

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) No. 14450/2005**
% **Date of Decision: 11th JANUARY,2010**
ISHWAR DEV VERMAPETITIONER
! Through: Mr. A.J.Khan, Advocate.
VERSUS
\$ UP STATE BRIDGE CORPORATION LTD. & ANOTHERRESPONDENTS
^ Through: Mr.Kuljiwan Goyal , Advocate

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

The petitioner is working with Project Manager, Construction Unit, Dhaula Kuan, New Delhi, a unit of UP State Bridge Corporation Ltd. (the respondents herein). He was appointed by the respondents in 1978 to the post of Dozer Operator and is working on the said post since then till date. His pay scale up to 05.11.2001 was Rs.950-1500/- and upon implementation of the recommendations of the Fifth Pay Commission, his pay scale was revised from Rs.3,500/- to Rs.4,590/- vide order dated 05.02.2003 (Annexure P-1 at pages 11 & 12 of the paper book). Later on his basic pay was reduced from Rs. 4,590/- to Rs.3,540/- vide office order of 2005 (Annexure P-2 at page 13 of the paper book).

2 The petitioner has filed this writ petition for issuance of a writ of certiorari or any other appropriate writ, order or direction against the

respondents quashing the office order of 2005 bearing No. 053/SB-C/B 2004-05 dated Nil by which his basic pay has been reduced from Rs.4,590/- to Rs.3,540/-.

3 The respondents, in response to this petition, have filed their counter affidavit in which they have defended reduction of basic pay of the petitioner from Rs.4,590/- to Rs.3,540/- on the ground that there was no post of Dozer Operator with the respondents and that there was no pay scale for the said post and for that reason, according to the respondents, the petitioner was treated in the pay scale of operator only.

4 A perusal of the contents of the counter affidavit filed by the respondents reveals that the respondents have not disputed that the petitioner was appointed by the respondents in 1978 to the post of Dozer Operator. Annexure P-1, which is an office order dated 05.02.2003 by which after implementation of recommendations of the Fifth Pay Commission, the pay of the petitioner was revised from Rs.3,500/- to Rs.4,590/- w.e.f. 06.11.2001, shows that his pay scale up to 05.11.2001 was Rs.950-1,500/-. In Annexure P-2, an office order of 2005, by which the pay of the petitioner was reduced from Rs.4,590/- to Rs.3,540/-, the pay scale of the petitioner up to 05.11.2001 in Column No. 10 of the said order is shown Rs.775-1,025/-. Both these office orders filed by the petitioner as annexures to the writ petition have not been controverted by the respondents in their counter affidavit. Learned counsel appearing on behalf of the petitioner has placed on record copy of order of the respondents dated 27.08.2007 according to which post of Dozer Operator is shown to exist with the respondents and the pay scale mentioned against the said post is Rs.3,500-4,590/-.

5 Mr. Kuljiwan Goyal learned counsel appearing on behalf of the respondents has contended that the post of Dozer Operator was created

in the department of the respondents for the first time in 2007 and for that reason, the petitioner was throughout treated as operator and his pay was revised from Rs.4,590/- to Rs.3,540/-. It is difficult to swallow this argument advanced on behalf of the respondents. In case the post of Dozer Operator, as alleged, was created for the first time in 2007 then why and how the respondents appointed the petitioner to the post of Dozer Operator more than three decades back in 1978. This query on being asked could not be answered by Mr. Goyal, learned counsel appearing on behalf of the respondents. On a comparison of Annexures P-1 & P-2, there appears to be an inherent fallacy in the stand of the respondents regarding the pay scale of the petitioner upto 05.11.2001. In the document by which his pay scale was revised from Rs.3,500-4,590/- as a measure of implementation of recommendations of the Fifth Pay Commission, his pay scale up to 05.11.2001 is shown Rs.950-1,500/- whereas in the document Annexure P-2 by which the pay of the petitioner was reduced from Rs.4,590/- to Rs.3,540/- w.e.f. 06.11.2001, his pay scale upto 05.11.2001 is shown Rs.750-1,025/-. It is evident from the record that the action of the respondents in reducing the pay of the petitioner from Rs.4,590/- to Rs.3,540/- vide impugned office order (Annexure P-2 at page 13 of the paper book), the respondents have acted arbitrarily and without any justiciable reason. The impugned order of 2005 by which the pay of the petitioner was reduced by the respondents, therefore, cannot stand the test of judicial scrutiny and is hereby set aside. Directions are given to the respondents to restore the pay of Rs.4,590/- of the petitioner w.e.f. 06.11.2001 and grant him all annual increments in the pay scale of Rs.3,500-4,590/- which he might have earned in the said scale as per rules. The arrears of pay be paid to the petitioner within eight weeks from today.

6. This writ petition stands disposed of in terms referred above leaving the parties to bear their own costs.

Order dasti.

JANUARY 11, 2010
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S.N.AGGARWAL, J