

(2014) 03 CAL CK 0143

Calcutta High Court

Case No: W.P.C.T. Nos. 271 and 272 of 2013

M.C. Ghatak

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision: March 11, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16

Citation: (2014) LabIC 2201**Hon'ble Judges:** P. Mandal, J; Asim Kumar Roy, J**Bench:** Division Bench**Advocate:** N.A. Khan, Advocate for the Appellant; Tulsi Lall and Babita Das, Advocate for the Respondent

Judgement

Prasenjit Mandal, J.

These two applications are directed against the judgment and order dated 17.12.2012 passed by the learned Central Administrative Tribunal, Calcutta Bench, Circuit Bench at Port Blair in O.A. No. 41/AN/2011 with M.A. No. 46/AN/2011 and the O.A. No. 177/AN/2011 filed by the same writ petitioner. Both the applications are disposed of by this common judgment and order. For convenience the W.P.C.T. No. 272 of 2013 is taken up for consideration first.

W.P.C.T. No. 272 of 2013

2. The writ petitioner is a Lecturer of Dr. B.R. Ambedkar Government Institute of Technology. He obtained Master Degree in Mechanical Engineering from the Punjab University in 1996, while he was serving in the Indian Air Force. On the recommendations of the UPSC, he was appointed to the post of Lecturer, Mechanical Engineering in Dr. B.R. Ambedkar Government Polytechnic, Port Blair and accordingly he joined the said post on 10.8.1998. In the meantime, the 5th Pay Commission came into force with effect from 01.01.1996 and by a notification dated 30.12.99 the AICTE issued a press release indicating that the said notification shall

be effective from 01.01.1996 and an incentive was provided for higher qualification in terms of Clause 7(a)(ii) of the scheme.

3. In terms of Para. 7(a)(ii) of the said notification, two advanced increments are permissible for higher qualification and as such, the petitioner is entitled to get two additional increments with effect from 10.8.1998 i.e. from the date of his joining, but he was allowed two increments with effect from 01.4.1999. The petitioner gave several representations to the concerned authorities including the Commissioner-cum-Secretary (Education) through proper channel for grant of two additional increments with effect from 10.8.1998. Even he sought for an interview through the proper channel and he was granted such permission to meet the Secretary(Education) to ventilate his grievance for non-sanctioning of advanced increments. Thereafter, he apprised the Commissioner-cum-Secretary (Education) of the situation, but, he was not granted two additional increments with effect from 10.8.1998 as per scheme. Under the circumstances, the petitioner was compelled to file the O.A. No. 41/AN/2011 with M.A. No. 46/AN/2011 before the learned Central Administrative Tribunal praying for implementation of the AICTE pay scales for Polytechnic teachers in A. & N. Islands and other consequential reliefs. The petitioner also filed an application being M.A. No. 46/AN/2011 for amendment and both the matters were heard together by the learned Tribunal and were dismissed by the impugned order.

4. Being aggrieved, the petitioner filed this application praying for quashing the order dated 17.12.2012 passed by the learned Central Administrative Tribunal in O.A. No. 41/AN/2011 with MA No. 46/AN/2011.

5. The respondents are contesting the said application contending inter alia that as per Para. 2.3 and 16.1(d) of the scheme, the same should be implemented from a subsequent date under intimation to the AICTE or receipt of clarification from the Union of India. The A & N Administration took a policy decision to implement the scheme only with effect from 01-4-1999. The representation of the writ petitioner for reconsideration of the grant of advanced increments with effect from 10.8.1998 was accordingly rejected. Moreover, the application having been filed after 7 years from the last representation, the said O.A. application is hopelessly barred by limitation.

6. Now, the question is whether the impugned order should be sustained.

7. Upon due consideration of the submissions of the learned counsel of both the parties and on going through the materials on record, we find that it is not in dispute that the writ petitioner having the Master Degree in Mechanical Engineering from the Punjab University joined the post of Lecturer, Mechanical Engineering, in Dr. B.R. Ambedkar Government Polytechnic, Port Blair as per Order No. 1965 dated 22.6.1998 on 10.8.1998. There is no dispute that on 30.12.1999 the AICTE issued the revised pay structure and service conditions of the teachers of technical institutions and that according to Para. 2.2 of the said scheme, such revision of pay scale and

service conditions of the teachers of the Technical institutions would be effective from 01.01.1996. Admittedly, according to Para. 7(a)(ii) of the said notification, two advanced increments for possessing higher qualifications were permissible to the teachers who held the Master Degree at the time of recruitment and as such the petitioner has contended that, since he had joined the post of Lecturer on 10.8.1998 having the higher qualification, he was entitled two advanced increments with effect from 10.8.1998 as per Para. 2.2 of the said scheme which became effective from 01.01.1996. The respondent authorities failed to give such two additional increments inspite of his efforts at all levels.

8. By filing the application being M.A. No. 467 AN/2011 the petitioner has challenged the order dated 22.11.1999 on the ground that as the scheme of AICTE provided extension of benefit with effect from 01.01.1996 fixation of pay by the respondents with two increments with effect from 01.4.1999 is totally arbitrary and violative of Articles 14 and 16 of the Constitution of India.

9. In order to understand the real dispute between the parties, it would be better to quote the Para. Nos. 2.2, 2.3 and 16.1 General.

2.2 Date of effect:

The revised pay scales, Career Advancement Scheme and incentives for higher qualification given in this notification shall be effective from January 1, 1996. All other terms and conditions come into force with effect from the date of this notification.

2.3 State Government Institutions and Private Aided Institutions:

Taking into account the local conditions, a State Government may implement the revised pay scales from a date later than January 1, 1996 and/or implement pay-scales other than those given in this notification, but which are not higher than the pay-scales given in Tables. (Appendix A-1, 2 and 3). In such cases, the details of the modification proposed either to the scales of pay or the date from which the Scheme is to be implemented, should be furnished to the All India Council for Technical Education for its approval.

16.1 General

(a) The implementation of the revised scales will be subject to the acceptance of all the conditions mentioned in the scheme including revised qualifications and recruitment procedures as well as of the other terms and conditions issued by the AICTE in this behalf.

(b) The State Governments/Institutions are required to amend their Statutes, Memorandum of Association, Rules/Schemes, Regulations, Bye-Laws, as the case may be, in line with the scheme forthwith.

(c) Anomalies, if any, in the implementation of the scheme may be brought to the notice of Directorate of Technical Education of respective State Governments for clarification.

A standing committee will be constituted by Directorate of technical Education of respective State Governments for dealing with anomalies which may arise from time to time during implementation of the Scheme of Revision of Pay Scales.

(d) The State Governments, after taking local conditions into consideration, may also decide in their discretion, to introduce scales of pay different from those mentioned in the Scheme and may give effect to the revised scales of pay from January 1, 1996 or a later date. In such cases, the details of the modification proposed either to the scales of pay or the date from which the scheme is to be implemented, should be furnished to the AICTE.

10. Thus, from Para. 2.3 of the said scheme, we find that the State Government had been given the liberty to implement the revised pay scales from a date later than January 01, 1996, but before implementation, the necessary approval must be obtained from the AICTE. The scheme 16.1(d) provides that the State Governments after taking local conditions into consideration may also decide in their discretion, to introduce scales of pay different from those mentioned in the scheme and may give effect to the revised scales of pay from January 01, 1996 or a later date and the scheme must be furnished to the AICTE.

11. Accordingly, on taking the policy decision over the matter of two advanced increments under Para. 7(a)(ii) with effect from 01.4.1999, the pay of the petitioner was fixed regretting the prayer for granting two advanced increments with effect from the date of his joining on 10.8.1998.

12. As per materials on record, there were correspondences between the Secretary (Education), A & N Administration regarding the AICTE recommendations and the Union of India and as per materials on record the Union of India did not provide any funds and it is observed that the Union of India had no objection to A & N Administration granting pay, scales from a prospective date. Accordingly, as a policy decision, the respondent authorities decided that in such a case the implementation of the pay commission would be effected from 01.4.1999 and as such, the writ petitioner was deprived of the benefit of two advanced increments from the date of his joining on 10.8.1998.

13. Since it is a policy decision of the A & N Administration and it has been made applicable not only to the petitioner but also to the other persons under the similar situations, we are of the view that there is no discrimination in fixing the advanced increments with effect from 01.4.1999. Since it was a policy decision, we are also of the view that no application lies at all against a policy decision. Accordingly, we are of the view that the learned Tribunal was right in dismissing the O.A. No. 41/AN/2011 and the M.A. No. 46/AN/2011 and in rejecting such prayer, we do not

find at all any discrimination or biasness against the petitioner by the respondents.

14. While disposing of the different O.A. applications filed by the petitioner, by the same order the learned Central Administrative Tribunal has passed a detailed order recording several decisions over the matter in question under the scheme and we do not wish to repeat of the same.

15. Not only that, we find that the writ petitioner submitted the last representation on 24.5.2004 to the Commissioner-cum-Secretary (Education) requesting to grant the benefit of additional increments with effect from 10.8.1998 and the said application was forwarded to the Assistant Secretary (Education) on 21.6.2004 and then on 16.7.2004, the Assistant Secretary (Education) clarified that the incentive for possessing higher qualification with effect from 01.4.1999 had been sanctioned as per Clause 7(a)(ii) of the notification dated 30.12.1999 read with Para. 16.1(d). Thereafter, the writ petitioner remained silent for a period of about seven years without any step and it is only on 07.2.2011, he filed the O.A. No. 41/AN/2011 for shifting back the date of two additional increments from 01.4.1999 to 10.8.1998, i.e. from the date of joining. Thus, we find that the writ petitioner remained silent about 7 years meaning thereby he had admitted the situation and thereby had abandoned the claim and so, his O.A. application dated 7.2.2011, in our view, is not entertainable for unreasonable delay and for that reason no relief can be granted against him. Not only that again we find that there is an unreasonable delay in filing the writ petition against the order dated 17.12.2012 passed by the concerned Tribunal. The writ petition had been filed on 25.7.2013, i.e. beyond 7 months from the date of the order. The explanation as submitted by him is not at all worthy of acceptance. So, in our view, the unreasonable delay has not been explained satisfactorily by the writ petitioner in preferring the writ petition. So, the writ petition is barred by limitation.

16. The writ petitioner has contended that four applications have been disposed of by an order and so the order is illegal. He has also contended that there is no discussion at all with regard to the four matters as contended by him. Having gone through the entire materials on record and the judgment and order passed by the learned Tribunal in respect of the four applications and the connected MA applications, we are of the view that the learned Central Administrative Tribunal has passed a well reasoned order touching all the applications. We do not find any infirmity in the impugned orders. All the four matters relate to the same writ petitioner about his service conditions, such as fixation of pay, grant of incentive, two advanced increments for possessing Master Degree, date of fixation of such advanced increments etc. and the correspondences between the petitioner and the Administration. So, we do not find any illegality in the matter of disposal of the four applications by the common judgment and order. So this contention of the writ petitioner cannot be accepted.

17. From the materials on record it also appears that the writ petitioner did not come to the Tribunal with clean hands. He took unauthorised leave for 32 days. He gave an intimation that he was unwell and would resume duties after being immediately fit. Then the writ petitioner was referred to the Medical Board to ascertain the seriousness/genuineness of his leave. The writ petitioner did not cooperate. He did not appear before the Medical Board for examination. Anyway, after considering the genuineness of the leave and to take a sympathetic view, his period of absence was regularised by the concerned Principal. But, the writ petitioner filed a criminal case against the Principal being CR No. 120 of 2008 alleging defamation for referring him to the Medical Board. The matter went up to the Hon"ble Court.

18. The writ petitioner filed another criminal case being CR No. 36 of 2010 against the Principal which is still pending. Thus it appears that when the Principal took steps against the petitioner for his apparent dereliction of duty, he filed two criminal cases against the Principal.

19. The writ petitioner filed another application being O.A. No. 138/AN/2008 against the respondents when the respondents, particularly, the Principal of the concerned College took steps for not attending the full training of eight weeks. That application was allowed by the concerned Tribunal and the writ petition preferred by the respondent of that application was dismissed.

20. From the above conduct we find that the writ petitioner did not come to take legal recourses with clean hands. He has taken such steps only to keep the Principal under pressure so that he (Principal) may not take any appropriate steps against the so called defaulting party. So, no relief should be granted in favour of the writ petitioner.

21. Accordingly, we are of the view that the learned Tribunal has rightly dismissed the O.A. No. 41/AN/2011 and rejected the application being M.A. No. 46/AN/2004. The application is also barred by limitation. So there is no scope of interference with the impugned judgment and order. The learned Tribunal has rightly rejected the O.A. application and the M.A. application by passing a well reasoned order.

22. This application is totally devoid of merits and is, therefore, dismissed.

23. Considering the circumstances, there will be no order as to costs.

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24. This writ application is also at the instance of the same writ petitioner and is directed against the order dated 17.12.2012 passed by the learned Central Administrative Tribunal, Calcutta Bench, Circuit Bench at Port Blair in O.A. No. 177/AN/2011 thereby dismissing the said application.

25. The writ petitioner filed the said O.A. application praying for quashing the order Nos. 597 and 598 dated 20.5.2010 passed by the Administrative Officer of the Dr. B.R. Ambedkar Government Institute of Technology on the ground being contrary of the AICTE scheme and for issuance of further directions for refixation of the pay and other consequential reliefs. By the impugned orders, the fixation of pay of the lecturer's senior scale and the payment of arrears along with interest by the respondent authorities had been done.

26. The writ petitioner has also contended that the incorrect fixation of pay had been done by the order dated 20.5.2010 including the incentive and two additional increments; but the Administration had declined his prayer observing that there was no error in fixation of pay. Even he made a representation to the Secretary (Personnel) on 29.12.2010 against the orders Nos. 597 and 598 dated 20.5.2010. He sent a representation and then reminder to the Principal of the concerned College in vain. But he was informed that there was no merit in the application or the reminder. The writ petitioner has also contended that he was harassed and victimised by the respondent No. 6 by committing defamation to such an extent that he filed a criminal case being CR No. 120 of 2008 against the Principal. The said two orders being Nos. 597 and 598 had been passed ignoring two advanced increments to be granted in his favour. Even when he submitted a representation for reconsideration, the same had been rejected without assigning any reason. The respondent No. 6 did it deliberately. The writ petitioner has also contended that while granting the benefit of senior scale of pay, his pay should have been fixed at Rs. 10650/- on 10.8.2003 after grant of two advanced increments.

27. The respondents have contended that as per existing scheme of promotion, there shall not be any additional increment on movement from the pay band of Rs. 15600 - Rs. 39100/- to Rs. 37400 - Rs. 67000/-. According to the Administration, his pay had been fixed properly at Rs. 9925/- on 01.8.2003 after granting two advanced increments on 01.4.1999. Accordingly, his pay was fixed in senior scale under FR 22(1)(a)(ii). So, his pay was fixed as per C.C.S. Rules and there is no provision for granting two advanced increments for the second time when the pay is fixed on promotion or granting financial upgradation under Career Advancement Scheme.

28. As per materials on record and on hearing submissions of both the sides in detail over the matter, in our view, the AICTE recommended by a notification dated 05.3.2010 as to the revised pay scale with effect from 01.01.2006 and in that situation also the State Government was at liberty to take into consideration of local conditions to decide their discretion to introduce his scale of pay higher than those mentioned in the scheme and to give effect to the scheme from a date on or after 01.01.2006. This is also, in our view, a policy decision of the Government and the Government is to pay the money and if the Government pays the money, the scheme of the AICTE dated 05.3.2010 should be implemented accordingly. Since it is also a policy decision, we are of the view that the Tribunal and writ Court cannot

interfere with a policy decision unless there is any discrimination. As per materials on record, the other 29 teachers got their revision of pay prospectively and not from the date of their actual appointment and as such we do not find any discrimination against the petitioner at all. So the contention of the petitioner that the provisions of Articles 14 and 16 of the Constitution of India have been violated, cannot be accepted at all.

29. The Administrative Officer issued the pay fixation order Nos. 597 and 598 dated 20.5.2010 for promotion to Lecturer (Senior Scale). The writ petitioner objected to such fixation requesting to fix the pay in terms of the order No. 492 dated 27.4.2010. That prayer was refused.

30. In consideration of such facts and circumstances, and the grounds as to the conduct of the writ petitioner as recorded in WPCT No. 272 of 2013, we are of the view that there is no scope to interfere with the impugned judgment and order and that the writ petitioner cannot get any of the reliefs as prayed for in this application. The learned Tribunal has rightly dismissed the O.A. application.

31. The application is, therefore, dismissed.

32. There will be no order as to costs.

33. Urgent Xerox certified copy of this judgment and order be supplied to the parties, if applied for, after observing all necessary formalities.

Asim Kumar Ray, J.

I agree.