(2014) 01 RAJ CK 0244

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3332 of 1998

M.L. Goyal APPELLANT

Vs

Rajasthan State Electricity Board RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) LabIC 4190 : (2015) 1 RLW 615

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Rahul Kamwar, Advocate for the Appellant; P.C. Jain, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been preferred by petitioner M.L. Goyal, inter-alia, with prayer that order passed by the settlement committee of the respondent dated 22.10.1997 and me order of the appellate committee passed on 19.02.1998 be quashed and set aside and the action of the respondent in reducing his basic pay on his absorption may be declared illegal and respondents be directed to fix the petitioner in the pay scale 1640-2900 with effect from 01.07.1995 at the stage 2050 as basic pay. It is further prayed that the respondents be further directed to refund the amount recovered from the salary of the petitioner for the period from 01.07.1995 to 31.05.1996. Petitioner was originally working with M/s. Instrumentation Limited, Kota, as Senior Office Assistant. According to petitioner, he had the post of Senior Office Assistant with M/s. Instrumentation Limited, whereas the respondent has said that his post with M/s. Instrumentation Limited was that of a typist. Petitioner was taken on deputation with respondent Rajasthan State Electricity Board on the post of Legal Assistant vide order dated 07.06.1994 for a period of one year. Petitioner at the time of his deputation, was getting salary in the pay scale 1327-2652, and his basic pay was Rs. 2022/-. In order to protect his basic pay, respondent-Board appointed the petitioner as Legal Assistant on deputation in the pay scale 1400-2900, on the basic pay of Rs. 2000/- and the differential amount of Rs.

22/- was treated as his personal pay. After completing the period of one year, petitioner submitted an application to respondent-Board for his absorption on the post of Legal Assistant with effect from 25.06.1995. Respondent-Board absorbed the petitioner as such by order dated 30.05.1996 with effect from 01.07.1995 in the pay scale 1400-2300, with initial fixation at the stage of Rs. 1650/- as on 01.07.1995. Petitioner raised an objection that at the time of his deputation his salary was fixed at Rs. 2022/-, his basic pay could not be reduced. Petitioner made a representation to the Chairman of the respondent-Board on 24.06.1996 and 17.08.1996. The respondent then appointed the petitioner by order dated 11.12.1996 on the post of Legal Assistant in the pay scale 1400-2600 with effect from 01.07.1995. According to petitioner, respondent-Board decided to recover from petitioner the excess payment made from 01.07.1995 to 31.05.1996. Petitioner aggrieved thereby, raised the dispute before the settlement committee of the respondent-Board on 17.05.1997, which rejected the claim of petitioner vide order dated 22.10.1997. Dissatisfied therewith, petitioner preferred appeal before the appellate committee on 31.12.1997, which too rejected the same by order dated 19.02.1998. It is therefore that petitioner has approached this court in the present writ petition.

2. Shri Rahul Kamwar, learned counsel for petitioner, has argued that decisions of the settlement committee as also the appellate committee are wholly illegal, arbitrary and unjustified. Already when petitioner was getting higher pay at the time of deputation, the respondent-Board, on his absorption, could not have reduced his basic pay. Its action is violative of Articles 14 and 16 of the Constitution of India. The settlement committee and the appellate committee have decided the issue without application of mind. The settlement committee only held that since in the absorption order of the petitioner dated 30.05.1996 with effect from 01.07.1995, his basic pay was mentioned as 1400-2300, yet if he joined without murmur, now he cannot raise the dispute. It is contended that petitioner at the time of absorption very much raised the dispute and his grievance was partially remedied by the Chairman of the respondent-Board. It is settled proposition of law that if the rules are silent on a particular aspect, then general law applies. As per the general law, pay of an employee cannot be reduced and has to be protected at the time of absorption. It is wrong to suggest that petitioner accepted the order of absorption dated 30.05.1996, whereunder he was ordered to be paid the pay scale at lower stage than the one he was receiving earlier. Action of the respondents in reducing the pay from retrospective effect is therefore illegal. In fact, the petitioner was appointed with the respondent-Board by order dated 30.05.1996 with effect from 01.07.1995. Copy of such order was received by him on 07.06.1996. Even if the absorption of the petitioner was to be given effect from an anterior date, the respondent-Board could not have decided to retrospectively reduce his pay and order to recover the amount. Learned counsel for petitioner referred to Regulation 24 of the Rajasthan State Electricity Board Employees Service Regulations, 1964, and argued that according to said Regulation, basic pay of an employee cannot be

reduced. The Supreme Court in catena of decisions has held that even if an employee has been paid certain money on account of wrong pay fixation in higher pay scale, such excess payment cannot be recovered unless it is shown that any misrepresentation was made by him or fraud was played. Learned counsel has also in support of his argument, relied on a judgment of the Calcutta High Court in Smt. Prativa Biswas and Others Vs. Union of India (UOI) and Others, .

3. Dr. P.C. Jain, learned counsel for respondent-Board opposed the writ petition and submitted that petitioner has suppressed the material facts inasmuch as he has not filed order of his original appointment with M/s. Instrumentation Limited, Kota. The factum of deputation has been denied contending that M/s. Instrumentation Limited, Kota, has got no communication nor any condition in their service to get any of the employee to be sent to respondent-Board on deputation. Petitioner was more than willing to be absorbed in the services of respondent-Board and therefore he voluntarily resigned the services of M/s. Instrumentation Limited, Kota, where his pay scale was 1440-1600-50-2300 with initial fixation at the stage of Rs. 1650/-, as on 01.07.1995. His next date of increment was to come after one year to be counted from 01.07.1995. He has concealed all these facts and wrongly stated that he was working as Legal Assistant. In fact, his service book shows that he was working with M/s. Instrumentation Limited, Kota as Senior Office Assistant Typing, which appears to be a post of Typist only. Since M/s. Instrumentation Limited, Kota, was on the verge of closer and the dearness allowance received by him at the time was much lesser than what dearness allowance was allowed to him in the respondent-Board, therefore petitioner has not been put to any disadvantage.

4. It is argued that since M/s. Instrumentation Limited, Kota, was on the verge of closer and the petitioner wanted to secure his employment as the establishment of his employer was going to be wound up and he, to be on safer side, applied for his absorption with the respondent-Board. Learned counsel for respondent-Board has invited attention of the court that even though basic pay of petitioner is accepted to Rs. 2022/- with M/s. Instrumentation Limited, Kota, but on that, he was getting total emoluments of Rs. 3,882.10 with FDA of Rs. 496.85 and VDA of Rs. 1,293.25. In the respondent-Board, however the petitioner was getting total emoluments of Rs. 4,240.00, with his basic pay of Rs. 1650/- with personal pay of Rs. 33/-, DA of Rs. 2244/-, DA on personal pay of Rs. 45/- and interim relief Rs. 268/-. The settlement committee as well as the appellate committee have rightly dismissed the claim of the petitioner. Reference is made to Regulation 3(xviii) of the Regulations, 1964, which defines the ''pay'' to mean the amount drawn monthly by an employee as the pay other than pay and personal pay and pay granted in view of his personal qualifications which has been sanctioned for the post held by him substantively or in an officiating capacity, and special pay and personal pay, and any other emoluments which may be specially classified as pay by the Board.

5. I have given my anxious consideration to rival submissions and perused the material on record.

6. Copy of the application submitted by petitioner to the Secretary of the respondent-Board dated 01.07.1995 wherein he requested for his absorption on the post of Legal Assistant, indicates that petitioner was initially taken on deputation from M/s. Instrumentation Limited, Kota with the respondent-Board. Petitioner''s absorption was thus made on his own request. This absorption cannot be said to be absorption of an employee who has been declared surplus from one establishment and has to be absorbed in subsequent one in the employment of the same employer. Here the petitioner was working with M/s. Instrumentation Limited, Kota, which is a different legal entity. There is a dispute as to what post exactly the petitioner held. While petitioner has asserted that he was working with M/s. Instrumentation Limited, Kota on the post of Senior Office Assistant but the respondent-Board asserted that in his service book his designation entered as Senior Office Assistant Typist, and therefore actually, he was a typist and no more than that. The order dated 30.05.1996, by which petitioner was absorbed, clearly indicates that his absorption was made subject to acceptance of his resignation by M/s. Instrumentation Limited, Kota, on eight conditions enumerated therein. Condition No. 4 was to the effect that he will be treated as fresh appointee in the Board from the date of his absorption and no benefit of the past services rendered in M/s. Instrumentation Limited or in RSEB will be admissible to him. This would mean that his working with M/s. Instrumentation Limited, Kota in a different pay scale or for that matter, his services on deputation with the respondent-Board, would have nothing to do with this fresh appointment. He was engaged in the pay scale 1400-2300, in which he was to be fixed at Rs. 1650/- as on 01.07.1995. Respondent-Board thereafter on representation by petitioner to the Chairman by order dated 11.12.1996 revised his pay scale to 1400-40-1600-50-2300-60-2600-75-2900 in place of 1400-40-1600-50-2300, with effect from 30.05.1996. Even if the respondent-Board did so by way of benevolence, this court cannot now direct it to further revise upwards the pay scale of petitioner contrary to the conditions of his fresh appointment with the respondent-Board, which were voluntarily accepted by petitioner himself. If the petitioner did not want to be absorbed in the services of the respondent-Board, as a fresh appointee, he could have declined to accept that. He is now estopped to question the correctness of that condition.

7. However, the grievance of the petitioner to the extent of recovery sought to be made from him from the period from 01.07.1995 to 31.05.1996, is fully justified. That was the period when respondent-Board consciously took the petitioner on deputation with them on a higher pay. Since the petitioner had actually discharged the duties on deputation and at the relevant time the respondent-Board themselves fixed his pay in the higher scale of pay, merely because he has been absorbed in their services from an earlier date, they cannot recover the differential amount of pay from petitioner.

8. In view of aforesaid discussion, writ petition succeeds in part and it is accordingly partly allowed. While the orders of the settlement committee and that of the appellate committee are upheld on other aspects, in so far as the action of the respondent-Board in seeking to recover the amount paid in excess for the period from 01.07.1995 to 31.05.1996, is declared illegal. If the amount has been recovered, the same is ordered to be refunded to the petitioner with interest at the rate of 9% per annum, within three months from the date a copy of this order is produced before the respondent-Board. If the said amount has yet not recovered, the same may not be now recovered from the petitioner. Writ petition accordingly stands disposed of.