
(2014) 05 RAJ CK 0150
In the Rajasthan High Court
Case No : Civil Writ Petition No. 55/2010

Surendra Singh and Others	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0150

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Ashwini Swami, Advocate for the Appellant; Shweta Bora on behalf of Mr. Anil Bissa, Addl. Govt. Counsel, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—The petitioner has filed the present writ petition with the following prayers:-

- (A) the order dated 17.4.2004 (Annex. 9) may kindly be quashed and set aside.
- (B) That consequent to aforesaid respondents may kindly be directed to permit the petitioner to reelect the option for switching over to the benefit of selection grade scheme and consequent to aforesaid the respondents may kindly be directed to grant the petitioner benefit of selection grade on completion of 9 and 18 years of respective service and consequently pay to him the arrears accruing pursuant to such grant.
- (C) Any other relief that may be deemed fit in the facts and circumstances of this case may kindly be granted in favour of the petitioner.
- (D) Cost of the writ petition may kindly be awarded in favour of the petitioner.

2. Both the learned counsels at Bar submitted that the controversy involved in the present writ petition is covered by the decision of coordinate bench of this Court in the case of Gurtej Singh and ors. v/s. State and ors. - SBCWP No. 96/2005 decided on 26.11.2008, a copy of which is placed on record as Annex.

1. The learned counsel for the petitioner has further submitted that following the said judgment of the learned Single Judge in the case of Smt. Gulab Devi V/s. State of Rajasthan and ors., another writ petition No. 7694/2010 came to be disposed of by this Court on 25.5.2010 and thereafter all such similarly situated persons have been given the same treatment by giving them an opportunity to give their option again within a period of 3 months from today in pursuance of order dtd. 20.11.2013. The learned Single Judge of this Court in the case of Gurtej Singh V/s. State of Rajasthan and ors. (supra) held as under:

In the instant case, the other firemen, who are similarly situated and who opted for stepping up pay in pursuance of the amendment having been effected in the years 1989, in the pay Scale Rules and were granted benefit of stepping up on re-opting and switching over to the benefit of selection scale in pursuance of circular dated 25th January, 1992 in view of memorandum dated 20th November, 1993, through the respondent by memorandum dated 20th November, 1993 prescribed a period of two months within which the employees like the present petitioners and other similarly situated Firemen could have exercised the option for switching over from stepping up pay scheme to the selection grade scheme which was introduced by circular dated 25th January, 1992 by the respondents. Though the period of two months was as cut off date for exercising the option but the facts remains that the similarly situated Firemen to that of the present petitioners have exercised their option, they have been granted the benefit of selection scale in pursuance of the circular dated 25th January, 1992 and by such benefit, they are being paid the higher pay than the present petitioners, through the present petitioners are similarly situated to those who have exercised the option within the prescribed period. The petitioner also approached to the employer through the Senior Staff, Officer Civil Defence and Home Guard, Rajasthan, Jaipur by a communication Annexure-5 dated 13th August, 2001 requesting the Deputy Secretary to the Government, Home Department permitting the petitioners to also exercise the option of selection grade scheme permitting them to switching over from the benefit of stepping up scheme to that of the selection grade scheme. The petitioners came with a case that they are Firemen and mostly posted to the field duties and the memorandum dated 20th November, 1993 was not widely circulated and therefore, they could not know of such scheme which is beneficiary to the petitioners and other similarly situated Firemen and the fact that similarly situated Firemen have exercised their option switching over from the benefit of stepping up pay to that of the selection grade scheme and therefore, by not permitting the petitioners for exercising the option of selection grade scheme to the present petitioners, the equals have been made un-equals. So far as the payment of salary is concerned, the persons who are equally placed and similarly situated on exercise of option from benefit of stepping up pay to selection grade scheme in pursuance of the circular dated 25th January, 1992 are being paid higher pay than of the petitioners.

In the circumstances, therefore, in order to overcome such anomaly in my view, it would be in the interest of justice, keeping in view the peculiar facts and

circumstances of the case as also the fact that the petitioners be also meted the same treatment by permitting them to exercise the option in pursuance of the memorandum dated 20th November, 1993 within three months from today with the undertaking by the petitioners that by such an exercise of the option if any amount is remain paid in excess of their entitlement, they would re-pay in lump sum as has been done by other similarly situated persons who have switched over from the benefit of stepping up pay to that of selection grade scheme. Permitting the petitioner to exercise the option in the instant case is in peculiar facts and circumstances of this case and shall not be precedent.

The writ petition stands allowed to the extent above. There shall be no order as to costs.

3. Thereafter the concerned Department appears to have passed an order on 27.11.2013 giving re-option to the other persons of the same Department. The said order dtd. 27.11.2013 is quoted below for ready reference:-

4. Accordingly, the present writ petition is also disposed of in same terms. No order as to costs. A copy of this order be sent to the parties concerned forthwith.