
(2018) 04 RAJ CK 0210
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2059 of 2001

Mahaveer Prasad Upadhyaya @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 19-04-2018

Acts Referred:

Revised Pay Scale Rules, 1983 — Rule 9, 10

Citation : (2018) 04 RAJ CK 0210

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Nitin Trivedi, A.R.Godara

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner seeking a direction to the respondents to permit him to re-exercise his option as prayed by him by way of setting aside and quashing the impugned orders dated 24/2/1995 (Annex.9) and 31/1/1996 (Annex.10) and to fix the petitioner under the Revised Pay Scales Rules with all consequential benefits.

The petitioner was initially appointed as Lower Division Clerk in the Colonization Department on 26/6/1976. The State of Rajasthan promulgated the Rajasthan Civil Services (Revised Pay Scales) Rules, 1983, 1986, 1989 and 1996 by which the pay scales of the State Government employees have been revised from time to time. The Rules of 1983 came into force vide Notification dated 17/2/1983 and the employees were required to exercise their options in accordance with Rule 9 and 10 of the Rules of 1983.

The petitioner exercised his option in Pay Scale No. 7 â€" Rs.490-10-550-640-20-840 and he was accorded the pay of Rs.610/- pm with effect from 26/6/1982.

It is claimed that the said option was exercised by the petitioner without understanding the full implications and in ignorance of the order dated

31/5/1983 was issued by the Finance Department by which the Government servants were permitted to revise their earlier options to provide them full

benefits of the Revised Pay Scales Rules.

It is claimed that when the petitioner came to know of the order dated 31/5/1983, he filed a representation dated 3/11/1989 seeking revision of his

earlier option i.e. the date indicated in the option. The representation of the petitioner was apparently rejected on 28/4/1990. Another representation

made by the petitioner on 26/8/1990 was also rejected on 18/4/1991. Whereafter, the petitioner made a representation to His Excellence the Governor

on 25/11/1994, which representation was rejected by order dated 24/2/1995 and 31/1/1996 (Annex.9 & 10) respectively by the State Government and

His Excellence the Governor. Feeling aggrieved, the present writ petition was filed on 13/5/2001.

It is submitted by learned counsel for the petitioner that the respondents were not justified in declining to permit the petitioner to revise his option

inasmuch as the said facility was made available in at least two departments i.e. CAD and Police Department vide Annex. 6 and 7, respectively and,

therefore, the respondents were not justified in declining the said relief to the petitioner. It was submitted that the grant of further option to the

petitioner to get his pay scale revised was not affecting any other person and, therefore, the alleged delay which occurred in filing the initial

representation pursuant to the Notification dated 31/5/1983 and filing the present writ petition after passage of six years is of no consequence.

Reliance was placed on a judgment of this Court in Manohar Kumar Jain vs. State of Rajasthan & Ors. : S.B.Civil Writ Petition No.6192/96 decided

on 10/11/1998 at Jaipur Bench.

Learned counsel for the respondents vehemently opposed the submissions. It was submitted that the writ petition is highly belated and the same

suffers from delay and laches. It was further submitted that the petitioner had two opportunities, first at the initial stage when he exercised a particular

option, whereafter pursuant to the Notification dated 31/5/1983 another option was given to all the employees to exercise option under Rule 9 of the

Rules of 1983 within a period of three months from the date of publication of the

Notification in gazette, however, the petitioner even at that stage chose not to exercise the option and for the first time on 3/11/1989 i.e. after six years the petitioner sought to get the option revised, which prayer was declined and ultimately the representations made to His Excellency the Governor was also rejected by the State and His Excellency the Governor in the year 1995/1996 itself, however, the petitioner chose to file writ petition in the year 2001 without any explanation for the delay. It was submitted that the plea of not being aware of the Notification dated 31/5/1983 is specious and cannot be accepted.

Further submissions were made that vide Annex. 6 and 7 further time was granted on account of special circumstances, which is reflected from the orders Annex.R/1 and R/2, wherein, the Colonization Commissioner sought permission of the State Government for giving another option to the employees to seek revision pursuant to the Rules of 1983, which was rejected indicating that the Finance Department has given permission for re-option only in cases where the pay stages were changed from retrospective date which was not known to the employees at the time of exercising option as per the Revised Pay Scale Rules, 1983 and, therefore, the petitioner cannot seek any benefit of the option granted to employees of other department. It was prayed that the petitioner having failed to exercise option at the relevant time is not entitled for any relief now.

Reliance was placed on the judgment of Honâ??ble Supreme Court in Rajasthan Rajya Vidhuta Vitran Nigam Ltd. vs. Dwarka Prasad Koolwal &

Ors. : AIR 2014 SC 3655 and of this Court in Dr. M.L.Vikram vs. State of Rajasthan & Ors. : S.B.Civil Writ Petition No. 7440/2007 decided on 17/4/2013.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The facts are not in dispute that the petitioner has exercised the option pursuant to the Revised Pay Scale Rules, 1983, whereafter on 31/5/1983 option was given to the employees to revise the option exercised by them within a period of three months, which option was not exercised by the petitioner within the given time and for the first time in November, 1989 he sought to exercise the option, which prayer was repeatedly declined firstly in the year 1990 and lastly by His Excellency the Governor on 31/1/1996.

The Communication dated 31/1/1996 reads as under:

â??Sir,

With reference to your representation dated 20.10.95 addressed to H.E. the Governor, Rajasthan, I have been directed to inform you that all Govt.

servants have already been given two chances to opt Revised Pay Scales from the dates which suits them. Therefore it is not possible to provide you more chances as per rules.

Yours faithfully, sd/-Â Â Â Â Â Â Â Â

Asstt. Secretary to Governor,

Rajasthan, Jaipur.â??

Thereafter also, the petitioner did not take any action and has filed the present writ petition on 15/5/2001. No indication has been given in the writ

petition as to what prevented the petitioner from questioning the legality and validity of various orders passed by the respondents from 1990 to 1996 at

the relevant time/within reasonable time.

The objection raised by the respondents in their reply regarding delay in filing the writ petition has also not been controverted/explained by filing any rejoinder.

This Court in the case of Dr. M.L.Vikram (supra) in a similar nature case laid down as under:

â??It is not in dispute that the petitioner at the first instance did not mention the date from which he was desirous to accept fixation of his pay under

the revised pay scales, therefore, fixation of his pay was made as per the provisions of the Rules of 1989. Subsequent thereto, a general opportunity

was given by the State Government to all Government servants to re-exercise option, but the petitioner failed to avail that also.

The only argument advanced by learned counsel for the petitioner is that the notification dated 20.11.1993 was not widely circulated, therefore, the

petitioner was not having knowledge of the opportunity given by the State Government for furnishing re-option.

I do not find any merit in the argument advanced. The notification concerned was notified in the official gazette and that is adequate publication for

general information to the persons concerned. The petitioner even after publication of the notification aforesaid failed to avail the opportunity of re-

opting the revised pay scales. For such an error of the petitioner himself, no direction can be given to the State Government now to accept the

petitioner's request for opting the revised pay scales from a specific date. Suffice to mention that the Rules of 1989 also nowhere provides for such

extension of time by relaxing the rules. The writ petition, thus, is dismissed. No order as to costs.â??

The Honâ??ble Supreme Court in the case of Dwarka Prasad Kookwal (supra), wherein, the dispute pertained to grant of opportunity of switching

over to the pension scheme and the GPF scheme under the Pension Regulations and GPF Regulations, respectively, it was inter alia laid down as

under:

â??49. Ultimately the issue boils down to the overall assessment of the awareness level of the employees of the RSEB based on the available data.

Based on the facts presented before us, on a composite consideration of the facts and taking a pragmatic view of the situation, a reasonable and

legitimate inference can be drawn that the respondents were aware of the notices issued for the exercise of the switch-over option but they chose not

to exercise that option either for personal reasons or perhaps because it did not suit them. The position changed in the second half of 1997, by which

time it was too late for them to do a re-think.

63. Notwithstanding the aforesaid Regulation providing for a time limit of 90 days for exercising the switch-over option, the appellant administratively

continued to give one opportunity after another to the employees of the RSEB to exercise their switch-over option. This continued for a period of 8

years and during that period if an employee chose not to exercise his option, it was deemed that he would continue to avail the benefits under the CPF

Scheme. Consequently, if this had any adverse financial impact on the employee in the long run (and realized by him in 1997-98), he had no one else

but himself to blame.

68. The right of an employee to switch over was, therefore, limited in time by the Pension and GPF Regulations. However, administrative orders

issued by the RSEB from time to time extended the period for exercising the option. No employee had any inherent right to either demand an

extension of the period for exercising the switch-over option or claim a right to exercise the switchover option at any time prior to his retirement, and

no such right has been shown to us.â??

So far as the judgment in the case of Manohar Kumar Jain (Supra) relied on by the learned counsel for the petitioner is concerned, the said judgment

cannot be of general application so as to lay down that irrespective of time limit indicated for exercising revised option the employee would be free to

exercise his option at any point of time and the State is bound to honor the said option and revise the pay scale as desired by the employee and,

therefore, the judgment has no implication insofar as the present case is concerned, wherein, the petitioner initially chose to exercise the option after

six years of the last date and challenged the orders passed during the period 1990 to 1996 in the year 2001 without giving any explanation, as noticed

hereinbefore, and the fact that similar nature writ petition in the case of Dr. M.L.Vikram (supra) has been rejected by this Court and the Supreme

Court in the case of Dwarka Prasad Koolwal (supra) has dealt with the right to exercise option at belated stage and has declined such exercise of

option, no case for interference in the present writ petition is made out.

Consequently, there is no substance in the writ petition and the same is, therefore, dismissed.