

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) .8606 OF 2009

EASTERN COALFIELDS LTD. & ORS.

APPELLANT(S)

VERSUS

PRATIVA BISWAS & ORS.

RESPONDENT(S)

O R D E R

1. The question involved in the instant appeal is the fixation of the salary of the respondents, upon their absorption in the Eastern Coalfields Limited (hereinafter referred to as "ECL"). It is one of the subsidiary companies of the Coal India Limited (for short "CIL").

2. The respondents were earlier employed in the Central Hospital, Kalla, which was under Coal Mines Welfare Organisation, set up and maintained by Ministry of Steel, Mines & Coal, Coal Department of the Government of India. Under the orders of the Government of India,

the hospital in question was transferred to the subsidiary company of Coal India Ltd. w.e.f. 1.8.1985, and the communication in this regard had been issued on 24.12.1986.

3. Services of the respondents had been transferred to the Eastern Coalfields Ltd., and they had opted for their absorption with the ECL. There was a meeting on 25.7.1986, between the Joint Secretary to the Government of India and an official of Southern Coalfields Ltd. It was decided that fitment would be offered to the transferred employees in NCWA scales, which does not entail any drop in their total emoluments, and that uniform procedure in this behalf should be followed. Option form was prepared, and options had been invited in the Form (Annexure P3) dated 24.12.1986. As the pay scale already prevailed, the very pay scale for technical, clerical hospital staff already existed and the employees' salaries were to be fixed in respective grades in the corresponding scales of pay. It was also mentioned in the Office Order dated 9.1.1987, that protection to be provided to the salary also.

4. Circular had been issued by CIL that on

absorption of employees of Coal Mines Labour Welfare Organisation in Eastern Coalfields Ltd. (ECL) that is to take place from 1.1.1987 basic pay and dearness allowance of the opted employees until 31st December 1986 was to be taken into consideration for their fixation in an appropriate Scale and calculation of benefits. The Additional Chief Medical Officer, Central Hospital, has taken the decision, that pay was to be fixed in the grade and pay scales of NCWA-IV (Four) and would be given with effect from 1.1.1987. The fitment has to be made in such a way that there was no loss of the employees so far as pay protection was concerned.

The respondents filed a writ petition on 6.1.1983, WP No.2663/1993 in which they had prayed for quashing of the decision dated 21.1.1992; it was, *inter alia*, also prayed not to reduce the salary which was paid to them, other emoluments were also claimed. The writ petition had been decided on 29.8.2002, in which the following order had been passed:

"Mr. Majumdar learned counsel appearing for the respondent authority, however, submits that the petitioners have given solitary instance and there had been no

categorical assertion on the part of the petitioners that there has been any reduction in pay in respect of other petitioners. Mr. Majumdar learned counsel, however, has not been able to show that other petitioners' pay got increased with effect from 1.1.1987 or at least their pays were protected. In my view when the petitioners were enjoying the Central Government scale of pay and when they were converted and fitted in the Coal India pay scale, their pay, in any event, could not be reduced, in as much as, pay protection was assured to them. After fitment now if it is found that ultimately lesser amount is to be received on or after 1st January 1987 that shortfall must be made, need by way of a personal adjustment.

The writ petition succeeds in part.

The Eastern Coal Fields Ltd. is directed to verify each and every individual case of the petitioners and if it is found that after fitment in any of the cases lesser amount in effect was being received by the concerned employees on or after 01.01.1987, personal adjustment with retrospective effect from 01.01.1987 must be given in accordance with the Coal India guideline contained in the office order dated 9th January 1987.

Such benefit must be extended to the writ petitioners within a period of six weeks from the date of communication of this order.

The Writ petition is disposed of."

5. Thereafter, fitment was done, and for that, an order has been placed on record, reflected in P-8, dated 20/21 May 2003, in which fixation has been shown in the following manner:

"We have considered your case and considering the relevant items, we have come to a conclusion that no more further benefit is payable to you as we have; given you much more salary in comparison to what you were getting salary during the period of C.M.L.W.O. The details are as follows: -

Basic as on 31.12.86	DA 4%	DA 8%	Total Pay	Basic fixed as on 1.1.87	F.D.A	S.D.A @1.795	10% Att. Bonus	Total pay
Rs.1950.00	Rs.78.00		Rs.2028.00	Rs.1834	Rs. 186.00	Rs.32.92	Rs. 183.40	Rs.2236.63
		Rs. 156.00	Rs. 2106.00					

Yours faithfully,
Sd/-
Chief Medical Officer I/C
CH, Kalla

Copy to: Dy. C.P. M L&IR, ECL HQ

/ TRUE COPY /"

6. It is apparent from the aforesaid fixation that the basic salary had been reduced to Rs.1834.00 as on 1.1.1987, whereas, the basic salary was Rs.1950/- as on 31.12.86; it was by way of adding the dearness allowance and bonus, that the total emoluments added up to be Rs.2236.63, whereas, the earlier drawn salary inclusive

of dearness allowance was Rs.2028/-; but the fact remains, that basic salary had been fixed on a lower side. It was clearly in contravention of the order passed by the Single Bench, in the previous Writ Application, on 29.8.2002.

Thereafter, the respondents had preferred fresh writ petition, and the Single Bench dismissed the same. However, the Division Bench has allowed the appeal preferred by the employees, and hence passed the following order:-

"The respondent authorities failed to appreciate that the optees including the appellants/writ petitioners herein did not exercise option of absorption in the Coal companies notwithstanding the fact that their existing service benefits including the pensionary benefits might be affected ultimately. The respondent authorities herein all through represented before the optees that they will not suffer any prejudice with regard to their service benefits. Therefore, by reducing the basic pay of the optees, namely the appellants herein, the respondent authorities have acted in breach of the specific assurance given to the optees before exercising option.

For the aforementioned reasons, we cannot approve the decisions of the learned Single Judge by affirming the judgment and order under appeal and the same are, therefore, set aside.

The respondent authorities herein are directed to refix the scale of pay of the writ petitioners/appellants without reducing the basic pay with retrospective effect from the date of their joining the Coal companies after exercising option and also pay the admissible financial benefits including the arrears. The aforesaid exercise should be done by the concerned respondents at an early date but positively within a period of four weeks from the date of communication of this order.

With the aforesaid directions, this appeal stands allowed."

7. Shri Kalyan Bandopadhyay, learned senior counsel appearing for the appellants, urged that what they assured was protection for the total emoluments; the fixation of the pay has been done in the manner that the total emoluments which had been drawn as on 1.1.1987, were more than the one drawn by the employees as on 31.12.1986. Learned senior counsel has taken us to the options form, to contend that protection was for the overall emoluments, and not to the pay. Pay scales could vary, once the pay scales that prevailed in ECL had been opted for as per the option exercised. Thus, the basic salary could have been reduced; however, that was taken care of by clubbing other emoluments. Thus, the decision

rendered by the Court in the first round of litigation had been duly complied with. The Single Bench had rightly dismissed the writ application. Writ-appeal has been allowed on the wrong perception of fitment required to be made. Learned senior counsel has also relied upon the decisions of this Court in *High Court Employees Welfare Organisation vs. State of West Bengal* 2007 (3) SCC 637, and *State Bank of India vs. K.B. Upadhyay and Ors.* 2003(11)SCC 646.

8. Shri Ashok Bhan learned senior counsel appearing on behalf of the respondents has contended that the basic principle of fitment of absorption had been violated. The salary that was drawn was to be protected; it has not been protected. As a matter of fact, while fixing the salary the Single Bench judgment and order in the first round of litigation, decided on 29.8.2002, had been violated, by issuing the communication dated 20/21.5.2003. The Division Bench has rightly undone the injustice that was done. Learned senior counsel has also relied upon the decision of this Court in *K. Gopinathan vs. Union of India* 1992(4) SCC 701, and has also relied upon the option form in which option was invited for

grant of the fitment. The option clearly indicated that the salary was to be protected and overall emoluments also could not have been less than as drawn on 31.12.1986.

9. Record of note of discussion leading to taking over of the hospitals given by Coal Mines Labour Welfare Organisation due to the repeal effect of The Coal Mines Labour Welfare Fund (Repeal) Act, 1986, it was decided that terms and conditions of transfer of the staff of CMWO would be as under:

“(B) Terms and conditions of transfer of staff of CMWO:

CIL should ensure that the fitment to be offered to the transferred employees in NCWA scales does not entail any drop in their total emoluments. All subsidiaries and SCCL should follow uniform procedure in this behalf. Standard detailed options paper should be prepared jointly by CIL and SCCL clearly specifying the terms especially for those who may choose to retain Government pay scales. The draft should then be sent to Government for clearance.”

10. It was clearly indicated that CIL would ensure, that the fitment that was offered would not entail any

drop in employee's total emoluments. Emoluments are different than the basic salary. Fitment in the pay scale was not to entail any drop in total emoluments on absorption. Protection of basic pay is different connotation than the other emoluments that are paid. Even the emoluments were to be protected as decided in the aforesaid meeting.

11. Coming to the option form in which options were invited on 24.12.1986 which gave two options; the first option was an option to be absorbed in the company's pay scales and terms and conditions, and another option was to be absorbed in the company but retention of the government pay scales and revision in the ongoing pay scales and service conditions including pensionary benefits. The option No.1 and No.2 are extracted hereunder:

Option No.1

(a) Employees may opt for pay structure and terms & conditions of service as applicable to the employees governed by National Coal Wage Agreement as a package in lieu of their existing remuneration, pay scales and terms & conditions of service including retirement benefit

as would be applicable on revision of pay scales with effect from 1st January, 1987, or from the subsequent date from which the revision takes place.

(b) Such employees who opt for Company's pay scales, terms & conditions etc. will continue to draw the same pay and allowances as admissible to them under 3rd Pay Commission till 31st December, 1985, and thereafter under 4th pay Commission till 31st December, 1986, or subsequent date from which revision of pay scales for the Coal Mining Industry takes place. However, their pay will be refixed in the revised scales of pay from 1st January 1987 or from the subsequent date from which general revision takes place for the coal mining workers.

(c) On option, the employees, shall stand absorbed in the Company's service with effect from 1.8.1985 and will become members of Coal Mines Provident Fund from the date of absorption.

(d) Such of the optees will continue to draw their emoluments under 3rd Pay Commission and 4th pay Commission till their pay is refixed in the manner provided in Annexure 'A' under revised scales of pay. The refixation as mentioned in para 'b' will be subject to adjustment.

(e) The total emoluments drawn by such optees as on 31st December 1986 will, however, be protected and they will be placed in the Company's appropriate revised scales of pay/ grade.

(f) The General terms and conditions of such of the optees, in brief, is placed at Annexure 'A'.

Option No. 2

(a) Employees on absorption who do not opt for Company's pay scales and terms and conditions of service will retain their existing pay scales and service conditions including pensionary benefits as admissible in Government Service as on 31st July' 85 immediately prior to absorption.

(b) Such of the optees will also be governed by their existing rules in the matter of overtime, leave, leave travel concession.

(c) In the matter of discipline, medical facilities and working hours and holidays, they will be governed by the Rules of the Company at their place of posting.

(d) Such of the optees will, however not be entitled to any career growth opportunities at par with those optees opting for Company's pay scales.

(e) Such of the optees opting for Govt. pensionary benefits will have to become members of the Public Provident Fund with effect from 1.8.85.

(f) Superannuation of such optees will remain 58 years of age.

12. It is apparent from the option No.1 that the employees who opt for the company's pay scales, terms and conditions, will continue to draw the same pay and

allowance as admissible to them under the 3rd Pay Commission till 31.12.1985 and thereafter the 4th Pay Commission till 31st December, 1986 or subsequent date from which the revision of pay scales for the Coal Mining Industry takes place. Mention of a subsequent date for revision of pay scales for the Coal Mining Industry clearly indicates that even when the option was exercised to be absorbed in the company's pay scales, the pay which was drawn earlier was required to be protected till revision. However, the basic pay was to be protected in the revised pay scales from 1.1.1987 or from the subsequent date from which general revision takes place for the coal-mining workers. We are concerned in the instant case with the fitment on absorption. As per option No.1 clause (b), the basic salary that was being drawn clearly had to be protected, when the option for absorption in company's pay scales had been applied for. When we consider the emolument part also, a separate protection was given in the Option No.1 itself, in clause(e), i.e. that the total emoluments which were being drawn by such incumbents, as on 31.12.1986 would, in any case, be protected, and that they would be placed in the company's appropriate pay scales/grades. So, there

was a dual protection, one for the basic salary, and another for the emoluments. The ECL has wrongly confused both the issues by overall taking the fixation by the inclusion of the emoluments. Salary was required to be protected, as well as the total emoluments that were being drawn; both could not have been reduced than what was being drawn as on 31.12.1986. Though we are not concerned with Option No.2, such protection was available on continuance in the government pay scale.

13. The Office Order dated 9.1.1987 has also been referred to on behalf the employer with respect to the terms and conditions of service in the subsidiaries of CIL in regard to the replacement of existing terms & conditions of services of Coal Mines Welfare Organisation. There was a clarification made with respect to Option No.2 with that we are not concerned. Thus, wrong reliance placed on Option No.2 resulted in the observation made by the single Bench that protection was only provided for the total emoluments of the employees and that shall be protected at the time of the re-fixation of the pay in the revised corresponding pay under NCWA-IV with effect from 1.1.1987. As already

mentioned that Option No.1 had been exercised in the instant case. Even in Option No.2 basic pay as well as the emoluments continued to be as drawn.

14. As a matter of fact, in the instant case, we need not have dilated on various issues as the matter stood concluded by the judgment and order passed by the single Bench in the previous round of litigation. The Single Bench vide order dated 26.08 2002 clearly ordered that the pay could not have been reduced as pay protection was assured to them and shortfall be made good if needed by way of personal adjustment.

15. When the pay scales were converted to and paid in the Coal India Limited, respondents' pay drawn could not have been reduced, inasmuch as pay protection had been assured to them and in view of aforesaid order that attained finality and pay fixation was to be made in the manner that total emoluments drawn were not less. After fitment, if it was found that lesser amount was to be received as salary on or after 1.1.1987, it was required that the shortfall was made good by way of personal adjustment(s). Accordingly, protection was to be made on the fitment by grant of personal pay meaning thereby the pay could not have been reduced on the fitment in the ECL

pay scales. The order 26.8 2002 was to be complied with in pith and substance; rather it was violated by the aforesaid method of fixation. As apparent from the aforesaid figure of fitment, pertaining to Prathiva Biswas, Senior Staff Nurse, Central Hospital, Kalla. The fitment that was made on 20/21 May 2003 was clearly in violation of the order as well as the provisions of option form and even subject to conditions on which the absorption had been made. Thus, in our opinion, the Division Bench has rightly set aside the order passed by the Single Bench by the order impugned; it was not the total emoluments that matters. Salary protection was to be ensured, it could not have been reduced apart from emoluments. There was dual protection; that was unfortunately ignored and overlooked by the ECL in spite of the clear and categorical order passed by the Single Bench in the writ application of 1993, which order had attained finality, and had not been questioned by any of the parties.

16. Learned senior counsel for the respondent has relied upon the decision of this Court in *K. Gopinathan vs. Union of India* (supra), in which this Court has

considered the concept of deduction in basic pay. One of the Assistant Sub Inspectors of the Police of the State had been absorbed in CBI and on absorption; the basic pay was reduced, though his overall pay had become higher as a deputationist. As the basic pay had been reduced, the Tribunal observed that the dearness allowance under the Central scale was higher, out of which a portion had been merged with the pay and, therefore, by thus adding the merged portion to the basic pay, the total emoluments became higher than the basic pay under the State Government. This Court rejected the reasoning adopted by the Tribunal and held that such reasoning was not acceptable. The basic pay could not have been reduced by absorption. This Court has observed:

"8. We are afraid we cannot subscribe to this reasoning. While upholding the view of Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No.1680 of 1989 in SLP(C)No.2196 of 1992, we have pointed out how the basic pay cannot be reduced. The same principle will be applicable to this case as well. Accordingly, the appeal is allowed. However, there shall be no order as to costs."

17. Shri Kalyan Bandopadhyay, learned senior counsel for the appellant, has relied upon the decision of this

Court in *State Bank of India & Ors. vs. K.P. Subbaiah & Ors.* (supra); the relevant portion is extracted hereunder:

"22. As noted above, a pay scale has different stages starting with initial pay and ending with ceiling pay. Each stage in the scale is commonly referred to as basic pay. The emoluments which an employee gets is not only the basic pay at a particular stage but also the additional amounts to which he is entitled as allowances e.g. DA etc. Therefore, when a question of pay protection comes, the basic feature is that the fitment or fixation of pay in a particular scale must be such as to ensure that the total emoluments are not reduced.

.....

25. There was no intention to protect any particular scale of pay. That being the position, the demand of a corresponding pay scale has no rationale. The High Court was, therefore, clearly in error in holding that the scale of pay was the determinative factor. The direction that while refixing the pay and DA the total pay fixed when the petitioner entered into the Bank's service has to be protected within the corresponding scale of pay cannot be maintained and is indefensible.

It is apparent from the aforesaid decision that this Court has considered the facts of the particular case before it, and culled out that there was no

intention to protect a particular scale of pay. The scale of pay was not a determinative factor. This Court, in the aforesaid context, observed, that while re-fixing the pay and dearness allowance, the direction that the total pay fixed, at the time when the petitioner entered into the service be protected with the corresponding scale of pay, could not be maintained. There is no dispute with the proposition, however, in the instant case, the pay scales, as they prevailed in the ECL, had been opted; but the dispute arose about the fixation of the pay in that scale. Pay was fixed lower than what had been drawn earlier, i.e. the one which had prevailed in the erstwhile employment. In the instant case, option clearly intended that the pay was to be protected; and the emoluments as well. Thus, the intention in the instant case was otherwise and fitment has not been done correctly, as such, basic pay have to be revised.

18. Reliance has also been placed by the appellants on a decision of *High Court Employees Welfare Association vs. State of West Bengal* 2007 (3) SCC 637 in which this Court has observed:

"26. A revision of pay scales has to be followed by fitment in the revised pay scales, in the case of all employees who are receiving payments under the old pay scales. Such fitment in the revised pay scales will have to ensure pay protection so that the total emoluments are not reduced on fitment in the revised pay scales. The problem of fitment is noticed in Samaraditya Pal's 'Service Law' (Second Edition, Page 277) thus :

"A pay scale has different stages. It starts with what is normally known as initial pay and ends with a ceiling. Each stage in the scale is represented by what is commonly referred to as basic pay. The emoluments which an employee takes home is not only the basic pay at a particular stage but also other admissible allowances viz. dearness allowance, house rent allowance etc. When the existing pay scale (Rs.1,000-100-1,500-200-5,000) is revised (Rs.2,000-200-3,000-400-10,000) the question of fitment arises in this form. At which stage of the new pay scale is an employee who is at the stage of Rs.1,300 in the existing scale and is drawing a total emolument of Rs.3,000 (including all allowances) on the day immediately preceding the date on which the revised pay scale becomes effective to be fitted?"

Therefore, a formula or principle of fitment is provided either in the pay revision Rules or by a separate order. Such a formula or principle for fitment is not required in the case of new recruits as they start at the

lowest stage of the applicable pay scale or at such stage as stated in the terms of appointment. Rule 7 of the State Pay Rules relating to fixation of initial pay in the revised scale of pay thus applies only to existing employees who have been extended the benefit of a revised pay scale. The words 'fixation of initial pay' in Rule 7 of State Pay Rules, refers to the first pay fixed in the revised scale, on fitment. Therefore the contention of the petitioner that Rule 7 of State Pay Rules is intended to apply only to new recruits and the sole purpose of paras 9 and 10 of Minutes is to apply the principle of Rule 7 of State Pay Rules to existing employees is untenable."

The decision does not espouse the cause of the appellants, as this Court has considered in the aforesaid dictum the fitment when the revised pay scale is made applicable and when a new entrant comes, new entrant starts at the lowest stage of the applicable pay scale and gets the benefit of the pay scale. This Court has observed that the employees who are receiving under the old pay scale, fitment in the revised pay scale has to be made in the manner so that total emolument was not reduced in the revised pay scale. In our opinion that would not mean the pay can be reduced. This court considered by said decision only the question to provide

the protection to emoluments.

19. Thus, the reduction of basic pay drawn in the pay scale was wholly arbitrary and violates the order of the Single Bench dated 26.08.2002, thus we find no merits in the appeal and we dismiss the same. Let the benefits be extended forthwith to all the employees who were absorbed, whether continuing today or have been retired and to the legal representatives of deceased employees, within a period of two months and compliance be reported to this Court. No costs.

.....J.
[ARUN MISHRA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI
OCTOBER 11, 2017

ITEM NO.114

COURT NO.9

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8606/2009

EASTERN COALFIELDS LTD. & ORS.

Appellant(s)

VERSUS

PRATIVA BISWAS & ORS.

Respondent(s)

Date : 11-10-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Mr. Kalyan Bandopadhyay, Sr. Adv.
 Mr. Anip Sachthey, AOR
 Ms. Anjali Chauhan, Adv.
 Ms. Ria Sachthey, Adv.

For Respondent(s) Mr. Ashok Bhan, Sr. Adv.
 Mr. Subhasish Bhowmick, AOR
 Ms. Goldy Goyal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In terms of the signed reportable order, the appeal is dismissed.

Pending application(s), if any, stand disposed of.

(OM PARKASH SHARMA)

AR CUM PS

(Signed reportable order is placed on the file)

(TAPAN KUMAR CHAKRABORTY)

BRANCH OFFICER