
(2001) 10 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 661 of 2001

State of Rajasthan and Others

APPELLANT

Vs

Shivnandan Lal Sharma

RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Rajasthan Educational Service Rules, 1970 — Rule 25(11A)
Rajasthan Service Rules, 1951 — Rule 26A

Citation : (2003) 4 RLW 2224 : (2002) 1 WLC 98 : (2002) 4 WLN 436

Hon'ble Judges : A.R. Lakshmanan, C.J.;Asok Parihar, J

Bench : Division Bench

Advocate : Akhil Simlote, for the Appellant; S.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Lakshmanan, C.J.—By consent of both the parties, the main appeal itself is taken up for admission.

2. We have heard Shri Akhil Simlote, counsel for the appellants and Shri, SP. Sharma, counsel for the respondents.

3. This appeal is directed against the order passed by the learned Single Judge allowing the writ petition filed by the respondent-herein by order dated 14.03.2001, directing the appellants-herein to award the benefit of Rule 26A of Rajasthan Service Rules, 1951 to the respondent-herein w.e.f. 1.4.1989 and to fix his pay upto the date of superannuation and that if any revision of his pension is to be made, the same shall also be done within three months from the date of receipt of certified copy of the order.

4. We have perused the order passed by the learned Single Judge as well as the material on record.

5. In the instant case, the respondent herein submitted a representation and also pointed out that since the State Government, vide its notification No.

B.3/40530/89 dated 8.10.1992 had issued a circular in furtherance of their earlier circular dated 27.6.92 declaring that all the persons who had been promoted upto 5.9.90 on the post of Headmaster would be entitled to receive benefit of Rule 26 and 26A, he was also entitled to receive the same benefit as he has been promoted vide order dated 31.7.95 for the vacancies as on 1.4.89 (1989-90). Hence he could not be treated dis-similarly to those who had been granted promotion in 1989 itself. A copy of the representation dated 24.4.97 made by respondent-herein was placed on record and marked as Annexure-5 to the writ petition.

6. The claim of the respondent-herein was rejected on the ground that since the pay scale of Lecturer and Headmaster had been equated w.e.f. 31.8.88, he could not be granted benefit of Rule 26A. Thereupon, the respondent-herein took up his matter before the Nodal Officer, Pension Court, Rajasthan, Jaipur for granting him benefit of Rule 26A, however, since the Chief Accounts Officer conveyed vide letter dated 29.12.1997 that the benefit of Rule 26A cannot be made to respondent herein and, as such, the respondent-herein was denied any benefit.

7. The respondent-herein pointed out to the Nodal Officer vide his representation dated 25.3.1998 that persons who had been granted promotion for the year 1989-90 from the post of School Lecturer to Headmaster, had been given the benefit of Rule 26A. It was also pointed out that he had passed S.T.C. and was an appointee prior to 1961 and that he had done B.Ed. in 1966. It was again pointed out that all the persons, similarly situated, have already been granted the benefit of Rule 26A as their promotion orders were passed prior to 5.9.90 itself and that since the respondent's promotion orders were passed after 5.9.90 with retrospective effect, he was entitled to be given similar benefit of 26A and he should have been notionally fixed w.e.f. 1989 and be given all the consequential benefits of higher pension and pensionary emoluments. It was also pointed out that the respondent- herein was not granted the fitment increment of the higher post at the time when the pay scale of Lecturer was equated to that of Headmaster in 1988.

8. We have perused the perused of Rule 26A, which provides as under:-

"26A(1) When a Government servant holding a post in a substantive, temporary or officiating capacity is promoted to a post in the regular line of promotion in his service, cadre or department, in a substantive, temporary or officiating capacity, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing the actual pay drawn by him in the lower post by one increment at the stage at which such pay is drawn.

Provided that where a Government Servant is, immediately before his promotion to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing the pay drawn at the maximum in the lower post by an amount equivalent to the last increment in the

lower post.

(2)(i) Notwithstanding the provisions of Rule 31, where the pay of a Government servant is fixed under Sub-rule (1) above, the next increment shall be granted on the date he would have drawn his increment had he continued in the lower post, provided that where the pay is fixed at the minimum of the time scale and the pay so fixed is more than the pay drawn in the lower post by an amount equal to the amount of the next increment in the lower post plus the amount of first increment in the higher post, the next increment shall be admissible after completion of service for the full incremental period of one year under Rule 31 of Rajasthan Service Rules.

(ii) Where a Government servant while drawing pay at the maximum of the pay scale of the post is promoted to a post in regular line of his promotion and is pay is fixed under Sub-rule (1) of this rule, the next increment is subject to Clause (i) of this sub-rule shall accrue to him on the date he would have drawn his increment had he continued in the lower post.

Explanation:- The expression in the regular line of promotion" means appointment by promotion in a service or cadre in accordance with the method of appointment provided in recruitment rules framed under the proviso to Article 309 of the Constitution of India.

(3) The provisions of Sub-rule (2) of Rule 35 A shall not be applicable in any case where the initial pay is fixed under this rule."

9. From the reading of Rule 26-A, it is apparent that once an employee has been granted promotion, he is entitled to be given the benefit of jump of one increment in the higher pay scale and also one increment of the pay scale which he is drawing. However, since the respondent-herein was already drawing higher of one increment as per Rule 26-A in the existing pay scale was required to be granted to him and his notional pay fixation should have been made w.e.f. 1989-90, The action of the appellant-herein, in our view, is based on mis-interpretation of Rule 26-A of the Rajasthan Service Rules.

10. The post of Headmaster is a promotional post from that of School Lecturer, Merely because the pay scale of Lecturer was equated to that of Headmaster, the benefit of jump of increment could not have been given to the respondent-herein when he was working on the post of Lecturer on account of change of the pay scale. Hence, the action of depriving the scale. Hence, the action of depriving the respondent-herein of the benefit of Rule 26-A which is only available on promotion of an employee/is wholly bad in law. In our view, the denial of benefit under Rule 26-A of the Rules of 1951 is also contrary to the circular issued by the department dated 27.6.1992. Merely because of the fault of the appellant No. 3-herein in not determining the vacancies for the year 1989-90 for the Division of Jaipur and granting the respondent-herein promotion with retrospective date, the position of the respondent herein, cannot be distinguished from those of his colleagues who had been promoted in 1989 or 1990 on the post of Headmaster

for the vacancies of 1989-90.

11. Sub-rule 11-A of Rule 25 of the Rajasthan Educational Service Rules, 1970, provides as under :-

"11A-If in any subsequent year, after promulgation of these rules vacancies relating to any earlier year are determined under Sub-rule (2) of rule relating to determination of vacancies which were required to be filled by promotion, the Departmental Promotion Committee shall consider the cases of all such persons who would have been eligible in the year to which the vacancies relate and the service-experience of an incumbent who has been so promoted, for promotion to higher post for any period during which he has not actually performed the duties of the post to which he would have been promoted, shall be counted. The pay of a person who has been so promoted shall be re-fixed at the pay which he would have derived at the time of his promotion but no arrears of pay shall be allowed to him."

12. From the reading of the aforesaid rule, it is apparent that the position as existing in 1989-90 i.e. the year of vacancy for which the respondent-he rein has been promoted, shall be considered. Since in that year, the respondent herein was entitled to be granted benefit of 26-A as was done in case of all the other similarly situated employees working in the Education Department as per its own Circulars dated 27.6.1992 and 8.10.92, he cannot be deprived.

13. The action of delaying the promotional orders of the respondent-herein for a period of 6 years, has resulted in the respondent not enjoying the status of the post of Headmaster and, moreover, no apparent loss can be said to occur to the appellants herein as only notional fixation has to be done. In our view, the denial of grant of higher pay fixation has only resulted in making the promotional order as defunct and the very purpose of promotional order has lost its significance. The order of the learned Single Judge is correct and does not require any interference in the present appeal. The order passed by the learned Single Judge allowing the writ petition is perfectly in order. Hence, the special appeal has no merit and the same is dismissed. The appellant-department is directed to comply with the order of the learned Single Judge within three months.