(2009) 12 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 211 of 1999

Mohd. Akbar Wani and Others APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Citation : (2011) 2 JKJ 661

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohd. Yaqoob Mir, J.—SRO 14 of 1996 provide for time bound promotion. First, second and third in-situ promotion is to be granted to

an employee who has stagnated on a post for a period of 9 years, 18 years and 27 years respectively. Said SRO 14 contains the rules known as

the Jammu and Kashmir (Higher Standard Pay Scale Scheme) Rules 1996 (hereinafter referred to as H.S.P Rules 1996).

2. Petitioners have been granted first and second in-situ promotion but subsequently it has been noticed that their stagnation period for in-situ

promotion was to be reckoned with effect from 01.06.1979 when their stagnation period has been reckoned with effect from 30.03.1973.

3. Petitioners earlier filed SWP No. 3944-46/96 captioned Mohammad Amin Wani and Ors. v. State and Ors. Their grievance was that their

services for the purposes of stagnation were to be reckoned from 30.03.1973. During the pendence of the petition, SRO 311 was issued by the

Government in the year 1997, pursuant to which Rule 5AA has been added in the H.S.P. Rules 1996. In view of the same, counsel for the

Petitioner therein had made a submission that SRO 311 came into force which takes care of his grievance. Based on said submission petition has

been disposed of on 23.07.1998 with the observation ""the writ petition is disposed of along with CM Ps as settled in terms of the said SRO 311"".

4. Consequently matter had been taken up with the Government. Under Secretary Home Department vide communication No. Home/HG/16/98

dated 1.1.1999, addressed to the Inspector General of Police, J&K, conveyed that the Finance Department has observed as under:

The provisions of SRO 311 dated 09.09.1997 exclusively pertains to work charge daily rated workers and are not applicable to the employees

who have been engaged on consolidated pay. Accordingly the period of service (i.e. 50% thereof) spent on consolidated pay is not to be counted

along with the period spent on regular service. Accordingly the stagnation period for in-situ promotion is to be taken from 01.06.79. Based on

which the period of stagnation in respect of the Petitioner was found more than 9 years but less than 18 years, as such, only one time bound

promotion was to be allowed. Therefore, second time bound promotion granted is in contravention of rules.

5. Based on the aforesaid communication the Director General of Police vide communication No. Estt/WP/Pay/43-45/99 dated 06.01.1999,

addressed to Commandant Auxiliary Police 1st Bn. Srinagar conveyed that based on letter dated 01.01.1999 (as referred above) action regarding

recovery of excess amount drawn by the Petitioners on account of pay fixation in terms of SRO 14 be intimated.

6. Aggrieved thereof instant petition has been filed.

7. The controversy arose in the back drop of the particular facts of this case which are precisely noticed as under:

8. ""Petitioners admittedly were appointed in the year 1973 as ""Guardsman"" temporarily and provisionally on consolidated pay of Rs. 30 + Rs. 114

as DA per month in the Home Guard Department. Subsequently vide Government Order No. Home-329(Police) of 1979 dated 4.7.1979, the

Petitioners along with other similarly situated persons i.e. ""Guardsman"" were placed in the pay scale of Rs. 210-4-250-EB-5-270-EB-6-300.

Thereafter in the year 1982 pursuant to Government order dated 29.11.1982, Home Guards organization was declared as a permanent organization.

9. The claim of the Petitioners is that they were appointed as ""Guardsman"" on regular basis in the year 1973 on consolidated pay and admittedly

were placed in the graded scale on 4.7.1979, therefore, their services for the period of stagnation has to be reckoned from 30.03.1973 not from

4.7.1979 when they were placed in the graded scale. In alternative if is also claimed that even if for the purposes of stagnation the period is not

reckoned with effect from 30.03.1973, still in terms of SRO 311 where-under Rule 5-AA has been added to the relevant rules, 50% of their

service as rendered by them on consolidated basis with effect from 1973 till 4.7.1979 has to be counted for the requisite purpose.

10. So far as the first contention i.e. to reckon the period of stagnation from 30.03.1973 is concerned, same is not tenable because Rule 5 of

H.S.P. Rules, 1996 provides that if the employee has not got any promotion or promotional scale/selection scale in this service career, shall be

entitled to first, second and third pay scale as prescribed under rules on completing regular satisfactory service of 9,18 and 27 years in place of his

existing scale. The word ""existing pay scale"" assumes significance because the employee has a right, after completion of his 9 years satisfactory

service, to be placed in first higher standard pay scale in place of his ""existing scale"". ""Existing pay scale"" is defined in Rule 14(b) of the H.S.P.

Rules 1996 which in nutshell means the pay scale of the entry post applicable from 1987 as per Civil Services (Revised Pay) Rules, 1992.

11. The Petitioners were required to be in a particular pay scale which they were not till 4.7.1979 as from the year 1973 till 4.7.1979 they were

working on consolidated pay. As the position of the Petitioners having been placed in the pay scale of Rs. 210-4-250 pursuant to Govt., order

dated 4.7.1979, is not disputed nor challenged, therefore, Petitioners having been placed in the grade scale with effect from 4.7.1979 have no right

to claim reckoning of their period of stagnation from 30.03.1973 as they were not in a required graded scale, so undoubtedly their period of

stagnation has to be counted with, effect from 4.7.1979 for the purpose of higher grade promotion as warranted under H.S.P. Rules 1996.

12. The next ground as projected is that in terms of addition of Rule 5-AA as provided by SRO 311 of 1997, 50% of the period of service of the

Petitioners on consolidated basis has to be counted for the purposes of grant of higher grade promotion.

13. This contention is resisted by the other side on the count that the operation of Rule 5-AA is restricted in its application to work charged

employee (s)/daily rated worker(S), so does not take into its sweep the employees who have engaged on consolidated pay.

14. The respective contention vis-a-vis Rule 5-AA of the H.S.P. Rules 1996 assumes significance as the interpretation of the rule has the bearing

on the contention. Rule 5-AA as has been added pursuant to SRO 311 of 1997 is quoted hereunder:

5-AA: In case of Work Charged employee(S)/Daily Rated Worker(s) (excluding Casual/Seasonal workers) who is/are brought on regular

establishment, 50% continuous work Charged/daily wage service shall be counted with regular service for purpose of grant of Insitue Promotion

under the rules; provided that the cases already settled under the provisions of existing rules shall not be reopened.

15. The plain reading of the rule provides that 50% of continuous work charged/ daily wage service shall be counted with regular service for the

purposes of grant of in-situ promotion. In categoric terms the rule provide for exclusion of casual/seasonal workers. It does not specifically exclude

the employees engaged on consolidated pay. When exclusion is specific and confined to casual/seasonal workers, then it cannot be said that the

rule making authority has excluded the employees engaged on consolidated pay. The position of daily rated workers cannot be said to be on a

better pedestal as against the employees working on consolidated pay. Looking into the scope and object of H.S.P. Rules 1996, it becomes

absolutely clear that the stagnated employees have to be given a benefit of higher standard pay so that dejection on the count of stagnation may not

effect the working capacity of such employees.

16. In case the contention of the Respondents is accepted that the employees engaged on consolidated pay have to be excluded, same may

amount to interpretation of the rule in a total negative form because daily rated workers cannot be said to have a special position as against the

employees working on consolidated basis. The way daily rated workers are brought on regular establishment, the Petitioners (employees on consolidated pay from the year 1973 till 04.07.1979) have been brought on regular establishment in a graded scale with effect from 04.07.1979,

therefore, cannot be denied the same benefit, otherwise same shall amount to discrimination which neither is the purport of the rule nor is the object

of H.S.P. Rules 1996. The only interpretation of the rule vis-a-vis the employees working as consolidated pay is that they are included, more so

when they do not fall in exclusion class.

17. Rule 5-AA referred to above squarely applies to the consolidated pay employees the way it applies to the daily rated workers. Therefore,

50% of continuous work as consolidated wage service has to be counted with regular service for the purpose of grant of in-situ promotion. The

fixation, therefore, has to be made afresh because the earlier fixation made in the year 1995, where-under service of the Petitioners has been

reckoned with effect from 30.03.1973, has to be changed.

18. While fixing pay for grant of in-situ promotion, 50% of continuous service which as the Petitioners have spent on consolidated basis shall be

counted with regular service and accordingly first, second and third higher standard pay scale as shall be warranted under such fixation shall be

allowed. The excess amount as a result of earlier fixation if found to have been drawn on re-fixation on aforesaid terms shall be adjusted.

Petition accordingly succeeds. Communication Nos. Home/HG/16/98 dated 01.01.1999 and ESTT/WP/Pay/43-45/99 dated 06.01.1999 shall be

treated as non-est.