

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No.  
T.A. No.

429/89

199

DATE OF DECISION 14.9.90

K. Jose Thomas Applicant (s)

M/s Mathai M. Paikadey,  
P. Mohanan, John Thomas &  
Biju Abraham Advocate for the Applicant (s)

Versus

Union of India (Ministry  
of Industry) & 3 others Respondent (s)

Mr. V. Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. A.V. Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Shri S.P. Mukerji, Vice Chairman)

In this application dated 7th July, 1989, the applicant who is now working as an Upper Division Clerk (UDC) in the office of the Registrar of Companies at Ernakulam, has prayed that the respondents be directed to revise and re-fix his initial pay on his absorption in Central Government service by protecting the last salary drawn by him before such absorption and to pay him arrears of pay thus re-fixed. The undisputed facts of the case are as follows:

2. The applicant was working as a Clerk in the Catholic Bank of India, Changanacherry from 1956 onwards till the company was ordered to be wound up by the High Court of Kerala on 31.10.1961. The applicant was taken in as an Estate Clerk under the Court Liquidator with effect from 1.2.1962 on a consolidated salary of Rs. 100 per month. As per the provisions of the Companies Act, the work relating to the

companies in liquidation came under the charge of Official Liquidator, High Court of Kerala from 1.4.56. The Official Liquidator attached to the High Court of Kerala was to carry on the liquidation proceedings in respect of the companies registered under the Companies Act and the Court Liquidator under whom the applicant had been working since 1.6.62 was to look after the liquidation proceedings of the <sup>banking</sup> companies. The office of the Court Liquidator was manned by the State Government staff and the staff of the erstwhile banking companies. The work of liquidation proceedings which was being looked after by the Court Liquidator in respect of banking companies came under the charge of the Official Liquidator who is an officer appointed by the Central Government on 7.1.67. It was subsequently decided that the persons who were attached to the office of the Court Liquidator and were working in respect of banking companies in liquidation could be absorbed in the office of the Official Liquidator, Kerala, as Central Government staff. Accordingly, <sup>an</sup> offer was made to the applicant through the memorandum dated 19th July 1969 (Annexure-A1). The said memo contained a specific assurance that the last pay of the applicant immediately before the date of his absorption in the Central Government would be protected while fixing his pay in the Central Government service. On that basis the applicant opted for absorption in the Central Government service and was absorbed as LDC with effect from 1.10.69 in the office of the Official Liquidator. According to the applicant, at the time of his absorption, he received a salary of Rs. 250 per month, but contrary to the <sup>offered</sup> terms and assurance, he was paid a salary of Rs. 221.50 for the first month. When he brought this orally to the notice of the respondents, he was assured that the matter would be taken up and the error rectified. Since by the efflux of time the loss of his pay magnified, the applicant sent a written representation on 19.9.83 (Annexure A2). When it did not evoke any response, he followed it up with representations dated 11.4.1984 and 29.1.85 <sup>and then on 29.1.87.</sup> When nothing happened, he sent a lawyer's notice on 13.1.88 and again on 29.3.88. At long last, the respondents on 12.4.88 informed the applicant that his claim was under

23

consideration. Four months later, vide the communication dated 2.8.88 (Annexure-A5) he was informed that he was not entitled to pay protection as he was not a State Government employee. The applicant's contention is that the respondents are bound by the principle of Promissory Estoppel, in protecting his last pay immediately before his absorption. The question of being or not being a State Government employee in view of the offer of terms made to him is irrelevant.

3) The respondents have taken the stand that the applicant was not a State Government employee and became for the first time a Government employee on 1.10.69. The offer made to him vide the memo dated 19.7.69 was common to all the staff and by the wording of the memo, only the State Government employees were to be entitled to protection of their pay. This condition is not fulfilled in case of the applicant. Being an outsider, entering Government service for the first time on 1.10.69, his pay had to be fixed at the minimum of the pay scale.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The whole case hinges upon the offer of terms and conditions of his absorption in Government service as indicated in the memorandum dated 19.7.69 at Annexure-A1. The memorandum reads as follows:

"Shri Jose Thomas at present working as Estate Clerk in the office of the Official Liquidator, Kerala is hereby informed that he is being considered for absorption in the Central government service in the office of the Official Liquidator, Kerala as Lower Division Clerk in the scale of Rs. 110-3-131-4-155-EB-4-175-5-180. The terms and conditions on which he may be absorbed are as under:

"On the temporary State Government employees joining the new posts and the permanent employees electing the Central Scales of pay and allowances and other conditions of service, their initial pay in the prescribed Central Scales will be fixed under the normal rules. The pay will be so fixed as to ensure the pay, which they were in receipt of under the respective State Government/s on the date immediately before the date of their transfer to the Central Government Service."

"You are requested to intimate your willingness within seven days from the date of this Memorandum in the proforma showing your willingness or otherwise for absorption. You

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are also informed that your absorption will be subject to the approval of the High Court of Kerala/State Government/Central Government/and relaxation of age limit as may be necessary and also subject to the usual conditions and terms which are applicable to other staff of the Central Government including liability for transfer in case any necessity arises."

(emphasis added)

From the above, it is clear that the offer of the terms and conditions for absorption was not a general offer to a category or class of staff but was specific to the applicant by name. The memorandum clearly indicated that the applicant who was working as Estate Clerk in the Office of the Official Liquidator was proposed to be considered for absorption in the Central Government service on the terms as quoted in that memorandum. The terms quoted in the memorandum referred to protection of pay <sup>as</sup> available to State Government employees. It was never mentioned that since he was not a State Government employee, the quoted terms will not be applicable to him. The wording of the memorandum gives the clear signal that the condition available to State Government employees would be applicable to the applicant also by adaptation. The respondents cannot at this stage argue that the terms offered in relation to the protection of pay being available to the temporary State Government employees could not be available to him as he was not a State Government employee. If he was not a State Government employee and the protection of pay available to such employees was not be extended to the applicant, there is no reason why the offer at Annexure-A1 should have quoted the terms available to State Government employees. There is no other term quoted in the memorandum for those who are not State Government employees. The <sup>inevitable</sup> conclusion from the wording of the memorandum at Annexure A1 is that the pay of the applicant will be fixed in the same manner as available to State Government employees. The applicant on that reasonable presumption gave his willingness. The respondents cannot at this stage withdraw from the terms offered to the applicant. It is not the case of the respondents that the memorandum was issued erroneously or by a person incompetent to issue such an offer. Nor is it their case that the applicant had any hand in the issue of the offer of terms and conditions of absorption.

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5. It has been held in **M/s Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and others**, AIR 1979 SC 621, that government is liable to principle of Promissory Estoppel. It has been held in **Solanki Parshottam Mohanbhai Vs. Union of India and others**, ATR 1987(2) CAT 356, that the principle of Promissory Estoppel is an equitable doctrine and it must yield where equity so requires. In **Vir Bhan Thakar & others Vs. Director (Medical) Employees State Insurance Scheme & others**, 1988(2) ATLT, page 3, it was held that parity with Central Government pay assured while inviting options for joining the Employees State Insurance Corporation cannot be denied by framing regulations to the contrary.

6. The learned counsel for the respondents raised the question of the claim being barred by limitation. Since the applicant has been suffering recurrent monetary loss, the question of limitation will arise only to exclude the arrears of pay for the period beyond 3 years prior to the date of filing the application which is 18th July, 1989.

7. In the facts and circumstances, we allow the application to the extent of directing that the initial notional pay of the applicant as on 1.10.69 should be fixed as if he was a State Government employee <sup>protecting his total emoluments</sup> at the time of absorption on that date and his pay subsequent to that date re-fixed on the basis of that notional pay, not only on each revision of pay scale, but also on his promotion, if any, after that date. The arrears of pay and allowances so fixed, however, should be paid to him only for the period with effect from 18th July 1986, i.e. for three years prior to the date of submission of this application. In the circumstances, there will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman