(1998) 10 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1209/1996

T.K.Tickoo APPELLANT

Vs

National Hydro Electronic Power Corporation Ltd.(NHPC) A Govt.of India Enterprises RESPONDENT

Date of Decision : 12-10-1998

Acts Referred:
Civil Services Regulations, 1956 — Article 52

Citation : (2000) KashLJ 252

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : P.N.Raina, J.P.Singh, Advocates appearing for the Parties

Judgement

The petitioner, an employee of the State Public Works Department was transferred on deputation to National Hydro Electric Corporation in April

1988. While he was still on deputation, Jammu and Kashmir Civil Services (Higher Standard Pay Scale) Rules 1996 were notified by the

Government vide SROU dated 15.1.1996.

As the petitioner was religible for Higher Standard Pay Scale, his parent Department placed him in the pay scale of Rs. 14002600 with effect from

1.1.1995, the date from which higher Standard pay Rules were enforced. The respondentsCorporation however refused to pay him the salary on

the revised pay scale and the arrears on the ground that no post in the pay scale was available against which he could be adjusted.

The petitioner has moved this petition for seeking enforcement of order dated 2071998 issued by his parent Department placing him in the pay

scale of Rs. 14002600 with effect from 111995.

The stand of the respondents Corporation is that the petitioner was transferred on deputation as Junior Assistant and the Corporation is obliged to

pay him the pay of the Junior Assistant only because there is no post carrying the pay scale of Rs. 14002600 at the level of Junior Assistant in the

project against which his pay can be drawn. It is further stated that petitioner having over stayed the deputation, respondents should have

repatriated him before granting him 'inSitu promotion because the terms of deputation do not provide for such promotions.

Mr. J. P. Singh, learned counsel appearing for the respondents argued that 'In Situ' promotion being akin to the substantive promotion in as much

as the promotee becomes entitled to higher pay scale even though his cadre is not changed. Under Rule 52 of the Civil Service Regulations (CSR)

the borrowing Department is under no obligation to pay the higher pay scale in such a case. Moreover, the respondents have been writing to the

parent Department of the petitioner for his repatriation after the expiry of his deputation but no such order was issued. This is yet another ground

absolving the respondents from payment of higher pay scale. He also emphasised that in terms of the agreement reached between the petitioner

and the State Government the minutes of which were issued on 1631996, a deputationsist has to be recalled before he is promoted to the next

higher rank. Since the Government failed to recall the petitioner before granting him promotion, the respondents he argued are not liable to pay him

the higher pay scale.

Mr. Raina, appearing for the petitioner contended that 'InSitu1 promotion is not a substantive promotion because it does not involve either change

of status or responsibilities. This only ensures higher pay scales without change of the post held by the official, the respondents, according to him

are liable to pay the higher pay scale in terms of Article 52C (iii) of the Civil Service Regulations. He also contested the claim of the petitioner that

in terms of memorandum of understanding, respondents are not liable to pay the higher pay.

The question involved is whether 'In Situ' promotion is in fact a promotion in the substantive rank. The State Government notified Jammu and

Kashmir Civil Services (Higher Standard Pay Scale Scheme) Rules 1996 vide SRO 14 dated 1511996. Rule 4(c) of these Rules defines

promotion insitu as under :

4 (c) ""Promotion InSitu"" means elevation from the existing pay scale to the prescribed Higher Standard Pay Scale without change of designation,

responsibility or interseseniority.

So, the rules only provide for grant of higher, pay scales and no more. This distinction is made clear by rule 4(g), which reads as under:

4(g) ""Promotion"" means a functional promotion to the next Higher Post as per the respective Recruitment Rules."" So, it is clear that the petitioner

has not been promoted and therefore he continues to hold the same post, that is, the post of Junior Assistant.

8. Coming to the terms of agreement reached between the representatives of National Hydro Electric Project Corporation and the Jammu and

Kashmir Government on 16.3.1996 regarding policy of deputation of J and K Govt. employees to the Corporation, the contention of Mr. Singh is

that it is in accordance with Article 52 E(2) of the Civil Service Regulations, which reads as under:

52 E (2). Deputations from the State Government to the Central Government or to other State Governments or to Corporations, Companies,

autonomous bodies etc. other than those owned and controlled by the State Government shall be; regulated by the terms and conditions as are

mutually settled between the borrowing and lending authorities. For prescribing the terms from the State Government the Standard terms of

deputation as contained in Schedule XVIII will be the guiding principles. In all such cases of deputation, the deputation allowance shall be

admissible regardless of the limitations contained in Article 52D(2) at the rates as may be offered by or settled with the borrowing authority subject

to the minimum prescribed under Article 52D (3).

This order shall come into effect from 181979 and shall apply to all cases of deputation as are ordered after that date. All officers who may be on

deputation on the date of issue of this order will have an option either to opt for these rules or to continue to be governed by the terms and

conditions of their deputation as already sanctioned in their favour so long as their period of deputation, if any, indicated in their order of deputation

does not expire. In cases where the period of deputation is not indicated the same will be 3 years from the date of commencement of deputation.

Extension in the period of deputation, if any, granted after the issue of this order, will be in accordance with terms and conditions of this order read

with schedule XVI11. Option shall be exercised within a period of 3 months from the date of issue of this order and those who do not exercise

option within the stipulated time will be deemed to have opted for the terms already sanctioned in their favour. This order shall also apply to all past

cases for grant of deputation allowance, if any, pending settlement with the concerned Administrative Department.

9. The agreement, it is argued, applies to I deputationists whether prior to or after 161996. Assuming that it is so, clause 3 (c) the agreement alone

is relevant in this case, reads as under :

3 (c) officers on Foreign Service shall not be entitled for any promotion during the period of Foreign service with NHPC. In case an employee is

promoted by his parent Deptt., he will be reverted to his parent Deptt. However in case where NHPC wants to continue an employee who has

been promoted by his parent Deptt. during Foreign Service, approval of his parent Deptt. will be obtained.

So it applies only in case of promotions and it has been already found that petitioner has not been promoted but only granted higher pay scale

while holding the post of Junior Assistant. It is nothing but a revision of his pay scale to which he becomes eligible by virtue of length of service and

not on account of promotion to higher class or category. The InSitu Promotion in fact is a revision of pay scale of the employee as it does not

effect change in his status or responsibility which is a jiecessary concomitant of promotion. In such a case the employee has been given the right to

exercise option under Article 52(C) (iii) of the Civil Service Regulations which the petitioner has already exercised.

So, Clause 3(c) of the agreement in no way absolves the respondents from payment of the revised salary in which the petitioner has been placed;

by the parent Department.

It was next contended that failure of parent Department to repatriate the petitioner has resulted in this avoidable situation because he has

overstyaed the deputation period. The respondents, therefore, it is argued cannot be made to pay the salary of a person whose service cannot be

utilised according to his pay scale. However, this plea is not available to the respondents as they could have relieved the petitioner and directed him to report to his parent department. Even letter for his repatriation was written only on 138 1997 followed by another dated 691997. Both these

communications were sent to the State Government only after he was placed in the higher standard pay scale. It follows that prior to this,

respondents had no objection to his continuance in the project. Even the basis of these communications is agreement dated 1631996 which as

noticed above is applicable

10. only in case of substantive promotion and does not cover cases of Higher Standard Pay Scales granted to the employees only to remove

stagnation of grade and not of status. Since the respondents did not relieve him of the assignment, they are obliged to pay him the arrears of the

pay to which he became entitled under SRO 14 of 1996. 13. In view of the aforesaid, the petition is allowed and respondents are directed to pay

the arrears of the pay as fixed by the Administrative Department. However.in the circumstances of the case, there will be no order as to costs.

