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Court : Allahabad

Decided On : Mar-01-1974

Reported in : (1975)ILLJ1All

Judge : M.P. Mehrotra, J.

Appellant : S.S. Bargava and ors.

Respondent : Allahabad Polytechnic and anr.

Judgement :

M.P. Mehrotra, J.

1. This is the plaintiff's second appeal. The trial Court decreed the suit but the lower appellate Court has dismissed the suit. The plaintiffs sued for declaration that the fixation of the grade and scale of pay and dearness allowance made by the defendants in pursuance of G.O. No. 2113 ED-XVIII-D dated 8-13-1967 whereby the emoluments of the plaintiffs were sought to be reduced, was null and void and ineffective and that the plaintiffs were entitled to the grade and scale of pay and to the dearness allowance in accordance with G.O. No. G-a263/X-l43-1965 dated 28-2-1966.

2. The brief facts are as follows: The plaintiffs are in the employment of the Allahabad Polytechnic as lecturers, instructors, office assistants and class IV assistant, etc. A society registered under the Societies Registration Act named as

Institute of Engineering Technology started a technical school under the name and style of 'Civil Engineering School' in or about year 1955. That institution continued to function and imparted technical education suitable for qualifying as overseers. Subsequently, the institutions imparting technical education were reorganised by the Government and the said institution was re-named as 'Allahabad Polytechnic'. The old management ceased with effect from 1st July, 1962 and a new management came into existence. The institution became an aided institution so far as the Government was concerned. The Government of U.P. appointed a committee for rationalization of pay of the Government servants and the said Committee submitted its report to the Government with its recommendations for rationalization of pay of the employees in various departments of the Government of U.P. The recommendations of Pay Rationalization Committee were duly accepted by G.O. No. G-a/261/X-143-1965 dated 28-2-1966, and the Government gave effect to the recommendation of the Committee for the employees of the Polytechnic and according to the said G.O. the new grades of pay were given effect to from 1st January, 1966. Certain G. Os. were subsequently issued by the Government and it is the cumulative effect of (the said G. Os. read with the first G.O. No. G-a/263/X-143-1965 dated 28-2-1966 which is the central point of controversy in this second appeal. It seems that the employees of the Allahabad Polytechnic and other similar institutions were allowed the fixation of pay in accordance with G.O. No. G-1/263/X-143-1965 dated 28-2-1966 but the Principal was asked to take an undertaking from each of the employees that if there was any excess payment, then the same would be reimbursed to the Government in case it was subsequently found that the fixation of pay was not correctly done. In other words, it was a provisional fixation of pay scales and payments made on the basis of such revised scales were liable to an adjustment in case subsequently it was held that the revision of pay scales was not correctly made. Subsequently, the defendants began to contend that the fixation on the basis of G.O. No. G-1/263/X-143-1965 dated 28-2-1966 was not correct in the case of the plaintiffs and that the subsequent G. Os. clarified the position; so the plaintiffs were bound to reimburse the defendants for the excess payment which had been made to them. Thereupon the plaintiffs filed the suit which has given rise to the present appeal and claimed the reliefs as stated above. The trial Court held that the pay scales were correctly

fixed in the case of the plaintiffs and the subsequent G. Os. issued by the Government did not effect the plaintiffs and, therefore, there was no question of any reimbursement being made by the plaintiffs. In this view of the matter, the suit was decreed by the trial Court. In the appeal which was taken out by the defendants before the lower appellate Court, the latter differed from the trial court's interpretation of the relevant G. Os. and reversed the trial Court's decree. The lower appellate Court held that as the plaintiffs were not getting any dearness allowance actually on 31st March, 1961, therefore, their pay fixation had to be done without including any dearness allowance and inasmuch as their pay scales had been fixed after including them in the assumed dearness allowance to which they would have been entitled if they were in service on 31st March, 1961, the said fixation was incorrectly done and hence the plaintiffs were liable to make reimbursement as agreed to by them when the tentative fixation of their grades and scales had been made by the Principal of the Institution. Therefore, the plaintiffs were not entitled to any relief in the suit and the same was dismissed. The plaintiffs have felt aggrieved and have filed the instant appeal against the judgment and decree of the lower appellate Court. As I have stated above, the only controversy involved in the appeal as regarding the correct interpretation of certain G.Os. which were issued from time to time. The relevant G. Os. are as follows:

- I. G.O. No. G-1-263/X-143-1965 dated 28-2-1966.
2. G.O. No. 1029/Ed/XVIII-D dated 12-7-1966.
3. G. O. No. 301/Ed/XVIII-D dated 24-4-1967.
4. G. O No. 2113/Ed/XVIII-D dated 8-11-1967.
5. G.O. No. 2426/Ed XVIII-D 398 ED/61 dated 2-7-1968.

It may be seen that the first G.O. No. -1G-263/X-143-1965 dated 28-2-1966 is a general G.O. addressed to all the Heads of the Department and Principal Heads of U. P. The G.O. says:

That the initial pay of a Government servant in the new scales of pay shall be fixed with reference to his present emoluments.

Then it lays down how the present emoluments shall be fixed. In Clause (6) of paragraph 2 of the said G.O. it is laid down that "dearness allowance (including dearness pay) and personal pay in lieu of cost of living allowance which would be admissible at the rates in force on March 31, 1961 will be taken into account in arriving at the present emoluments of the Government servants concerned.' The second G.O. dated 12-7-1966 lays down 'that the Governor has been pleased to order that with effect from January 1, 1966, the staff of the aided polytechnics may be allowed the same pay scales and rates of D. A. as have been recommended by the Pay Rationalisation Committee and accepted by Government for corresponding posts in Government Polytechnics.

3. It will thus be seen that whereas the first G.O. was applicable to the staff of the Government Polytechnic, the second G.O. extended the benefit of the same to the staff of the aided Polytechnic. It is an admitted fact that in the instant case the Allahabad Polytechnic is an aided Polytechnic. In view of the combined effect of the said two G. Os. the plaintiffs became entitled to the new scales recommended by the Pay Rationalisation Committee and accepted by the Government with regard to the staff of the Government Polytechnic and they were similarly entitled to the fixation of their present emoluments on the basis of the conditions laid down in the first G.O. dated 28-2-1966, i.e. after taking into account the dearness allowance which would be admissible at the rates in force on March 31, 1961. However, it seems that subsequently some controversy arose and the Government issued certain further G. Os. The third G.O. which was issued by the Government is dated 24th April, 1967. It lays down that the G.O. dated July 12, 1966 would stand modified to the extent as laid down in the said G.O. dated 24th April, 1967. Thereafter the fourth G.O. was issued on November 8, 1967 and that it was laid down in that G.O. that 'It would not be permissible in case of aided Polytechnic staff to allow assumed dearness allowance at the rate admissible on March 31, 1961 to whole time Government servants to be included in the present emoluments for the purposes of pay fixation. The present emoluments of the staff of the aided Polytechnic will not, therefore, contain dearness allowance while pay

is fixed under the formula already approved by the Government in G.O. No. 301/Ed/XVIII-D dated April 24, 1967.' On the basis of this G.O. it began to be contended that initial fixation of the scales and grade in the case of the plaintiffs was incorrect inasmuch as the present emoluments in the case of the plaintiffs had been fixed after including the dearness allowance whereas such dearness allowance should not have been included in the present emoluments as had been made clear by the said G.O. dated November 8, 1967. The last G.O. was issued by the Government on 2nd July, 1968. This G.O. was 'in supersession of modification of G.O. No. 301/Ed/XVIII-D dated April 24, 1967.' It will be seen that it supersedes the modifications of G.O. dated 24th April, 1967. Obviously it can have reference only to the G.O. dated 8th November, 1967 because it was this latter G.O. which had made modification in the G.O. dated 24th April, 1967. In other words the G.O. dated November 8, 1967 stood superseded by last G.O. dated 2nd July, 1968. This last G.O. has reiterated that 'the pay fixation of the existing staff at Aided Polytechnic in the revised pay scales may be done in accordance with the procedure as laid down in G.O. No. G-a/263/X-143-1965 dated February 28, 1966 and the emoluments of the staff on the date of application of revised pay scale may be arrived at after taking into account the D. A. that was actually admissible and paid in Aided Polytechnics in particular pay scales on March 31, 1961 irrespective of the fact whether the institutions were not under the purview of the department on that date.'

4. The trial Court's view is that the fourth G.O. dated November 8, 1967 and the fifth G.O. dated July 2, 1968 did not apply to the case of the plaintiffs as the said two G. Os. are applicable only to the Aided Polytechnics which were in existence on 31st March, 1961. Admittedly the Allahabad Polytechnic was established on 1st July, 1962 as before the said date the institution was known as 'School of Engineering' and was run by a Registered Society and it was not an aided institution. It may be stated here that the trial Court has also placed reliance on Circular No. 5107-20/IE35-X-81 May, 1967. The said circular lays down 'the new pay scales recommended by the Pay Rationalisation Committee and finally accepted by the Governments for the correspondent posts in Government Polytechnics will apply to the staff at aided Polytechnics with effect from December 13, 1965.' The said circular does not seem to have any independent effect. It has

merely given effect to the Government orders and therefore, I am leaving the same out of consideration. The lower appellate Court's approach was that in the first G.O. dated 28-2-1966 when it refers to the dearness allowance admissible at the rates in force on March 31, 1961, what is contemplated is actual payment which a Government servant was getting on 31st March, 1961 and not assumed payment, therefore, in the case of those employees who were not in the employment on 31st March, 1961, it would not be permissible to fix their employments on the basis of any assumed dearness allowance to which they would have been entitled if they were in service on March 31, 1961 and as the plaintiffs were not admittedly in the service of any Aided Polytechnic on March 31, 1961, therefore, in the fixation of their present emoluments it was not permissible to include any dearness allowance whatsoever, on the basis of the assumed rate to which they would have been entitled if they were in service on 31st March, 1961. The lower appellate Court emphasised that on 31st March, 1961, the employees of the institution in question were not getting any dearness allowance and it was not permissible to include any notional dearness allowance in their present emoluments on the basis of the rates prevalent on March 31, 1961. The said Court held that the subsequently two G. Os. dated November. 8 1967 and July 2, 1968 merely clarified the position which was implicit in the first G.O. dated February 28, 1966. In other words, all the said three G. Os. only lead to the conclusion that those employees who were not getting any dearness allowance on March 31, 1961 would not be entitled to the inclusion of any notional dearness allowance in the fixation of the present emoluments.

5. In my view the lower appellate Court has not correctly interpreted the relevant G. Os. I do not think what was contemplated by G.O. No. G-1/263/X-143-1965 dated 28-2-1966, was the actual payment which was made on 31st March, 1961, Clause (6) of paragraph 2 in the said G.O. provides that the dearness allowance (including dearness pay) and personal pay in lieu of cost of living allowance which would be admissible at the rates in force on March 31, 1961 will be taken into account in arriving at the present emoluments of the Government servants concerned. This language is certainly in contrast with the expression 'dear-ness allowance which was being paid on March 31, 1961.' It is not the requirement that the dearness allowance must have been paid on 31-3-1961. The requirement is

that the dearness allowance should be admissible at the rates which was in force on March 31, 1961. Therefore, in my view the very basis of the judgment of the lower appellate Court is erroneous. The fourth G.O. dated 8th November, 1967 seems to lay down that the fixation of the present emoluments of the staff of the aided Polytechnic should be done without including any dearness allowance whatsoever. However, the said G.O. dated November 8, 1967 was subsequently superseded by the last G.O. dated July 2, 1968 and it was made clear that the procedure laid down in the G.O. dated February 28, 1966 continued to be applicable to the existing staff of the aided Polytechnic. I, therefore, hold that the plaintiffs were rightly fixed in their pay scales and grades and their present emoluments were also correctly arrived at after taking into consideration the dearness allowance which was admissible at the rates prevalent on 31st March, 1961. It is not denied that the plaintiffs were receiving the dearness allowance when the first G.O. dated 28th February, 1966 was issued and I do not think that it was Government's intention that in fixing the present emoluments of the plaintiffs the same should be artificially reduced by excluding the dearness allowance which were actually being paid to the plaintiffs on the date when the said G.O. was issued. Any calculation of the present emoluments on the basis of the exclusion of the dearness allowance which the plaintiffs were actually receiving, would be highly artificial and detrimental to the employees. In other words in the context of the Government's eagerness to benefit the employees, I should not place an interpretation of the relevant G. Os. which would run counter to the intention on the part of the Government to give new benefits to the employees.

6. Therefore, I allow the appeal, set aside the judgment and decree of the lower appellate Court and restore the judgment and decree of the trial Court. In the circumstances of the case, the parties shall bear their own costs.