

(2018) 10 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2761 Of 2017, IA No. 01 Of 2017

Mangat Ram @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 05-10-2018

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2018) 10 J&K CK 0029

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Aseem Sawhney, Abhinav Sharma

Final Decision : Dismissed

Judgement

1. The petitioner in this petition, inter alia, prays for a direction to the respondents to grant him the benefit of Jammu & Kashmir Civil Services (Revised) Pay Rules, 1973 with effect from the date of his first appointment in the year 1983 in the Power Development Department with consequential benefits of subsequent pay revisions. The petitioner has also claimed refund of an amount of Rs.12,456/- along with interest allegedly recovered by respondents from the petitioner.

2. Briefly stated, the facts, as narrated by the petitioner in this petition, are that the petitioner was a daily rated worker till the year 1983 when he was placed in the graded pay scale of Rs.345-460 by respondent No.3 vide order No.113/CEJ dated 27.08.1982. It is stated by the petitioner that since at the time of his placement in the regular pay scale, he was ITI trained with Matriculation and therefore, he was entitled to be treated as skilled worker to be placed in the higher pay scale of Rs.280-520. It is also claimed that on the basis of ITI qualification possessed by the petitioner, the petitioner was subsequently granted the pay scale of Rs.800-1500 by respondent No.3 vide his order No.128/CEJ of 1985 dated 13.06.1988. The petitioner was adjusted in M&RE Division -I, Jammu and in the year 1989 was transferred to M&RE Division, Gandhi Nagar, Jammu.

3. The grievance of the petitioner is that the respondents without taking note of

SRO 149 of 1973 erroneously treated the petitioner as unskilled worker and regularized him in the pay scale of Rs.345-460 in the year 1982 whereas he was entitled to be treated as skilled worker to be placed in the higher pay scale in terms of SRO 149 of 1973. It is the further grievance of the petitioner that this error committed by the respondents came to be compounded when the subsequent revision took place in the year 1987.

4. The petitioner also states that on a false complaint filed by someone alleging that matriculation and ITI certificates of the petitioner were forged, the Provincial Departmental Vigilance Officer, PDD, Jammu asked the Executive Engineer, Division-II to get the certificates of the petitioner verified and on verification, the same were found to be genuine. The petitioner has also made reference to an earlier litigation filed by ITI trained employees, who were initially granted the benefit of SRO 149 of 1973 but later on the said benefit was withdrawn by the government in view of the J&K Power Development Department (Subordinate) Service Recruitment Rules, 1981. The petitioner claims that the writ petition being SWP No.894/1990 titled Mohan Singh and others v. State of J&K and others was filed by three employees of the Power Development Department. Obviously, the petitioner could not have filed the aforesaid writ petition for the simple reason that as per his own submission, he was never granted benefit of SRO 149 of 1973 and was all along treated as unskilled worker and placed in the lower pay scale. He has given the history of the litigation fought by the ITI trained employees of the PDD, who ultimately succeeded in vindication of their right in a batch of petitions led by SWP No.809/2001 decided by a Division Bench of this Court vide judgment dated 08.05.2017. On the parity of reasoning in the aforesaid judgment of the Division Bench, the petitioner claims that he is also entitled to be placed in the higher pay scale in terms of SRO 149 of 1973 w.e.f. the date of his initial appointment in the year 1983 with consequential benefits of pay revision that have taken place subsequent thereto.

5. The respondents have filed their objections in which the stand taken is that the petitioner was a daily rated worker working in the Power Development Department and was regularized and placed in the graded pay scale in the year 1983. The petitioner in the year 1988, as claimed by the petitioner himself, was given the benefit of his ITI qualification when he was placed in the higher pay scale by respondent No.3. The respondents have emphatically denied that the petitioner has ever raised his grievance, as has been projected by him in this petition, at any time prior to the filing of this petition. It is stated that the petitioner got the cue to file this writ petition on the disposal of a batch of writ petitions by Hon'ble Division Bench of this Court on 08.05.2017 and, therefore, the petitioner being a fence sitter cannot be allowed to raise the grievance for which cause of action, if any, accrued to him in the year 1983 itself.

6. Having heard learned counsel for the parties and perused the record, it is clear that the cause of action accrued to the petitioner to raise his grievance against his placement in the lower pay scale way back in the year 1983 when as per own

showing of the petitioner, he was not given the benefit of SRO 149 of 1973 and was placed in the lower pay scale treating him as unskilled worker. The petitioner accepted his position and continued in the said pay scale till he got the benefit of up-gradation in view of his ITI qualification. This happened in the year 1988. The petitioner did not raise any grievance. Thereafter several pay revisions have taken place once in the year 1987 and then in the year 1992, the petitioner was placed in the corresponding revised pay scale, which the petitioner accepted without any demur or protest. As a matter of fact, I do not find anything on the record of the petition which would show that the petitioner was ever aggrieved of his placement in the pay scale which he claims to be the pay scale of unskilled worker. SRO 149 of 1973 was in-vogue when he was regularized and was granted the graded pay scale by the respondents. He accepted his position till the controversy with regard to the applicability or otherwise of SRO 149 of 1973 in the wake of promulgation of the Jammu & Kashmir Power Development Department (Subordinate) Services Recruitment Rules, came to be finally decided by a Division Bench of this Court in a batch of writ petitions lead case being SWP No.809/2001 on 08.05.2017.

7. The petitioner, in these circumstances, is nothing short of a fence sitter who was awaiting final outcome of the litigation initiated by some aggrieved employees having qualification of matriculation and ITI. Most of the employees who were before the Court were those who had been granted benefit of SRO 149 of 1973 but was later on sought to be withdrawn by the respondents. The case of the petitioner is different from them. He was never granted this pay scale and his grievance as I could gather from the writ petition is that the right from the year 1983 when he was regularized in the department, he was denied benefit of the SRO 149 of 1973. Having kept silent for about 34 years, the petitioner has knocked the door of this Court only after being prompted by judgment of the Division Bench (supra).

8. I have carefully examined the judgment passed by the Hon'ble Division Bench, reliance whereupon has been placed by the petitioner. The judgment aforesaid is a judgment in personam and grants relief only to the petitioners therein and is not a judgment in rem that would apply to the class as a whole. The petitioner has even retired on superannuation w.e.f. 31.07.2013 and has been receiving pension, that too, without any protest or grievance.

7. The writ petition, in the facts and circumstances narrated above, is badly hit by delay and laches and, therefore, cannot be entertained. The view, which I have taken in this petition, is fortified by a decision of the Supreme Court in the case of State of U.P. and others v. Arvind Kumar Srivastava ; (2015) 1 SCC 347 and a decision of a Division Bench of this Court in the case of State of J&K and others v. Rajesh Anand dated 30.12.2017. What was stated by the Supreme Court in paragraph No.22 of the judgment in Arvind Kumar Srivastava (supra) is reproduced hereunder:-

"22. The legal principles which emerge from the reading of the aforesaid

judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India*; (1997) 6 SCC 721. On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

8. For the foregoing reasons and in view of the settled legal position, I do not find any reason or justification to entertain this writ petition and the same is, accordingly, dismissed. No costs.