(1989) 04 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3743 of 1988

Mansha Ram Purohit APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 20-04-1989

Acts Referred:

Citation : (1989) 1 RLW 235 : (1989) 2 WLN 247

Hon'ble Judges : R.S. Verma, J;K.S. Lodha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kishore Singh Lodha, J.—The facts in this case are not in dispute. The petitioner Shri Mansha Ram Purohit was a District Judge in the ordinary scale in substantive capacity, when be was given promotion in the Officiating capacity in the selection scale of Rs. 1800-2250 on 21st of June, 1961. Earlier he was drawing a salary of Rs. 1180/- in the ordinary scale. In the selection scale he was drawing a salary of Rs 1900/- when he retired on 9th of November, 1962. He had been paid his pension and gratuity taking into account his substantive pay in the ordinary scale of the District Judge. How ever, he claimed that In was entitled to his pension and gratuity on the basis of the officiating pay he was drawing at the time of his retirement This contentions of the petitioner was negatived by the State Government and, therefore, he had to file this present writ petition.

2. We have heard the in learned Counsel for the petitioner and the learned Additional Government Advocate and have perused the relevant provisions under the Rajasthan Service Rules. Rule 247 of these Rules provides how the amount of pension is to be regulated. Rule 256 then lays down the scales of pension and gratuity and Rule 257 relates to the death cum retirement gratuity. Rule 250 defines emoluments where as Rule 251 defines average emoluments. Rule 250A prescribes bow the emoluments of person who has retired on or after 18th of December, 1961 and had held a post carrying higher pay than his substantive post in given circumstances are to be ascertained and Rule 250C prescribes how

the emoluments of a person who retired on or after 1st of April, 1970 have to be ascertained. In this case the petitioner fails under the category of persons who retired on or after 18th of December, 1961 and his date of retirement was 9th of November, 1962.

3. Rule 250A reads as under:

250. In the case of a Government servant who retires on or after 18th December, 1961 and has held before retirement a permanent post except in the circumstances given in Rule 250 (1) (e) of or a temporary post which has been in existence or which has been sanctioned for 5 years or more when such post carries a rate of pay higher then the substantive pay his "average employments" under Rule 251 and "emoluments" under Rule 250 shall be increased by the difference between the officiating pay and his substantive pay, provided that he had held continuously that post for a period of one year immediately before his retirement.

This concession shall be admissible during a period of leave also provided that it is certified that the Government servant would have officiated if he had not proceeded on leave.".

Rule 250 (1) (e) reads as under:

(e) Officiating pay of a Government servant without a substantive appointment if the Officiating service counts under Rule 18 and allowance drawn by an officer appointed provisionally substantive or substant protempore, or in an officiating capacity to an office which is substantively vacant and on which he Government servant a lien or to an office temporarily vacant in consequence of the absence of the permanent incumbent on leave without allowance or on transfer to foreign service.

Rule 250(2) reads as under:

(2) In the case of Government servant with a substantial appointment who officiates in another appointment or holds a temporary appointment "Emoluments" mean

(a) the emolument which would be taken into account under this rule in respect of the appointment in which he officiates or of the appointment as the case may be, or

(b) the emoluments which would have been taken into account under this rule had he remained in his substantive appointment, which ever are is more favourable to him.

A bare reading of these provisions would clearly go to show that the petitioner''s case does not fall under Rule 250 (1)(e) but must fall under Rule (2) of Rule 250 because the petitioner was not without a substantive appointment as envisaged under Clause (3) of Rule 250 (1) and, therefore, his emoluments and average a emoluments under Rule 250 and Rule 251 shall have to be increased by difference between officiating pay and his substantive pay. It is admitted that he had held the officiating post continuously for a period of more than a year immediately before his retirement. The learned Additional Government Advocate how ever, urged that the petitioner''s case should be governed by Rule 250(1)(e) but for the reason already stated above this provision would not be applicable to him and his case will have to be governed by Sub-rule (2) of Rule 250 reads with Rule 250A. At cost of some repetition, we would like to say that the petitioner was not a Government servant without a substantive appointment and officiating on a higher post; actually he was holding a substantive post as a District Judge in the ordinary time scale and was officiating on the higher post of District Judge in the selection scale. This clearly excludes application of Rule 250(1)(e) reproduced above.

4. In these circumstances, we are clearly of the opinion that the payment of the pension and gratuity on the basis of the substantive and pay of the petitioner in the ordinary scale of the District Judge was not proper and he is entitled to the pension and gratuity in accordance with Rule 250A read with Sub-rule (2) of Rule 250 i.e. his emoluments will have to be increased by the difference between the officiating pay and the substantive pay. He is, therefore, entitled to get his pension and gratuity revised accordingly.

5. It is further contended by the learned Counsel for the petitioner that the petitioner had retired as far back as on 9th of November. 1962 and the payment of the pension and gratuity under a wrong calculation had been made to him on 5th of July, 1988. He had improperly been deprived of the proper amount of pension and gratuity any, therefore, he should be awarded interest on the difference between the amounts of pension and gratuity payable to him and the amount already paid to him. The learned Additional Government Advocate, how ever, urged that the payment of the latter amount could not be made on account of a question of the interpretation of the relevant Rules. We are clearly of the opinion that the Rules are already clear on the point and the pension and gratuity should have been calculated in the manner indicated by us above and their was no justification for making payment at a lower scale. In these circumstances, we are inclined to grant interest to the petitioner.

6. We, therefore, direct that the petitioner shall be paid the pension and gratuity in accordance with R 250A r/w Rule 250(2), RSR and shall further be paid interest at rate of 18% pa. on the difference between the amount already paid to him on account of pension and gratuity and the amount which is now held to be payable to him on these counts, from 5th July, 1988 upto the date of payment. The balance of the amount of pension and: gratuity due upto the date shall be paid within 3 months from today. How ever, looking to the circumstances we shall not make any order as to costs.

7. The petition is accordingly allowed.

