

(1998) 03 J&K CK 0030

In the Jammu And Kashmir High Court

Case No : S.W.P. No. 1210/1996 and S.W.P. No. 1349/1996

Jagdish Chander Gupta

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Citation : (1998) 2 SCT 340

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S.S. Nanda, H. Rehman, K.N. Bhat, J.P. Singh, D.C. Raina, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—Heard. Admitted.

2. With the consent of the parties, this petition is taken up today, for final disposal.

3. This order shall dispose of writ petition Nos: 1349 and 1210 of 1996. The facts have been taken from SWP No. 1349/1996. The petitioners

are working as Food Inspectors. They submit that they are entitled to in situ promotion in terms of Jammu and Kashmir Civil Services (Higher

Standard Pay Scales) Scheme Rules, 1996.

4. The respondents have put in appearance. The stand taken by them is that even though the aforementioned Rules are applicable and have been

adopted by the Jammu Municipality, yet the petitioners are not entitled to the benefit thereof. It is stated that the petitioners have already got benefit

of one promotion, and therefore, second promotion cannot be given to them under the Rules.

5. It be seen that the respondents in their objections have given the breakup of

the revision of pay scales and other benefits which accrued to the petitioners on account of upgrading of the grades. Reliance in this regard is being made only to the case of M.S. Dutta petitioner. The cases of other petitioners are also similar. From the service profile as given in the objections, it becomes apparent that the petitioners did avail the benefit of the revision of the pay scales and also revision of grades from time to time. There was general revision as also upgradation on account of orders passed by the Administrator of the Jammu Municipality.

6. The short question which thus arises for determination is as to whether these revision of pay scales and the benefits which the petitions have got on account of upgradation, would debar them from having benefit of the Rules referred to above.

7. In this regard, it would be apt to notice Rule 4(c) and (g). They are recoduced, as under :

4(c) ""Promotion in situ"" means elevation from the existing pay scale to the prescribed Higher Standard Pay Scale without change of designation, responsibility or inter se seniority.

.....

4(g) ""Promotion"" means a functional promotion to the next Higher Post as per the respective Recruitment Rules.

Rule 5 is also relevant. This is also being noticed. it reads, 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/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 was not got any promotion

or promotional scale/selection scale in his/her service career 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 the 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 from the 1st of the month following the month in which he completes such service;

(iii)(a) Every employee, covered under these rules who has not got any promotion or promotional scale/selection grade in his service career and has completed nine years or more but less than 18 years of regular satisfactory service before 1.1.1995 will be allowed w.e.f. 1.1.1995, in place of his existing pay scale the First Higher Standard Scale specified in Column 3 of Schedule 1 of these rules;

(b) An employee, covered under these Rules who completes such regular satisfactory service of nine years after 1.1.1995 and has not got any promotion or promotional scale/selection scale in his service career will be allowed the First Higher Standard Scale from 1st. of the month following the month in which he completes such service;

(iv) (a) An employee covered under these Rules who after grant of one or more promotions after first entry into the service has stagnated for 9 years or more in the same post before 1.1.1995 will be allowed w.e.f. 1.1.1995, in place of his/her existing pay scale the First Higher Standard Scale as specified in column 3 of Schedule 1 of these Rules.

(b) An employee covered under these Rules who after grant of one or more promotions after first entry into the service completes 9 years of such stagnation in the same post after 1.1.1995, will be allowed w.e.f. 1st day of the month following the month in which he/she completes 9 years of such regular satisfactory service, the First Higher Standard Pay Scale as specified in Col. 3 of Schedule 1 of these Rules.

Reference has also been made to the preamble to Schedule 1. For the facility of reference, it is noticed. It reads as under:

Schedule 1

Rule 4(b), (d), (f) and (g) of J&K Civil Service (Higher Standard Pay Scale Scheme) Rules, 1996.

Structure for grant of Higher Standard Pay Scale to various categories of NonGazetted State Government Employees on completion of the prescribed regular satisfactory service.

S. No. Pay Scale of the Entry post applicable from 1.4.1987. First Higher Standard Pay Scale for 9 years of regular satisfactory service in the

entry post. Second Higher Standard pay scale for 18 years of regular satisfactory service in entry post. Third Higher Standard pay scale for 27

years of regular satisfactory service in entry post.

1 2 3 4 5

By referring to Schedule 1, it is sought to be stressed that first benefit was to be given after completion of period of service of nine years. Second

benefit was supposed to be given after 18 years and the third benefit was to be given after completion of 27 years of service. It is further stated

that it is only where a promotion has been given, only then it can be said that the benefit of this Rule is not to be given. According to the learned

counsel appearing for the petitioners, that merely because a person has been given a higher grade or his pay has been revised, would not amount to

promotion.

8. After hearing learned counsel for the parties, I am of the opinion that there is merit in the contention of the learned counsel for the petitioners.

Merely because there has been a revision in the pay scales or merely because higher grades have been given, would not amount to promotion. In

this regard, the petitioners have rightly placed reliance on the clarification given by the Government in this regard. This appears at page 107 of the

Compilation prepared by the Finance Department 1996 Edition. The point of dispute and the clarification has been indicated. This is noticed. It

reads, as under:

(g) Whether the upgradation of a post in respect of the pay scale without change of its nomenclature should be treated as a promotion for purposes

of grant of InSitu promotion under J&K Civil Service (HSPSS) Rules, 1996, (g) Since in such cases the existing pay scale ceases to exist and the

same is entirely replaced by a new scale of pay without any change in nomenclature of the post, as such upgradation should not be construed to be

functional promotion for the purpose of grant of InSitu promotion under the relevant provisions of the J&K (HSPSS) Rules, 1996.

9. I am of the opinion that whatever otherwise explicit in the Rules, has been made still clearer by giving a clarification. Giving of higher grade or merely because there is revision in the pay scales, cannot be treated as promotion. The stand taken by the respondent/Jammu Municipality cannot be sustained.

10. This petition is, accordingly, allowed. The petitioners are held entitled to the benefit of the Rules with effect from the dates on which they completed 9 years, 18 years or 27 years of service. There would be no order as to costs.

11. Disposed of accordingly.

12. Petition allowed.