

(2008) 12 J&K CK 0037

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1891 Of 2004

Makhan Lal Bhat

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Jammu and Kashmir Civil Services (Higher Standard Pay Scale Scheme) Rules, 1996
— Rule 5(11)(b)

Citation : (2009) 1 JKJ 453

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : V.K.Magoo, P.N.Bhat, Neeru Goswami, Advocates appearing for the Parties

Judgement

1. The petitioners grievance is that tinder Rule 5 Sub RuleII Clause (b) of the Jammu & Kashmir (Higher Standard Pay Scale Scheme) Rules,

1996, he is entitled to 3rd higher standard pay scale. He states that he qualified the eligibility as provided under the rules after having completed 27

years or more regular satisfactory service before 01.01.1995.

2. The respondents on the other hand claimed that the petitioner has earned the functional promotion during his service career which disentitled him

from 3rd Higher Standard Pay Scale. It is stated that the petitioner was promoted in the Selection Grade Teacher w.e.f 01.03.1983 in the scale of

Rs.600900. He was later placed in the scale of Rs.5601130 under SRO 370. It is stated that since he earned one functional promotion, therefore,

he was not entitled to 3rd Higher Standard Pay Scale.

3.1 have heard learned counsel for the parties and perused the record.

4. The petitioner came to be appointed as a teacher on 22.06.1964. He was

placed in the pay scale of Rs.600900 on 01.03.1983 and lateron, he was placed in the pay scale of Rs.5601130, which came to be revised under SRO 370 to Rs.10752325. It is also averred by the petitioner that on 01.01.1995 he was placed in the pay scale of Rs.17603200 instead of Rs.21253600 while granting insitu promotion in pursuance of the SRO 14 dated 15.01.1995. Initially there were two scale provided for the teacher, i.e., Rs.475850 and 600900, latter was shown as Selection Grade and said two grades were clubbed together in a single pay scale of Rs.9001830 w.e.f. 17.07.1987 vide SRO 370. In essence, it is stated that there was only one Selection Grade provided for the post of teacher. In pursuance to aforesaid SRO, the respondents in reference to Cabinet Decision No. 53 dated 09.02.1987 issued Government Order No.203Edu of 1987 dated 11.02.1987 thereby specifying that the teachers who were presently placed in the pay scale of Selection Grade of Rs.600900, would now be placed in the grade of Senior Teachers and such placement would not be construed as a promotion within the meaning of Art. 77B of J&K CSR. The import of this rule clearly envisages that the grades of Rs.475850 and 600900 have been clubbed into one grade and any placement in the senior grade is not to be construed as a promotion within the meaning of SRO 370. In essence, the petitioner claims that his placement in the grade of Rs.600900 can not be construed to be a functional promotion which is clearly apparent from the fact that vide SRO 370 both the grades have been clubbed into one grade of Rs.9001830. The respondents claimed that the petitioner has earned a functional promotion which disentitles the petitioner to seek 3rd Higher Standard Pay Scale.

5. Consequent upon the introduction of J&K (Higher Standard Pay Scale Scheme) Rules, 1996 vide SRO 14 dated 15.01.1996, representations were received from various Unions of the Government Employees Departments where various issues were raised regarding implementation of the scheme. The Finance Ministry after examining it in detail had given clarification of various issues. For the purpose of present petition, the point of doubt raised was that a case may arise where by virtue of two tier system of a particular post an employee might have been placed in the higher selection scale of the same category of post without any change in his functions/ duties prior to clubbing of such pay scale into one. The question

that would arise for consideration is whether in such cases elevation from a lower scale to higher should be construed as a functional promotion for

the purposes of grant of insitu promotion. In this connection, it is clarified that since the merger has resulted in abolishing of one pay scale with

introduction of a single tier pay system, as such in such cases placement/elevation from a lower to higher scale granted prior to clubbing of two

scales should not be construed as a functional promotion for the purposes of grant of Insitu promotion.

6. The clarification given by the Finance Department clearly reveals that the placement/elevation from a lower to higher scale granted prior to

clubbing of two scales should not be construed as a functional promotion for the purposes of grant of Insitu promotion.

7. The above conclusion which can be drawn from the clarification given by the Finance Department is that the petitioner was elevated from lower

to higher scale within the same category without any change in his duties and subsequently clubbing of two scales should not be construed as a

functional promotion. Admittedly, the placement of the petitioner in the Selection Grade of Rs.600900 did not bring about any change in his

functions or duties at that time. He continued to work as a teacher on a higher grade. Consequently, both the grades were clubbed into one grade

vide SRO 370. In essence, the clubbing of two grades clearly manifest that it could not be considered as a functional promotion.

8. In the face of this position, the petitioner has not earned any functional promotion during his tenure as a teacher. He has completed 30 years of

service. As a consequence of this, he is entitled to 3rd Higher Standard Pay Scale. I do not agree with the contentions raised by the respondents

that the petitioner has been given functional promotion during his tenure as a teacher which disentitled him from 3rd Higher Standard Pay Scale.

9. In view of the above, I allow this petition and direct the respondents that 3rd Higher Standard Pay Scale be granted to the petitioner from the

date he became eligible for the same along with all consequential benefits in terms of SRO 14 dated 15.01.1996. It is stated that the petitioner has

already retired from service. The petitioner, therefore, shall also be entitled for post retirement benefits which would include revised pension and

other benefits like gratuity. This petition is, accordingly, disposed of along with connected CMP(s), if any.