
(2016) 03 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7526/2011

Bhagwan Sahai Gupta

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16
Rajasthan (Regulation of Appointments to Public Services and Rationalisation of Staff)
Act, 1999 — Section 6

Citation : (2016) 03 RAJ CK 0003

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Anand Sharma, for the Appellant; Sudeep Mathur for Inderjeet Singh, AAG, for the Respondent

Final Decision : Disposed off

Judgement

M.N. Bhandari, J.—1. By this writ petition, a challenge is made to the order dated 12th May, 2010, whereby the pay scale of Rs. 10000-15200 allowed to the petitioner for the post of Private Secretary and pay scale of Rs. 5500-9000 for the post of Stenographer Gr.II were ordered to be withdrawn and both the pay scales have been substituted by the pay scale of Rs. 9000-14400 and Rs. 5000-8000 respectively.

2. Learned counsel for petitioner submits that after appointment on the post of Stenographer Gr.II, the petitioner was promoted on the post of Private Secretary and allowed the pay scale of 10000-15200 w.e.f. 1st November, 2001. The respondent-University thereafter revised the pay scale in pursuance to the Rajasthan Civil Services (Revised Pay Scale) Rules, 2008 (in short "The Rules of 2008") and accordingly allowed the pay scale of 15600-39100. The similar benefit was given to the counterparts of the petitioner but has not been withdrawn because they have retired prior to passing of the impugned order. They are getting retiral benefits in the same pay scale which they were drawing

at the time of retirement. The petitioner's pay scale has been revised vide impugned order in reference to the letters of the State Government dated 12th December, 2006 and 6th February, 2008. It is without providing opportunity of hearing though the petitioner was getting higher pay scale for last more than 10 years before the impugned order was passed. The revision of the pay scale is even for the post of Stenographer Gr.II. In view of above, impugned order has been passed in violation of principles of natural justice. The reference of 5th and 6th Revised Pay scale Rules has been given to show entitlement of the pay scale given to the petitioner. The withdrawal of the pay scale is in the light of the letters issued by the State Government on 12th December, 2006 and subsequently on 6th February, 2008.

3. The issue in reference to the order of the State Government for withdrawing the pay scale came up for consideration before this court in the case of K. Shankar Iyer & Ors. v. The State of Rajasthan & Ors., S.B. Civil Writ Petition No. 383/2007, decided by the Principal Seat at Jodhpur on 21st July, 2011. The D.B. Civil Special Appeal (Writ) bearing No. 2032/2011, State of Raj. & Anr. v. K. Shankar Iyer & Ors. was dismissed by the Division Bench on 25th April, 2012. Since controversy in reference to the order of the Government has already been dealt with, the judgment (*supra*) applies to the facts of this case. Accordingly, petition be allowed by quashing the impugned order so that petitioner may be brought at par with those who are getting pensionary benefits in the higher pay scale prior to its withdrawal.

4. Learned counsel for respondents have opposed the petition. It is submitted that as per letter dated 12th December, 2006 issued by the Government, grant of higher pay scale to the petitioner was not permissible. The withdrawal of the pay scale was made precisely for that reason only. Section 6 of RAPSAR Act, 1999 does not permit higher pay scale without permission of the Government thus impugned order be maintained.

5. I have considered the rival submissions made by the parties and perused the record.

6. It is not in dispute that after appointment of the petitioner, he was given regular pay scale. It was revised from time to time with revision of the Pay Scale Rules. The petitioner was drawing pay scale as given in the Revised Pay Scale Rules. It has been withdrawn suddenly in pursuance to letters dated 12th December, 2006 and 6th February, 2008 issued by the State Government. The issue was considered by this court in the case K. Shankar Iyer & Ors. v. The State of Rajasthan & Ors. (*supra*). The appeal preferred by the State Government remained unsuccessful. The relevant paras of the judgment of the Single Bench are quoted hereunder:

"The issue involved in this petition was examined by this Court in the Case of M.D. Lohiya and Ors. v. State of Rajasthan and Ors., reported in 2007 (2) CDR 916 (Raj.), wherein the pay-scale granted to Senior Technical Assistants in the

same fashion were withdrawn on the count that the prior permission of the State Government was not taken. This Court in the case of M.D. Lohiya (supra) held as under:--

"the Senior Technical Assistants/Professional Assistants working with the respondent university since 1968 are getting pay scales allowed to the Librarians working with the Government Degree Colleges. It is the position admitted that a parity in grant of pay scale to Senior Technical Assistants/Professional Assistants vis-?-vis Librarians working with Government Degree Colleges is maintained by the respondents since 1968, that cannot be changed without a cogent reason. It is not open for the Government now to say that the Senior Technical Assistants/Professional Assistants working with the respondent university do not hold the post equivalent to the post of Librarians working in Government Degree Colleges.

The university in pursuant to the orders passed by the Government of Rajasthan on 24.4.1993 read with 5.8.1993 on basis of resolution No. 71/94 undertaken by the Syndicate ordered to revise the pay scales of Senior Technical Assistants/Professional Assistants by order dated 7.7.1994. Such revision was made by the university with a view to maintain parity with regard to grant of pay scales to the Senior Technical Assistants/Professional Assistants vis-?-vis Librarians working with the Government. It is true that before granting the pay scale of Rs. 2200-4000 a sanction was required to be taken by the university but in totality of facts and circumstances of the case such sanction is quite formal and the respondent State should have granted it ex-post facto. I have intentionally used the term "formal sanction" for the reason that this Court by judgment dated 8.10.1990 (SB Civil Writ Petition No. 608/82) declared the Librarians working in Government Degree Colleges entitled for getting the pay scales revised in accordance with the recommendations made by the UGC. The Senior Technical Assistants/Professional Assistants working with the respondent university for all purposes stand at par with the Librarians working in Government Degree Colleges, therefore, a cautious decision was taken by Government of Rajasthan to allow the same pay scales to them also. Looking to this fact in any event the State Government was required to accord sanction for grant of pay scale of Rs. 2200-4000 to the Senior Technical Assistants/Professional Assistants working with the respondent university including the petitioners w.e.f. 1.1.1986. It is really surprising that the State Government instead of granting ex-post facto sanction despite a request made by the Vice Chancellor choose to victimise the employees of the university. The act of the respondent State, therefore, is not only discourteous to the university but is also unjust and arbitrary. I also failed to understand as to why the respondent State has yet not allowed the pay scale of Rs. 8000-13500 to the Senior Technical Assistants/Professional Assistants working with the respondent university though the same has already been granted to the Librarians working with Government Degree Colleges w.e.f. 1.9.1996. As stated above, the respondents are under obligation to maintain parity with regard to grant of pay scales among the Senior Technical Assistants/Professional Assistants and Librarians working with Government Degree Colleges.

Non grant of pay scale of Rs. 8000-13500 to the Senior Technical Assistants/ Professional Assistants working with the respondent university including the petitioners w.e.f. 1.9.1996 is highly discriminatory."

In D.B. Civil Special Appeal (Writ) No. 644/2007, the Division Bench of this Court while rejecting the Special Appeal preferred by the State Government giving challenge to the judgment of this Court in the case of M.D. Lohiya held as under:--

"The controversy involved in the writ petitions was with regard to grant of equal pay to the Senior Technical Assistants/Professional Assistants vis-?-vis Librarians working in the Govt. Degree Colleges. Originally, this partly was ordered in the year 1968 on the basis of Ranawat Pay Commission. Later on, it was maintained in the years 1980 and 1986 with pay scale of Rs. 2200-4000. This pay scale was further revised w.e.f. 1.9.1996 and the Librarians working in the Govt. Degree Colleges were granted the pay scale of Rs. 8000-13500 but this was denied to the Senior Technical Assistants/Professional Assistants working with the respondent-University because earlier pay scale as recommended by the University Grant Commission was granted without the approval of the State Government. Learned Single Judge observed that the equity was maintained between the Librarians of the Govt. Degree Colleges and the Senior Technical Assistants/Professional Assistants working with the respondent-University long back in the year 1968 and it cannot be withdrawn without any cogent reason and denial by the Government on account of audit objection despite recommendation by the Vice Chancellor to maintain the parity, is involved of the fundamental rights of the petitioner-respondents. Today, it is also brought to the notice of this Court by the learned counsel for the respondents, which has not been controverted by the learned Additional Advocate General that the Accountant General (Civil Lekha Pariksha), Rajasthan, Jaipur has already removed the audit objection with regard to parity of the pay scale vide order dt. 3.11.2009.

In view of the order dt. 3.11.2009 and also in light of the findings arrived-at by the learned Single Judge with regard to maintaining parity, which was already granted way back in the year 1968 with the approval of the State Government, the denial of the new pay scale to the petitioner-respondents, who are at par with the Librarians of the Govt. Degree Colleges, is contrary to the law. Accordingly, we find no reason to interfere with the findings arrived-at by the learned Single Judge."

Suffice it to mention here that the Hon''ble Supreme Court vide order dated 10.12.2010 has already dismissed the Special Leave Petition preferred by the State of Rajasthan giving challenge to the judgment referred above.

In the instant case too, it is not in dispute that an equivalence has already been made amongst the Stenographers and Personal Assistants working with the University and the State Government. The petitioners have always been treated as the persons holding an equivalent post to their counter-part with the State

Government. The University is required to prescribe the same pay-scale for its non-teaching staff that is given by the State Government to its employees holding equivalent posts. In such circumstances, no wrong was committed by the respondent-University in making fixation of the petitioners pay in the pay-scale of Rs. 5500-9000 w.e.f. 1.4.1999, though in technical terms previous approval should have been obtained by the University."

7. The relevant paras of the judgment of the Division Bench are also quoted hereunder:

"The Single Bench has dismissed the writ applications relying upon the order passed by the Single Bench of this Court in M.D. Lohiya and Ors. v. State of Rajasthan and Ors. [2007(2) CDR 916 (Raj.)] which has been affirmed by the Division Bench of this Court in DB Civil Special Appeal (Writ) No. 644/2007 and by the Hon'ble Apex Court vide order dated 10.12.2010. In the aforesaid case of M.D. Lohiya, the pay scales were similarly extended to the other employees Senior Technical Assistants working in the University. They were getting pay scales as allowed to the Librarians working with the Government Degree Colleges. Revision was made by the University on revision of the pay made by the State of Rajasthan for their employees and the pay scales were revised without formal sanction of the State Government. This Court held that as parity was there in the matter of grant of pay scales to the Senior Technical Assistants vis-?-vis Librarians, the benefit of grant of similar pay scale was rightly extended and recovery could not have been ordered. The order was affirmed upto the Supreme Court and denial of similar pay scale to the Senior Technical Assistants working in Government Degree Colleges at par to the Librarians was held to be illegal.

The case in question is similar. It is not in dispute that the employees Stenographers are entitled to similar pay scales as that of the Government. When the salary of the State Government employees has been revised, right accrued to the employees of the university to be treated similarly in view of Government directives that pay scale has to be same in University as that of similar category of State employees in secretarial service. Though prior approval of the State Government ought to have been obtained but the benefit was extended in similar manner by the University in several cases in which action has been affirmed upto the Supreme Court. The case in hand is similar. The State Government was requested to grant ex-post facto sanction which was not accorded by the State Government by order dated 12.12.2006. The State Government ought to have granted sanction, more so, in view of its prevailing instruction as to parity in pay scales. Thus, the order directing recovery was illegal. When terms and conditions of service, particularly pay scales, were similar, the State Government was bound to accord sanction and it should not have ordered recovery of the amount paid. Thus, we do not find any ground so as to interfere in the impugned orders passed by the Single Bench."

8. In the light of judgments referred above, this petition deserves to be allowed.

It is even for the reason that before withdrawing the pay scale, no notice was given to the petitioner, therefore, principles of natural justice were not adhered to. In view of above, there exists violation of Articles 14 and 16 of the Constitution of India also. The counterparts of the petitioner are getting pensionary benefits in the pay scale as was existing prior to its withdrawal by the impugned order thereby even a discrimination has been caused between similarly situated employees. The petitioner has also retired after four months of the impugned order. He cannot be made to suffer only for the reason that at the time of passing of the order, he was in service while continuing other employees to draw higher pensionary benefits only for the reason that they retired just prior to passing of the impugned order.

9. The petitioner has also been denied benefit of gratuity as well though no justification could be given by the respondents. He is entitled for gratuity which could not have been withheld by the respondents.

10. For all the reasons given above and in the light of judgment of the Division Bench in the case of State of Raj. & Anr. v. K. Shankar Iyer & Ors. (supra), I deem it proper to set aside the impugned order. Accordingly it is set aside with the direction to the respondents to continue the petitioner in the pay scale as was given to him earlier prior to its withdrawal. It would be with all consequential benefits and accordingly retiral benefits be revised. The payment of gratuity would carry interest @9% p.a. for the delayed period as it could not have been withheld apprehending recovery of dues from the petitioner but can be withheld only on the ground set out under the rules, which does not exist herein.

11. The writ petition stands disposed of with the aforesaid.