
(2004) 08 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5231 of 2002

Sudershan Mehta (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2005) 1 RLW 109 : (2004) 4 WLC 511

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : J.P. Sharma, for the Appellant; O.P. Sharma and Akhil Simlote, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The prayer of the petitioner is that the respondents be directed to release pensionary benefits to the petitioner determining the same on the last pay drawn along with the interest on due amount from July 31, 1999 till payment of the amount of pension.

2. The facts of the case are that the petitioner was in regular employment of Government of Rajasthan in school education. She was holding the post of Vice Principal from January 1, 1996 and drawing the salary in pay scale of Rs. 8000-13500. Her last place of posting was at Rajkiya Maharani Balika Uchch Madhyamik Vidyalaya, Bikaner. The petitioner stood retired on July 31, 1999 on attaining the age of superannuation. The post of Vice Principal, Lecturers Teachers Training College and Senior Deputy Inspector Schools were place at the equal status. After several requests only 75% gratuity Rs. 1,52,856/- has been released on November 22, 1999 and 25% sum Rs. 50,962/- is due. The commutation amount Rs. 1,95,686/- is yet to be paid. While neither there was any due against the petitioner nor any departmental enquiry was pending.

3. The petitioner stated that the pensionary benefits are to be released on the

basis of last pay drawn, but the respondents are trying to implement the new pay scale of Rs. 7500-12000 instead of Rs. 8000-13500, as the same was made applicable w.e.f. July 1, 1998. Because of the confusion regarding pay scale of the petitioner, the respondents have not released the pensionary benefits of the petitioner. The petitioner preferred the writ petition No. 3980/2000 and in compliance of the direction she preferred the appeal before the Rajasthan Civil Services Appellate Tribunal, that came to be decided with the direction to file representation. Hence the instant writ petition.

4. The respondents Nos. 1 & 2 have filed the reply to the writ petition and submitted that the amendment of pay scale was made effective w.e.f. July 1, 1998, i.e. prior to the date of retirement of petitioner. In this regard the order dated September 17, 2001 has been passed in view of the notification dated August 7, 1998, therefore the petitioner is entitled for the pensionary benefits according to the amended pay scale.

5. I have considered the rival submissions and carefully scanned the material on record.

6. In Chandra Mohan Singh etc. etc. v. State of Raj. and Ors. (2000 (2) RLR 542) this court held that a benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallised and no rule can be framed under, the Proviso to Article 309 of the Constitution which affects or impairs the vested rights.

7. Admittedly the pay scale of the petitioner was not changed while she was in the service till July 31, 1999, therefore the benefits accrued to the petitioner under the existing rules cannot be taken away by an amendment with retrospective effect. The act of the respondents in changing the pay scale of the petitioner with retrospective effect is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution,

8. As a result of the above discussion, I allow the writ petition and direct the respondents to release retiral benefits to petitioner determining the same on the last pay drawn by her. The respondents are restrained from making any recovery, and if any recovery has already been affected, the entire recovered amount shall be refunded back. The petitioner shall also be entitled to the interest at the rate of 12% per annum, on the amount due w.e.f. July 31, 1999. The respondents shall ensure compliance of the order within ninety days from the date of receipt of certified copy of this order. There shall be no order as to costs.