
(2009) 06 RAJ CK 0013
In the Rajasthan High Court

Prem Chand Jain	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Citation : (2009) 3 WLN 316

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Judgement

Narendra Kumar Jain, J.—The petitioner was granted selection scale and his pay was fixed in the pay scale of Rs. 6500-10500. However, the same was revised and it was reduced to Rs. 5500-9000 with effect from 01.07.1998.

2. Learned Counsel for both the parties contended that number of identical writ petitions were filed which were decided by the learned Single Bench in Chandra Mohan Singh and 185 Ors. v. State of Rajasthan and Ors. 2004 (3) WLC (Raj.) 413 and being aggrieved with the same, the State of Rajasthan preferred Special Appeal before the Division Bench i.e. D.B. Civil Special Appeal (Writ) No. 208/2006, State of Rajasthan and Others Vs. Raniwas Porwal, therefore, the present writ petition may be decided in the light of the decision rendered by the Division Bench in the above case and the same directions may be issued in the present case.

3. The Division Bench in State of Rajasthan and Ors. v. Raniwas Porwal (Supra) while disposing of the Special Appeal filed by the State of Rajasthan, issued following directions:

Therefore, we are of the opinion that the declaration of the amendment of Note 8 vide Notification dt. 08.06.2001 to BE ultra vires was not required to be made and judgment under appeal to that extent is not sustainable and deserves to be set-aside.

However, it may be clarified that because of the provisions made in Note 8 read with Note appended to Rule 6 a Senior Teacher drawing pay in second selection

grade of 6500-10500 prior to 01.07.1998 and promoted as senior Teacher but after 01.07.1989 who has not completed 10 years as Senior Teacher at the time of commencement of the Act his pay in pay-scale of 6500-10500 was protected as personal to him, though he would become eligible to such scale under the new rules of 1998 only on completion of 10 years. In this view of the matter, the rights of the respondents even under the aforesaid provision remain intact and unaffected and it could not have any adverse effect on them.

But those who have been promoted as Senior Teachers drawing their pay in Second Selection Grade of 6500-10500 will not be eligible for this pay protection because even under the Rules of 1998 as initially exist, they were to be promoted to Senior Scale, which was Rs. 5500-9000 only. But because of lacuna in the Rules originally enacted, not providing any specific provision, their fixation has been wrongly made by considering all Senior Teachers to be of the same category. The initial fixation in higher payscale being without any mistake on their part, until Notification of amendment, the resultant recoveries of excess amount paid to them has been waived.

But after correction of this lacuna on amendment of Note 8, no such protection has been granted under the Rules. If any such recovery has become due on account of continued drawing of pay by such Senior Teachers promoted after 01.07.1998, due to no mistake or misrepresentation on the part of such incumbents, they may make appropriate representation to the Government to consider their cases against recovery.

Accordingly, with the aforesaid clarification the appeals are allowed. The judgment under appeal declaring Notification dt. 08.07.2001 to be ultra vires is set-aside. However, the view which we have taken on interpretation of the Rules, the existing teachers who have been promoted as Senior Teacher in the Second Selection Grade prior to commencement of the Rules at any time but because of non-completion of 10 years of service as Senior Teacher under the revised rules were required to be fixed in lower pay scale, their continuance in the higher payscale was protected as pay-scale personal to them under Note to Rule 6. The rights of all the appellants stand protected to this extent. In that light, the writ petitions filed by the appellants stand allowed to that extent.

In the facts and circumstances of the case, there shall be no order to costs.

4. As agreed by learned Counsel for both the parties, the present writ petition is disposed of and the same directions are issued in this case which have been issued by the Division Bench in the case of State of Rajasthan v. Raniwas Porwal (Supra), which have been reproduced above. Cost is made easy.