

(2019) 07 RAJ CK 0112

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8599 Of 2004, 13739 Of 2011

Bharat Singh And Ors

APPELLANT

Vs

Rajasthan State Warehousing Corpn. And Ors

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 07 RAJ CK 0112

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Shiv Charan Gupta, Asad Ali, Alankrita Sharma

Final Decision : Allowed

Judgement

Sanjeev Prakash Sharma, J

1. The petitioner while originally preferred a writ petition before this court praying for grant of selection scale on completion of 18 & 27 years of service without being influenced by the objection raised by the Accountant General, Rajasthan, however, counsel for the petitioner limited his arguments to the actual release of amount in terms of the order passed by the respondents on 13.9.2011 granting selection to the petitioner and prays that the order dated 13.9.11 already passed in his favour be implemented.

2. The petitioner has already retired from the post of Senior Warehouse Manager in 2009. By a the miscellaneous application, the petitioner placed on record the order dated 13.9.11 seeking prayer for implementation thereof. The respondents have thereafter filed an additional affidavit and it is stated that the case of the petitioner was considered for selection scale and it has been deposed in the affidavit as under:

"4. That by order dated 13th September, 2011 the petitioner was sanctioned the second selection scale w.e.f. 25th 1995. The petitioner had completed 18 years of service as Warehouse Manager from 25th August, 1989. The benefit of

selection scale for the first time introduced by the State Government by order dated 25th January, 1992, a copy of which is filed herewith and marked as Annexure AA-8. The petitioner could not be granted the selection scale in pursuance to the order dated 25th January, 1992 as there were adverse remarks in his Annual Performance Appraisal Reports of 1985-86 and 1987-88 and had also been awarded a punishment of stoppage of one grade increment vide order No. 2028 dated 4th February, 1992 and was accordingly granted the selection scale w.e.f. 25th January, 1995."

3. The affidavit further states that the order has been passed for grant of selection scale but the same has not been released as there was a stay order passed by the High Court in connected S.B. Civil Writ Petition No. 13739/2011 "Jai Kumar Chaturvedi Vs. Rajasthan State Warehousing Corporation" wherein the operation of the order dated 8th July, 2011 was stayed.

4. Learned counsel for the respondent submits that the said order is stayed by this court, relief cannot be given to the petitioner herein. Suffice it to say that order passed by the Court in individual writ petition (supra) would apply to the said petitioner only and cannot be given a larger effect of those persons who are not the parties to the said writ petition. The petitioner herein admittedly is not arrayed as party to the aforesaid writ petition filed by Jai Kumar Chaturvedi (supra).

5. The reason put forward by the respondents thus is not found to be justified. The present writ petition is therefore allowed to the extent of directing the respondents to implement their order dated 13.9.2011 and release the amount of arrears of selection scale and also consequently release his retiral benefits. The retiral benefits shall carry interest @ 9% per annum in terms of the Rajasthan Civil Services (Pension) Rules 1996. The order passed by this court shall be implemented within a period of three months henceforth.

S.B. Civil Writ Petition No. 13739/2011

6. The short controversy involved in the present writ petition is to whether on account of revision of pay scale, recovery can be initiated against a person who has already retired, much earlier from the date when the order of revision of pay scale is passed.

7. In view of the law laid down by the Apex Court, the constitutional Bench of the Supreme Court in "Chairman, Railway Board And Ors. Vs. C.R. Rangadhamaiah And Ors." wherein it has held as under:

"In many of these decisions the expressions "vested rights" or accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby

taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni & Ors., (supra)."

8. Thus, it has been held that the pay and allowances being received under a particular pay scale become a vested right of an individual and the same cannot be taken away retrospectively.

9. In view of above, the order dated 8.7.2011 has to be treated prospective and the same would not effect those who have drawn pay scale in terms of the order passed earlier in the year 1998 in the pay scale of Rs. 7500-12000 and petitioner is not required to refund the said amount accordingly received. Accordingly, the impugned order of recovery passed against the petitioner who retired on 31.1.1997 and revising his pay on the said basis is held to be illegal and unjustified. The order dated 19.8.2011 is accordingly quashed and set aside. The petitioner is entitled to receive the pension on the basis of pay which he was drawing prior to the order dated 19.8.2011. Similar view has also been taken by the Apex Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer)- 2015 (4) SCC 334.

10. Accordingly, the writ petition stands allowed in the aforesaid terms.