

**Udai Chand Sharma Vs. the State of Rajasthan and anr.**

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**Court :** Rajasthan

**Decided On :** Jul-18-1984

**Reported in :** 1984WLN(UC)171

**Judge :** P.K. Banerjee, J.

**Appeal No. :** S.B. Civil Writ Petition No. 1845 of 1976

**Appellant :** Udai Chand Sharma

**Respondent :** The State of Rajasthan and anr.

**Judgement :**

P.K. Banerjee, J.

1. The short question which arises for consideration in this case is that the petitioner was declared surplus and transferred to the Irrigation Division, Bhilwara as per requisition of the Executive Engineer, Irrigation, Bhilwara on February 22, 1968 as Mechanic Grade I from Mahi Project Circle, Banswara in the pay scale of Rs. 170-10-31012.5-385 and his pay was fixed at Rs. 200/- on the date of his transfer in the new office. He continued in the same pay scale all the time. It appears from Annexure 6 that the petitioner was getting the pay at the relevant time in the pay scale of Rs. 170-10-310-12.5-385 which was revised to the scale of Rs. 180-10-2 30-15-385-20-425 and his pay was fixed according to the new scale when he was transferred. It is alleged that thereafter the petitioner was placed in the pay scale of Rs. 130-3 0 thereby causing him reduction in the pay scale vide Annexun-9 to the petition. By Annexure-10 the petitioner's pay was brought down to Rs. 170/- and his pay was fixed in scale No 9 at Rs. 170/- in the scale of Rs 130-300. The petitioner, however, was getting much above that scale when he was so transferred. Hence the rule challenging the reduction in the pay on the ground that this is the case of transfer from one Department to the another and his pay was protected. In fact the petitioner was bound by the contract with the Government that he must serve the Government for three years after completion of the training imparted to him by the Government and he had no option to withdraw himself from the contract within that period. It appears, however, the petitioner was declared surplus and his service was to be terminated. According to the respondent it was benevolent on the part of the State Government to give him a job in another Department of the State, but his pay was fixed by mistake at higher level than he is entitled to get and, therefore, reduction in pay which he was obtaining due to mistake in calculation of fixing him in new scale, was in accordance with law.

2. Mr. Calla on behalf of the respondent contended that scales of pay in a non-project area in respect of Irrigation Department and planned project are two different and, therefore, his pay was fixed on the basis of project area.

3. In my opinion, the affidavit by the respondent clearly shows that the petitioner was transferred from one project to another which may not be a temporary project area in the Irrigation Department and non project scale. It is argued by Mr. Mridul that number of persons who have been declared as surplus were allowed to

work with them and they were appointed on the same day and working in the same type of job having the same qualifications are given different pay and, therefore, violative of Article 16 of the Constitution of India. It appears to me however, in the facts of this case it is clear that the petitioner was transferred on his being declared surplus to another establishment of the Government and his pay was preserved long after he was transferred. He was transferred in 1968. All of a sudden the respondent felt in 1975 that his pay was fixed at a higher scale. In my opinion, when he was transferred with a particular pay, he carries with him his pay and he was given that pay also through out and even if he does not com: within the scale of non-project this pay must be treated to be given to him as special pay in non-project organisation.

4. In that view of the matter the order of reduction in pay of the petitioner cannot be sustained and must be set aside, which I hereby do and petitioner must be given the same pay scale which he was getting in the Department of Irrigation Planned Project all throughout before he is transferred to Mahi Project Workshop.

5. This rule is, therefore, made absolute to the extent indicated above. There will be no order as to costs.

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