**(2019) 04 RAJ CK 0013**

**In the Rajasthan High Court**

**Case No :** Civil Writ No. 12549, 12714, Of 2018

Jetha Ram & Ors. APPELLANT

Vs

Rajasthan High Court & Anr RESPONDENT

**Date of Decision :** 03-04-2019

**Acts Referred:**

State Government promulgated the Rajasthan Civil Services (Revised Pay) Rules, 2017 — Rule 9, 11, 11(1), 11(7), 14, 15
Constitution Of India, 1950 — Article 14, 309

**Citation :** (2019) 04 RAJ CK 0013

**Hon'ble Judges :** Sandeep Mehta, J;Vinit Kumar Mathur, J

**Bench :** Division Bench

**Advocate :** Vikas Balia, Kuldeep Mathur

**Final Decision :** Disposed Off

## Judgement

The petitioners have preferred these two writ petitions founded on a common cause of action and the relief claimed by them is identical. Thus, both the writ petitions are being heard and decided together by this single order.

The petitioners herein are all employed in the Group-D services of the Rajasthan High Court. The petitioners have relied upon a seniority list issued vide office order dated 20.1.1997 issued by the Rajasthan High Court whereby, all the petitioners are placed above one Shri Nimba Ram in the order of seniority. Another seniority list dated 31.3.2004 was issued by the Rajasthan High Court wherein also, some of the petitioners are placed above Shri Nimba Ram in the order of seniority. An order dated 19.7.2011 was issued whereby, the petitioners as well as aforesaid Shri Nimba Ram were given increments and were shown to be drawing higher salary than that being drawn by Shri Nimba ram and were also shown to be senior to him. While exercising powers conferred under Article 309 of the Constitution of India and acting on the recommendations made by the VII Pay Commission, the State Government promulgated the Rajasthan Civil Services (Revised Pay) Rules, 2017 (hereinafter referred to as the 'Rules of 2017' for short) as per which, the pay fixation of the petitioners was made at Rs.31700/- vide order dated 13.11.2017 and other similar orders. The petitioners claim that they were shocked to receive an office order dated 11.4.2018 whereunder, the names of various employees, who had surrendered their 15 days' P.L. for encashment are reflected. In the said order dated 11.4.2018, name of Shri Nimba Ram has been shown at Sr.No.21 but the basic pay drawn by him is quantified at Rs.32,700/-. The petitioners claim that they cannot be placed in a pay scale lower than that being drawn by their junior Shri Nimba Ram for this purpose, they rely upon Rule 11(1) and 11(7) of the Rules of 2017, which is reproduced hereinbelow for the sake of ready reference:

"11. Fixation of pay in the revised pay structure.-

(1) The pay of a Government servant who elects, or is deemed to have elected under rule 9 to be governed by the revised pay structure on and from 1st October, 2017, shall, unless in any case the Governor by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if such lien had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner:-

(A) in the case of all employees-

(i) the pay in the application Level in the Pay Matrix shall be the pay obtained by multiplying the existing basic pay by a factor of 2.57, rounded off to the nearest rupee and the figure so arrived at will be located in that Level in the Pay Matrix and if such an identical figure corresponds to any Cell in the applicable Level of the Pay Matrix, the same shall be the pay, and if no such Cell is available in the applicable Level, the pay shall be fixed at the immediate next higher Cell in that applicable Level of the Pay Matrix.

Illustration:

1

Existing Running Pay Band : PB-1

Pay Band

5200-20200

Grade Pay

1700

1750

2400

2400

2400

 

2800

GP No

2

3

9

9A

9B

10

Levels

L-1

L-2

L-5

L-6

L-7

L-8

2

Existing Grade Pay : 2400 (GP No.9B)

Cells

17700

17900

20800

21500

22400

26300

18200

18400

21400

22100

23100

27100

3.

Existing Pay in Running Pay Band : 8160

18700

19000

22000

22800

23800

27900

19300

19600

22700

23500

24500

28700

4.

Existing Basic Pay : 10560 (8160+2400)

19900

20200

23400

24200

25200

29600

20500

20800

24100

24900

26000

30500

5

Pay after multiplication by a fitment factor of 2,57 :10560 x 2.57 = 27139.20

 

(rounded off to 27139)

21100

21400

24800

25600

26800

31400

21700

22000

25500

26400

27600

32300

6.

Level corresponding to GP 2400 (9B) : Level 7

22400

22700

26300

27200

28400

33300

23100

23400

27100

28000

29300

34300

7.

Revised Pay in Pay Matrix (either equal to or next higher to 27139 in Level 7): 27600.

 

23800

24100

27900

28800

30200

35300

(ii) if the minimum pay or the first Cell in the applicable Level is more than the amount arrived at as per sub-clause (I) above, the pay shall be fixed at minimum pay or the first Cell of that applicable Level.

(7) Where in the fixation of pay under sub-rule (1), the pay of a Government servant, who, in the existing pay structure, was drawing immediately before the 1st October, 2017 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised pay structure in a Cell lower than that of such junior, his pay shall be stepped up to the same Cell in the revised pay structure as that of the junior."

Relying upon the said Rule, the petitioners claim that in case, a government servant was earlier drawing more salary than another government servant junior to him in the same cadre, his pay shall be stepped up to the same as that of the junior concerned. Finding out that, Nimba Ram had been fixed in the higher basic pay scale of Rs.32,700/-, the petitioners submitted a representation to the respondent authorities for raising their pay scale and to bring it at par with that of Shri Nimba Ram in terms of Rule 11(7) of the Rules of 2017. The said representation of the petitioners was accepted and the basic pay of the petitioners was revised and increased to Rs.32,700/- instead of Rs.31,700/- w.e.f. 1.7.2017. The subsequent increment orders issued in favour of the petitioners also reflect that their basic pay is Rs.32,700/-. However, the petitioners were severely prejudiced and shocked when they received an office order dated 14.8.2018 whereby, the order dated 4.6.2018 passed in their favour was withdrawn and the pay of the petitioners was revised and reduced to Rs.31,700/-and that too without providing any opportunity of showing cause or hearing to the petitioners herein. The respondents also issued directions to recover the excess amount paid to the petitioners by effect of the order dated 4.6.2018 and the amount so assessed was ordered to be deducted and adjusted from the salary of the petitioners. The said order dated 14.8.2018 is assailed in these two writ petitions.

In reply to the writ petition, the respondents have not disputed the fact that Shri Nimba Ram (supra) another employee in the Group-D services being junior to the petitioners has been granted pay scale which is higher than the petitioners. However, the justification for this situation is shown in their reply in reference to the fact that Shri Nimba Ram was given the benefit of ACP after coming into force of VII Pay Commission and thus, his pay has swelled up above the petitioners. To support the impugned action, the respondents have relied upon the guidelines No.9, 11 and 12 issued under the Rules 14 and 15 of the Rules of 2017 which are reproduced hereinbelow for the sake of ready reference:

14. Scheme of Assured Career Progression (ACP).- The scheme of Assured Career Progression (ACP) with three financial upgradations shall be as under; -

(1) The scheme will be available to all posts in Class IV, Ministerial, Subordinate Services and those holding isolated posts and drawing pay under these rules upto Level 13 excluding State services.

(2) Benefit of pay fixation available at the time of normal promotion shall be allowed at the time of financial upgradations under the scheme, Thus, one increment shall be given in the Level from which the employee is granted ACP and he shall be placed in the immediate next higher Level in the Cell equal to the figure so arrived at in the Level from which ACP is to be given and if no such Cell is available in the Level to which ACP granted, he shall be placed at the next higher Cell in the immediate higher Level.

(3) There shall be no further fixation of pay at the time of regular promotion, if promotion is in the same Level as granted under ACP. However, if promotion is on the post carrying higher Level than only the pay in that Level in the Pay Matrix shall be fixed at the equal Cell and if there is no equal Cell than at the immediate next Cell.

(4) For grant of financial upgradation under the Assured Career Progression (ACP) Scheme, the service shall be counted from the date of the direct entry in service and shall be admissible on completion of 9, 18 and 27 years regular service respectively.

(5) Existing Government servants who have already availed three benefits of financial upgradation will not be eligible for the grant of ACP. Those Government servants who have availed benefit of one ACP / one promotion will be eligible for second and third ACP on completion of 18 and 27 years of regular service, respectively. Similarly those Government servants who have availed benefit of two ACP's / two promotions / one promotion and one ACP, as the case may be, will be eligible for third ACP on completion of 27 years of regular service.

(6) The authority competent to make appointment on the post held by the Government servant shall be competent to grant ACP

(7) The detailed guidelines for grant of Assured Career Progressions (ACP) shall be as contained in Schedule-VI appended to these rules

15. Scheme of Assured Career Progression (ACP) for State Service Officers-The scheme of ACP with three financial upgradations shall be allowed to State Service Officers as under: -

(1) The scheme will be available to all posts in State services and isolated posts

 

in the Level 14 and above.

(2) Benefit of pay fixation available at the time of normal promotion shall be allowed at the time of financial upgradations under the scheme. Thus, one increment shall be given in the Level from which the employee is granted ACP and he shall be placed in the Cell equal to the figure so arrived at in the Level from which ACP is to be given and if no such Cell is available in the Level to which ACP granted, he shall be placed at the next higher Cell in that Level.

(3) There shall be no further fixation of pay at the time of regular promotion, if promotion is in the same Level as granted under ACP. However, if promotion is on the post carrying higher Level than only the pay in that Level in the Pay Matrix shall be fixed at the equal Cell and if there is no equal Cell than at the immediate next Cell.

(4) For grant of financial upgradation under the Assured Career Progression (ACP) Scheme, the service shall be counted from the date of the direct entry in service and shall be admissible on completion of 10, 20 and 30 years regular service respectively.

(5) Existing Government servants who have already availed benefits in Ministerial/ Subordinate service / State Service of three ACPs will not be eligible for the grant of ACP. Those Government servants who have availed benefit of one ACP / one promotion will be eligible for second and third ACP on completion of 20 and 30 years of regular service, respectively. Similarly those Government servants who have availed benefit of two ACPs / two promotions / one promotion and one ACP, as the case may be, will be eligible for third ACP on completion of 30 years of regular service.

(6) The authority competent to make appointment on the post held by the, Government servant shall be competent to grant ACP

(7) The detailed guidelines for grant of Assured Career Progressions (ACP) shall be as contained in Schedule-VI appended to these rules."

On the strength of these guidelines, the respondents have fervently defended their action claiming it to be compliant with the statute and oppose the petitioners' contention that the impugned action is arbitrary or illegal.

Shri Vikas Balia learned counsel representing the petitioners relied upon the decision rendered by the Hon'ble Supreme Court in the case of Kurmanchal Institute of Degree & Diploma & Ors. Vs. Chancellor, M.J.P. Rohilkhand Univ. & Ors. reported in (2007)6 SCC 35 and urged that as per a plain reading of Rule 11 of the Rules of 2017, the petitioners were required to be placed at parity with their junior Shri Nimba Ram in pay scale and that any action to the contrary would be hit by the vice of being arbitrary and discriminatory and violative of Article 14 of the Constitution of India and so also of the Rules of 2017. He urged that the plea of the respondents that the guidelines referred to supra, entitled the respondent authorities to maintain difference in pay between junior and senior employee on account of grant of ACP at a later date is absolutely untenable because as per him, law is well settled that a parent legislation cannot be superseded by the Rules which are subordinate legislation. He urged that as the guidelines relied upon by the respondents are contrary to the clear mandate of Rule 11(7) of the Rules of 2017, manifestly, the same cannot operate to the prejudice of the petitioners so as to deprive them of their due entitlement of higher pay scale in accordance with the principal statute i.e. Rule 11(7) of the Rules of 2017. He thus vehemently and fervently urged that the writ petitions deserve acceptance and the impugned order should be quashed and set aside.

Per contra, Shri Kuldeep Mathur, learned counsel representing the respondent Rajasthan High Court vehemently and fervently opposed the submissions advanced by Shri Balia. He urged that the guidelines have been framed with reference to the powers provided to the legislature by the principal statute and as such, the petitioners cannot rely upon the so-called repugnancy existing inter-se between the Rules and the guidelines. He further submitted that the area of operation of the guidelines and Rule 11 of the Rules of 2017 is entirely different. As per him, the guidelines clearly cater to the situations covered by Rules 14 and 15 of the Rules of 2017 dealing with the grant of ACP whereas, Rule 11 of the Rules of 2017 deals with pay scale. He thus urged that there is no repugnancy or inconsistency between Rule 11 and the guidelines referred to supra issued under Rules 14 and 15 of the Rules of 2017 and hence, as per him, the difference in pay scale inter-se between the petitioners and Shri Nimba Ram which is the natural consequence of his being granted the benefit of ACP after coming into force of the VII Pay Commission is absolutely justified and the petitioners cannot claim any parity on this aspect. On these grounds, Shri Mathur craved dismissal of the writ petitions.

We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the material available on record.

We are fully convinced by the contention of Shri Balia learned counsel representing the petitioners that in case of repugnancy between the Rules and the guidelines issued thereunder, the Rules being the parent legislation will prevail. Manifestly, in Rule 11 reproduced hereinabove supra which deals with the fixation of pay of the govt. servants in the same cell, there is no permissibility of deviation with reference to grant of ACP to a junior govt. servant in the same cell at a later stage. In case, the basic pay of junior government servant steps up on account of grant of ACP or otherwise, the natural consequence thereof would be that the pay of his seniors would have to be stepped up correspondingly. The ratio of the Hon'ble Supreme Court judgment relied upon by Shri Balia in the case of Kurmanchal Institute (supra), wherein it was held as below:

"19. The submission of the learned Counsel that the UGC Regulations 1985 provides for study center of this nature cannot be countenanced. The UGC Regulations being a subordinate legislation must be read with the principal Act. The subordinate legislation will be ultra vires if it contravenes the provisions of the principal Act. [See Vasu Dev Singh and Ors. v. Union of India and Ors. 2006(11)SCALE108] A statutory authority, it is well known, must act within the four-corners of the statute. A'fortiori it has to operate within the boundaries of the territories within which it is to operate under the statute. Such territorial jurisdiction of the University must be maintained as otherwise a chaos would be created. If distance education of such a nature is to be encouraged, the only course would be to suitably amend the provisions of the Act."

fully satisfies us that a subsequent legislation cannot supersede the principal statute. In the case at hand, the situation created in conferment of a higher pay scale to Shri Nimba Ram by operation of Rules 14 and 15 of the Rules of 2017, has to be rectified by conferring the same pay scale to the petitioners by effect of the principal legislation i.e. Rule 11(7) of the Rules of 2017.

In view of the discussion made hereinabove, we are of the firm opinion that the order dated 14.8.2018 whereby the order dated 4.6.2018 passed in favour of the petitioners stepping up their pay and bringing it at par with their junior employee Shri Nimba Ram was recalled and the excess amount paid to them was ordered to be recovered is illegal and arbitrary and amounts to hostile discrimination and thus, runs contrary to the letter andspirit of Article 14 of the Constitution of India and hence, the same cannot be sustained.

Accordingly, these writ petitions deserve to be accepted and are hereby allowed. The order dated 14.8.2018 is quashed and set aside.

Stay applications are disposed of.

No order as to costs.

A copy of this order be placed in both the files.