

(2001) 07 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 385/1998

All J&K Diploma Engineers and others	APPELLANT
Vs	
State of Jammu & Kashmir and others	RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Jammu and Kashmir Civil Services (Higher Standard Pay Scale Scheme) Rules, 1996
— Rule 5

Citation : (2002) 4 SCT 409

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Seema Shekhar, D.C. Raina, Vipin Gandotra, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—The State after showing initial zeal of filing a Caveat has not taken any step to file its counter pleadings. The fact that the

Caveat of the Caveaters was duly listed is noticed in the order dated 2531998. There was appearance on behalf of the State on 1551998.

Government Advocate has been appearing on later dates also. However, perusal of the file indicates that counter affidavit has not been filed. The

facts as projected in the petition are as under.

2. J&K Civil Services (Higher Standard Pay Scale Scheme) Rules 1996 were enforced. SRO No. 14 was issued on 1511996. The Scheme

which was enforced by this SRO was called as Higher Standard Pay Scale Scheme. Rule 5 of the Scheme provided that ""an employee covered

under these Rules, who has not got any promotion or promotional scale/selection scale in his service career and has completed 18 years or more

but less than 27 years of regular satisfactory service before 111995 will be

allowed w.e.f. 11.11.1995 in place of his existing scale the second Higher Standard Pay Scale specified in column 4 of Schedule 1 of these Rules." The other benefits which could be allowed have also been serialised in these Rules. Under Rule 9, an employee was supposed to exercise an option to join this scheme. This Rule dealing with exercise of option reads as under :

9. Exercise of option

(a) If the employee who has got benefit of senior/selection grade Scale, desires, he may exercise option to continue senior/selection grade scale or

to accept this Scheme. If he exercises option to join this scheme, his pay fixation shall be done, as if he had not availed of the senior grade/selection

grade scale. As a result, the amount of pay and allowances, due if any shall be adjusted against the benefit admissible under these Rules;

(b) The option must be exercised in writing in Form as prescribed under Schedule 3 annexed to these Rules and shall have to be furnished to the

proper authority i.e. head of the Department/Office under whom he/she is working, within three months from the date of issue of this Notification.

3. In para 2 of the petition, the petitioners submit that all the Diploma Holders were given the pay scale of Rs. 25004000 and 22003800 by the

respective Chief Engineers in the year 1996/97. What has given cause of action to the petitioners and other members of the Association is the

issuance of the Circular dated 10.3.1998. In this Circular the following facts have been mentioned :

(1) That the Administrative Department has come to know that the Chief Engineers have allowed pay scale of Rs. 25004000 in favour of Junior

Engineers Grade I;

(ii) That the above benefit has been given in terms of SRO 14 issued on 15.6.1996. It is submitted that if benefit of the above was to be given then,

the concerned employee was supposed to exercise option.

(iii) That the option was to be exercised within a period of three months;

(iv) That the grade of Rs. 25004000 could not be given.

(v) In the above circular it has been mentioned that the selection scale Overseers redesignated as Junior Engineer Grade I could have opted and this

option was to be exercised within three months from the date of the issuance of

the SRO and they never elected the benefit of this scale. Having not done so the concerned Chief Engineers were not within their rights to confer the benefits.

4. Petitioners submit

(i) That from time to time the post of Overseers were placed either in the regular grade or in the selection scale;

(iii) That on the reorganisation in the Engineering Department, the selection scale was dispensed with and instead two distinct cadres were created,

namely, Junior Engineer GradeI and Junior Engineer GradeII;

(iv) That all such Diploma Holders, who have been granted selection grade before 141987 (10001560) were redesignated as Junior Engineer

GradeI;

(v) That some of the posts having been upgraded were designated as Junior Engineer GradeI and petitioners as also other Members of the

Association came to be redesignated as Junior EngineerGradeI. They were placed in the pay scale of Rs. 10001560;

(vi) That the redesignation or upgradation was not a promotion in terms of Article 77B of the Civil Services Regulations;

(vii) That the upgradation of the post from Junior Engineer GradeII to Jr. Engineer GradeI did not lead to assumption of any additional or fresh

duties or responsibilities;

(viii) That on 1761991 the Finance Department had expressed an opinion that this upgradation would not constitute promotion for the purposes of

Article 77 of the Civil Services Regulation;

The further fact which is pleaded is that on 151196 SRO No. 14 was issued. The question arises as to whether on the issuance of SRO, Junior

Engineer GradeI became entitled to INSITU promotion or not. These questions were examined by the Finance Department. As per the

petitioners, the Finance Department was of the opinion that all Junior Engineers GradeI who held the INSITU promotions.

The further fact which is pleaded is that the grade of Rs. 10001560 was revised to Rs. 19003200 and thereafter to Rs. 21253600. It is

accordingly submitted by the petitioners that they rightly came to be placed in the grade of Rs 22003800 and some of them on the basis of the

length of service were placed in the grade of Rs. 25004000. It is submitted that the petitioners are drawing their pay accordingly. It is submitted

that the Circular AnnexureA which takes away the benefit conferred upon the petitioner has been issued by ignoring the provisions of SRO 14.

The factual position as projected by the petitioners has also not been taken note of by the respondents. It is submitted that under Rule 14 of SRO

14 it is mentioned that in case of any dispute and/or doubt with regard to any of the provisions of these rules, the matter shall be referred to the

Government in the Finance Department for clarification and/or interpretation, who shall decide the same. It is accordingly submitted that the

Commissioner/Secretary to Government, Public Works Department was not competent to issue the order AnnexureA. The Circular in question

has been issued on the basis that the petitioners were placed in the selection scale in the year 1986 and therefore, they were not entitled to

INSITU promotion. This reasoning is sought to be assailed on the ground that what was given to them in the year 1986 was not a selection grade,

but came to be conferred upon them on account of upgradation of the posts. This according to the petitioners could not be treated as promotion.

For this reliance is being placed on an earlier decision in paragraph 16(h) of the writ petition. For facility of reference this para is reproduced below

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16(h) That on 1761991 the Finance Deptt. opined that the upgradation does not constitute 'promotion' for purposes of Article 77 of the Civil

Services Regulations.

5. In addition to the specific pleas raised above, it is also stated that the petitioners were enjoying this benefit w.e.f. 111995. This benefit could not

be taken away after three years and in any case if this was to be taken away then the petitioners should have been heard. As noticed in the very

beginning, the counter has not been filed. The further fact is that the operation of the Circular dated 10388 was stayed by this Court on 253 1988.

6. After going through the pleadings of the parties, I am of the opinion that there is merit in the submissions made by the petitioners. The petitioners

are entitled to INSITU promotion, if they had been stagnating for the periods mentioned in the Rules of 1996. An employee who was not given

any promotion or promotional scale or selection scale within the period specified

in Rule 5 was entitled to INSITU promotion. The case of the petitioners is that mere upgrading of the grade would not be a promotion. It would not amount to conferring a promotional pay scale or a selection scale. There is merit in this submission of the petitioners. As a matter of fact this issue was examined by the Finance Department and an opinion has already been expressed by the Finance Department. In this view of mine, I am supported by a Division Bench judgment of this Court in case Administrator, Jammu Municipality v. Jagdish Chander precise question in the above case was as to whether up gradation involves promotions or not. The argument which was put by the State and State authorities was that upgradation would involve promotion and therefore, benefit as INSITU promotion could not be given. This precise argument was repelled by the Division Bench. What was observed is being quoted below :

Before we advert to examine the implementation of the scheme visavis the claim of the respondents, the fact relevant for the purpose is that while implementation of the scheme by the various departments of the Government, some doubts were raised, which were referred to the Government by the respective departments. One of the points of doubt was that whether up gradation of the post aims to promotion. Whether its change of nomenclature could be treated as promotion. The Government through its Department of Finance, in its clarification, issued Notification vide O.M.

No. A/29/961034 dated 22101996. This point of doubt has been tabulated under item (g) which reads as under :

(g) Whether the upgradation of a post in respect of the pay scale without change of its nomenclature should be treated as a promotion for purposes of grant of insitu promotion under J&K Civil Service (HSPSS) Rules 1996. (g) Since in such cases the existing pay scale ceases to exist and the same is entirely replaced by a new scale of pay without any change in nomenclature of the post, as such, upgradation should not be construed to be functional promotion for the purposes of grant of insitu promotion under the relevant provisions of the J&K (HSPSS) Rules, 1996.

Admittedly the upgradation does not involve any promotion nor it has changed the nomenclature. Therefore, the plea of Mr. Nanda that respondents being placed in the upgraded pay scale are not entitled to the relief is rejected. This service of the respondents do not contemplate any

promotion to the respondents, therefore, the argument that the respondents have been promoted to higher pay scale is devoid of merit.

7. Another respect of the matter is that if there was any dispute regarding the implementation of SRO 14 that this doubt has to be clarified by the

Finance Deptt in terms of Rule 14. No such clarification is available. The petitioners having been allowed the benefit since January, 1996 could not

be deprived of the same without affording opportunity of hearing. Therefore, looking from any point of view the decision Annexure A (Circular

dated 103 1998) cannot ipso facto operate to the prejudice of the petitioners. This petition is allowed. If any benefit which was already been

conferred upon the petitioners has to be taken away then the petitioners either individually or through their Union would be heard. Till this exercise

is completed the interim order passed by this Court dated 2531999 shall continue to operate. When such a decision is taken the view expressed

by the Division Bench of this Court in LPA (SW) No. 110/98 (supra) which decision has been quoted above would be shown full respect. There

appears to be no cogent escape route for getting out of the view expressed by the Division Bench. However, as it is the case of the petitioners that

interpretation, if any, visavis the Rule is to be placed by the Finance Department, the Finance Department is left free to take such decision and

whenever such a decision is taken, the observations made in this respect above and in the L.P.A. (SW) No. 110/98.

8. Disposed of accordingly.