**(2013) 08 J&K CK 0002**

**In the Jammu And Kashmir High Court**

**Case No :** S.W.P. No. 1349 Of 2008 and I.A. No. 2393 Of 2008

Gh. Ahmad Bhat APPELLANT

Vs

State of J. and K. RESPONDENT

**Date of Decision :** 28-08-2013

**Acts Referred:**

**Citation :** (2014) 1 JKJ 136

**Hon'ble Judges :** Tashi Rabstan, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

Tashi Rabstan, J.—The matter, in view of consent of learned counsel for parties, is admitted and taken up for final disposal. Petitioner,

engaged as work charge employee, on 1st March 1974, was converted into regular temporary cadre on 15th April 1980 and declared quasi

permanent from 5th August 1983. He was appointed as Installation Surveyor on 1st July 1985 and promoted as Technician-III on 1st January

1998. There was pay anomaly between eight senior officials of Electric Division 2nd, Srinagar and their juniors that was brought to the notice of

respondent department. Vide Order No. 101/EDII dated 1st March 1999, sanction for placement of eight officials, including Ghulam Ahmad Bhat

- petitioner, in the pay scale of 4200-5325 equivalent to their junior counterparts, being of their identical grade and cadre with effect from 1st

September 1997, the date from which their junior counterparts were placed in the pay scale of 4200-5325, was accorded subject to the condition

that the officials were not involved in any embezzlement/unlawful activities and criminal case, were not under suspension, and their work and conduct remained satisfactory. The Assistant Executive Engineer, Sub Division, Baghat/Chanapora, vide No. 1044/CSD dated 4th March 1999,

informed that above eight officials, including petitioner, were neither involved in any embezzlement/unlawful activities, criminal case, nor were under

suspension and that work and conduct of these officials remained satisfactory. It was after a decade less by few months (i.e. 09 years and 02

months) that vide Order No. ED-II/2 of 2008 dated 2nd April 2008, issued by Executive Engineer, Electric Division 2nd, Srinagar, that sanction

was accorded to the grant of retirement of petitioner with effect from 30th April 2008 from government service after attaining the age of 58 years.

2. The office of Accountant General (A & E), J & K, Srinagar, vide No. PNR-I/C/S-636/2008-09/352-54 dated 4th June 2008, informed

Executive Engineer, Electric Division 2nd, Srinagar, that the benefit of SRO 225 of 1997, raising pay scale from Rs. 3050-4590 to Rs. 4200-

5325 with effect from 1st September 1997 was given without obtaining approval of Administrative Department and that necessary sanction be

obtained and ""entry to this effect recorded in the service book"" under proper attestation, otherwise a due/drawn statement showing the excess pay

drawn as a result of giving benefit under SRO 225 of 1997 may be prepared and forwarded to the office of Accountant General (A & E), J & K,

Srinagar for effecting recovery. The office of Executive Engineer, Electric Division 2nd, Srinagar, in response to Accountant General (A & E), J &

K, Srinagar's letter No. PNR-I/C/S-636/2008-09/352-54 dated 4th June 2008, drew excess drawn statement with effect from 09/1997 to

04/2008 and vide letter No. ED-II/1797 dated 6.6.2008 [4th July 2008], informed Senior Accounts Officer (Pension), Accountant General,

Srinagar-respondent No. 6, that the petitioner was due for benefit of SRO 59 dated 6.2.1990 but could not be granted/paid to him due to

procedural delay and was being now granted to him in terms of Clarification issued by Director, Codes, Finance Department. He further mentions

that necessary ""entries have been recorded"" in petitioner's Service Book and the excess pay drawn amounting to Rs. 2,33,583.00 be recovered

from petitioner from his Death-cum-Retirement Gratuity (DCRG).

3. The petitioner aggrieved of letter No. ED-II/1797 dated 6.6.2008 [4th July 2008], has come up with the writ petition on hand on the grounds

 

that petitioner alongwith other officials has been placed in the pay scale of 4200-5325 by respondents and entry to that effect was made in his

service book and before paying petitioner the salary in the pay scale of 4200-5325, clearance was also obtained from the concerned officers of

petitioner and others, regarding their involvement in any embezzlement or unlawful activities/criminal case and also to the effect that they are not

under suspension and that their work and conduct remained satisfactory. The petitioner, it is insisted, thus, was not required to obtain any

administrative approval and that it was for respondents to obtain administrative approval, if at all required. It is urged that in the event respondents

have not obtained or given any administrative approval, responsibility thereof cannot be saddled on petitioner and recovery cannot be effected

from his gratuity and that respondent No. 4 was required to do needful in the matter but instead he asked respondent No. 6 to effect recovery of

an amount of Rs. 2,33,583/-. It is pleaded that communication dated 04.06.2008 reveals that respondent had given benefit of SRO 59 to

petitioner in terms of Clarification issued by Director, Codes Finance Department. In terms of Director, Codes, Finance Department's letter No.

A/29(96)-112 dated 9.6.2006, it is insisted, the Accountant General - respondent No. 5, was informed that in case any employee who had been

otherwise due for his placement in the 'apportioned' graded pay scale in terms of the provisions of Appendix 2-A of J & K Civil Service (Revised)

Pay Rules, 1987 as inserted vide SRO-59 of 2/1990, amended from time to time, with regard to relevant 'apportioned' grade structure, but has

not been given benefit which was due upto 15.01.1996 (date of issue of SRO-14) due to the reasons purely attributable to the procedural delay,

be considered. The petitioner, on the strength of grounds averred in the petition, has sought the following relief:

i) Writ of certiorari, quashing impugned letter No. ED-II/1797 dated 4.6.2008/4.7.2008 addressed by respondent No. 4 to respondent No. 6 for

effecting recovery of Rs. 2,33,538/- from the petitioner's DCRG;

ii) Writ of mandamus, commanding respondents to pay an amount of Rs. 4,77,928/- as worked out by respondent No. 4 as provided under SRO

59 of 2/1990 dated 6.2.1990 as also full pension, DCRG, communication etc. in favour of petitioner.

 

4. The stand taken by respondents 1 to 4 in opposition to writ petition is that petitioner's placement in the pay scale of 4200-5325 was done by

the then Executive Engineer without any competence and authority and that same could have been done only after getting confirmation/approval of

Administrative Department. It is insisted that it is respondent No. 6, who has detected the illegality committed by the Executive Engineer by placing

petitioner in higher pay scale under SRO 225 of 1997 [Refer JKS Soft JKS/1629] with effect from 01.09.1997 without approval and that after

receiving communication from respondent No. 6, recovery proceedings were initiated and amount of Rs. 2,33,583/- to be detected from

petitioner's pensionary benefits.

5. The respondents 5 & 6, in their Reply, have stated that the petitioner's pay was stepped up from his pay scale viz. 3050-4590 whereas, he was

holding the pay scale of Rs. 4200-5325 w.e.f. 1.9.1997 without obtaining Administrative Department's approval. It is insisted that as the necessary

sanction was not obtained, same was brought to the notice of concerned department vide No. PWR-I/C/S-636/2008-09/3520/54 dated

4.6.2008 and that respondent department was requested to obtain necessary sanction or intimate the excess pay and allowances drawn on

account of said anomaly.

6. I have gone through the pleadings and heard learned counsel for the parties.

7. Regulations known as jammu and Kashmir Civil Services Regulations apply to all servants. Article 242 of Jammu and Kashmir Civil Services

Regulations (Volume I), while annunciating average emoluments for reckoning of retiral benefits of an employee, who has retired on or after

01.10.1976, provides under Government instructions, inserted vide F.D. Notification SRO 45 dated 28.01.1980:-

Government instruction:- With effect from 1st January, 1976 the average emoluments are determined with reference to emoluments drawn during

the last ten complete months. This work involves not merely an arithmetical calculation of the average emoluments but also a check of the

correctness of the emoluments which enter into the calculation. The correctness of the emoluments on the first date of the ten months period would

naturally depend on the correctness of the emoluments prior to this date. However, any such check of the correctness of past emoluments, whether in the office preparing the pension papers or latter in the office responsible for issuing the pension payment order, should not become an occasion

for an extensive examination going back into the distant past, the check should be the minimum which is absolutely necessary and it should in any

case not go back to a period earlier than a maximum of twenty four months preceding the date of retirement.

8. From the above rule position, it is obvious that there is absolute bar to check the correctness or otherwise of the past emoluments beyond the

period of 24 months preceding the date of retirement. In the present case correctness of emoluments drawn by petitioner before 24 months of his

retirement, for that reason, cannot be disputed while reckoning the petitioner's retiral benefits and any dispute as regards correctness of

emoluments, drawn by petitioner, raised by Accountant General after about a decade while calculating retiral benefits of petitioner, cannot be

permitted inasmuch as such query is expressly barred for Accountant General, to go back to a period beyond two years from the date of

retirement, to check and correct the past emoluments drawn by petitioner, in view of Article 242 of J & K Civil Service Regulations.

9. Learned counsel for petitioner during course of argument states that petitioner's case is squarely covered by Accountant General (A & E) J & K

Srinagar's letter No. PNR-5/SRO-59/Policy/08-09/68-72 dated 29.12.2008. The said letter dated 29.12.2008, at request of learned counsel for

petitioner, is taken on record. It would be advantageous to reproduce apropos excerpt of letter No. PNR-5/SRO-59/Policy/08-09/68-72 elated

29.12.2008 hereunder:

In view of the Government Order No. 270-PDD and Financial Advisor & Chief Accounts Officer, Power Development Department letter No.

PDD/AC/11/08/2008 dated 13.02.2008 on the subject cited above, where under it has been clarified that in case any employee who was

otherwise due for the placement in the apportioned graded pay scale in terms of Appendix 2-A of J & K Civil Service (Revised) Pay Rules 1987

as inserted vide SRO 59 of 02/1990, amended from time to time, with regard to relevant apportioned grade structure, but has not been given

benefit which was due up to 15.01.1996 (date of issue of SRO 14) due to reasons purely attributable to the procedural delay, may be considered at this stage, but it should be within the relevant apportioned grade structure of the relevant said Appendix 2-A of J & K Civil Service Revised Pay

Rules, 1987.

While admitting the said clarification in this office, it has been desired to obtain a categorical certificate in the following proforma in respect of each

case from the competent appointing authority who is empowered to grant such upgradation under normal rules, to enable this office to authorize

pensionary benefits accordingly.

It is certified that Shri.............Designation................was entitled to the benefit of SRO 59 dated 05.02.1990 and SRO 393 of 27.11.1997 (as

amended from time to time) prior to 15.01.1996 but due to procedural delay the same has been allowed to him after the said date viz.

15.01.1996.

10. The above letter dated 29.12.2008 of Accountant General unequivocally admits the clarification of Finance Department for giving benefit of

SRO 59 of 1990 to left out employees of Power Development Department and intimates Chief Engineer, Electric Maintenance & RE Wing,

Kashmir, Srinagar, Superintending Engineers and Executive Engineers of respondent department, to give such benefits after recording Certificate

that due to procedural delay benefit of SRO 59 of 1990 could not be given to the concerned employee at the relevant point of time. While relying

on letter No. PNR-5/SRO-59/Policy/08-09/68-72 dated 29.12.2008 of Accountant General (A & E) J & K Srinagar, learned counsel for

petitioner states that impugned letter No. ED-II/1797 dated 4.6.2008 [4.7.2008] itself depicts that petitioner was due for benefit of SRO 59, but

he could not be paid/granted the said benefit clue to procedural delay and same is being granted to him in terms of Clarification issued by Finance

Department (Director Codes) vide No. A/29(96)-112 dated 9.6.2006 and that in this regard necessary entries, as required, were recorded in the

petitioner's service book. In that view of the matter, as petitioner's services are regulated and governed by J & K Civil Service Regulations and he

being a retired employee of J & K State Government (Power Development Department), is, therefore, entitled to all the benefits, given to similarly

situated person(s)/employees, including one emanating from letter No. PNR-5/SRO-59/Policy/08-09/68-72 dated 29.12.2008.

11. The trite law on the subject is that once the department has made fixation wrongly, it cannot reduce the pay by holding that the pay fixation was

wrongly done and that too at the fag end of service of an employee and that the department is not within its rights to deduct the pension. The

pension, it is trite law, is to be fixed on the basis of the salary last drawn by an employee and the pensionary benefits are, accordingly, to be

calculated. In this regard reference may be made to [Mushtaq Ahmad v. State & Ors. (JKJ [HC] (1) 2011 322), Maryam Bano v. State 2003 (1)

(JKJ [HC] 783 : 2003 SLJ 188), [Perdhurnan Krishan Khullar v. Union of India 2003 (3) [JKJ] [HC] 423], Randhir Singh & Ors. v. State of

Punjab and another (1998 (6) SLR 391).

12. For the reasons discussed above, the writ petition is allowed and letter No. ED-II/1797 dated 4.6.2008/4.7.2008 qua recovery of Rs.

2,33,583.00 quashed. The respondents are directed to release the withheld pension/gratuity benefits in favour of petitioner. Disposed of alongwith

connected CMP(s).