

A STATE OF MIZORAM AND ANR.
v.
MIZORAM ENGINEERING SERVICE ASSOCIATION AND ANR.

MAY 6, 2004

B [BRIJESH KUMAR AND ARUN KUMAR, JJ.]

Service Law:

C *Pay scales—Higher pay scale to Engineers recommended by the Fourth Pay Commission—Grant of in respect of one incumbent and denial to others—Correctness of—Held, on facts, State Government has accepted recommendations of Fourth Pay Commission and granted higher pay scale to one incumbent—Similar pay scales should be given to other incumbents without discrimination.*

D **Appellant-State Government issued a notification withdrawing benefits of revised pay scales to Executive Engineers and Superintending Engineers. The respondent-Association filed a Writ Petition before High Court for quashing the notification and for grant of higher pay scales to Chief Engineers and Additional Chief Engineers respectively**
E **on the basis of the recommendations of the Fourth Central Pay Commission. A Single Judge of the High Court allowed the Writ Petition, which was affirmed by the Division Bench in Writ Appeal by the State.**

F **In appeal to the Court, the State Government contended that the Engineers of the respondent-Association are not entitled to higher pay scales; and that they belong to unorganised service due to absence of Recruitment Rules.**

G **Dismissing the appeal, the Court**

HELD: 1.1. The fact that the revised pay scale was being allowed to one incumbent in tune with the recommendations of the Fourth Central Pay Commission, shows that the State Government has duly accepted the recommendations of the Fourth Central Pay Commission.
H **Having done so, it cannot be permitted to discriminate between**

individuals and not allow the same to the rest. There is no special reason or justification for confining the higher scale to a particular individual and deny the same to others. The State Government cannot be permitted to discriminate between similarly placed individuals in this behalf between those holding the post at the time of revision of pay scales and future incumbents of the post. [502-B-F]

1.2. For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organized service, the Engineers cannot be made to suffer. There is hardly any difference in organized and unorganised service so far as Government service is concerned. In Government service, such a distinction does not appear to have any relevance. [503-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 793 of 1998.

From the Judgment and Order dated 28.2.97 of the Gauhati High Court at Assam in W.A. No. 347 of 1996.

L. Nageshwar Rao, Additional Solicitor General, Ms. Hemantika Wahi, Ms. Sumita Hazarika and Ms. Archana Palkar Khopde for the Appellants.

Harish N. Salve, Kailash Vasudev, P.C. Prushi, S.K. Shandilya, Prateek Kumar and Mrs. V.D. Khanna for the Respondents.

K.N. Madhusoodhanan and R. Sathish for Intervenors.

The Judgment of the Court was delivered by

ARUN KUMAR, J. : This appeal is directed against the judgment dated 28th February, 1997 passed by a Division Bench of the Gauhati High Court. By the impugned judgment the Division Bench dismissed the appeal against the judgment dated 17th May, 1996 passed by the learned Single Judge. The learned Single Judge had allowed a writ petition filed by respondent herein challenging a notification No. G. 12011/3/87 F.Est dated 3rd February, 1989 whereby certain categories of engineers in the State

- A** Engineering Service had been excluded for purposes of revision of pay scales accepted by the State vide Notification No. G. 12011/3/87F.Est dated 19th January, 1989. The Mizoram Engineering Service Association (respondent) has been demanding higher pay scales for its members. The background is that prior to 1971 what is now known as the State of
- B** Mizoram was a district called the Lushai Hills District within the State of Assam. From 1971 to 1986 Mizoram was a Union Territory under the North Eastern Areas Reorganisation Act, 1971. It attained full state-hood on 20th February, 1987. In 1974 when the State was a Union Territory, the Government of India constituted a Departmental Pay Committee to
- C** suggest scales of pay and allowances for employees of Mizoram on the pattern of Central Government employees vide Ministry of Home Affairs letter No. 1.3.1973. M.P. dated 4th Novemebr, 1974. On the recommendation of the said Departmental Pay Committee, the Government of India revised the scales of pay and allowances for the employees of the State of Mizoram w.e.f. 1.1.1973. On a demand made by Superintending and Executive
- D** Engineers of the respondent Association for equalizing their respective scales of pay with their counterparts in the Central Public Works Department, the Government of India vide letter dated 16.10.1983 intimated to the Secretary to the Mizoram Administration, Public Works Department conveying the sanction of President of India for revision of pay scales of
- E** the Engineers (Group 'A' posts) in tune with the pay scales enjoyed by the engineers in the CPWD.

- The Government of India accepted the Fourth Central Pay Commission Report regarding revision of pay scales for Group A, B, C, D & E posts in the Central Civil Services w.e.f. 1.1.1986. The recommendations of the
- F** Fourth Central Pay Commission accepted by the Government of India became applicable for the civil services in Mizoram also. The Central Civil Services (Revised Pay) Rules, 1986 came into force w.e.f. 1.1.1986 and they were made applicable to the employees forming part of the civil services in Mizoram. Certain representations were made on behalf of
- G** employees for removal of anomalies resulting from the Fourth Central Pay Commission Report. In 1987 an Anomalies Committee was appointed to look into the alleged anomalies and make suitable recommendations. The recommendations of the Anomalies Committee created further anomalies rather than resolving them. On 7th November, 1988 another Anomalies
- H** Committee was appointed. The report of the Anomalies Committee was

accepted by the Government of the State of Mizoram. A notification No. A
 G 12011/3/87F.Est. dated 19th January, 1989 accepting the recommendations
 was issued. Soon thereafter the State Government issued another notification
 dated 3rd February, 1989 (the impugned notification) to the effect that the
 scales of pay for Group 'A' officers as mentioned in paras 28 of Schedule
 A and Schedule B did not include pay scales for MCS officers/MPS B
 officers whose pay scales were governed by their respective service rules.
 The notification further excluded engineering officers of the rank of
 Executive Engineer and Superintending Engineer from the benefits of the
 notification dated 19th January 1989. This notification was challenged by
 the respondent Association by filing a Writ Petition in the Gauhati High C
 Court. In the Writ Petition the first prayer was with regard to quashing the
 notification dated 3rd February, 1989 which excluded the Executive
 Engineers and the Superintending Engineers from getting the benefit of
 revised pay scales under the notification of the State Government dated
 19th January, 1989. The second prayer was with respect to the Chief D
 Engineers and Additional Chief Engineers seeking directions that they
 should get the conversion scale of pay of Rs. 5900-6700 and Rs. 4500-
 5700 respectively instead of the revised scales of pay prescribed for them
 by the State Government. The scale of Rs. 5900-6700 for the Chief
 Engineer and Rs. 4500-5700 for Additional Chief Engineer demanded by
 the respondent Association was as per the recommendations of the 4th E
 Central Pay Commission and was the same as was being allowed to
 incumbents holding equivalent posts in the Central Public Works
 Department. The learned Single judge allowed the Writ Petition granting
 both the prayers of the Writ Petitioner. The appeal against the judgment
 of the learned Single Judge was dismissed by the Division Bench. F
 The present appeal is directed against the said judgment of the Division
 Bench.

We have heard the learned counsel for the parties at length. At the
 outset we may note that the learned counsel for the appellant has not G
 seriously challenged the impugned judgment so far as it grants relief to the
 Executive Engineers and Superintending Engineers by quashing the
 Notification dated 3rd February, 1989. The challenge in the appeal is
 mainly directed against the scale of pay granted to the Chief Engineers and
 Additional Chief Engineers i.e. Rs.5900-6700 and Rs. 4500-5700
 respectively. In this connection following points have been raised : H

A 1. The base year for purposes of revision of pay scales of Chief Engineer and Additional Chief Engineer should be taken as 1973 and not 1983 even though the revision was being taken into consideration w.e.f. 1.1.1986 as per the Fourth Central Pay Commission Report which had been accepted by the State Government.

B 2. In respect of Chief Engineer, the recommendation of the Pay Anomalies Committee which was accepted vide Notification dated 19th January, 1989 was to the effect that only the existing incumbent would get the scale of Rs. 5900-6700 and future entrants would be entitled to pay scales of Rs. 4500-5700 only. This scale is the scale for all heads of departments in the State of Mizoram while the scale of Rs. 5900-6700 was for next higher post.

C
D It was not disputed that the then incumbent of the post of Chief Engineer namely, Mr. Robula was given the scale of Rs. 5900-6700. It was submitted that the said scale was specially allowed to him since he was holding the post on 1.1.1986 i.e. the date from which Fourth Central Pay Commission recommendations were made applicable. Subsequent entrants to the service were not to be given that scale. (Per letter dated 13th January, 1989 from Secretary, PWD to Director Accounts & Treasury, Mizoram).

E
F 3. It was vehemently argued that scale of Rs. 5900-6700 was being allowed by the Government of India for senior level posts in the corresponding cadres. Engineering Service in the State of Mizoram was not an organized service. There were no Recruitment Rules for the service. Therefore, there were no senior level posts which would entitle the incumbents to get the grade of Rs. 5900-6700.

G So far as the question as to which base year should be taken into consideration for purposes of revision of pay i.e. 1973 or 1983, we may recall that Mizoram became a Union Territory in the year 1973. The Government of India had accepted the fact that the persons employed in Engineering Services within the State of Mizoram should get pay scale at par with those working in the Central Public Works Department. This decision was also implemented. The scales of pay for Engineers working
H in the Mizoram State were revised w.e.f. 1973. The next crucial event in

this connection is the recommendations of the Fourth Central Pay Commission which were accepted by the State of Mizoram as well. These recommendations take 1983 as the base year for the purpose of revision of pay scales. Apart from this the Central Civil Services (Revised Pay) Amendment Rules, 1987 also take the year 1983 as the base year. These rules came into force on 1st January, 1986. At that time Mizoram was a Union Territory. The Government of India accepted the Rules. They were made applicable in Mizoram as well. The schedule annexed to the Rules refers to present scales and revised scales of pay. The present scales mean the scales which were in force at that time. For the relevant category of posts the existing scale given in the Schedule is Rs. 2250-125/2-2750 and the revised pay scale is Rs. 5900-200-6700. In this background there does not appear to be any good reason for taking 1973 as the base year for the purpose of pay revision in Mizoram. No reason is forthcoming. Mr. L. Nageshwara Rao, the learned Additional Solicitor General appearing for the appellants relied on a Notification dated 1st February, 1989 to submit that it was the decision of the State Government to treat the year 1973 as the base year for the purpose of pay revision and that has to be accepted. We are unable to accept this submission made on behalf of the appellants in view of the fact that recommendations of the Fourth Central Pay Commission have been duly accepted by the State Government. Additional factor which impels us to take this view is that the State Government itself accepted the scale of Rs. 5900-6700 and allowed the same to the then incumbent Mr. Robula w.e.f. 1.1.1986. The State linked up revision of pay scale of Mr. Robula with the date of revision of pay scales as per recommendations of the Fourth Central Pay Commission. A different reasoning cannot be applied in case of other officers in the service. In this connection it is also worth noting that in para 4 of the counter affidavit filed on behalf of the State Government before the learned Single Judge in response to the Writ Petition it is admitted that the existing pay scale for the post of Chief Engineer was Rs. 2250-2500 prior to enforcement of recommendations of the Fourth Central Pay Commission. This is also admitted that the conversion scale for the scale of Rs. 2250-2500 is Rs. 5100-5700 and 5900-6700 as per the Fourth Pay Commission Report. However, it is submitted that grade of Rs. 5900-6700 was applicable only in respect of organized Medical, Engineering and other Central Services as per specific recommendations of the Fourth Central Pay Commission. In view of this stand of the State Government it is difficult to accept that

A the Chief Engineers will not be allowed the grade or Rs. 5900-6700.

Coming to the argument that the scale of pay of Rs. 5900-6700 was confined to only the then Chief Engineer Mr. Robula and was not be allowed to future entrants in the service, we find no justification for this.

B The fact that the revised pay scale was being allowed to Mr. Robula in tune with the recommendations of the Fourth Central Pay Commission, shows that the State Government had duly accepted the recommendations of the Fourth Central Pay Commission. Having done so, it cannot be permitted to discriminate between individuals and not allow the same to the rest. In this context the learned counsel for the appellant submitted that it is not unusual that sometimes special pay is granted to an individual and the same does not become a precedent for others. As a proposition it may not be disputed. But there has to be special reason for this. In the facts of the present case we do not find any justification for confining the higher scale to a particular individual and deny the same to others. There may be special reasons for instance special merit, expertise or the like, for giving special pay to a particular individual. In the present case no such reason is forthcoming. On the other hand the reason given is that since he was holding the post on 1.1.1986, the date from which Fourth Central Pay Commission recommendations were given effect to, he was being allowed the higher pay scale. This reason rather supports the case of respondent. It shows an admission on the part of the appellant that the revised pay scales for the post of Chief Engineer as per the recommendations of the Fourth Central Pay Commission was Rs. 5900-6700 and was allowed to a Chief Engineer. The State Government cannot be permitted to discriminate between similarly placed individuals in this behalf between those holding the post at the time of revision of pay scales and future incumbents of the post. The argument has no merit.

G Great stress was laid on the fact that Engineering Service in the State was not an organized service and therefore, it did not have categorisation by way of entrance level and senior level posts and for that reason the higher scale of Rs. 5900-6700 which was admissible for senior level posts could not be given in the Engineering Service. The main reason for dubbing Engineering Service as an unorganized service in the State is absence of recruitment rule for the service. Who is responsible for not framing the recruitment rules? Are the members of the Engineering Service

responsible for it? The answer is clearly 'No'. For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organized service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organized and unorganized service so far as Government service is concerned. In Government service such a distinction does not appear to have any relevance. Civil Service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words 'organised service' and 'unorganised service'. Nothing has been pointed out in this behalf. The argument is wholly misconceived.

The learned counsel for the appellant also argued that if the scale of Rs. 5900-6700 is to be allowed to the Chief Engineers, the State Government will have to allow the same scale to other heads of departments in the service of the State Government which will be a heavy burden on the financial resources of the State Government and for that reason we should restrict the scale for post of Chief Engineer and Additional Chief Engineer to Rs. 4500-5700 and Rs. 4100-5300 respectively. In our view this is hardly any ground to interfere with the decision of the High Court. It has been found that the claim of the respondents is fully justified by the facts on record. The Central Government as well as the State Government accepted the recommendations of the Fourth Central Pay Commission and the scales being allowed to the members of the respondent Association are based on those recommendations.

Thus we do not find any merit in the present appeal. The impugned judgment does not call for interference. The appeal is dismissed leaving the parties to bear their respective costs.

B.S.

Appeal dismissed.