

STATE OF U.P. AND ORS.

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v.

U.P. SALES TAX OFFICERS GRADE II ASSOCIATION

APRIL 16, 2003

[DORAISWAMY RAJU AND D.M. DHARMADHIKARI, JJ.]

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Service Law:

Revision of pay scale—Fixation of—Trade Tax Officers carrying pre revised pay scale of Rs. 400—750 at par with District Level Officers in other departments—District Level Officers pay scale revised to Rs. 690—1420. However, Trade Tax Officers given pay scale of Rs. 625—1240—Claim for equality in pay scales—High Court allowing the claim—Justification of—Held: High Court justified in granting revised pay scale of Rs. 690—1420 at par with District Level Officers since Trade Tax Officers are exercising administrative and quasi judicial functions both within the district and outside, thus can be treated at par with District Level Officers in other departments who carried the same pre—revised pay scale—Grant of arrears of pay from date of filing petition.

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Respondent—Trade Tax Officers were carrying pre-revised pay scale of Rs. 400-750 at par with other District Level Officers in other departments of the State. Second U.P. Pay Commission was set up for revision of pay scales of government servants. It classified the District Level Officers in two groups on the basis of their engagement in the developmental or non developmental activities. Pursuant to this Government resolution was taken which gave a go-bye to this classification. It fixed pay scales for different posts a step above the pay scale recommended by the Pay Commission. It granted pay scale of Rs. 690-1420 to officers in pre-revised scale of Rs. 400-750. However, respondents were granted pay scale of Rs. 625-1240. Respondent challenged the same. High Court directed the respondent to be fixed in the revised pay scale of Rs. 690-1420. Hence the present appeal.

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Appellant—State contended that no parity is found status-wise and function-wise between Trade Tax Officers in the Tax Department and District Level Officers in other departments of the State; that Government Resolution has fixed pay scales for different posts a step above the pay scale

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A recommended by the Pay Commission; that looking to the nature of onerous duties of District Level Officers in other departments engaged in developmental activities of the State, they have been granted pay scale of Rs. 690-1420 and Trade Tax Officers have been given revised scale of Rs. 625-1240; and that pay fixation is a subject for experts who undertake comparative study of nature of duties and functions of various employees to be considered for pay revision, such a decision of Pay Commission and the Government based thereon is not open to judicial review.

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E Respondent-Association of Trade Tax Officers contended that once the Government resolves to depart from the report of the Pay Commission of giving different pay revision based on grouping of the District Level Officers engaged in developmental activities and others not so engaged, there was no justification not to give to the Trade Tax Officers revised pay scale of Rs. 625-1240 which is the pay scale recommended in place of pre-revised scale of Rs. 400-750; that Trade Tax Officers discharge both administrative and quasi judicial functions within the District and some time their jurisdiction goes beyond the District based on the area for which they are appointed; that when the District Level Officers, who were in the pre-revised scale of Rs. 400-750, have been granted by the State Government the pay scale of Rs. 625-1240, the High Court is justified in holding that it was discriminatory to grant Trade Tax Officers carrying the same pre-revised scale of Rs. 400-750, the pay scale of Rs. 625-1240.

Dismissing the appeal, the Court

F HELD: 1.1. High Court was justified in granting relief by directing that the Trade Tax Officers be fixed in the revised scale of Rs. 690-1420 at par with District Level Officers carrying the same pre-revised scale of pay. [623-D, E]

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H 1.2. Pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees. In the instant case, judicial review is not sought against the report or recommendations of the Pay Commission but the implementation of the Government Resolution based on the report and recommendations of the Pay Commission is questioned. The Pay Commission classified the District Level Officers into two groups, those engaged in welfare and in developmental activities, and others not so engaged in view of their onerous duties. The former group, recommended pay revision a step above other

District Level Officers engaged in traditional work of the government. A

The Government Resolution rightly gave a go-bye to this classification, when it resolved under its decision taken to grant revised pay scales to District Level Officers only on the basis of the pre-revised pay scales which they were carrying. The officers in the pre-revised scale of Rs. 400-750 were given the pay scale of Rs. 690-1420. Therefore, the Trade Tax Officers who were carrying pre-revised scale of Rs. 400-750 could not have been discriminated vis-a-vis the District Level Officers who also carried the same pre-revised scale of pay. The Trade Tax Officers were granted a pay scale of Rs. 625-1240 which is a step below the pay scale of Rs. 690-1420 granted to the District Level Officers who carried same pre-revised scale of pay with Trade Tax Officers. [623-F-H; 624-A-C] B C

1.3. The High Court has examined the nature of duties and functions of Trade Tax Officers and concluded that the Trade Tax Officers exercise administrative and quasi judicial functions both within the District and sometimes outside and can, in that sense, be treated as District Level Officers at par with District Level Officers in other departments. The importance of their role and their significant contribution, functionally in the administrative hierarchy cannot in any manner be belittled even vis-a-vis the others, appreciated by the Commission or ultimately considered for better treatment even by the government, in the process of implementation of the report of the Commission. It appears that the Government Resolution makes no distinction between the officers carrying pre-revised scale of Rs. 400-750 in the Tax Department as well as in other departments. In effect, the implementation of the Resolution of the government seems to be discriminatory and has rightly been interfered with by the High Court by directing the State Government to grant revised pay scale of Rs. 690-1420 to Trade Tax Officers at par with District Level Officers who carried same pre-revised scale of pay. [624-F-H; 625-A] D E F

1.4. The pay fixation of the in-service or retired Trade Tax Officers in the revised pay scale of Rs. 690-1420 has to be granted from the date the Second U.P. Pay Commission was set up for revision of pay scales of government servants. Their current pay and pension have to be fixed accordingly. With regard to the working out of arrears and payments of the same based on pay fixation in pre-revised pay scales, the ends of justice would be met by directing that they would be entitled to arrears of pay based on re-fixation of pay in the revised scale only from the date of their G H

A filing of the petition in the High Court and they would not be entitled to any arrears of pay prior to the date of filing the petition. [625-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5866 of 2000.

B From the Judgment and Order dated 30.11.1998 of the Allahabad High Court in W.P. No. 4626 of 1984.

Subodh Markandeya, R.C. Verma and Rajeev Kr. Dubey for the Appellants.

C P.P. Rao, Dinesh Dwivedi, Sunil Kr. Jain, Manish Kumar, Shivpati B. Pandey, Mrs. Vimla Sinha and Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

D **DHARMADHIKARI, J.** The State of Uttar Pradesh is in appeal against the judgment of the Division Bench of Allahabad High Court dated 30.11.1998 whereby the Sales Tax Officers Gr.II [now re-designated as Trade Tax Officers Gr.II and hereinafter referred to as 'Trade Tax Officers'] have been directed to be fixed in the revised pay scale of Rs. 690-1420/- with consequential further revision of pay in accordance with the pay revision recommended by Second U.P. Pay Commission.

E The claim of Trade Tax Officers through their association [respondent herein] in the High Court was that at par with other District Level Officers in the State services who are carrying pre-revised pay scale of Rs. 400-750, the Trade Tax Officers should also have been given revised pay scale of Rs. 690-1420 in implementation of the Government Resolution dated 29.12.1981 which was taken pursuant to the report of the Second U.P. Pay Commission set up for revision of pay scales of government servants w.e.f. 1.7.1979. The High Court, after going through the relevant part of the report of the Pay Commission and the Government Resolution dated 29.12.1981 taken pursuant thereto, came to the conclusion that since the Trade Tax Officers were carrying pre-revised pay scale of Rs. 400-750 at par with other District Level Officers in other departments of the State, the pay scale of Rs. 625-1240 granted to them which is a step below the revised pay scale of Rs. 690-1420 given to the District Level Officers in other departments, is *per se* discriminatory. It is held that keeping in view the nature of the duties and functions of Trade Tax Officers, they are equal in rank to District Level Officers and have to be

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given revision of pay scales at par with other District Level Officers as both of them were carrying the same pre-revised pay scale of Rs. 400-750. A

The learned counsel appearing for the State of Uttar Pradesh, in assailing the judgment of the High Court, has contended that the report of the Second U.P. Pay Commission deals with the pay revision of Sales Tax or Trade Tax Officers of the Sales Tax Department distinctly under Chapter 20 under the heading 'Institutional Finance'. It is pointed out that the case of pay revision of District Level Officers in various departments, other than Tax Department, have been separately dealt with by the Pay Commission in its report. It is, therefore, submitted that no parity is found status-wise and functionally between Trade Tax Officers in the Tax Department and District Level Officers in other departments of the State. It is submitted that by Resolution dated 29.12.1981, the government has fixed pay scales for different posts a step above the pay scale recommended by the Pay Commission. In doing so on reasonable grounds, a separate treatment has been given by making a distinction between officers in Tax Department and District Level Officers in other departments, amongst whom are those involved in developmental activities. Looking to the nature of onerous duties of District Level Officers engaged in developmental activities of the State, the government in its resolution have granted them pay scale of Rs. 690-1420 and Trade Tax Officers have been given revised scale of Rs. 625-1240 although prior to the above revision both Trade Tax Officers and District Level Officers were carrying pre-revised scale of Rs. 400-750. B C D E

It is contended that pay fixation is a subject for experts who undertake comparative study of nature of duties and functions of various employees to be considered for pay revision. Such a decision of the Pay Commission and the government decision based thereon is not open to judicial review. F

Learned counsel appearing for the respondent [Association of Trade Tax Officers herein] in supporting the impugned judgment has tried to project a point of view different from the one accepted by the High Court. It is pointed out that the Officers who were carrying pay scale of Rs. 400-750/- under the First Pay Commission were recommended pay scale of Rs. 625-1170/- by the Second Pay Commission w.e.f. 1.7.1979. After considering the report and recommendations of the Second Pay Commission, the government passed Resolution on 29.12.1981 to grant pay scale of Rs. 625-1240/- that is a step above the pay scale recommended by the Second Pay Commission. G

The learned counsel then took us through the relevant parts of the H

A report of the Second Pay Commission and the Government Resolution taken consequent thereupon. It is pointed out that the Pay Commission separately dealt with the Trade Tax Officers in the Tax Department and District Level Officers in other departments. So far as District Level Officers are concerned, after identifying them and ascertaining their nature of duties and functions, the Pay Commission classified them in two groups i.e. A & B. In group A are included Officers who are engaged in developmental activities and for them because of onerous duties, pay scale of Rs. 850-1720 was recommended. For the other Officers in Group B, in which are included Officers not engaged in developmental activities but are discharging traditional duties, pay scale of Rs. 700-1600 was recommended even though both categories of Officers in group A & B were carrying various different pre-revised pay scales of Rs. 400-750; Rs. 450-850; Rs. 450-950 and Rs. 550-1200 depending upon the department to which they belonged.

From the contents of the Government Resolution dated 29.12.1981 which is taken pursuant to the report of the Second Pay Commission, it is pointed out that the classification of District Level Officers into two groups i.e. A & B, as mentioned above based on their engagement in developmental or non-developmental activities, was given a go-bye by the government. To the District Level Officers based on their different pre-revised scales of pay, the government decided to give them pay revision a step above the revision recommended by the Pay Commission. The Officers who were in the pre-revised scale of Rs. 400-750, were granted revised pay scale of Rs. 690-1420 by the government excepting the solitary post of District Organizer Pradeshik Vikas Dal.

The relevant part of the Government Resolution contained in paragraph 19 (a), (b) & (c) needs to be noted which is as under :-

“19. District Level Officers may be placed in the following three categories on the basis of their present pay scales.

- (a) Those Officers/posts are in the pay scale of Rs. 550-1200, they be given revised pay scale of Rs. 850-1720.
- (b) Those Officers/posts are in the pay scale of Rs. 450-850 and Rs. 450-950 be given revised pay scale of Rs. 770-1600.
- (c) Those Officers/posts are in the pay scale of Rs. 400-750 be given revised pay scale of Rs. 690-1420 except District Organizer Pradeshik Vikas Dal”.

Learned counsel appearing for the respondent/Association, therefore, argues that once the government resolves to depart from the report of the Pay Commission of giving different pay revision based on grouping of the District Level Officers engaged in developmental activities and others not so engaged, there was no justification not to give to the Trade Tax Officers revised pay scale of Rs. 625-1240 which is the pay scale recommended in place of pre-revised scale of Rs. 400-750. It is submitted that Trade Tax Officers discharge both administrative and quasi judicial functions within the District and some time their jurisdiction goes beyond the District based on the area for which they are appointed. When the District Level Officers, who were in the pre-revised scale of Rs. 400-750, have been granted by the State Government, the pay scale of Rs. 625-1240, the High Court is justified in holding that it was discriminatory to grant Trade Tax Officers carrying the same pre-revised scale of Rs. 400-750, the pay scale of Rs. 625-1170. On the aforesaid additional reason, the judgment of the High Court in favour of Trade Tax Officers has been supported.

After going through relevant part of the report of the Second Pay Commission, the Resolution of the government taken thereupon and hearing the submissions made by the learned counsel appearing for the parties, we have come to the conclusion that the High Court committed no error in granting relief by directing that the Trade Tax Officers be fixed in the revised scale of Rs. 690-1420 at par with District Level Officers carrying the same pre-revised scale of pay.

There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees. In the present case, however, judicial review is not sought against the report or recommendations of the Pay Commission. What the respondent/association has questioned is the implementation of the Resolution of the Government based on the report and recommendations of the Pay Commission. As we have seen above, the Pay Commission classified the District Level Officers into two groups. Those engaged in welfare and developmental activities, in view of their onerous duties, were recommended pay revision a step above other District Level Officers engaged in traditional work of the government. These recommendations of the Pay Commission by classifying District Level Officers into two groups i.e. A & B has been given a go-bye rightly too, in our view, by the government when it resolved under its decision

A taken on 29.12.1981 to grant revised pay scales to District Level Officers only on the basis of the pre-revised pay scales which they were carrying. We have also noted the relevant part of the Resolution of the Government which recommends for the officers in the pre-revised scale of Rs. 400-750, the pay scale of Rs. 690-1420.

B In the light of the aforesaid decision of the government, Trade Tax Officers who were carrying pre-revised scale of Rs. 400-750 could not have been discriminated vis-a-vis the District Level Officers who also carried the same pre-revised scale of pay. Pursuant to the aforesaid decision of the government, Trade Tax Officers have been granted a pay scale of Rs. 625-1170 which is a step below the pay scale of Rs. 690-1420 granted to the District Level Officers who carried same pre-revised scale of pay with Trade Tax Officers.

The High Court has also gone into the question as to whether the Trade Tax Officers can be dealt differently from the District Level Officers. The Pay Commission did consider the cases of Trade Tax Officers in the Tax Department distinctly from District Level Officers in other departments of the State Government but for both the Officers in pre-revised scale of Rs. 400-750, the Commission recommended revised scale of Rs. 625-1170. Thereafter, the Government Resolution granted pay scale of Rs. 625-1240 to the officers in pre-revised scale of Rs. 400-750. Pursuant to the Resolution of the Government, all Officers either in the Tax Department or in other departments, carrying pre-revised scale of Rs. 400-750 were required to be granted revised scale of Rs. 625-1240 and no discrimination inter se between them could be made on the basis of the report of the Pay Commission. The High Court has examined the nature of duties and functions of Trade Tax Officers. The High Court has rightly come to the conclusion that the Trade Tax Officers exercise administrative and quasi judicial functions both within the District and sometimes outside and can, in that sense, be treated as District Level Officers at par with District Level Officers in other departments. The importance of their role and their significant contribution, functionally in the administrative hierarchy cannot in any manner be belittled even vis-a-vis the others, appreciated by the Commission or ultimately considered for better treatment even by the government, in the process of implementation of the report of the Commission. It appears that the Resolution of the Government dated 29.12.1981 and particularly its relevant part quoted above, makes no distinction between the officers carrying pre-revised scale of Rs. 400-750 in the Tax Department as well as in other departments. In effect, the

implementation of the Resolution of the government seems to be discriminatory and has rightly been interfered with by the High Court by directing the State Government to grant revised pay scale of Rs. 690-1420 to Trade Tax Officers at par with District Level Officers who carried same pre-revised scale of pay. A

The last question that remains is whether on due fixation of the Trade Tax Officers in the revised scale of pay of Rs. 690-1420 w.e.f. 01.7.1979, they should be granted full arrears of pay. B

We have heard the counsel appearing for the parties on the question of the relief with regard to the arrears of pay based on re-fixation of the pay scales of Trade Tax Officers. As directed by the High Court, the pay fixation of the in-service or retired Trade Tax Officers in the revised pay scale of Rs. 690-1420/- has to be granted w.e.f. 01.7.1979 and their current pay and pension have to be fixed accordingly. But so far as the working out of arrears and payments of the same based on pay fixation in pre-revised pay scales is concerned, in our considered opinion, the ends of justice would be met by directing that they would be entitled to arrears of pay based on re-fixation of pay in the revised scale only from the date of their filing of the petition in the High Court and they would not be entitled to any arrears of pay prior to the date of filing the petition. C D

Consequently, except for the modification on the question of grant of arrears of pay to be paid on re-fixation of salary in the revised scale of Trade Tax Officers, this appeal fails and is hereby dismissed but in the circumstances without any order as to costs. E

N.J.

Appeal dismissed.