

KRISHNA KANT TIWARI

A

v.

KENDRIYA VIDYALAYA SANGATHAN & ANR.
(Civil Appeal No. 10239 of 2013)

NOVEMBER 12, 2013

B

[H.L. GOKHALE AND KURIAN JOSEPH, JJ.]

SERVICE LAW:

Pay protection - Cut off date - Teacher in State Government - Joining as primary teacher in Kendriya Vidyalaya Sangathan on 23.7.1987 and confirmed on 23.9.1989 -- Claim for protection of pay as per O.M. dated 7.8.1989 which was given effect from 1.8.1989 - Held: It is permissible for the Government to lay down the cut off date from which the benefit would be available to the employees - Once it is stated that the order takes effect from 1.8.1989, the clause will have to be given its plain meaning as it is drafted -- Therefore, the employees like the appellant who was in the State Government service earlier, will be entitled to pay protection from that date i.e. 1.8.1989 -- He will, however, not get the pay protection prior to that date -- Interpreted this way, it will not amount to giving any retrospective effect to the Memorandum -- The last pay drawn by the claimant in State service as on 1.8.1989, directed to be protected with consequential service benefits - Government of India, Department of Personnel and Training O.M. dated 7.8.1989.

C

D

E

F

The appellant after rendering 12 years service as a teacher in the M.P. State Service, joined the Kendriya Vidyalaya Sangathan as a primary teacher on 23.9.1987. He was confirmed on the said post on 23.9.1989. Meanwhile, the Order/Memorandum dated 7.8.1989 granting pay protection was issued by the Central

G

- A Government, Department of Personnel & Training, which was to take effect from 1.8.1989.

B The claim of the appellant for his pay protection was declined by the respondents on the ground that he joined the Kendriya Vidyalaya Sangathan on 23.9.1987 and since the cut off date was 1.8.1989, the appellant was not entitled to the benefit. The Central Administrative Tribunal as also the High Court declined to interfere.

C Allowing the appeal in part, the Court

D HELD: 1.1 It is permissible for the Government to lay down the cut off date from which the benefit would be available to the employees. However, in the instant case, the information received by the appellant under the Right to Information Act, 2005 placed before this Court indicates that three teachers were given the benefit of pay fixation in spite of the fact that they had also joined before 1.8.1989. It is also relevant to note that the cases of persons who were in service in Central/State/ Autonomous/PSUs during the period from 01/01/86 to 01/01/96, and were selected in KVS and applied for pay protection, were considered and their pay was protected. [para 6-7] [365-F-H; 366-A, D]

F 1.2 The Circular/Memorandum dated 7.8.1989 states that the issue of pay protection of the candidates recruited through Public Sector Undertakings, etc. has been engaging the attention of the Government for quite some time. It further states that these orders take effect from the 1st day of the month in which the Office Memorandum is issued i.e. 1.8.1989. Once it is stated that the order takes effect from 1.8.1989, the clause will have to be given its plain meaning as it is drafted. Therefore, the employees who were drawn from Public Sector Undertakings, like the appellant who was in the State Government service earlier, will be entitled to pay

H

protection from that date i.e. 1.8.1989. He will, however, not get the pay protection prior to that date. Interpreted this way, it will not amount to giving any retrospective effect to the Memorandum. [para 9] [366-H; 367-A-C] A

1.3 The respondents are directed to correct the service record of the appellant protecting his last drawn pay in the Madhya Pradesh service as on 1.8.1989 and give him the consequential service benefits also on that basis. [para 10] [367-D-E] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10239 of 2013. C

From the Judgment and Order dated 26.02.2007 of the High Court of Judicature at Bilaspur, Chattisgarh in Writ Petition No. 5343 of 1999. D

Sanjiv Jha, Braj Kishore Mishra, Aparna Jha, Abhishek Yadav for the Appellant.

Yogmaya Agnihotri, Dharmendra Kumar Sinha for the Respondents. E

The Judgment of the Court was delivered by

H.L. GOKHALE, J. 1. Leave granted.

2. Heard Mr. Sanjiv Jha, learned counsel in support of this appeal and Ms. Yogmaya Agnihotri, learned counsel appearing for the respondents. This appeal raises a short question as to whether the appellant was entitled to pay protection on the basis of his earlier service as a Teacher in the State of Madhya Pradesh after joining the Kendriya Vidyalaya Sangathan. The appellant's case is that under the concerned Government Memorandum dated 7th August, 1989, he is entitled to the pay fixation on the basis of the last pay drawn by him in the earlier service. F
G

A 3. The facts leading to this appeal are this wise. The
 appellant was working as a Teacher in the M.P. State Service
 and he had put in a service of about 12 years whereafter he
 joined as a Primary Teacher in the Kendriya Vidyalaya
 Sangathan on 23.9.1987. He was confirmed on the post of
 B Primary Teacher on 23.9.1989. In the meanwhile, the Order/
 Memorandum dated 7th August, 1989 granting pay protection
 was issued by the Central Government, Department of
 Personnel & Training. Paragraphs 2 and 3 of this Order/
 Memorandum read as follows:

C "2. The question as to how pay protection can be given in
 the case of candidates recruited from Public Sector
 Undertakings, etc. has been engaging the attention of the
 Government fro sometime. The matter has been carefully
 D considered and it has been decided that in respect of
 candidates working in Public Sector or Autonomous
 bodies, who are appointed as direct recruits on selection
 through a properly constituted agency including
 department authorities making recruitment directly, their
 E initial pay may be fixed at a stage in the scale of pay
 attached post so that the pay and DA as admissible in the
 Govt. will protect the pay plus DA, already being drawn by
 them in their parent organization. In the event of such a
 stage not being available in the post which they have been
 recruited, they pay may be fixed at stage just below in the
 F scale of the post to which they have been recruited so as
 to ensure a minimum loss to the candidates. The pay fixed
 under this formulation will not exceed the maximum of the
 scale of the post to which they have been recruited. The
 pay fixation is to be made by the employing Ministries/
 G Departments after verification of all the relevant documents
 to be produced by the candidates who employed in such
 organizations.

H 3. These orders take effect from the first day of month in
 which the office memorandum is issued i.e. 1st August,
 1989."

KRISHNA KANT TIWARI v. KENDRIYA VIDYALAYA 365
SANGATHAN [H.L. GOKHALE, J.]

4. The appellant continued in the service of the Kendriya A
Vidyalaya Sangathan until he retired some time in January, 2012. He made a representation on 17.12.1998 that by virtue of the aforesaid Government Order/Memorandum his last pay drawn ought to have been protected when he joined the Kendriya Vidyalaya Sangathan. That representation was B
rejected by the respondents on 25.1.1999. The respondents took the stand that paragraph 2 of the aforesaid Memorandum dated 7th August, 1989 clearly lays down the cut off date as 1st August, 1989 from which it becomes applicable and the appellant had joined the Kendriya Vidyalaya Sangathan before C
that date i.e. on 23.9.1987. Therefore, he was not entitled to the benefit as per the said Memorandum/Circular.

5. The appellant moved the Central Administrative Tribunal by filing an O.A. bearing No.341/1999 and the same having been rejected, he moved the High Court of Chhattisgarh at D
Bilaspur by filing a writ petition. The Division Bench of the High Court rejected Writ Petition No.5343 of 1999 by the impugned order dated 26th February, 2007. The Division Bench took the view that the protection was available to the employees who E
joined on or before 1.8.1989. Since the appellant had joined the Kendriya Vidyalaya Sangathan prior to that date, he was not entitled to that benefit. Hence, this appeal.

6. If the facts were to remain as this, there was no reason for this Court to interfere. This is because now it is accepted F
that it is permissible for the Government to lay down the cut off date from which the benefit would be available to the employees. The appellant is, however, making out a case of discrimination by pointing out that in the case of three teachers, namely, that of one V.P. Sharma, P.S. Shukla and P. G
Padmananabhan, they were given the benefit of pay fixation in spite of the fact that they had also joined prior to the aforesaid date i.e. before 1st August, 1989. This information was obtained by the appellant by making an application under the Right to Information Act, 2005 and the information is placed H

A before this Court in this appeal. The respondents were given an opportunity to file their counter affidavit but they have not. Ms. Yogmaya Agnihotri, learned counsel appearing for the respondents states that the old record was not available on the basis of which a response could be filed. She has, however, defended the decision of the respondents contending that as per the Memorandum, the benefit of pay protection could not be given to those who were appointed prior to 1st August, 1989.

C 7. It is also relevant to note that a specific query was raised by the appellant as to whether any such persons have been given the benefit of pay protection during the period from 1st January, 1986 to 1st January, 1996 and to that question the following reply has been given:

D "The cases of protection of pay who were in service in Central/State/Autonomous/PSUs State Govt. during the 4th Pay Commission covering the period from 01/01/86 to 01/01/96, who applied through proper channel and selected in KVS and applied for protection of pay have been considered and their pay has been protected. Cases where there was some confusion, clarification has been given to all the ACs and instructions have been issued to consider all such left out cases."

F 8. It is further submitted on behalf of the appellant that maybe the appellant may not get any benefit prior to 1st August, 1989, but as on that date his pay will have to be corrected and will have to be brought at par at least with the last pay drawn by him when he was in the Madhya Pradesh service. A further submission was that if that is not done, the effect will be that his juniors would be drawing salary higher than what he is drawing at present.

H 9. We have considered the rival submissions. The Circular/Memorandum which is relied upon, states in paragraph 2 that the issue of pay protection of the candidates recruited through

Public Sector Undertakings, etc. has been engaging the attention of the Government for quite some time. Paragraph 3 thereafter states that these orders take effect from the 1st day of the month in which the Office Memorandum is issued i.e. 1st August, 1989. Once it is stated that the order takes effect from 1st August, 1989, the clause will have to be given its plain meaning as it is drafted. Therefore, the employees who were drawn from Public Sector Undertakings, like the appellant who was in the Madhya Pradesh Government service earlier, will be entitled to pay protection from that date i.e. 1.8.1989. He will, however, not get the pay protection prior to that date. Interpreted this way, it will not amount to giving any retrospective effect to the Memorandum.

10. In the circumstances, we allow this appeal in part. The O.A. No.341 of 1991 filed by the appellant will consequently stand partly allowed. The order passed by the High Court will stand interfered to that extent. The respondents are directed to correct the service record of the appellant protecting his last drawn pay in the Madhya Pradesh service as on 1.8.1989 and thereafter they will give him the consequential service benefits also on that basis. The needful shall be done in three months. In the facts of this case, we pass no order as to costs.

R.P.

Appeal partly allowed.