition was filed by the appellant herein which was finally disposed of by the judgment and order under appeal. The learned single Judge, however, while deciding the said writ petition specifically held that the writ petitioners are given pay protection by giving a fixed D.A. and not enhancing the basic pay.

8. It has been submitted on behalf of the appellants/writ petitioners that the respondent authorities have illegally reduced the pay of the said writ petitioners and such reduction is not at all permissible under the law. It has also been submitted on behalf of the appellants/writ petitioners that the reduction of pay tantamounts to imposition of punishment which could not be done in the facts of the present case. The learned Counsel of the appellants referred to and relied on the decision of the Hon"ble Supreme Court in the case of [K. Gopinathan Vs. Union of India \(UOI\)](#), in support of his aforesaid contentions.

9. Mr. Bose, learned Counsel of the appellants/writ petitioners submits that in service jurisprudence, reduction of pay is resorted to where a disciplinary proceeding has been initiated by the competent authority against its employees and reduction of pay may be a sequel to punishment order passed against such employees. Mr. Bose further submits that in the instant case, appellants herein have been subjected to arbitrary discrimination and victimization with regard to their entitlement as regards enjoyment of due scale of pay. It has been argued on behalf of the appellants/writ petitioners that the respondent authorities specifically agreed to protect the pay of the appellants/writ petitioners and by not protecting the said pay the respondent authorities have violated its own assurance. The learned Counsel of the appellants/writ petitioners submits that the emoluments of an employee should mean the pay and Dearness Allowances admissible to the said employee. Therefore, emoluments of an employee cannot be protected without

protecting the actual pay of the said employee.

10. The respondent authorities herein have admitted and accepted that the basic pay in respect of the writ petitioners has been reduced.

11. Mr. Bose, learned Counsel of the appellants/writ petitioners submits that the reduction of basic pay of the appellants/writ petitioners are not at all permissible in view of the specific assurance given by the respondent authorities before exercising option by the optees, namely the appellants herein.

12. Mr. Majumder, learned Counsel of the respondents, however, submits that the appellants herein received more amount after joining the services of the Coal companies upon exercising option and therefore, it cannot be said that the total emoluments of the appellants/writ petitioners were not protected in terms of the assurance given by the respondent authorities to the employees concerned before exercising option. Mr. Majumder further submits that the terms and conditions accepted by the optees including the appellants/writ petitioners herein categorically indicate that the total emoluments drawn by the optees on 31st December, 1986 would be protected.

13. Since the concerned employees namely, the appellants/writ petitioners received more amount on and from 1st January, 1987, it could not be said that the total emoluments of the optees had not been protected. According to the respondents, the basic pay of the optees although was reduced, total emoluments received by the said employees were actually not reduced in view of enhancement of the allowances of the said employees. The learned Counsel of the respondents further submits that the protection of the total emoluments does not mean the protection of the basic pay.

14. We are, however, unable to accept the aforesaid contentions made on behalf of the respondent authorities.

15. The concerned respondents specifically assured the optees including the appellants/writ petitioners herein before exercising option that their total emoluments would be protected after absorption in the Coal companies. After giving the aforesaid assurance, the respondents herein cannot reduce the basic pay of the optees since reduction of basic pay will adversely affect the service benefits available to the optees including the pensionary benefits which are calculated on the basis of the actual basic pay and not on the allowances actually received by them.

16. The appellants herein relied on the aforesaid assurance of the respondents and exercised option for absorption in the employment of the Coal companies. Therefore, if the respondent authorities are allowed to reduce the basic pay of the optees then the same will adversely affect their ultimate service prospects specially the pensionary benefits after retirement from service which we cannot approve.

17. The respondent authorities being a model employer cannot affect the service prospects of its employees without observing due process of law. The optees including the appellants/writ petitioners herein relied on the assurance given by the respondent authorities regarding pay protection before exercising option.

18. Therefore, the said optees cannot suffer any financial loss after joining the Coal companies. The respondent authorities cannot give a different meaning to its assurance with regard to pay protection by referring to the total emoluments presently available to the said optees even after reducing the basic pay when such reduction of basic pay would seriously prejudice the service prospects of the said optees.

19. The employees are very much concerned about their pensionary benefits which are admittedly, calculated on the basis of their basic pay. The respondent authorities never clarified to the optees that their basic pay would be reduced by the Coal companies after absorption. The respondent authorities herein sought to protect the financial benefits of the optees while in service but did not consider the pensionary benefits of the said employees.

20. The pensionary benefits are an integral part of the service benefits available to the employees which could not be affected without due process of law and the respondents herein are also bound to protect the said pensionary benefits of the optees in view of the assurance given to the appellants before exercising option.

21. In the present case, if the basic pay of the optees are reduced then the same will adversely affect the due service benefits of the said optees which were never contemplated by them while exercising option. The total emoluments of an employee cannot be protected by reducing the basic pay which, in our opinion, would run contrary to the assurance given to an optee. In the case of K. Gopinathan (supra), the Hon"ble Supreme Court has specifically held that the basic pay could not be reduced on absorption.

22. Therefore, while refixing the pay scale the respondent authorities most illegally reduced the basic pay of the optees including the appellants herein and protected the total emoluments by enhancing the D.A. After refixation of pay even if the total emoluments are enhanced, there cannot be a reduction of basic pay. Under normal circumstances, the basic pay of an employee cannot be reduced excepting by imposition of punishment.

23. The learned single Judge in the order dated 29th August, 2002 passed in the previous writ petition filed at the instance of the appellants herein specifically held that the pay of the appellants in any event, could not be reduced since the pay protection was assured to them but afterwards while considering the subsequent writ petition of the appellants herein said learned single Judge failed to appreciate the earlier order passed by him in its correct perspective and erroneously refused to grant relief to the writ petitioners/appellants herein.

24. Since the basic pay could not be reduced at the time of refixation of the pay scale of the employees, we are constrained to hold that the respondent authorities herein acted wrongfully, illegally and in clear violation of the law, as laid down by the Hon"ble Supreme Court in the case of K. Gopinathan (supra) by reducing the basic pay of the optees who were the employees of the erstwhile Coal Mines Labour Welfare Organisation and joined the respondent Coal companies after exercising option.

25. The learned Counsel of the respondent authorities submits that the appellants/writ petitioners herein did not prefer any appeal from the earlier order dated 29th August, 2002 passed by the learned single Judge in the writ petition bearing CO. No. 2663 (W) of 1993 and, therefore, cannot reagitate the issue with regard to reduction of pay by filing the present writ petition.

26. We are unable to appreciate the aforesaid submission since the learned single Judge by the earlier order dated 29th August, 2002 did not permit the respondent authorities to reduce the basic pay of the optees. The learned Counsel of the respondents referred to and relied on a decision of the Hon"ble Supreme Court in the case of The [The VIth Income Tax Officer, City Circle II-A, Bangalore Vs. K.Y. Pillaiah and Sons](#), which, in our opinion, is not at all applicable in the facts of the present case.

27. The earlier order dated 29th August, 2002 passed by the learned single Judge in the previous writ petition bearing CO. No. 2663 (W) of 1993 can under no circumstances estop the appellants herein from filing the subsequent writ petition bearing W.P. No. 12011 (W) of 2003 which was ultimately disposed of by the learned single Judge by the judgment and order under appeal.

28. The respondent authorities failed to appreciate that the optees including the appellants/writ petitioners herein did not exercise option for absorption in the Coal companies notwithstanding the fact that their existing service benefits including the pensionary benefits might be affected ultimately. The respondent authorities herein all through represented before the optees that they will not suffer any prejudice with regard to their service benefits. Therefore, by reducing the basic pay of the optees, namely the appellants herein, the respondent authorities have acted in breach of the specific assurance given to the optees before exercising option.

29. For the aforementioned reasons, we cannot approve decisions of the learned single Judge by affirming judgment and order under appeal and the same therefore, set aside.

30. The respondent authorities herein are directed to refix the scale of pay of the writ petitioners/appellants without reducing the basic pay with retrospective effect from the date of their joining the Coal companies after exercising option and also pay the admissible financial benefits including the arrears. The aforesaid exercise should be done by the concerned respondents at an early date but positively within

a period of four weeks from the date of communication of this order.

31. With the aforesaid directions, this appeal stands allowed.

In the facts and circumstances of the present case, there will be, however, no order as to costs.

32. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned advocates of the parties on usual undertaking.

Tapan Mukherjee, J.

33. I agree.