

(2023) 08 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2310 Of 2013, CPSW No. 737 Of 2017

Shyam Prashad

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 25-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2023) 08 J&K CK 0042

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Vishal Sharma, K. D. S. Kotwal, Sanjay Kakkar

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. The respondent No. 1 had issued SRO No. 233 of 1988, thereby providing the retirement age of a person appointed to the service of society as 58 years.
2. The petitioner filed the writ petition for directing the respondents not to comply with the SRO No. 233 of 1988 to the employees of the respondent No. 3 and further directing the respondent No. 3 not to retire the petitioner at the age of 58 years on the ground that the service rules applicable to the employees of Citizens' Cooperative Bank provide for the retirement of its employees at the age of 60 years.
3. The respondent No. 3 filed response to the writ petition thereby stating that the Division Bench of this Court in case titled "N. K. Mehta and others Vs. State of J&K and others" reported as 2009 (2) JKJ 1HC has held that the provisions contained in the SRO 233 of 1988 shall govern the service conditions of the Cooperative Societies including those of the employer society, as such, the present petition is not maintainable.
4. Since the dispute in respect of the applicability of SRO 233 of 1988 to the

employees of the co-operative society stood already settled by the judgment of the Division Bench of this Court in "N. K. Mehta" (supra) as such, the learned counsels for the parties restricted their arguments only in respect of the payment of salary to the petitioner for a period of two years, for which the petitioner claims to have worked for the respondent No.3 and the respondent No.3 in its turn has denied the same.

5. This Court while entertaining the writ petition and issuing the notice to the respondents vide order dated 29.10.2013 directed that the petitioner shall be permitted to continue in the service beyond 58 years of age at his own risk and responsibility. It was also provided that he shall not be paid any salary for the said period till the matter is finally considered after the objections are filed by the respondents.

6. During the pendency of this petition, the petitioner filed an application seeking directions to the respondents to consider the case of the petitioner for release of his salary as the petitioner had worked without salary for a period of two years up to the age of superannuation i.e. upto November 2015, on the analogy of Sushma Sharma-Manager, Ashwani Kapoor-Chief Manager and Dhan Dev Joshi-Manager. This Court vide order dated 15.07.2017 disposed of the said application by directing the respondents to consider the case of the petitioner on the analogy of case of Sushma Sharma-Manager, Ashwani Kapoor-Chief Manager and Dhan Dev Joshi-Manager under the rules, provided that the petitioner is similarly situated person with the said persons.

7. The non-compliance of the order dated 15.07.2017 compelled the petitioner to file the contempt petition. In response to the contempt petition, the respondent No. 3 filed statement of facts/compliance report, stating therein that the petitioner was not similarly situated vis-a-vis other employees on the ground that though the petitioner had marked his attendance, but he did not actually work in the bank during the period of two years after attaining age of 58 years.

8. From the record, it is evident that Sushma Sharma-Manager and Ashwani Kapoor-Chief Manager attained superannuation on 31.07.2014 and 30.09.2015 respectively, but they continued to work till the age of 60 years and they were paid the salary for the period beyond 58 years. Similarly, Dhan Dev Joshi-Manager whose retirement was due on 28.02.2015 but worked till the age of 60 years. He too was paid the salary for the said period. The abovementioned officials worked beyond the age of 58 years till 60 years pursuant to intervention of the court.

9. The Division Bench in case titled "N. K. Mehta and others Vs. State of J&K and others" reported as 2009 (2) JKJ 1 HC has observed as under:

"However, before we conclude, it would be appropriate on our part to state that the questions raised in the writ petition were, in fact, not covered by the judgments referred to above and the same were required to be answered independently. We may further point out that the said rules have made a great

departure from what had been provided in the 1988 rules having granted power to the Co-operative Societies to frame rules pertaining to service conditions of their employees as part of their bye-laws. The 1988 rules would become inconsistent with the rules governing service conditions as and when framed by Co-operative Societies in their bye-laws, liberty for which has been granted by the said rules. At the same time, there being no authoritative pronouncement that the rules governing the service conditions made by the societies prior to coming into force of the 1988 rules were repealed by the 1988 rules, the petitioners did have reason to come to this Court to seek continuation of their service until 60 years and, in the circumstance, though we dismiss the appeal, but make it clear that the petitioners having rendered service despite having crossed the age of 58 years on the strength of the orders of this Court, should not be made to repay any part of their salaries drawn in course thereof.”

10. The respondent No. 3 has admitted in its communication dated 05.11.2022 that the petitioner marked his attendance from 01.11.2013 till 31.10.2015, but at the same time it is mentioned that he did not actually work in the bank. This Court is at loss to observe that once the attendance of the petitioner has been marked in the office, then how the respondents can claim that the petitioner did not work, though attended the office. If it was so, the respondent No.3 could have informed the Court about the same by laying an appropriate motion before the Court. Having not done so for seven years after attaining the superannuation by the petitioner, though under Court orders, the respondents cannot claim that the petitioner did not work in the office. It is apt to mention here that the response to the writ petition was filed by the respondent in the year 2022. It appears that the respondent No. 3 has made a lame excuse to deny the salary to the petitioner for a period of two years for which he worked under the orders of the Court. Though, this Court vide order dated 29.10.2013 had observed that the petitioner would not be given any salary for the period till the matter is finally considered, but the judgment of Division Bench provides for the payment of salary to the employees of the Cooperative Societies who have worked till the age of 60 years and also that the respondent No.3 has paid salary to above mentioned employees. Once, the respondent No. 3 paid the salary to the other employees, who worked under the Court orders as mentioned above, there appears to be no justification for the respondent No. 3 to deny the similar treatment to the petitioner. Law is well settled that similarly situated employees are to be treated alike by their employer. Reliance is placed upon judgment of Hon’ble the Apex Court in case titled State of Karnataka Vs. C. Lalitha reported as (2006) 2 SCC 747, in which the Apex Court has held as under:

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she

had also been promoted as Assistant Commissioner which was a Category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.”

(emphasis added)

11. Also, in case titled State of U.P. Vs. Arvind Kumar Srivastava reported as (2015) 1 SCC 347, the Apex Court has held as under:

“ 22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(emphasis added)

12. In view of the above, this Court is of the considered view that the respondent No. 3 is under obligation to release the salary of the petitioner for the period of two years with effect from 01.11.2013 to 31.10.2015 and the same be released in favour of the petitioner within a period of three months from the date certified copy of the order is served upon the respondent No. 3, failing which the respondent No. 3 shall also pay an interest at the rate of 6 % per annum from 31.10.2015 till its realization.

13. Disposed of.

14. In view of the order passed in the main petition, the contempt proceedings are closed.