

(2018) 05 RAJ CK 0050
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5954 of 2016

Somdutt Sharma @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 01-05-2018

Acts Referred:

Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 — Rule 9, 10(5)

Citation : (2018) 05 RAJ CK 0050

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Pramendra Bohra , Sweta Bora, Anil Bissa

Final Decision : Allowed

Judgement

This writ petition is directed against the order dated 2/2/2016 (Annex.11) passed by the Financial Adviser, Police Head Quarter, Jaipur and a direction has been sought to the respondents to revise the pay/pension of the

petitioner as per the Revised Pay Scale Rules, 1989, 1998 and 2008.

The petitioner was serving as Sub-Inspector with the respondent Department when Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 (the Rules, 1989) were introduced. Thereafter, on 20/11/1993 a

memorandum was issued providing for permission to the employees to exercise option or re-option under Rule 9 of the Rules of 1989 within two months from the date of publication of the order. It is claimed that the

petitioner gave his option, however, the revision was not permitted in terms of Rules, 1989. The petitioner attained the age of superannuation on 31/8/1995. On 22/2/1997, the Superintendent of Police, Hanumangarh sent a

letter to the Superintendent of Police, Sriganganagar for redressing the grievance of the petitioner indicating that the petitioner had submitted his option on 24/12/1993 for revising his pay in the Pay Scale of 1400-2600.

Thereafter, despite petitioner's repeated following-up with the Department, on

22/7/2015 Superintendent of Police, Hanumangarh ordered for revision of the pay/pension of the petitioner according to the option

submitted by him pursuant to Rules of 1989, however, the Financial Adviser from whom the guidance was sought, by its communication dated 2/2/2016 opined that as per Rule 10(5) of the Rules, 1989 option once given

was final and as the revision has taken place under the Revised Pay Scale Rules, 1998 and 2008 and prayer for option has been made after retirement, there was no justification for sending the option to the State

Government.

It is submitted by learned counsel for the petitioner that the order dated 2/2/2016 (Annex.11) is ex facie incorrect as it is based on assumption that the petitioner applied for submitting his option after retirement, whereas,

the petitioner had given his option during the course of his employment in the year 1993 itself, which is evident from the letter dated 22/2/1997 (Annex.6) and, therefore, the order impugned deserves to be set aside.

Further submissions have been made that the case of the petitioner has been accepted by the respondent Department which is evident from the order dated 22/7/2015 (Annex.10), however, the Financial Adviser based on

wrong assumption has declined to send the same to the State Government, which is not justified in the circumstances of the case and, therefore, the writ petition deserves to be allowed.

Learned counsel appearing for the respondents supported the order impugned. It was submitted that reliance placed by the petitioner on communication dated 22/2/1997 (Annex.6) is misplaced inasmuch as the point of time

when the petitioner gave his option for revision, the office of Superintendent of Police, Hanumangarh was not in existence as the same came into existence on 12/7/1995.

Further, submissions have been made that the original service book of petitioner was reported lost and duplicate whereof was prepared in the year 2006 as per official record and in the duplicate service book and in the

personal file of the petitioner there was no mention about submission of option letter by the petitioner and, therefore, as the petitioner had failed to give his option within the time permitted under Rule 9 of the Rules, 1989, he

has no cause in the present writ petition and same, therefore, deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

Once it was specifically indicated that the option form was submitted by the petitioner on 24/12/1993, his case could not have been rejected by the Financial Adviser on the non-existent ground that the prayer was made

after retirement as the petitioner had retired only on 31/8/1995. Further, once the respondent themselves vide Annex.10 have determined the revised pension of the petitioner, there was apparently no reason for passing the

order Annex.11 holding that there was no justification for sending the same to the State Government, specially in view of the fact that respondents in para 8 of the reply have admitted the genuineness of the letter dated

22/2/1997.

Consequently, the writ petition filed by the petitioner is allowed, the order dated 2/2/2016 Annex.11 is quashed and set aside. The respondents are directed to revise the pay/pension of the petitioner in terms of Rules of

1989 and subsequent Pay Scale Rules, 1998 and 2008 and make payment of the arrears to the petitioner. The said exercise may be undertaken by the respondents within a period of six weeks from the date a certified copy

of this order is placed before them.