

(1995) 02 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 1253 of 1993

Kamal Kishore

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 20-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (1995) JKLR 630 : (1995) SriLJ 185

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : P.S.Chandel, M.P.Sharma , H.Rehman , Advocates appearing for the Parties

Judgement

1. Petitioner was appointed as Draftsman in the payscale of Rs. 16002660 vide Order No. 28CTP/J.92 dated 14.5.1992 pursuant to the selection made by the Subordinate Services Recruitment Board (SSRB). Thereafter he had been drawing the salary in the payscale of Rs. 16002660 till July 1993 when it was stopped and he was told to draw the salary in the scale of Rs. 12002040. On enquiry it transpired that the respondents had taken resort to SRO174 of 1992 dated 30.7.1992 containing an amendment to the Jammu and Kashmir Civil Service (Revised Pay) Rules, 1992, for their action. This amendment directed that fresh recruitment to the post of draftsman shall be made in the payscale of Rs. 12002040 and that such appointees shall be placed in the payscale of Rs. 16002660 after putting in 8 years of service. It further provided that it shall be deemed to have come into effect from 30.3.1992.
2. Petitioner feels aggrieved of the impugned action and has filed this petition challenging it on the only ground that since he had been placed in the

payscale of Rs. 16002660 prior to the promulgation of SRO174 of 1992, his salary could not have been reduced by the said SRO and upon a retrospective operation.

3. In their objections, respondents have taken a routine stand trying to interpret the terms of SRO174 and have explained that various administrative departments had contravened its terms by inviting applications for various posts necessitating a circular dated 24.12.1993 issued by the Finance Department, clarifying the position.

4. The short point that comes up for consideration is: Whether the benefit that had accrued to the petitioner by having been appointed to a higher payscale could be taken away by a subsequent amendment in the pay revision rules ordered retrospectively by SRO174 of 1992?

5. There is no dispute that the petitioner was appointed as Draftsman in the payscale of Rs. 16002660 pursuant to the selection by SSRB. It also goes undisputed that Recruitment Board had invited applications for the post in the same scale. It is also a common ground that the petitioner had been drawing salary in this scale till July 1993. Therefore, it does not appeal to any reason or logic that his payscale could have been reduced by an amendment carried in the revised pay rules of 1992 by virtue of SRO174 (Supra which was retrospectively put in operation from 30.3.1992).

6. It is well settled that the accrued rights and the benefits vested cannot be taken away by amendment to rules retrospectively. It is true that rules can be made and given retrospective operation but so long as the same do not militate against the vested rights of those affected. I derive support for this from a number of judgments of the Supreme Court but to avoid burdening this judgment, ratio of only one or two needs to be reiterated.

7. In 1984 (2) S.L.J. 55, the Apex Court observed as under:

The accrued rights cannot be taken away by making amendment of the rules by retrospective effect"".

The Supreme Court laid down similar proposition in L.C. Singhal Vs. D. General (AIR 1972 S.C. 628) holding:

Government has no power to alter or modify the conditions of service of a Government servant with retrospective effect to the prejudice of such Government Servant.

A Constitution Bench of the Apex Court went a step further in State of Gujrat Vs.

Ram Lai (1983 (2) SCC 33) by observing:

We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to the situation that obtained 20

years ago and ignore the march of events and the constitutional rights accrued in the course of 20 years. That would be most arbitrary,

unreasonable and a negation of history.....The law which, if made today, would be plainly invalid as offending constitutional provisions in the

context of existing situation and it could not become valid by being made retrospective".

Regard being had to the fact that the petitioner was offered appointment in payscale of Rs. 16002660 and was appointed in that scale and was

allowed to draw salary in that scale for about one year, it becomes plain and simple to appreciate that the right had accrued to him to draw the

salary in that scale and such a right, by no reason or logic, can be tampered with or taken away by the application of rule, more so with

retrospective operation. This is so for the additional reason that the scale in which the petitioner was appointed becomes his condition of service

which cannot be taken away at his back by the retrospective operation of any rule.

8. Since I am not called upon to test the validity of SRO174 of 1992, I accordingly hold that said SRO cannot be applied to the petitioner for

reducing his payscale from Rs. 16002660 to Rs. 12002040 and direct the respondents to allow the petitioner to draw his salary in the payscale of

Rs. 16002660 in which he was appointed.