
(2009) 01 RAJ CK 0074
In the Rajasthan High Court

Surendra Nath Sharma

APPELLANT

Vs

Rajasthan Shiksha Karmi Board and Others

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : (2009) 01 RAJ CK 0074

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Judgement

Ajay Rastogi, J.—Instant petition has been filed by petitioner assailing orders dt.01/07/06 (Ann.11) & fixation order (Ann.13) whereby respondents intended to make recovery from them for the period during which they had worked in Shiksha Karmi Board.

2. Petitioner while working in Department of Education, was selected as Siksha Sahyogi in Rajasthan Shiksha Karmi Board and was sent on deputation for a period of one year on the condition that they would get a sum of Rs. 150/- per month in addition to their basic pay in terms of Rule 29 of R.S.R., as is evident from order dt.08/01/99 (Ann.1) and during appointment on deputation, his pay after grant of higher selection scale admissible in terms of Board's order dt.24/05/96 & dt.06/08/96 was accordingly fixed and revised vide order dt.02/06/2000 (Ann.6).

3. However, petitioner was repatriated to their parent department of Education vide order dt.06/07/04 and after revising fixation intended to make recovery vide order dt.01/07/06 (Ann.11) relating to the period they worked in Siksha Karmi Board on deputation.

4. Counsel for petitioners inter-alia submits that before passing orders impugned, no opportunity of hearing was ever afforded to the petitioners and the action of respondents is in clear violation of principles of natural justice and that apart, while they were entitled to be fixed in their basic pay in terms of Rule 29 of RSR in addition to amount of Rs. 150/- per month as deputation pay, as such

respondents are not justified even for making recovery from them.

5. However, no reply to writ petition has been filed by respondents. However, Government Counsel submits that controversy raised in instant petition has been decided by DB decision of this Court at principal seat Jodhpur in Special Appeal (Writ) 208/06 & bunch of others (State of Rajasthan v. Ramniwas Porwal) on 13/12/07 (Per Hon. Mr. Rajesh Balia, J.) 2008(2) WLC 406 clarifying the position *ad infra*:

However, it may be clarified that because of the provisions made in Note 8 read with Note appended to Rule 6 a Senior Teacher drawing pay in second selection grade of 6500-10500 prior to 1.7.1998 and promoted as Senior Teacher but after 1.7.1989 who has not completed 10 years as Senior Teacher at the time of commencement of the Act his pay in pay-scale of 6500-10500 was protected as personal to him, though he would become eligible to such scale under the new rules of 1998 only on completion of 10 years. In this view of the matter, the rights of the respondents even under the aforesaid provision remain intact and unaffected and it could not have any adverse effect on them.

But those who have been promoted as Senior Teachers drawing their pay in Second Selection Grade of 6500-10500 will not be eligible for this pay protection because even under the Rules of 1998 as initially exist, they were to be promoted to Senior Scale, which was Rs. 5500-9000 only. But because of lacuna in the Rules originally enacted, not 26 providing any specific provision, their fixation has been wrongly made by considering all Senior Teachers to be of the same category. The initial fixation in higher pay-scale being without any mistake on their part, until Notification of amendment, the resultant recoveries of excess amount paid to them has been waived.

But after correction of this lacuna on amendment of Note 8, no such protection has been granted under the Rules. If any such recovery has become due on account of continued drawing of pay by such Senior Teachers promoted after 1.7.1998, due to no mistake or misrepresentation on the part of such incumbents, they may make appropriate representation to the Government to consider their cases against recovery.

Accordingly, with the aforesaid clarification the appeals are allowed. The judgment under appeal declaring Notification dated 8.7.2001 to be *ultra vires* is set-aside. However, the view which we have taken on interpretation of the Rules, the existing teachers who have been promoted as Senior Teacher in the Second Selection Grade prior to commencement of the Rules at any time but because of non-completion of 10 years of service as Senior Teacher under the revised rules were required to be fixed in lower pay-scale, their continuance in the higher pay-scale was protected as pay-scale personal to them under Note to Rule 6. The rights of all the appellants stand protected to this extent. In that light, the writ petitions filed by the appellants stand allowed to that extent.

6. A bunch of 62 Special Appeals (Writ) (No. 936/05 State of Rajasthan v. Shyam

Swaroop Upadhayaya) also came up for consideration before Division Bench at Jaipur Bench ? that too vide judgment dt. 04/04/08 (per Hon. Mr. R.M. Lodha, J.) were disposed of in the light of judgment in State of Rajasthan v. Ramniwas Porwal 2008(2) WLC 406, *ibid ad infra*:

The existing teachers who have been promoted as Senior Teacher in the second selection grade prior to commencement of the Rules at any time but because of non-completion of 10 years of service as Senior Teacher under the revised Pay rules are required to be fixed in lower pay scale. Their continuance in higher pay scale protected as pay scale personal to them under Note to Rule 6 would remain to that extent.

7. It has also been observed that no recovery shall be made from employees even if fixation was made in higher pay scale not admissible to them. In instant case, petitioners have only challenged the recovery being made vide orders dt.01/07/06 (Ann.11) & fixation order (Ann.13); and as per Government Counsel, in the light of judgments quoted (*supra*), no recovery can be made; as such order dt.01/07/06 (Ann.11) does not hold good and deserves to be aside.

8. Consequently, writ petition stands allowed in terms of judgment (*supra*) by Division Bench of this Court in State of Rajasthan v. Ramniwas Porwal 2008(2) WLC 406 & State of Rajasthan v. Shyam Swaroop Upadhayaya (*supra*); and impugned orders orders dt.01/07/06 (Ann.11) & fixation order (Ann.13) are hereby quashed & set aside. No order as to costs.