
(2015) 07 RAJ CK 0223
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7785 of 2002

Damodar Mishra

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 10(3)

Citation : (2015) LabIC 4574

Hon'ble Judges : Ajit Singh and Anupinder Singh Grewal, JJ.

Bench : Division Bench

Advocate : Tarun Kumar Mishra, for the Appellant; Virendra Lodha, Senior Counsel assisted by Devesh Chauhan, G.S. Gill, A.A.G., assisted by Harish C. Kanpa, for the Respondent

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J.—Through the instant writ petition, the petitioner is seeking direction for grant of regular increments in the pay scale which were due in the year 1997, 1998, 1999 & 2000. He has also sought payment of pension/gratuity and commutation on the basis of last pay drawn on 29.04.2001 after granting the usual increments. The petitioner was serving as Additional District Judge in the cadre of Rajasthan Higher Judicial Service in the pay scale of 5100-150-5700-200-6300 which was subsequently revised to 16400-450-20000 (annual increment Rs. 450) w.e.f. 01.09.1996 in accordance with Rajasthan Civil Services (Revised Pay Scales) Rules, 1998. The petitioner was given an option to join as President, District Consumer Forum, to which he consented and joined as such on 30.04.1996. The petitioner superannuated from the Rajasthan Higher Judicial Service on 30.09.1996. However, as the appointment of the President of the Consumer Forum is for a term of 5 years or upto the age of 65 years, whichever is earlier, he continued to work as such till 30.04.2001.

2. Learned counsel for the petitioner has contended that the petitioner was entitled to the increments in the pay scale of the Additional District Judge even

while he was serving in the Consumer Forum even though he may have reached the age of superannuation in the Rajasthan Higher Judicial Service. He has drawn attention of this Court to Rule 3(6) of the Rajasthan Consumer Protection Rules, 1987 (hereinafter referred to as "the 1987 Rules") wherein it is mentioned that the terms and conditions of the service of the President of the District Consumer Forum cannot be varied to his disadvantage during the tenure of office. He has further submitted that in terms of Rule 29 of the Rajasthan Service Rules, 1951 (hereinafter referred to as "the 1951 Rules") increments are to be drawn as a matter of course unless they are withheld by the competent authority. In support of his submissions the learned counsel has relied upon the judgment of the Kerala High Court in the case of State of Kerala v. Govindan Kutty (ILR 1999 (3) Kerala 376), judgment of Division Bench of the Delhi High Court in the case of R.N. Mittal (Mr. Justice) (Retd.) and Another Vs. Government of the NCT of Delhi, , judgment of the Hon"ble Supreme Court of India in the case of D.S. Nakara and Others Vs. Union of India (UOI), , judgment of single Bench of this Court at the Principal Seat, Jodhpur in S.B. CWP No. 3834 of 2001 (Amarnath Purohit v. State of Rajasthan decided on 13.02.2015), and the judgment of a Full Bench of this Court in F.B. (DB) Civil Special Appeal (Writ) No. 796 of 1997 (State of Rajasthan and Others Vs. Shyam Sunder Gupta and Others,).

3. On the contrary, the learned counsel for the respondents has stated that as the petitioner had already superannuated from the Rajasthan Higher Judicial Service on 30.09.1996, he could not have been granted the increments in the pay scale after that date, although he was entitled to the grant of the increments prior to the date of superannuation. He has further submitted that in terms of Rule 337 of the Rajasthan Service Rules (Old), re-employed Government servant is not entitled to draw pension in addition to the pay. He has further referred to Rules 152 and 153 of the Rajasthan Civil Service (Pension) Rules, 1996, and submitted that as the total pensionary benefits of the petitioner and salary exceeded Rs. 26,000/- (now amended to Rs. 80,000/-) the petitioner was not entitled for increments in the pay scale. He has also submitted that the order of superannuating the petitioner on 30.09.1996 has not been challenged by the petitioner, and hence he could not claim any increments thereafter.

4. We have heard the learned counsel for the parties and perused the material on record.

5. The appointment of the petitioner as President, District Consumer Forum is governed by the Rajasthan Consumer Protection Rules, 1987. The relevant extract of these Rules is reproduced hereunder:

"Rule 3 - Salaries and other allowances and terms and conditions of the President and Members of the District Forum (section 10(3)).--

(1). The President of the District Forum shall receive the salary of the Judge of a District Court if appointed on a whole-time basis or an honorarium

(2).

(3). The salary, honorarium and other allowances shall be defrayed out of the consolidated Fund of the State Government.

(4).

(5).

(6) The terms and conditions of the service of the President and the members of the District Forum shall not be varied to their disadvantage during their tenure of office."

The tenure of office of the President District Consumer Forum has been fixed under the Consumer Protection Act, 1986, Section 10 which, inter alia, provides that:

Section (10) Composition of the District forums:--

(1)

(2) Every member of the District Forum shall hold office for a term of 5 years or up to the age of 65 years, whichever is earlier, and shall not be eligible for re-appointment. Provided that a member may resign his office.....

(3) The Salary or Honorarium and other allowances payable to and the other terms and conditions of service of the members of the District Forum shall be such as may be pre scribed by the State Government."

6. Upon perusal of Rule 3(1), it is evident that the President of the District Forum is entitled to draw the salary of a Judge of a District Court in case he is appointed on a whole time basis like the petitioner. Rule 3(6) stipulates that the terms and conditions of the President and members of the Forum shall not be varied to their disadvantage.

7. Even though the petitioner may have joined as President of the Consumer Forum but it could not be construed that he had continued to be a member of the Rajasthan Higher Judicial Service even after the date of his superannuation. The petitioner had joined as President of the Consumer Forum on 30-04-1996 although order for his appointment had been passed on 09.02.1996. Before he had joined as President of the Forum, an order was issued by the Government on 19.03.1996 whereby he was intimated that he shall be retiring w.e.f. 30.09.1996 on attaining the age of superannuation i.e. 58 years. Subsequently the petitioner was asked to submit his pension papers on 14.05.1996 for preparing pension payment order and other retiral benefits. The petitioner represented that this aspect be reconsidered. The matter is stated to have been placed before the Chief Justice and examined. The petitioner was informed vide letter dated 27.02.1997 that his services in the Consumer Forum shall be treated as fresh appointment, and he shall be deemed to have been reappointed on attaining the age of 58 years. The petitioner submitted his pension papers on 24.01.1998, and his pension was computed on the basis of the last pay drawn by him at the time of retirement. It is, therefore, patent that the petitioner had, for all practical

purposes, retired from service on 30.09.1996, and hence he could not have drawn increments in the pay scale thereafter.

8. There is no dispute that the petitioner was paid the salary of the Additional District Judge including increments till 30.09.1996 whereon he superannuated. In service jurisprudence, increments in a pay scale are only applicable till the date of superannuation. Increments by their very nature imply continuation in service and are payable annually or with the passage of time while in service. On the other hand, the term superannuation denotes termination or end of service. Therefore, superannuation and increments cannot coexist. By no stretch of imagination can an employee after superannuation be held entitled to increments.

9. It is also noteworthy that the petitioner never challenged the order of superannuation from service dt. 30.09.1996, which has attained finality. The petitioner has appended order dated 04.03.1997 (Annex.-XII) with his rejoinder to the reply filed by respondents, which indicates that the Registrar of the High Court sent communication to the petitioner that as he had retired on attaining the age of superannuation on 30.09.1996, his appointment as President of the Consumer Forum is to be treated as fresh appointment. This order has not been challenged by the petitioner. In case, this appointment to Consumer Forum is to be treated as fresh appointment after superannuation, then as per provisions of Rule 152 read with Rule 153 of the Rajasthan Civil Services (Pension) Rules, 1996, he would not be entitled to increments especially when his pay and gross pension exceeded Rs. 26,000/- (at that relevant period of time) now amended to Rs. 80,000/- per month vide notification dated 12.09.2008. This is specifically pleaded in the reply filed by the respondent High Court, which has not been rebutted by the petitioner in his rejoinder. The relevant extract of Rule 152 of the Rajasthan Civil Services (Pension) Rules, 1996 is reproduced hereunder:

"152. Fixation of pay of re-employed pensioners: (a) Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of posts held by them prior to retirement shall be given.

(b)(i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the reemployed post. Similarly, if the minimum of the scale of pay in which a pensioner is reemployed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of

the scale of pay of the re-employed post. However, in all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

(c) The re-employed pensioner will in addition to pay as fixed under sub-rule (b) above shall be permitted to draw separately any pension sanctioned to him and retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are reemployed, pension (excluding pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:

(i) In the case of ex servicemen who held posts below commissioned officer's rank in the Defence Forces and in the case of other retired Government servants who held posts other than State Service posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of service officers belonging to Defence Forces and State Government pensioners who were members of the State Services at the time of their retirement, the first (Rs. 1500/-) of the pension shall be ignored.

(e) The pay fixed under sub-rules (a) to (d) and gross pension taken together shall not exceed (Rs. 26,000) p.m."

Rule 153 of the Rules of 1996 reads as under:

"153. Drawal of increments:

Once the initial pay of re-employed pensioner has been fixed in the manner indicated above, he may be allowed to draw normal increments in the time scale of the post to which he is appointed as if the pay has been fixed at the minimum or the higher stage, as the case may be (i.e. before an adjustment on account of pension is made) provided that the pay and gross pension taken together do not at any time exceed (Rs. 26,000/-) per month."

Thus, even if the matter is considered in this perspective, the petitioner would not be entitled to draw increments.

10. Much emphasis has been laid on the Rule 3(6) of the 1987 Rules that the terms and conditions cannot be varied to disadvantage during the tenure in the Consumer Forum. It is admitted position that the petitioner has been paid the salary including increments which he had drawn on 30.09.1996. Non payment of increments thereafter cannot, in any manner, be construed as variation in the terms and conditions of service. It is only in case the salary, which the petitioner was drawing as Additional District Judge, had been reduced, it could be said that the terms and conditions of his service had been varied to his disadvantage.

11. The judgments cited by the learned counsel for the petitioner are distinguishable on facts from the instant case. The judgment in the case of *State of Kerala v. Govindan Kutty* (supra) pertains to the interpretation of the

Consumer Protection Rules framed by the State of Kerala and the benefit of the Rules was being taken away by an executive order. There is no mention in this judgment that salary also included increments even after superannuation of President of the Forum which is the issue involved in the instant case. It was held that the petitioner therein was entitled to full salary and pension cannot be deducted therefrom. This is contrary to the finding of the Full Bench in State of Rajasthan and Others Vs. Shyam Sunder Gupta and Others, , wherein referring to Rule 337 of the Rajasthan Service Rules (Old), it was held that the pay minus pension shall be paid.

12. The judgment in the case of R.N. Mittal v. Government of NCT (supra) pertains to the salary and allowances of a retired High Court Judge who had been appointed as President of the State Consumer Commission. It was held that the President of the Commission was entitled to the salary as well as all other allowances and perquisites applicable to a sitting High Court Judge.

13. Insofar as the judgment of the Hon"ble Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), (supra) is concerned, there is no denying the principle laid down that the pension is not a bounty which is payable at the mercy of the employer. However, the issue involved therein was entirely different from that which has arisen in the instant case. In that case the question was about the legality of fixation of a cut off date for applicability of revised pension scheme.

14. In the case of Amarnath Purohit v. State of Rajasthan (supra) the single Bench had held that the benefit of revised pay scale applicable to an Additional District Judge would be applicable to the petitioner who was the President of the Consumer Forum. Hence, the petitioner cannot derive any benefit from this judgment as it is not his case that revised pay scale has not been paid to him.

15. In the case of State of Rajasthan and Others Vs. Shyam Sunder Gupta and Others, , the following questions were referred to the Full Bench:

1. Whether President, Consumer Forum gets salary of a District Judge?
2. If a person already in service is appointed as President, Consumer Forum, he will continue to get the same salary till he reaches the age of superannuation provided under the Rajasthan Higher Judicial Service Rules?
3. After date of retirement from the Higher Judicial Service, if the person still continues as President of the Consumer Forum to complete the tenure provided under the Act, whether he will continue to get the same salary last drawn by him or usual salary of a District Judge plus the pension for which he was otherwise entitled for after his due retirement as member of Higher Judicial Service?
4. During the tenure as President of Consumer Forum whether a person can be treated as member of Higher Judicial Services even after he reaches the age of superannuation so as to entitle him to all the benefits of services for the remaining period of his tenure as President, Consumer Forum?

5. Whether there can be any re-employment of President, Consumer Forum during the fixed tenure, if the person appointed as President while in service, after his retirement from the services?
6. What is the status of a member of RHJS who is appointed as President, District Forum while in the RHJS and continuing as such after his superannuation in the RHJS?
7. Whether aforesaid appointment of a member of RHJS at any stage can be reckoned as "re-employment" or whether it is to be held as "statutory appointment"?

These questions were answered as under:

1. The President, District Consumer Forum gets the salary of a District Judge on his appointment i.e. he will get salary what he was getting in Rajasthan Higher Judicial Service on the date of his appointment.
2. The person who is a member of Rajasthan Higher Judicial Service and appointed as a President, District Consumer Forum, he will continue to get the same salary in pay scale of RHJS till he reaches to the age of superannuation in Rajasthan Higher Judicial Service.
3. A person who has been appointed as President of the District Consumer Forum while in Rajasthan Higher Judicial Service on his retirement from the Rajasthan Higher Judicial Service, he will get the last drawn salary which he was getting on the date of his superannuation from Rajasthan Higher Judicial Service minus pension which he gets on retirement from Rajasthan Higher Judicial Service.
4. A person who has been appointed as President of the District Consumer Forum while in Rajasthan Higher Judicial Service, on his superannuation from Rajasthan Higher Judicial Service, he cannot be treated as member of the Rajasthan Higher Judicial Service after his superannuation from Rajasthan Higher Judicial Service though he will get all the benefits and allowances which RHJS officers gets till his completion of the tenure in District Consumer Forum, but pension has to be deducted from his salary.
5. The person who has been appointed as President of the District Consumer Forum while in Rajasthan Higher Judicial Service retires from Rajasthan Higher Judicial Service before completion of 5 years, there is no question of his re-employment in Consumer Forum for rest of the tenure period. He will continue for 5 years in the Consumer Forum on the basis of his statutory appointment in Consumer Forum.
6. A person who has been appointed as President of the District Consumer Forum while he was in Rajasthan Higher Judicial Service, after his retirement he will have the status as that of the President of District Consumer Forum.
7. The person who has been appointed as President of the District Consumer Forum while he was in Rajasthan Higher Judicial Service, once he was given the

appointment as President of the District Consumer Forum for 5 years, he will hold that post for 5 years irrespective of his superannuation in the Rajasthan Higher Judicial Service. Therefore, the superannuation in the Rajasthan Higher Judicial Officer will not affect his tenure of 5 years in District Consumer Forum.

16. It is, thus, apparent that the Full Bench, while answering question No. 2, had specifically held that a member of Rajasthan Higher Judicial Service, who is appointed as President of the District Consumer Forum, shall continue to draw the same salary in the pay scale of Rajasthan Higher Judicial Service till he reaches the age of superannuation in the Rajasthan Higher Judicial Service. While deciding the question No. 3, it was held by Full Bench that appointment as President of the Consumer Forum after retirement from service, shall entitle the occupant to the last drawn salary which he was getting on the date of superannuation from the Rajasthan Higher Judicial Service. It was also held while answering question No. 4 that President of Consumer Forum on his superannuation from Rajasthan Higher Judicial Service cannot be treated as member of Rajasthan Higher Judicial Service, although he will get same benefits and allowances which the Rajasthan Higher Judicial Service officers get till completion of their tenure in the District Forum but the pension has to be deducted from the salary.

17. Therefore, answer to question Nos. 3 & 4 does not in any manner lay down that the salary which the President of the Consumer Forum will be entitled to after his superannuation from the Rajasthan Higher Judicial Service will include increments. The term benefits and allowances cannot be said to include increments.

18. In view of the above, the petitioner has not been able to make out any case whatsoever that he was entitled to increments in the pay scale of Additional District Judge after his superannuation from the Rajasthan Higher Judicial Service. Resultantly, the instant petition is without any merit, and the same is accordingly dismissed.