
(2013) 03 DEL CK 0210

In the Delhi High Court

Case No : Writ Petition (C) 130 of 2012

A.I.I.M.S. and Others

APPELLANT

Vs

S.S. Rawat and Others

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0210

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sumit Babbar and Mr. Mehmood Pracha, for AIIMS, for the Appellant; Anurag Mathur, Advocate for R-1 and Mr. Sunil Kumar, Advocate for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The respondent No. 1 was employed, on temporary basis, as a Statistical Assistant with the writ petitioner in the year 1973. He was subsequently confirmed in service. The petitioner receives funds from various bodies and organizations to conduct research, implement programmes or monitor the same. The petitioner was the nodal agency to implement the Integrated Child Development Scheme (ICDS) formulated by the Central Government. In the year 1983, with consent of petitioner, the respondent joined ICDS on deputation as a Research Officer (Bio-Statistics) and was placed in the pay scale Rs. 2200-4000 and while on deputation with the project, he was promoted as a Senior Research Officer in the pay scale Rs. 3000-4500. He retained his lien to the post of Statistical Assistant under AIIMS and when eligible for promotion was promoted in the next pay scale, the post being the same i.e. Statistical Assistant, but with the nomenclature Statistical Assistant (Special Grade). Reverted to the Parent Cadre in the year 1993, issue came up of protecting the basic pay which respondent was receiving while on deputation to ICDS.

2. It is true that when a person reverts to the Parent Department, no Rule or law

obliges the Parent Department to retain the last drawn basic pay receivable by the employee with the Transferee Department.

3. But, FR-27 permits premature increments to be given to a Government Servant; and we note that the writ petitioner follows the Fundamental Rules applicable to Government Servants. FR-27 reads as under:-

F.R. 27. Subject to any general or special orders that may be made by the President in this behalf, an authority may grant a premature increment to a Government servant on a time-scale of pay, if it has power to create a post in the same cadre on the same scale of pay.

4. The respondent relied upon a decision taken by the Finance Committee of the petitioner on October 08, 1971 pertaining to the agenda:-

To consider the question of grant of higher initial pay to Shri Raj Pal Singh, Lab. Assistant and adoption of uniform policy for fixation of pay of the employees on various research schemes in the Institute.

5. And inter-alia, the decision being as under:-

As per the above decision of the Finance Committee the pay of the employees of the Institute who had gone on higher posts to the Schemes was also being protected as and when they were reverted back in the regular set up of the Institute in the same post and grade which they have been occupying on the schemes under the power of the Director under FR-27 for about 10 years in the past. The pay of the following employees of the Institute who were working on the schemes in the Institute and who subsequently got promotion at the Institute in the identical post/scale has been protected under FR-27.

6. Respondent highlighted various instances of employees of AIIMS who proceeded on deputation to projects under AIIMS and while working on the projects earned promotions and on reversion to the cadre under AIIMS were given benefit of pay protection i.e. basic pay which they were last drawing while on deputation. This was as per the resolution above.

7. Needless to state the respondent drew sustenance to said plea by referring to the afore-noted decision taken by AIIMS and implemented qua others.

8. Learned counsel for AIIMS, while challenging the impugned decision dated March 12, 2010, urges that the respondent cannot claim a right to be placed in the pay scale in which he was placed as a Senior Research Officer (ICDS) i.e. Rs. 3000-4500 while on deputation.

9. Now, the argument overlooks the distinction between a person claiming a right to be placed in a higher pay scale vis-a-vis last drawn basic pay being retained. The respondent never claimed a right to be placed in any pay scale. He was happy in the pay scale of Statistical Assistant (Special Grade), but was only wanting, his last drawn basic pay which he was receiving as a Senior Research Officer to be protected, as was done for others as per the decision dated October

08, 1971.

10. Reference in the writ petition to the cadre posts under AIIMS and those in the pay scale Rs. 3000-4500 is neither here nor there, and thus we need not discuss the issue of respondent's eligibility to earn promotion to posts in said pay scales, for the reason the respondent was not claiming a right to be placed in the pay scale Rs. 3000-4500. He was only claiming his last drawn pay to be protected, which obviously has to be in the pay scale of a Statistical Assistant (Special Grade). The writ petition is accordingly dismissed but without any orders as to cost.

CM No. 263/2012

Since the writ petition stands disposed of, instant application seeking ad-interim stay of operation of the impugned order stands disposed of as infructuous.