
(2018) 04 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : SWP No.1420 OF 2009

S.IQBAL SINGH

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND OTHERS

RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Citation : (2018) 04 J&K CK 0006

Hon'ble Judges : TASHI RABSTAN

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. The question for determination in this writ petition is as to whether petitioner is entitled to the reliefs as prayed for by him in terms of Order No.

JKSRTC/EC-III/184 dated 20.04.2009 issued by the respondent- Corporation whereby he has been given the promotion with retrospective effect, i.e.,

as Junior Assistant w.e.f. 29.12.1976 on notional basis till the date he was regularized as such, as Senior Assistant w.e.f 03.08.1983 on notional basis

till he was regularized as such, and as Booking Manager w.e.f. 02.11.1999 on notional basis and monetary benefits w.e.f. 1-1-2008.Â

2. The case in brief as projected by the petitioner is that vide Order dated 02.06.1971, he was appointed as Conductor in the J&K Govt. Transport

Undertaking. Subsequently, in the year 1976, J&K SRTC was established and the employees of the J&K Govt. Transport Undertaking were adjusted

in the said Corporation. Thereafter, vide Order dated 28.12.1983, petitioner was promoted as Junior Assistant and vide order dated 30.01.1997 as

Senior Assistant. The case of the petitioner is that one Sh. K. K. Watal, who was junior to him, was promoted as Junior Assistant vide order dated

05.11.1985. On the representation being filed by Sh.K. K. Watal, he was promoted as Junior Assistant w.e.f. 23.10.1978 vide Order dated 24.01.1997

issued by the Corporation. The petitioner also submitted representation and when the same was not considered, he filed writ petition bearing SWP No.

705-A/1997 which came to be disposed of with a direction to the respondents that petitioner should be adjusted as Junior Assistant as per his seniority.

However, respondent No.2 on consideration rejected the claim of the petitioner resulting in filing of another writ petition bearing SWP No. 2392-

A/1999 which too was disposed of vide order dated 19.07.2001 directing the Corporation to consider the claim of the petitioner for giving him the

benefits with effect from the date, the juniors and other similarly situated persons were given the assignment of Junior Assistant. It was further held

that if the petitioner became entitled to further promotion, then his claim would also be considered accordingly. In pursuance of the said order, the

Corporation vide order dated 11.03.2004 ordered that the petitioner should figure at Sr. No. 7-A in the seniority list of the Senior Assistants, but he

was not given the other benefits including further promotion to the post of Booking Manager. Being aggrieved petitioner again submitted

representation highlighting that his juniors have been promoted as Booking Manager and he may also be considered. When his grievances were not

redressed by the respondents, petitioner filed another writ petition bearing SWP No. 30/2008 claiming promotion with retrospective effect to the post

of Junior Assistant, Senior Assistant and Booking Manager. This Court vide order dated 15.01.2008 issued notice and in the meanwhile directed that

case of the petitioner should be considered by the respondents. During the pendency of the said petition (SWP No. 30/2008), respondent No. 1 issued

an Order dated 23.01.2008^Â whereby 14 employees were given retrospective promotion as Junior Assistants w.e.f.^Â 29.12.1976 on notional basis till

the date they were promoted as such on regular basis, as Senior Assistants retrospectively w.e.f. 03.08.1983 on notional basis till the date they were

promoted as such on regular basis and as Booking Manager or equivalent cadre w.e.f 02.01.1999 on notional basis till 31.12.2007 and thereafter on

regular basis. The aforesaid order has also been placed on record as Annexure-E with the writ petition. It is contended that out of the said 14

employees, six of them were juniors to the petitioner. They are S/Sh. Abdul Rashid Mir, Santokh Singh, Chand Ji Aima, Nazir Ahmad Rigoo, Abdul

Qayoom Khan and Mohd Younis Chella, who were appointed as Conductors on 06.04.1972, 10.09.1972, 03.01.1973, 05.08.1973, 20.04.1974 and

19.11.1976 respectively whereas petitioner was appointed as Conductor on 02.06.1971. Thus, the above named persons were admittedly juniors to the

petitioner. Petitioner submitted a representation to the respondents requesting them that he was entitled to be promoted as Junior Assistant, Senior

Assistant and Booking Manager w.e.f. the dates his above named juniors have been given the said benefits. Accordingly, the Corporation after

consideration of representation of the petitioner issued Order bearing No: JKSRTC/EC-III/184 dated 20.04.2009. The operative part of the said order

is reproduced hereas under:-

“Whereas having found the claim of Shri Iqbal Singh genuine against the above 6 officials as well, it is hereby ordered that he be deemed to have

been promoted as Junior Assistant w.e.f. 29.12.1976 on notional basis till the date he was regularized as such, as Senior Assistant w.e.f 3.8.1983 on

notional basis till he was regularized as such, and as Booking Manager w.e.f 2.11.1999 on notional basis. However, he is entitled to monetary benefits

in the grade of Booking Manager w.e.f. 1-1-2008.”

3. Through the medium of instant petition, petitioner is seeking writ of Mandamus commanding the respondents to treat the entire period on regular

basis with full monetary benefits instead of notional basis. Alternatively, he prayed that order dated 20.04.2009 whereby he has been given

retrospective promotions as Junior Assistant w.e.f. 29.12.1976, Senior Assistant w.e.f. 03.08.1983 and Booking Manager w.e.f. 02.11.1999 which has

not been understood and implemented in its right perspective, be implemented in letter and spirit by granting monetary benefits.

4. On notice, respondents 2 to 4 have filed the reply and have taken the preliminary objection that the petition is suffering from constructive res-

judicata on the ground that the petitioner had filed Writ Petition bearing SWP No. 30/2008 in which he had also prayed for retrospective promotions.

In the reply, they have virtually admitted that the petitioner has been granted the retrospective promotions in terms of order dated 20.04.2009 on the

same analogy as has been adopted in the case of other persons who were given the retrospective promotions vide order dated 23.01.2008 and who

were juniors to him.

5. Heard learned counsel for the parties and perused the record.

6. The preliminary objection regarding the plea of constructive resjudicata raised by the respondents is devoid of any force. In the writ petition bearing SWP No. 30/2008, the petitioner claimed the promotions as Junior Assistant, Senior Assistant and Booking Manager from the date his junior, S. Mohinder Singh, was given the promotion. The said writ petition was filed on 14.01.2008 and notice was issued and interim order regarding consideration of the claim of the petitioner was passed by this Court on 15.01.2008. Thereafter, the respondent-Corporation issued order dated 23.01.2008 whereby 14 employees, out of which above named six employees, juniors to the petitioner, were given the promotions as Junior Assistant, Senior Assistant and Booking Manager with retrospective effect. On the representation of the petitioner, his claim was found genuine and the Corporation issued order dated 20.04.2009, whereby he has also been granted retrospective promotion, but the case of the petitioner is that in terms of the aforesaid order, he has not been given all the benefits to which he is entitled to. Thus, the cause of action in the present writ petition has accrued subsequent to the filing of the writ petition bearing SWP No. 30/2008. In such a case, principle of constructive resjudicata does not apply. The principle of constructive res-judicata applies when the cause of action had already accrued and the person who had the opportunity to claim the said relief in a suit or a petition, fails to claim the same. The present petition, therefore, is not hit by the principle of constructive res-judicata.Â Â

7. So far as the claim of the petitioner for commanding the respondents to treat the entire period on regular basis instead of notional basis is concerned, the same, in my considered opinion, is not tenable inasmuch as the order dated 20.04.2009 whereby he has been given the retrospective promotion on the notional basis for certain periods, has not been challenged by the petitioner. In absence of challenge to the said order, writ of Mandamus does not lie, therefore, this claim of the petitioner is not tenable. However, alternate reliefs claimed by the petitioner in the petition are somewhat justifiable. The concerned official of the Corporation who was required to implement order dated 20.04.2009 whereby the retrospective promotions have been granted to the petitioner, has not understood and implemented the order in its letter and spirit. Admittedly, the petitioner has

been promoted as Junior Assistant w.e.f. 29.12.1976 on notional basis till the date he was regularized as such. Admittedly, the petitioner was promoted on regular basis as Junior Assistant w.e.f. 28.12.1983 and since then, he was performing the duties as Junior Assistant. Thus, his notional promotion as Junior Assistant would be w.e.f. 29.12.1976 upto 28.12.1983 when he was actually promoted and with effect from 28.12.1983, he was/is entitled to monetary benefits on the basis of his notional fixation of pay w.e.f. 29.12.1976. Similarly, he has been promoted as Senior Assistant w.e.f. 03.08.1983 on notional basis till he was regularized as such. Admittedly, he was promoted on regular basis as Senior Assistant w.e.f. 20.01.1997 and started performing the duties as such. Thus, as Senior Assistant, his notional period was treated with effect from 03.08.1983 upto 30.01.1997 when he was actually promoted and with effect from 31.01.1997 onwards, he was/is entitled to monetary benefits as Senior Assistant. This is the simple and plain interpretation of the order dated 20.04.2009. The petitioner has been given retrospective promotion as Booking Manager with effect from 02.11.1999 on notional basis and monetary benefits with effect from 01.01.2008. The aforesaid promotion to the post of Booking Manager and the benefits have been given on the same analogy as has been done in case of his above named six juniors. The respondents, as is evident from the service book placed on record, have fixed the pay of the petitioner by treating the entire period with effect from 29.12.1976 to 31.12.2007 on notional basis. The said fixation is contrary to the order dated 20.04.2009.

8. In the facts and circumstances of the case, I would have allowed full monetary benefits to the petitioner with effect from the date he has been given the retrospective promotions in terms of order dated 20.04.2009, but, as stated above, the said order has not been challenged. The Hon^{ble} Supreme Court in a case titled Union of India Vs K. V. Jankiraman reported in AIR 1991 SC 2010 has held as under: -

“24. It was further contended on their behalf that the normal rule is ‘no work no pay’. Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions

even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.Â

25. We are not much impressed by the contentions advanced on behalf of authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17 (1) will also be in applicable to such cases.Â Â Â

9. Admittedly, the petitioner has been deprived from the aforesaid promotions. He was neither under suspension nor disciplinary proceedings were pending against him. The Corporation has not even implemented its own order dated 20.04.2009 in its letter and spirit which forced the petitioner to file the present petition which could have been avoided if the concerned officials of the respondent-Corporation would have understood the import of the aforesaid order dated 20.04.2009 in its rights perspective.

10. Viewed thus, writ petition is allowed and respondents are directed to fix the salary of the petitioner as Junior Assistant on notional basis with effect from 29.12.1976Â upto 28.12.1983 when he was actually promoted and started performing the duties and thereafter he is entitled to monetary benefits as Junior Assistant upto 19.01.1997 with a further direction to fix the pay of the petitioner as Senior Assistant with effect from 03.08.1983 on notional basis upto 29.01.1997 and thereafter, he is entitled to monetary benefits on the basis of such fixation upto 31.12.2007.Â The respondents are directed to calculate the arrears as directed above and release the same within a period of eight weeks from the date of receipt of copy of this order.

11. Disposed of as above along with connected MP(s).