

(2015) 11 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : SWP. No. 484 of 2011, CMP. No. 4202 of 2011 and CMP. No. 754 of 2011

Mohammad Shafi Khan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Jammu and Kashmir Civil Services (Higher Standard Pay Scale Scheme) Rules, 1996
— Rule 3(a), Rule 4

Citation : (2016) 3 JKJ 661

Hon'ble Judges : Mr. Muzaffar Hussain Attar, J.

Bench : Single Bench

Advocate : Mr. Showkat Naqashbandi, AAG and Mr. Satinder Singh, Advocates, for the Respondents; Mr. A. Haqani, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Muzaffar Hussain Attar, J.(Oral) - At the very outset learned counsel for the petitioner submitted that petitioner is pressing only grant of

relief no. (a) and in view of the circumstances of the case, he does not press any other reliefs sought for in the writ petition. His statement is taken

on record.

2. The facts as emerge from the counter affidavit filed by the then Director, State Motor Garages, reveal that the petitioner was appointed as

Solderer in the State Motor Garages Department on 29th November, 1965. He unauthorisedly absented from service and was placed under

suspension on 22nd November, 1969. It is further pleaded in the counter affidavit that the petitioner subsequently resigned from the Government

service and claimed all past service benefits like G.P. Fund etc in the year 1979.

It is further pleaded in the aforesaid affidavit that after long period of 23 years, petitioner instituted a civil original suit in the court of City Munsiff, Srinagar in the month of June, 1993. The suit was dismissed and against the decree and judgment initially passed by the City Munsiff and thereafter by the Sub-Judge (CJM), Srinagar, the appeal was filed which was allowed by the appellate court. It was declared by the appellate court that the petitioner had not resigned from service and no termination order has been proved, so there is no requirement of grant of relief for reinstatement. It is also pleaded in the aforesaid affidavit that the petitioner thereafter was served with charge sheet dated 6th September, 2005 and he was asked to explain his position about his unauthorized absence from duty w.e.f. April 1969 to 11th June, 1993 (more than 24 years). Enquiry officer was appointed to conduct the departmental enquiry.

3. Petitioner retired on superannuation from the service in the month of November, 2000. Petitioner filed SWP. No. 444/2006, which was decided by the Court vide its Judgment dated 5th November, 2008. The Court, in the aforesaid Judgment, after dealing with the issues raised by the parties, disposed of the writ petition in the following manner:-

... Keeping in view the facts of the case coupled with the law laid down by the apex court as also by this court, petitioner is held not entitled to any salary right from 22nd November, 1969 till his retirement, but the said period shall qualify for all service and retiral/pensionary benefits and shall not be treated as break in service.

Having glance over the above discussions, the writ petition is allowed and the show cause notice, framing of charge sheet and initiating of departmental proceedings are quashed. The respondents are directed to pay all service benefits/retiral benefits petitioner within a period of three months and report compliance. The period for three months shall commence from the date copy of the judgment is served by the petitioner on the respondents. There shall, however, be no order as to costs.

4. The Court held that petitioner is not entitled to any salary from 22nd November, 1969 till his retirement, but the said period shall qualify for all service and retiral/pensionary benefits and shall not be treated as a break in the service. In essence, the Court did not grant any monetary benefit to the petitioner, but directed that the period, for which, he remained out of service,

shall qualify for retiral/pensionary benefits. The Court after ruling as above allowed the writ petition and quashed the show cause notice, charge sheet as also the departmental proceedings. The respondents were directed to give all the service/retiral benefits to the petitioner within three months.

5. Learned counsel for the petitioner submitted that petitioner is entitled to get the service benefits in terms of Jammu and Kashmir Civil Services

(Higher Standard Pay-Scale Scheme) Rules 1996 (for short ""Rules of 1996""). Learned counsel also submitted that respondents have to grant

notional insitu promotion to the petitioner which would enable him to get retiral benefits at a higher rate.

6. The rules of 1996 have come into force w.e.f. 1st January, 1995. Clause-(a) of Rule 3 of the Rules of 1996 provide that all categories of non-

gazetted Government employees except as provided elsewhere in these Rules, who are whole time employees working either in permanent or

quasi permanent or temporary capacity in graded scales, and in terms of Clause-(b) such other categories of employees as may be specified by the

Government from time to time shall get benefit of Rules of 1996.

7. The explanation appended to Rule 4 of the Rules of 1996 provide that in case of a Government servant, who, on the relevant date, was on

deputation or on leave or on foreign service or under suspension or under training ""existing pay scale"" in his/her case would mean that the pay scale

applicable to the post which he/she would have held but for his/her being on such deputation or leave or foreign service or under training or under

suspension as the case may be.

8. The Rules of 1996 have been brought into existence for the benefit of those employees, who were rendering service, but for a specific period of

time would not get regular promotion in accordance with service rules, they were to be granted time bond promotion which has reference to the

scale of pay only in terms of the aforesaid rules. Admittedly the petitioner was not in service as he had literally absconded. The Court in its

Judgment dated 5th November, 2008 passed in SWP. no. 444/2006, which has attained finality having not been challenged by any party,

specifically mentioned that the petitioner is held not entitled to any salary right from 22nd November, 1969 till his retirement.

9. The insitu promotion benefits in terms of Rules of 1996 have reference to the salary which is granted to an employee who satisfies the requirements of rules notified vide SRO 14 of 1996. The petitioner, who is not held entitled to salary, would not, thus, be entitled to insitu promotion grade in terms of the aforesaid rules. Furthermore the petitioner having not rendered service for 24 years, will not be covered by the Rules of 1996.

10. For the above stated reasons this writ petition being meritless is accordingly dismissed along with connected CMP(s).