
(2004) 05 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1243 of 2003

Chandra Mohan Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Rajasthan Civil Services (Revised Pay Scale) Rules, 1998 — Rule 6

Citation : (2004) 3 RLW 2014

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Man Singh, J.M. Saxena, Virendra Lodha, Prahlad Singh, R.K. Mathur, Manish Bhandari, Rajendra Soni, Praveen Balwada, Akhil Simlot, S.K. Saxena, Saroj Chaudhary, B.B.L. Sharma, S.K. Singodia, S.K. Jindal, C.L. Saini, A.K. Jain, Rakesh Sharma, Mahendra Goyal, A.K. Sharma, Ganesh Meena, J.K. Yadav, Asgar Khan, Vinod Goyal, H.P. Singh, Manoj Joshi, Anurag Sharma, U.P. Gaur, L.K. Sharma, Rohan Jain, Subhash Bisawa, Priyanka Pareek, Amit Jindal and Ashwani Chobisa, for the Appellant; Mohd. Rafiq, A.A.G. and B.M. Sharma, for the Respondent

Judgement

Shiv Kumar Sharma, J.—Core question that arises for consideration in all these writ petitions is whether a rule can be framed under the proviso to Article 309 of the Constitution of India to whittle down the employee's vested right which has become crystallized?.

2. All the petitions have common cause of action since they are aggrieved by the issuance of Notification dated June 8, 2001 and August 7, 1998 whereby their existing pay scale of Rs. 6500-10500 has been reduced to Rs. 5500-9000 w.e.f. July 1, 1998.

3. The petitioners indisputably have been given from time to time the benefit of revision of pay scale, selection scale as per circular dated January 25, 1992 and under the Rajasthan Civil Services (Revised Pay Scale) Rules, 1998 (For. Short "1998 Rules") Notification No.F.16(5) FD (Rules) 1998 dated August 7, 1998 was

issued under 1998. Rules in exercise of powers conferred by the proviso to Article 309 of the Constitution. By the said Notification the, concept of Entry Scale, Senior Scale and Selection Scale was introduced. The Notification indicated that so far as the case of Senior Teachers is concerned, their Entry Scale as revised after September 1, 1996, would be Rs. 5500-9000. It was further indicated that benefit of Senior Scale was to be conferred only after completion of 10 years of service in the pay scale of Rs. 6500-10500. The benefit of Selection Scale was to be given after completion of 8 years of service in Senior Scale in the pay scale of Rs. 7500-12000.

4. Notification No.F.16(5) FD (Rules)/98 dated June 8, 2001 reads as under:-

"In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Rajasthan is pleased to make the following rules to amend further the Rajasthan Civil Services (Revised Pay Scales) Rules, 1998 namely:-

1. The rules may be called the Rajasthan Civil Services (Revised Pay Scales) (Third Amendment) Rules, 2001.

2. They shall be deemed to have come into force with effect from . 1.7.1998.

3. In the Rajasthan Civil Services (Revised Pay Scales), Rules, 1998 in Schedules V-the existing General Note 8 Shall be re-numbered as 8(1) and following new Clause (ii) and (iii) there under shall be inserted, namely:-

(ii) The teacher earstwhile Teacher Grade III/drawing pay, in the second selection grade of 6500-10500 and promoted as senior prior to 1.7.1989 shall draw pay in the scale of 6500-10500 as senior scale of Senior Teacher. Those Senior Teachers who have not completed nine years service as Senior Teacher on 1.7.1998, their pay on 1.7.1998.

(iii) As a result of re-fixation of pay in accordance with the provisions contained in the Clause (ii) above, the recovery of over payment, if any, shall stand waived for the period from 1.7.1998 to the date of issue of this Notification.

By order of the Governor OSD (M.D. Kaurani), Principal Secretary/Finance."

5. It is averred in the writ petitions that the petitioners have already availed the benefit of sections grade of Rs. 6500-10500 but they have been deprived of the rightful claim to continue in the said scale and the act of the State Government in reducing pay scale No. 12 (Rs. 6500-10500) to pay scale No. 11 (Rs, 5500-9000) is arbitrary, discriminatory and violative of Articles Hand 16 of the Constitution.

6. On February 26, 2004 Mr. Mohd. Rafiq learned Additional Advocate General submitted that reply on behalf of the respondents be been filed tin Gopal Lal Sharma v. State of Rajasthan (1), and the same may be treated as reply in all the connected writ petitions. Rejoinder to the reply was also submitted on behalf of the petitioners.

7. I have heard the rival submissions and carefully scanned the impugned Notifications.

8. Laying down the condition of service is primarily the function of the Legislature, the proviso to Article 309 is a transitional provision empowering the Executive to make rules having the force of law. The proviso merely enable the Governor to make rules to regulate the "recruitment and condition of service" of the parsons mentioned therein and is not co-extensive with the power of the Legislature under item 70 of List I or 41 of List II.

9. The question relating to power to make rules with retrospective effect was considered by a Constitution Bench of the Hon''ble Supreme Court in *State of Gujrat v. Raman Lal Keshav Lal Soni* (2). It was indicted "that the law must satisfy the requirements of the constitution today taking into account the accrued cr. acquired rights of the parties today. The law cannot say, 20 years ago the parties had no right, therefore the requirement of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not-yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the Constitutional rights accrued in the course of 20 years. That would be most arbitrary, unreasonable and a negation of history." in *K.C. Arora v. State of Haryana* (3), their lordships of the Supreme Court observed that the State Government can not take away accrued right of an employee by making amendment of the rules with retrospective effect.

10. In *T.R. Kapur v. State of Haryana* (4), the Hon''ble Apex Court held that the benefits, acquired under the existing rules can not be taken away by an amendment with retrospective effect that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights.

11. *Udai Pratap Singh v. State of Bihar* (5), was the case wherein the Hon''ble Supreme Court held that by an executive order the statutory rules can not be whittled down.nor can any retrospective effect be given to such executive order so as to destroy any right which had crystallized.

12. In *R.S. Ajara v. State of Gujrat* (6), it was indicated that no rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights.

13. Their Lordships of the Supreme Court in *Chairman Railway Board v. C.R. Rangadhamaiah* (7), propounded that the expression "vested rights" or "accrued rights" are 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. 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 violatlve, of the rights guaranteed under Article 14 and 16 of the Constitutions.

14. The only submission of the Mr. Mohd. Rafiq, learned Additional Advocate General is that considering the demand made by the teachers of the Education Department in the State of Rajasthan, High Powered Committee was constituted and on the basis of the report of the Committee impugned Notifications were issued. The teachers having gained at one stage can not be allowed to complain if as a result of implementation of the settlement and the recommendations of the High powered Committee they find the same inconvenient to them at the letter stage. They can not be allowed to have best of both. Reliance is placed on R.N. Gosain v. Yashpal Dhir (8), wherein their Lordships of the Supreme Court held thus:- (Para 10)

"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage to which he could only be. entitled on the footing that it is valid, and then turn round and say it is void for the purpose of; securing some other advantage."

15. Having analysed the submissions of learned Additional -Advocate General I find that an agreement was entered into between the State Government and Rajasthan Shikshak Sanyukt Sangharsh Samiti (Siya Ram Group) relating to teachers Grade III. There is nothing on record to show that Teachers Union of Siya Ram Group had authority to represent all the teachers of the State. In the rejoinder filed on behalf of the petitioners it has specifically been pleaded that Siya Ram group did not have any authority to enter into an agreement on behalf of all the teachers of the State. The petitioners did not derive any advantage out of the impugned Notifications, therefore question of approbate and deprobate does not arise at all. It also appears that the impugned Notifications were issued ignoring the provisions contained in Rule 6 of 1998 Rules: Note appended to Rule 6 provides thus:-"

"Note:-In cases where the revised pay scale has been lowered down in comparison to the corresponding revised pay scale of existing pay scale indicated in Section "A" of Schedule 1, the existing employee will continue to draw pay in the corresponding revised pay scale indicated in Section "A" of the above schedule as personal to him to long as he holds the post, however, fresh appointments/promotion will be made in the revised pay scale prescribed for the post in Section "B" of Schedule I."

Accordingly the employees who were receiving "Existing Pay Scale of Rs. 2000-3200 or Rs. 2000-3500 they were entitled to corresponding Revised Pay Scale of Rs. 6500-10500 and even as per the Schedule, State Government could not have reduced the pay scale to Rs. 5500-9000 (Existing Pay Scale Rs. 1640-2900).

16. Undeniably the aggrieved persons are Senior Teachers who before coming into force of the 1998 rules were receiving the benefit of existing pay scales No.

14 and 15 as indicated in Schedule I (i.e. Pay Scale of Rs. 2000-3200 and Rs. 2000, 3500) and after giving effect to the revised pay scales from September 1, 1996 the Revised Pay Scale No. 12 (i.e. Pay Scale of Rs. 6500- 10500) was given to them. After issuance of the impugned Notification with retrospective effect, the secured and vested rights of the petitioners, who were already receiving the benefit of Pay Scale of Rs. 6500-10500 prior to July 1, 1998, have been taken away. A benefit that has accrued to the petitioners under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallised and no rule can be framed under the Proviso to Article 309 of the Constitution which affect for impairs the vested rights. The act of the State of Rajasthan in issuing impugned Notifications retrospectively which have the effect of taking away a benefit already available to the petitioners under the existing rule is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution.

17. As a result of the above discussion, I decide the instant writ petitions in the following terms:-

(i) Impugned Notifications dated June 8, 2001 and August 7, 1998 to the extent they interfere with the accrued and vested rights of the petitioners and similar situated employees in reducing the Pay Scale of Rs. 6500-10500 to Rs. 5500-9000 w.e.f. July 1, 1998 are declared ultravires to the Constitution and only to that extent they stand quashed and set aside.

(ii) The petitioners unaffected by the impugned Notifications shall be entitled to retain the pay scale of Rs, 6500-10500 and consequential monetary benefits in view of 1998 Rules which were given effect from September 1, 1996.

(iii) The respondents are restrained from making any recovery from the petitioners and if any recovery has already been affected, the entire recovered amount shall be refunded back within thirty days from the date of "receipt of certified copy of this order.

(iv) There shall be no order as to costs.