
(2014) 05 RAJ CK 0147
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8422/2012

Smt. Manorama Asopa

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0147

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Manoj Bhandari, Advocate for the Appellant; B.L. Bhati, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—The petitioner having served the respondent Education Department as Teacher, since her initial appointment on 17/10/1965, has passed through the chain of litigation with the respondent Department and the present writ petition is restricted to the consequential relief as a fruit of her success in the litigation & for which the review DPC held by the respondent Department has already recommended her case for promotion to the post of Principal, thereafter, to the post of District Education Officer and further to the post of Deputy Director, but which has not yielded anything so far.

2. The brief review of the legal battle and orders passed by this Court are referred hereunder.

3. For the charge sheets issued under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 served on the petitioner in the year 1995, the petitioner was held guilty and punished in the year 2002, after her retirement in the year 1999. The said punishment orders were challenged by the petitioner by way of SBCWP No. 1120/2005-Smt. Manorama Asopa vs. State & ors. & SBCWP No. 1310/2005-Smt. Manorama Asopa vs. State & ors. The said writ petitions came to be allowed by this Court on 23/4/2009 in the following

terms:-

9. A bare perusal of the impugned order shows that the said order of withholding of 5% of pension has been passed by the Disciplinary Authority, namely, the Director of Education though with the approval of the Governor and RPSC, but no notice prior to imposition of such penalty was given to the petitioner. A perusal of Annex. 24 dated 22.11.2002 a letter written by the Dy. Secretary of the Government of Rajasthan to the Director shows that the record was called by the said Dy. Secretary for approval of the punishment by the RPSC and in pursuance of the same along with letter dtd. 29.5.2003, the Director sent back the said record along with the stipulation of proposed punishment on the petitioner of withholding of 5% of the pension permanently. Copy of both these letters Annex. 24 dtd. 22.11.2002 and 29.5.2003 were not endorsed to the petitioner and therefore, the petitioner was never put to notice of that punishment of withholding of pension to the extent of 5% proposed against her to be approved by the RPSC and the Governor. The petitioner for the first time came to know of this punishment with the approval of the Governor only by the impugned order dtd. 6.10.2004. In view of this admitted position that no notice of proposed penalty of withholding of pension of 5% was given to the petitioner prior to passing of the impugned order, this Court is of the clear opinion that the impugned order of penalty deserves to be quashed on this ground alone. Therefore, without going into the merits of the charges and alleged breach of principles of natural justice during the course of enquiry, this Court is of the view that the impugned orders cannot be sustained on the ground of not giving notice of proposed punishment to the petitioner prior to passing of the impugned orders.

10. Though the learned counsel for the petitioner took this Court through the nature of charges and the defence taken by the petitioner to establish that the charges were only relating to supervisory negligence and no financial loss was caused to the State Government and for this reason also, the impugned punishment of withholding of pension could not be passed against the petitioner, this Court considers it not necessary to go into the said aspects.

11. This Court in the case of J.N. Purohit (supra) as quoted above in para 10 has clearly laid down that in absence of such notice the impugned punishment order cannot be sustained while considering Rule 170 of the RSR which is admittedly *pari materia* with Rule 7 of the Rules of 1996. Since punishment in question was imposed after retirement of the petitioner from service in the year 1999, obviously Rule 7 would apply in the present case. Since mandatory requirement of giving prior notice of proposed punishment has not been complied with in the present case, this writ petition deserves to be allowed.

12. Consequently this writ petition is allowed and the impugned punishment order dtd. 6.10.2004 in SBCWP No. 1120/2005 and impugned order dtd. 6.10.2004 (Annex. 17 in SBCWP No. 1310/2005) are quashed and set aside and the respondents are directed to pay amount of the pension withheld under the impugned orders to the petitioner with interest @9% per annum within a period

of three months from today. No costs.

4. The said order of the Single Bench was upheld by the Division Bench with the dismissal of DBC Special Appeal (W) No. 02341/2010-State of Rajasthan & ors. vs. Smt. Manorama Asopa, as time barred.

5. Another SAW No. 1363/2011-State of Rajasthan & ors. vs. Smt. Manorama Asopa also came to be dismissed on the peremptory order issued by the Division Bench.

6. The contempt petition was also filed against the respondents by the present petitioner for non-compliance of the order of Rajasthan Service Appellate Tribunal, where she had approached earlier for her promotion on due turn and the Tribunal allowed the appeal of the present petitioner with the following directions by its order dated 15/12/2006 passed in appeal no. 340/99:-

7. The writ petition against the said order passed by the Tribunal was dismissed by this Court on 24/7/2009 (SBCWP No. 1917/2009-State of Raj. & Anr. vs. Smt. Manorama Asopa), which was confirmed by the Division Bench while dismissing SAW No. 06720/2010-State of Raj. & Anr. vs. Smt. Manorama Asopa in which peremptory order was passed by the Division bench on account of non-compliance. The said appeal was dismissed on 5/8/2011.

8. For non-compliance of the order passed by the Tribunal, the contempt petition No. 15/2011 was filed by the petitioner in which the learned Single Judge of this Court passed the following order on 13/1/2011:-

Gopal Krishan Vyas

Mr. Manoj Bhandari, for the petitioner.

Heard learned counsel for the petitioner.

Admittedly, the contempt petition filed by the petitioner before the Rajasthan Civil Services Appellate Tribunal, Jodhpur Bench, Jodhpur is pending. It is expected from the Tribunal that for compliance of the order, no leniency should be given to the Contemnors because they are required to obey the directions issued by the Tribunal in time. The order-sheets which are produced by learned counsel for the petitioner speaks that unnecessary adjournments were granted to the respondents for compliance of the judgment of Tribunal dated 15.12.2006 which is affirmed by this Court.

It is a very serious matter. The Tribunal is directed to decide the contempt petition filed by the petitioner on the next date of hearing.

The contempt petition is disposed of in above terms.

Sd/-

(Gopal Krishan Vyas), J.

9. In pursuance of the said litigation, which ended in favour of the present petitioner, the review DPC was held and recommendations for promotion of the present petitioner were forwarded to the respondent Department vide order Annex. 18 dated 9/8/2011. However, thereafter, since no action was taken by the respondent Department, the present writ petition was filed on 8/8/2012.

10. Mr. Manoj Bhandari, learned counsel for the petitioner submitted that the respondents deserve to be directed to complete the process of giving promotions to the petitioner and grant notional benefits uptill the date of retirement and subsequent thereto revise the pension amount accordingly. He also contended that suitable directions for grant of interest on the arrears of pension, which are not so far paid, may also be passed.

11. The respondents have not so far filed any reply to the writ petition. However, learned counsel for the respondent Department, Mr. B.L. Bhati submits that needful action has already been taken by the respondents but final order in this regard giving actual/notional promotion to the petitioner are yet to be passed.

12. Having heard the learned counsels, this Court is of the opinion that the present writ petition deserves to be allowed as only the consequential benefits as a fruit of previous litigation, in which the petitioner has succeeded, are now required to be given. In fact, the petitioner would be entitled to revision of her pension amount since she has retired way back in 1999. The said exercise ought to have been completed by the respondents even without the intervention of the Court. The present writ petition appears to have been filed only for the purpose of issuing directions to the authorities concerned to take action, which was expected to be taken by them.

13. Accordingly, the present writ petition is allowed. The respondents are directed to pass consequential promotion orders of the petitioner in pursuance of recommendation of the review DPC, immediately. The respondents are also directed to revise the pension of the petitioner accordingly and pass orders in that regard, & issue Revised PPO forthwith. The revised pension including the arrears may be paid to the petitioner within the period of three months from today, failing which the same shall bear interest @ 9% p.a. from the date of retirement till actual payment. No costs. Copy of the order be sent to the parties concerned forthwith.