
(2022) 04 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 298 Of 2019, Writ Petition (C) No. 468 Of 2019, Civil Miscellaneous No. 1, 981 Of 2019

Ghulam Hassan Shah

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Citation : (2022) 04 J&K CK 0013

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Rayees Ud Din Ganai, Satinder Singh Kala, Avtar Singh Sodhi

Final Decision : Disposed Of

Judgement

Sanjeev Kumar, J

1. The petitioner is aggrieved and has challenged order bearing no. DULB/A/2416/1259 of 2018 dated 18.12.2018 ["impugned order"] passed by Director Urban Local Bodies whereby the benefit of upgraded pay scale of Rs. 4,000–6,000 (pre-revised) granted in favour of the petitioner vide order dated 5.11.2002 has been rescinded. The impugned order has been assailed by the petitioner primarily on the ground that the impugned order has been passed after the retirement of the petitioner on superannuation on 31.5.2018 and also that the same was passed without providing any opportunity of being heard to the petitioner.

2. Respondents have filed their objection and have tried to justify the impugned order on the ground that the Deputy Director, Local Fund Audit and Pension, Srinagar, while examining the pension case of the petitioner found that the petitioner had been given the benefit of upgraded pay scales within a span of few years which was not permissible. The petitioner was, however, held entitled to the benefit of Insitu promotion in terms of SRO 14 of 1996 that too with effect from 1.12.2005.

3. Having heard learned counsel for the parties and perused the record, I am of the view that the impugned order is not sustainable for more than one reason. The impugned order has admittedly been passed after the retirement of the petitioner, as a result a direction has been issued to recover the excess amount paid to the petitioner due to grant of upgraded pay scale vide order dated 5.11.2002. Admittedly, the petitioner had no say either in grant of pay scale or in fixation of his salary in the said grade. The petitioner was paid the pay scale as also the salary as per the pay scale which the petitioner utilized during the course of his service, and, therefore, it would be highly inequitable to ask the petitioner to refund the said amount or direct deduction of the said amount from his retirement gratuity. The legal position in this regard is well settled and does not require reiteration.

4. Otherwise also, I find no illegality in order dated 5.11.2002 which is sought to be rescinded by the impugned order. As is apparent from the reading of the impugned order, the petitioner was substantively appointed as Dharat Mahaldar on 4.2.1982 vide order no. 566-68/NACK dated 4.2.1982. The post of Dharat Mahaldar held by the petitioner, was subsequently upgraded from the pay scale of Rs. 750-940 (pre-revised) to the scale of Rs 775-1025 (pre-revised) and the petitioner was accordingly given the benefit of promotion to the said upgraded pay scale vide order dated 11.5.1994. The benefit of first upgradation was granted in favour of the petitioner after more than 12 years. It is true that the post held by the petitioner i.e. Dharat Mahaldar grade-I was further upgraded to the pay scale of Rs. 950-1500 (pre-revised) and the petitioner was granted the benefit of upgraded pay scale with effect from 14.11.1996. With a view to remove stagnation, the respondents once again upgraded the post of Dharat Mahaldar and granted the benefit of higher grade to the petitioner along with 17 other colleagues from pay scale Rs. 3050-4590 (pre-revised) to the pay scale of Rs. 4,000-6000 vide order dated 5.11.2002. It is in this grade of Rs. 4,000-6000 (pre-revised) that the petitioner ultimately retired on 31.5.2018.

5. From the sequence of events taken note of hereinabove, this court does not find any illegality in the decision taken by the respondents from time to time for upgrading the post of Dharat Mahaldar and granting the benefit to the incumbents holding such post including the petitioner. The respondents in their reply affidavit have not been able to explain as to how the order dated 5.11.2002 was bad in the eye of law or contrary to any statutory rule or executive instructions occupying the field. That apart, by the impugned order the petitioner has been deprived of the benefit of higher pay scale and recovery has been ordered against him; such order could not have been passed without complying with the principles of natural justice.

6. For the foregoing reasons, I find merit in the petition and the same is allowed and impugned order dated 18.12.2018 is set aside. The petitioner shall be entitled to all the post-retirement benefits treating him to have retired in the pay scale of Rs. 4,000-6000 (pre-revised), which was granted to him in terms of

order dated 5.11.2002.

7. Disposed of.