

2018 SCeJ 723

SUPREME COURT OF INDIA

Present : Justice Madan B. Lokur, and Justice Deepak Gupta, JJ.

UNION OF INDIA - Appellant,

Versus

R. SETHUMADHAVAN & Anr. - Respondents.

Civil Appeal No. 3173 of 2018 (Arising out of S.L.P. (CIVIL) No. 5456 OF 2018)

22 March, 2018

Service matter

Pension – Pay recommendations – Scale of pay recommended by the 5th Central Pay Commission and the acceptance of the recommendations by the Government of India by a policy decision dated 30th September, 1997 and the Office Memorandum dated 17th December, 1998 clarified by the Office Memorandum dated 11th May, 2001 – Whether the Office Memorandum dated 11th May, 2001 overrides the Office Memorandum dated 17th December, 1998 clarifying the policy resolution of the Government of India dated 30th September, 1997 – Clarificatory executive instructions in OM dated 11-5-2001 are an integral part of the OM dated 17-12-1998 clarifying the policy resolution of the Government dated 30-9-1997 and do not override the original OM dated 17-12-1998 is correct law. *K.S. Krishnaswamy & Ors. v. Union of India & Anr.* (2006) 13 SCC 215, followed.

[para 13]

JUDGMENT

Madan B. Lokur, J. – (22 March, 2018) – Leave granted.

2 .More than 140 years ago, it was said by the Privy Council:

“These proceedings certainly illustrate what was said by Mr. *Doyne*, and what has been often stated before, that the difficulties of a litigant in *India* begin when he has obtained a Decree.” (General Manager of the Raj Durbhunga, under the Court of Wards v. Maharajah Coomar Ramaput Sing, (1871-2) Vol. XIV Moo, I.A.605)

A somewhat similar fate seems to await government servants – on getting retired, they have to struggle for the due pension. This is a classic case of a railway employee who retired as a Train Examiner on 31st March, 1991 and his pension woes are being decided after 27 years and unfortunately not in his favour.

3. We recommend to the Department of Personnel and Training of the Government of India to try and make life after retirement easier for a government servant by having appropriate legislation enacted by Parliament or applicable Pension Rules rather than a khichdi of Instructions, Office Memoranda, Clarifications, Corrigenda and so on and so forth.

4. When the respondent retired as a Train Examiner with the Indian Railways, he was in the pay scale of Rs. 1400-2300. After the 5th Central Pay Commission was implemented, the replacement scale for the post of Train Examiner (which was apparently abolished) became Rs.4500-7000.

5. According to the respondent the post of Train Examiner was re-designated as Junior Engineer Grade-II and the revised pay of a Junior Engineer Grade-II was recommended by the 5th Central Pay Commission to be Rs. 5000-8000. The difference in the replacement scale of a Train Examiner as against the revised scale in the case of Junior Engineer Grade-II made a difference of about Rs. 500 per month in the pension entitlement of the respondent.

6. On 30th September, 1997 a Policy Resolution was notified by the Government of India relating to the scope and extent of the application of the recommendations of the 5th Central Pay Commission and its acceptance. This was followed by a large number of representations from pensioners and resulted in the Government of India issuing an Office Memorandum on 17th December, 1998 to the following effect:-

“The President is now pleased to decide that w.e.f. 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the post last held by the pensioner.”

7. It appears that the confusion continued and once again an Office Memorandum was issued by the Government of India on 11th May, 2001 clarifying the earlier Office Memorandum. The clarification reads as follows:-

“In the course of implementation of the above order, clarifications have been sought by Ministries/Departments of the “post last held” by the pensioner at the time of his/her superannuation. The second sentence on O.M. dated 17.12.1998, i.e. “pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.1996 of the post last held by the pensioner”, shall mean that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as 01.01.96, of the scale of pay held by the pensioner at the time of superannuation/retirement.”

8. The grievance of the respondent is directed against the clarification dated 11th May, 2001 since the respondent felt the impact of the clarification on his pension. He, therefore, preferred an Original Application before the Central Administrative Tribunal for his rightful pension. The question raised by the respondent as indeed by some others was referred to a larger Bench of the Tribunal and the question referred reads as follows:-

“When, the pre-revised pay scale of Rs. 1400-2300 attached to the post of JE. II (TXR) in the Railways was revised to Rs. 5000-8000 (while the normal replacement pay scale for the pre-revised pay scale of Rs. 1400-2300 is Rs. 4500-7500) whether the pension admissible to the pre 01.01.1996 retirees should be based on the pay scale of Rs. 5000-8000 or should be restricted to that calculated on the basis of the pay scale of Rs. 4500-7000/-.”

9. By an elaborate judgment and order dated 31st October, 2011 the Tribunal took the view that the respondent held the post of Train Examiner on the date of his superannuation and his pension had been correctly fixed on that basis. The replacement scale for the post of Train Examiner was Rs. 4500-7000 with effect from 1st January, 1996. It was held that the pension of the respondent could not be on par with the pay scale of a Junior Engineer Grade-II. The reference was answered accordingly.

10. While coming to this conclusion the Tribunal adverted to 20 or more decisions rendered by various Benches of the Tribunal, several High Courts and also few decisions of this Court. This is an indication of the contest in store for pensioners when a claim for pension is made against the State.

11. Be that as it may, the Tribunal eventually relied upon the decision of this Court in **K.S. Krishnaswamy & Ors. v. Union of India & Anr.** (2006) 13 SCC 215 to dismiss the Original Application.

12. Feeling aggrieved by the judgment and order of the Tribunal, the petitioner preferred W.P. No. 13207 of 2013 in the Madras High Court. By the impugned judgment and order dated 2nd August, 2016 the High Court allowed the writ petition and quashed the order passed by the Tribunal. It is under these circumstances that the Union of India is before us.

13. We have heard learned counsel for parties and find that the Tribunal was right in relying upon the judgment and order passed by this Court in **Krishnaswamy**. In this decision, the very question that arose for consideration before the Tribunal and the High Court was dealt with, though with reference to some other posts of the Government of India. The question formulated by this Court in **Krishnaswamy** related to the scale of pay recommended by the 5th Central Pay Commission and the acceptance of the recommendations by the Government of India by a policy decision dated 30th September, 1997 and the Office Memorandum dated 17th December, 1998 clarified by the Office Memorandum dated 11th May, 2001. The basic question that arose for consideration was whether the Office Memorandum dated 11th May, 2001 overrides the Office Memorandum dated 17th December, 1998 clarifying the policy resolution of the Government of India dated 30th September, 1997.

14. While dealing with this question, this Court held in paragraphs 17 and 27 of the Report as follows:

“**17.** The main thrust of the submissions of learned counsel for the appellants is that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners. We are unable to accept this contention. As noticed above, the

recommendations of the Fifth Pay Commission were accepted to the extent of policy resolution dated 30-9-1997. The aforesaid Policy Resolution was further clarified by issuing instructions in OM dated 17-12-1998, which were clarified by another executive instructions in OM dated 11-5-2001. It is well-settled principle of law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate Government. It is also well-settled principle of law that a policy decision of the Government can be reviewed/altered/modified by executive instructions. It is in these circumstances that a policy decision cannot be challenged on the ground of estoppel. In the present case, the recommendations of the Fifth Pay Commission were accepted by a Policy Resolution dated 30-9-1997 that the ceiling on the amount of pension will be 50% of the highest pay in the Government. The pension of all pre-1-1-1996 retirees including pre-1986 retirees shall be consolidated as on 1-1-1996, but the consolidated pension shall not be brought on to the level of 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement. The subsequent OM dated 17-12-1998 clarified the Policy Resolution dated 30-9-1997 by executive instructions in OM dated 17-12-1998 and further clarified in the form of OM dated 11-5-2001 clarifying the contents of Policy Resolution of the Government dated 30-9-1997. They are both complementary to each other. Both clarify the government Policy Resolution dated 30-9-1997. The appellants are not aggrieved by the executive instructions in OM dated 17-12-1998. In our view, therefore, the contention of the appellant that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998, thereby creating two classes of pensioners is absolutely ill-founded and untenable.

27. For the reasons aforesaid, the view taken by the Madras High Court that the clarificatory executive instructions in OM dated 11-5-2001 are an integral part of the OM dated 17-12-1998 clarifying the policy resolution of the Government dated 30-9-1997 and do not override the original OM dated 17-12-1998 is correct law and it is, accordingly, affirmed. The view taken by the Delhi High Court that OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners does not lay down the correct law and is, hereby, set aside.”

15. Unfortunately, the High Court has not even referred to this judgment while taking a decision in favour of the respondent. Since the issue is squarely covered by the decision of this Court in **Krishnaswamy**, the appeal must be allowed.

16. Yet another error made by the High Court is in assuming that the post of Train Examiner was re-designated as Junior Engineer Grade-II. There is nothing on record to suggest the re-designation. In fact the conclusion of re-designation is the sole basis on which the writ petition was allowed by the High Court and as mentioned above, we do not find any material on record to suggest the re-designation. Consequently, the entire basis of the decision of the High Court is erroneous, apart from the fact that the High Court did not advert to the decision of this Court in **Krishnaswamy** on the subject.

17. In the circumstances, we have no option but to set aside the impugned judgment and order of the Madras High Court and we do so accordingly. The appeal is allowed.

18. In case any payments have been made to the respondent, there will be no recovery of these amounts.

19. A copy of this order be sent to the Secretary, Department of Personnel and Training of the Government of India.

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