

(2009) 02 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1582/2001

Peyari Lal Tickoo

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Citation : (2009) 1 JKJ 439 : (2010) 1 SCT 37

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : S.C.Gupta, P.N.Raina, Advocates appearing for the Parties

Judgement

1. The petitioner was appointed as Junior Assistant in the office of Deputy Commissioner, Leh in the year 1962. He came to be appointed as

Junior Scale Stenographer in the office of Divisional Commissioner, Kashmir in the year 1976. He was transferred and posted in the office of

Agrarian Reforms Commissioner as Junior Scale Stenographer on 3.10.1985. Vide Government order No. Rev (NG) 15 GR of 1986 dated

20.3.1986, State cadre of Revenue Department came to be constituted and the office of Agrarian Reforms Commissioner was included in the

State Cadre. As a result of inclusion of the office of Agrarian Reforms Commissioner in the State cadre, the petitioner sought fixation of his

seniority in the State cadre. The grievance of the petitioner for his inclusion in the seniority list of State cadre remained hanging with the

respondents. The resultant effect of this was that the persons junior to petitioner namely Mushtaq Ahmed and Azizudin Bukhari were promoted as

Senior Scale Stenographers to the exclusion of petitioner.

2. The petitioner had approached this court seeking fixation of his seniority in the

State cadre. The Court vide its order dated 22.3.1991, directed the respondents to consider the claim of the petitioner in the State cadre, but nothing seems to have been done in pursuance of the directions of the court also. It is only due to the hard persuasion of the petitioner that respondents issued Order No. FC (NG) 467 of 2000 dated 14.11.2000, wherein they have conceded that petitioner was senior to Mushtaq Ahmed and Azizudin Bukhari and was found entitled for promotion as Senior Scale Stenographer from March, 1993 the date when his juniors were promoted. While accepting his contention, he was promoted as Senior Scale Stenographer from March, 1993 with only notional benefit of seniority given to him. He was not found entitled to any arrears on this account. It is this part of the order, which is subject matter of challenge in this Court.

3. I have heard the learned counsel for the parties and perused the record.

4. Mr. Raina, learned counsel for the petitioner states that he has specifically taken stand in the writ petition that nature of duties of both Junior

Scale Stenographer and Senior Scale Stenographer were the same, except for the fact that they carried different pay scales.

5. On the other hand, Mr. Gupta, learned counsel for respondents states that petitioner is not entitled to get any monetary benefit.

6. There is no dispute with respect to this proposition of law that if a person does not perform any duty on the post, he is not entitled to receive any

monetary benefits for the same. In essence, a person who seeks any monetary benefit on the post to which he lays his claim should have actually

worked on the said post. This satisfies the principle of no work no pay. The Courts have rightly declined to grant monetary benefits based on the

principle of no work no pay.

7. In the present case the situation is, however, different. The petitioner has worked as Junior Stenographer and he has specifically pleaded in the

writ petition that nature of the job of Junior Stenographer is similar that of one is to be performed by Senior Scale Stenographer. He has not been

permitted higher pay scale because of non consideration of his promotion from the date his juniors were promoted.

8. The respondents have not rebutted this contention in their reply. As a matter for fact, there is no denial in the counter affidavit filed by the

respondents. The Court has to presume that the facts raised by the petitioner are

correct. This being the position, it can not be said that principle of no work no pay would apply in this case. The petitioner was admittedly working as Junior Scale Stenographer, performing the same job as was to be done by Senior Stenographer. He was only to be given higher pay scale. The nature of job of Junior Scale Stenographer and Senior Scale Stenographer was similar. His entitlement to receive the monetary benefits of the post of Senior Scale Stenographer from the date the order of his promotion was made by the respondents cannot be denied to him.

9. I, accordingly, direct the respondents that petitioner should also be given monetary benefits of Senior Scale Stenographer w.e.f. March 1993, the date when order of his promotion has been made effective by the respondents. Let this exercise be done within a period of three months from the date a copy of this order is received by the respondents. In case, needful is not done within the aforementioned period, interest @ 6 % shall be paid to the petitioner with effect from March, 1993 the date he is entitled to receive the monetary benefits.

10. Disposed of alongwith CMP, if any.