

(2005) 05 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1551 of 2003

Gh. Hassan Khan and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Citation : (2010) 3 JKJ 937

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, Judge

1. The point that needs adjudication in this petition is, whether the petitioners are entitled to third in-situ promotion in terms of SRO 14 of 1996

Jammu & Kashmir Civil Services (Higher Standard Pay Scale Scheme) read with SRO 311 of 1997.

2. The petitioners were working as daily wagers and their services were regularized in the year 1975. The petitioners have worked as daily wagers

for 14 years and have completed 20 years of service on regular establishment. SRO 311 of 1997 mandates that 50% of the continuous work by

daily wagers is to be counted with regular services for the purposes of grant of in-situ promotions. Thus the seven years out of 14 years service as

Daily-wager is to be counted for the purposes of grant of in situ promotion:

3. In para-3 of the parawise reply, the respondents have pleaded that the petitioners were working as daily-wagers for 13 years 2 months and 24

days before their regularisation. The respondents in para-7 of the parawise reply have pleaded that second in-situ promotion has been granted in

favour of the petitioners in the year 1996. It is profitable to reproduce para-3 and para-7 of the said reply herein;-

3. Para 3 is matter of record, needs no reply. However, it is submitted that the petitioner by their own showing under annexure-C have put in

service of 13 years 2 months and 24 days before they were brought on regular establishment. Hence the contentions of petitioners in para under

reply are baseless and incorrect. The contention of petitioners that they have not put in more than 14 years of continuous service is self

contradictory and misleading, is accordingly denied.

7. In reply to para 10, it is submitted that the petitioners were granted 2 steps of In situ promotion in the years 1996 as per the Rule 5 of grant of

Higher standard pay scale rules of 1996 with effect from 1995. It is submitted that the petitioners had put in daily wage service of about 13 years

before getting regularized on the permanent establishment. However, 50% continuous service cannot be taken into consideration for the purpose of

In situ promotion as per the SRO-311 of 1997, which is clear that once cases processed and settled under SRO-14 of 1996 cannot be reopened.

However, it is submitted that contradictory stand has been taken by the petitioners. It is clarified that even if 50% service of petitioners rendered

on daily wage basis were taken into account. The petitioners even then were not entitled to 3rd In situ promotion under the provisions of SRO-

14/1996. Hence the contentions of petitioners are baseless and are denied.

4. The meat of the matter is, whether the petitioners are entitled to third in-situ promotion despite of the fact that second in-situ promotion has been

granted to them in the year 1996 in terms of Rule 5 of SRO 14 of 1996.

5. The petitioners have made representation, Annexure-C to the writ petition. The Additional Director, Jammu & Kashmir Sericulture

Development Department, has made communication to Director, J&K Sericulture Development Department, Srinagar, which read as under;-

....Kindly refer your above cited endorsement on the subject. In this context the case was forwarded to Manager Seed Srinagar vide our No:

ADSDK/Admn/04/900 dated 6.5.04 asking him to furnish comprehensive report in the matter. The Manager Seed Srinagar in turn under his

communication No: DS/2jk4/Admn/EC 172 dated 11.5.2004 reported that the applicant was granted I and II time bound promotion at the due

time of course as recorded in the service book. The communication also added that by virtue of SRO 311 dated 9-9-1997 the daily wage service

when added to the actual service comes to 33 years 2 months and 13 days as on ending October, 2001 i.e. superannuation retirement of the applicant.

In the said communication it is also reported that the case was sent to Accountant General's department for seeking guideline who in turn informed to grant III time bound promotion without reopening the case already settled.

Manager Seed has made communication to Additional Director, Sericulture Development

Department, Annexure 9-A, which read as under;-

....Kindly find enclosed the original application of Sh. Ab. Rehman Khan, Ex. Seed examiner endorsed to this office vide your office letter No:

AD-SDDK/ADM/900, dt. 6.5.04 wherein your good self has sought a comprehensive report along with original service book of the applicant.

The report is given here under with reference to service book and service particulars.

The applicant was granted i and ii time bound promotion at the due time of course as recorded on the service book of the concern. Since by virtue

of (SRO-311) dt. 9.9.97 the daily wage service when added to the actual service comes to 33 years 3 months and 13 thirteen days as on

31.10.2001 accordingly, the case was sent to Accountant General office, Srinagar for further guidelines in the Matter had also given similar view

and Photostat copy of which is enclosed) therefore, in terms of (SRO-311) dt. 9.9.97 third in situ promotion could be granted without reopening

the case already settled.

6. In terms of these communications the department of Accountant General has also replied to the communications of the respondents that third

time bound promotion be given to the petitioners ""without reopening the case already settled.

7. Mr. Khan argued that second in-situ promotion stand granted as per Rule 5 of SRO 14 of 1995 w.e.f. 1995, thus the case of the petitioners

stands settled. The 50% continuous service as daily wager cannot be taken into consideration for the purposes of grant of third in-situ promotion

because cases have been settled in terms of SRO 14 while granting second in-

situ promotion. The petitioners were granted 2nd in situ promotion in the year 1996, hence third in-situ promotion cannot be granted to the petitioners, because they have not completed nine years of service from that date. Thus petitioners are not entitled to third in-situ promotion.

Considered.

Rule 5 of SRO 14 grant of higher pay scale read as under;- "5. Grant of Higher Standard Pay Scale.-

(i)(a) An employee covered under these Rules who has not got any promotion or promotional scale/selection scale in his service career and has

completed 18 years or more but less than 27 years of regular satisfactory service before 1-1-1995 will be allowed, w.e.f. 1-1-1995, in place of

his existing scale the second Higher Standard Pay Scale specified in column 4 of Schedule 1 of these rules;

(b) An employee covered under these rules who completes such regular satisfactory service of 18 years after 1-1-1995 and has not got any

promotion or promotional scale/selection scale in his service career will be allowed the Second Higher Standard Scale from the 1st of the month

following the month in which he completes such service;

(ii)(a) An employee covered under these Rules who has not got any promotion or promotional scale/selection scale in his/her service career and

has completed 27 years or more of regular satisfactory service before 1-1-1995

will be allowed, with effect from 1-1-1995, in place of his/her existing scale, the Third Higher Standard Pay Scale specified in Column 5 of

Schedule 1 of these Rules:

(b) An employee covered under these Rules who completes such regular satisfactory service of 27 years after 1-1-1995 and has not got any

promotion or promotional scale/selection scale in his service career will be allowed the Third Higher Standard Scale from the 1st of the month

following the month in which he completes such service...

8. While going through Rule 5(ii)(b), it mandates that if an employee completes regular satisfactory service of 27 years after 1st January, 1995, he

can be given third in-situ promotion from first day of month following the month in which he completes such service. Thus it means that if a person

completes 27 years of regular satisfactory service after 01.01.1995, can get third

in-situ promotion.

9. Applying the test to the instant case, admittedly the petitioners have completed 27 years of service after 1.1.1995, while calculating 50% of daily wage services for the purposes of granting in-situ promotion.

SRO 311 read as under;-

SRO-311. -- In exercise of the powers conferred by proviso to section 124 of the Constitution of Jammu and Kashmir the Governor is pleased to

direct that the following amendments shall be made in Jammu and Kashmir Civil Service (Higher Standard Pay Scale Scheme) Rule, 1996.

In the said rules the following shall be inserted as Rule 5-A A after Rule 5-A. 5-AA. In case of work charged employee(s) / Daily Rated

Worker(s) (excluding Casual/sessional workers) who is/are brought on regular establishment, 50% continuous work charge/daily wage service

shall be counted with regular service for purpose of grant of. In situ, promotion under these rules provided that the cases already settled under the

provisions of existing rules shall not be reopened.

10. The arguments of Mr. Khan are devoid of any force for the following reasons:

The petitioners were in service on 9th September, 1997 when the SRO 311 was issued. The date of superannuation of the petitioners is given at

page-6 of the writ petition, which is not disputed. The petitioners are within their rights to derive benefit in terms of Rule 5(ii)(b). SRO 311

nowhere mandates that Rule 5(ii)(b) of SRO 14 of 1996 is not applicable. Thus the benefit cannot be denied to the petitioners keeping in view the

opinion of Accountant General, referred hereinabove.

11. The words 'the case is already settled under the existing rules should not be reopened' means that if an employee has retired prior, to issuance

of SRO 311 their cases cannot be reopened.

12. SRO 14 of 1996 has been issued on January 15, 1996 while as SRO 311 has been issued on 9th September, 1997. Almost all the employees

who have completed their 9 years, 18 years, 27 years of service were given the benefit of in-situ promotion 1st, 2nd and 3rd respectively. Then

what was the purpose, aim and object of issuing circular 311. While reading SRO 311 one comes to inescapable conclusion that this SRO has

been issued for the benefit of the daily-wagers who have been brought on

regular establishment in order to derive benefit of in-situ promotion in terms of SRO 14 while counting 50% continuous daily wage service with the regular service. Otherwise, there is no such provision of law or rule or circular which mandates counting of daily wage service for purposes of granting of any service benefit after bringing such daily-wager on regular establishment.

13. The petitioners were in service on the date of issuance of the circular. Their date of superannuation has been given in the petition, as discussed

hereinabove. Thus it is wrong to say that the benefit cannot be given to the petitioners.

14. Keeping in view the said principle, if the argument of Mr. Khan is accepted, it will amount to deprive the employees, who have been brought

on regular establishment after performing their duties as daily-wagers from the benefit of SRO 311 and, that will defeat the aim, purpose and

object of the SRO 311. Thus the argument of Mr. Khan fails.

The arguments of Mr. Khan that after granting second in-situ promotion, the petitioners have not put in regular satisfactory service of nine years

and after completion of nine years service, the petitioners can claim third in-situ promotion is devoid of any force. The purpose of SRO 14 is to

provide benefit to the employees who have not got any promotion for 9, 18 and 27 years. The benefit of second in-situ promotion which the

petitioners have derived is in terms of Rule 5 of SRO 14. There is no such provision in SRO 14 which mandates that if an employee has been

granted first or second in-situ promotion though completed more than 9/18 years of regular satisfactory service or less than 27 years at that time

are not entitled to claim third in situ promotion after completion of 18 or 27 years of regular satisfactory service.

Keeping in view the above discussion, the writ petition is allowed, the respondents are commanded to grant third in-situ promotion to the

petitioners under rules and release all dues, to which they are legally entitled to.