

UNION OF INDIA

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v.

T.M. SOMARAJAN & OTHERS
(Civil Appeal No. 9041 of 2003)

OCTOBER 21, 2009

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[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]

Service law – Pay fixation – Appointment of officer of State Police Service to IPS cadre – Reduction of pay in IPC cadre vis-a-vis higher pay in State Police Service – Also juniors to the officer inducted into IPS cadre after the induction of the officer, getting more pay – Removal of anomaly sought – Held: After entering into IPS cadre from State Cadre Service, pay of such officer should not be reduced – Order of tribunal as upheld by High Court that applicant entitled to get his initial pay fixed in IPS Cadre on basis of the pay drawn by him in non-IPS cadre as confirmed Superintendent of Police without applying restrictive definition of expression higher scale, does not call for interference – Indian Police Service (Pay) Rules, 1954, Schedule II section I.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9041 of 2003.

From the Judgment & Order dated 6.9.2002 of the High Court of Kerala at Ernakulam in O.P. No. 22783 of 2002 (S).

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WITH

SLP (C) Nos. 14700-14701 of 2004.

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SLP (C) Nos. 8967 of 2007.

Mohan Jain, ASG, Dinesh Thakur, Rohini Mukherjee,

A Subhash Kaushik, S.N. Terdal (for Sushma Suri) for the Appellant.

Nishe Rajen Shonker (for T.T.K. Deepak & Co.) C.N. Sreekumar, P.R. Nayak, G. Prakash, R. Sathish, V.K. Sidharthan for the Respondents.

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The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. It is an admitted position that the respondent No. 1 who was a member of the state police service was inducted into the Indian Police Service (IPS in short) w.e.f. 9.12.1995. At that time, his basic pay in the state cadre was Rs. 4650 p.m. + special pay of Rs. 100. Very curiously, after his entry into the IPS., his pay came to be re-fixed at Rs. 4250 + special pay of Rs. 200 w.e.f. 1.12.1996.

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2. Respondent No. 1 made a representation dated 16.8.1997 to the Accountant General (A&E), Kerala, Thiruvananthapuram for the purpose of removal of the anomaly consisting in the reduction of pay in the IPC cadre vis-a-vis higher pay in the State Police Service. Instead of removing that anomaly, it was reiterated in a communication dated 2.9.1997 received from the Accountant General (A&E), Kerala that the fixation of pay was made placing reliance on Clauses (iii) & (iv) of Schedule II of IPS (Pay) Rules, 1954 (hereinafter referred to as "the IPS (Pay) Rules") and hence, there was no anomaly at all. Respondent No. 1 again sent a detailed representation dated 6.10.1997 wherein he had elaborately explained the facts and the relevant rules with regard to the pay fixation on his appointment to the IPS cadre on promotion from the State Police Service and the provisions regarding the power of relaxation conferred on the Union of India under Rule 6 of Section III of Schedule II of the IPS (Pay) Rules. However, that was also rejected by communication dated 4.1.1998. The respondent No.1, therefore, challenged the same by way of filing Original Application before the Central Administrative

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Tribunal, Ernakulam Bench and sought the following reliefs: A

1. Call for the records leading to Annexure A1 & A2 and set aside the same.
2. Issue a direction to the respondents to fix the basic pay of the applicant in the post of Superintendent of Police (IPS Cadre) at Rs. 4500/- + personal pay of Rs. 400/- with effect from 9.12.1995 and disburse the arrears of salary due to the applicant. B
3. To declare that the applicant is entitled to have his pay fixed in the IPS cadre on the basis of the pay drawn by him in the non-IPS cadre is a confirmed Superintendent of Police applying the provisions contained in Section 1 of Schedule II of the Indian Police Service (Pay) Rules without giving effect to the unreasonable definition of higher scale of pay contained in Clause III of Schedule II of the said Rules. C D
4. To declare that the definition of Higher Scale of pay contained in Clause III of Schedule II of the Indian Police Service (Pay) Rules is unreasonable and unworkable and hence should not be enforced for fixation of the pay of the applicant in the IPS cadre with effect from 9.12.1995. E
5. To declare that the definition of higher scale of pay contained in Clause (III) of Schedule II of the Indian Police Service (Pay) Rules is unconstitutional and ab initio void. F
6. To call for the records leading to Annexure A-16 and letter NO. 20015/1/2000-AIS (II) dated 27.3.2000 of the Government of India, Ministry of Personnel, Public Grievances and Pensions referred to in Annexure A-16 and set aside the same. G H

A 3. It also became apparent that few other officers similarly placed with the respondent No. 1 were not found fit to be inducted into the IPC cadre along with the respondent No. 1 and they were inducted into the IPS Cadre subsequently. It was pointed out by the respondent No. 1 that those officers were also junior to him. They were Shri Somasundra Menon, Shamsudeen, Vijayan. Yet, inspite of the fact that all these officers were junior and inducted into the IPS Cadre after the induction of respondent No.1, their pay were fixed at higher level than that of respondent No. 1.

C 4. The Tribunal had held that the pay of respondent No. 1 could not be reduced from Rs. 4650 to Rs. 4250/- particularly because of the Rules governing the pay scales of such State Cadre Police Officers who were inducted into the IPS Cadre. For that purpose, the Tribunal took stock of IPS (Pay) Rules, D 1954 and more particularly, Rule 4(5) thereof. The Tribunal also took into account Section III of the Schedule-II which is referred to in Rule 4(5). On reading of the same, the Tribunal correctly came to the conclusion that the pay of respondent No. 1 should have been fixed at Rs. 4900/- and he was also entitled to special pay of Rs. 100/- Besides this, the Tribunal also took into account Section I of Schedule II of the IPS (Pay) Rules, E 1954. In para 8 of its order, the Tribunal explained as to how the respondent No.1 was entitled to higher pay. Ultimately, it wrote a finding that the respondent No. 1 was entitled to get F his initial pay in IPS Cadre fixed at Rs. 4900/- p.m. in accordance with the proviso to Clause (2) Section I of Schedule II. It also came to the conclusion that the Central Government had the power to erase any anomaly caused in fixing the pay of the concerned officer who had been inducted into the IPS G Cadre. Ultimately, the Tribunal also referred to the peculiar anomaly caused in this case by the number of juniors of the respondent No. 1 getting more pay than that of the respondent No.1 who, though was inducted into the IPS Cadre earlier to his juniors, faced an anomaly of earning salary lower to his H juniors and even lesser than what he earned as a State Cadre

Police Officer. The Tribunal ultimately issued five direction which are as under: A

1. The impugned order A-1 dated 2.9.1997 is set-aside.
2. The impugned order A-2 dated 4.2.98 within practically reiterates the interpretation of the Rules as given in A-2 and the conclusions drawn therein set-aside. B
3. The impugned order A-16 dated 22.5.2000 of the DOPT is set-aside. C
4. We declare that the applicant is entitled to have his initial pay fixed in the IPS Cadre on the basis of the pay drawn by him in the non-IPS cadre as a confirmed Superintendent of Police as on 9.12.1995 without applying the restrictive definition of the expression higher scale occurring in definition Clause (iii) of Schedule II of the Indian Police Service (Pay) Rules, 1954. We further declare that in the applicant's case the context requires such interpretation of the meaning of expression 'higher scale of pay' that should not cause the anomalous situation of the applicant deriving less pay and allowance than his juniors some of whom were not even found fit to be promoted to the IPS along with and hence were considered for promotion on subsequent date or dates. We also declare that the anomaly in the applicant's initial pay fixation in the IPS is to be necessarily removed by applying the provisions of Clause (6) of Schedule II of the Indian Police Service (Pay) Rules, 1954. The first respondent is directed to pass appropriate orders and ensure removal of the anomaly in the applicant's initial pay fixation in the IPS by applying the provisions of D
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A Clause (6) and fixing the applicant's initial pay in the IPS on the basis of his actual pay in the higher scale of Super Indent of Police (Non-IPS) as on the date of his promotion to the IPS.

B 5. The above orders and directions shall be carried out and the consequential benefits including arrears, if any, flowing therefore granted to the applicant at an early date and in any case, within a period of four months from the date of receipt of copy of this order."

C 5. The Union of India challenged the order of the Tribunal by way of filing review application which was dismissed. Ultimately, the matter reached before the High Court. The High Court also dismissed the O.P. NO. 22783 of 2002. Hence, the present appeal.

D 6. Mr. Mohan Jain, learned Additional Solicitor General appearing for the Union of India tried to suggest that the fixation which was drawn as per the IPS (Pay) Rules was correctly done and, therefore, the orders passed by the Tribunal as well as of the High Court were erroneous.

E 7. Mr. C.N. Sreekumar, learned counsel appearing for the respondent No. 1, however, supported the orders and pointed out that there would be no need to go into all the questions as the respondent No.1 has already retired from the service. He pointed out that the Tribunal had correctly decided the issues.

F 8. Mr. Jain, learned Additional Solicitor General very fairly conceded that there was an anomalous position inasmuch as the juniors of the respondent No. 1 were drawing more pay than the respondent No. 1 herein and, therefore, that part of the Tribunal's order could not be faulted. Insofar as the interpretation put forth by the Tribunal on the IPS (Pay) Rules was concerned, learned Additional Solicitor General requested us to keep the question open.

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9. We have considered the order of the Tribunal in detail. We are in agreement with the Tribunal's well considered order as also of the High Court. In our opinion, after entering into the IPS cadre from the State Cadre Service, the pay of such an officer should not be reduced.

10. With these observations, we feel that there is no infirmity in the orders of the Tribunal and the High Court. We do not see any merit in this appeal which is, accordingly, dismissed.

11. It is reported before us that the respondent No. 1 has still not been able to get the fruits of the orders of the Tribunal and High Court which were in his favour. We direct the Union of India to work out and pay the benefits to be given to the respondent No. 1 within six months from today.

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Delay condoned.

It is not disputed by the parties that the questions involved in these petitions are identical with those involved in Civil Appeal No. 9041 of 2003.

In view of the orders passed in Civil Appeal No. 9041 of 2003, these Special Leave Petitions are dismissed.

N.J.

Appeal and SLPs dismissed.