
(2016) 05 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : LPA No. 158 of 2015

Y.S. Parmar University

APPELLANT

Vs

N.K. Joolka

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 HimLR 1615

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Sandeep Sharma, J.

Bench : Division Bench

Advocate : Ranjana Parmar, Senior Advocate with Komal Kumari, Advocate, for the Appellant; Ankush Dass Sood, Senior Advocate with Shweta Joolka, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Sandeep Sharma, J.—Present appeal is directed against the judgment dated 8.12.2014 passed by the learned Single Judge of this Court in CWP No. 8262 of 2013, whereby the writ petition filed by the petitioner (respondent herein) was allowed, (for short "impugned judgment").

2. While passing the impugned judgment, the learned Single Judge has held that the petitioner was entitled to the benefit under Rule 22(III) of the Fundamental Rules and Supplementary Rules (for short "FRSR") and that the reasons given by the appellant (hereinafter referred to as the "respondent-University"), while rejecting the representations, in Annexures P-10, P-13 and P-15, are not in consonance with correct interpretation of the provisions of Rule 22(III) of FRSR.

3. In nutshell, case of the petitioner was that the petitioner, who became Head of the Department (for short "HOD") in the year 2004 in the respondent-University, was given additional charge of the post of Director of Extension Education (for short "Director") as a result thereof he was given presumptive pay of 10%. Thereafter, the post of Director was advertised by the respondent-University, the

petitioner being eligible was called for interview and was appointed to the said post on tenure basis in the pay scale of Rs. 16400-22400 plus other allowances admissible from time to time in the University. Thereafter, petitioner superannuated as such on 31st March, 2008.

4. Petitioner by way of writ petition prayed that after his appointment as Director, he was not granted step up of two increments as envisaged under Rule 22(I)(a) (1) of FRSR, as such, he was compelled to make representations to the respondent-University on various occasions. He categorically stated in his petition that post of Director is higher post, carrying higher responsibilities, than the post of the Professor/HOD, which was being occupied by him before his appointment on the post of Director. Since the post to which the petitioner was appointed entails higher responsibilities, as defined in the Act and Statutes of the University, he was entitled to step up by two increments of the pay admissible to him as Director. Representation made by him in this regard to the respondent-University was rejected vide Annexure P-10, wherein it was reiterated that the petitioner was not entitled to this benefit because the pay scales of the post of Professor/HOD and that of Director were identical and therefore, having served on the post of Director, shall not be deemed to involve assumption of duties and responsibilities of greater importance for the purpose of pay fixation under Rule 22(III) of FRSR.

5. Since respondent-University had failed to redress the aforesaid grievance of the petitioner, he was constrained to approach this Court by way of writ petition specifically seeking for quashment of communications dated 6.7.2010, 23.11.2011 and 9.10.2012 (response(s) to the representations of the petitioner) issued by respondent-University. Petitioner also prayed for writ of mandamus seeking direction to the respondent-University to step up the pay of the petitioner by two increments pursuant to his appointment as Director with respondent-University w.e.f. 8.1.2008, with all consequential benefits. He also prayed that in case it was found that in view of the provisions of Rule 22(III) of FRSR he was not entitled to fixation as per Rule 22(1)(a)(1) of FRSR, in that event the provisions of Rule 22(III) may be struck down being violative of Article 14 of the Constitution of India.

6. Respondent-University by way of detailed reply refuted the claim of the petitioner and submitted that claim of the petitioner cannot be accepted in view of the provisions contained in the FR 22(I)(a)(1) as well as clarification received from Principal Secretary(Horticulture) to the Government of Himachal Pradesh. Respondent-University specifically took a stand that statutory posts of the Dean and the Director in the University like any other University are higher than that of Professor and equivalent thereof, as per the Act/Statute, but the benefit of two increments is not admissible in terms of Rule 22(1)(a)(1) of FRSR. Respondent-University justified the decision to reject the claim of the petitioner in light of the provisions contained in the FRSR and the clarification of the State Government and submitted that the action of the respondent-University in not granting the

increments to the petitioner is not arbitrary, discriminatory and petition deserves to be dismissed.

7. Petitioner by way of rejoinder reaffirmed and reiterated all the averments made by him in the writ petition and specifically averred that the duties and responsibility of the post of Director are more onerous than those of the post of HOD which is amply clear from the statutes of the University which prescribe the powers and functions of both the posts.

8. We have heard learned counsel appearing for the parties and have gone through the record of the case carefully.

9. Only controversy involved in the present case is whether the petitioner is entitled to the benefits in terms of the provisions of Rule 22(I)(a)(1) of FRSR.

10. To settle the said controversy we may make a reference to Rule 22(I)(a)(1) and Rule 22(III) of FRSR as under:-

"22(I)(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or (rupees one hundred only), whichever is more."

"22(III). For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith."

11. It is admitted case of the parties that the petitioner, who was HOD in respondent-University, was given additional charge of the post of Director and subsequently being eligible for the post of Director he was appointed to the said post on tenure basis in the pay scale of Rs. 16400-22400 + other allowances admissible from time to time.

12. Perusal of the comparative profile qua qualification and selection process to the posts of Director and Professor/HOD clearly suggests that post of Director in comparison is a higher post with higher responsibilities than the post of the Professor/HOD which was being occupied by the petitioner prior to his posting as Director on tenure basis. Hence, the contention of the respondent-University that the post of Professor/HOD and that of Director is in identical pay scale cannot be accepted especially in view of the fact that the statutes of the respondent-University suggest that the duties, powers and functions of the Professor/HOD

are not identical as comparable to the duties and responsibilities attached to the post of Director. On the other hand, statutes do disclose that the duties and responsibilities of the post of Director are more onerous than that of the Professor/HOD. Moreover, reply filed by the respondent-University is vague and evasive because it has not replied specifically the averments made in the writ petition. The only stand taken by the respondent-University is that the petitioner was appointed as Director on tenure basis for a period of five years or till superannuation in the pay scale of Rs.16400-22400 + allowances and he never represented against the aforesaid pay fixation order. Respondent-University instead of rendering plausible explanation for not granting benefit of FR 22(1)(a) (1) to the petitioner has only cited instructions of audit objection raised by the office of Accountant General in some other cases. Apart from this, vague stand has been taken that pay scales of Professor/equivalent and Dean/Director are identical, therefore, their appointments shall not be deemed to be the assumption of duties and responsibilities of greater importance for the purpose of pay fixation as per Rule 22(1)(a)(1) of FRSR. Hence benefit of pay fixation under Rule 22(1)(a)(1) of FRSR is not admissible in the case of the petitioner. Even aforesaid stand taken by the respondent-University is contrary to the statutes which specify the duties of both the said posts.

13. Mrs. Ranjana Parmar, learned Senior Counsel, appearing on behalf of respondent-University, vehemently argued that the provisions of FRSR referred above would make it crystal clear that the petitioner is not entitled for any relief as granted by the learned Single Judge. She further prayed that learned Single Judge is not competent to decide the equivalence of posts as it is a clear academic question to be decided by the competent authority.

14. Stand of the respondent-University for rejecting the claim of the petitioner has been that the petitioner who was holding a tenure post was not entitled for the benefit of pay fixation under Rule 22(III) of FRSR because the post of Director does not involve higher duties and responsibilities, more particularly when petitioner was holding a tenure post. The aforesaid contention does not hold good in view of material made available on the record including Annexure P-16 which leave no doubt in our mind that the post of Director carries greater duties and responsibilities in comparison to the post of Professor/HOD.

15. In the present case, respondent-University has miserably failed to point out that how petitioner is not entitled for the benefits of grant of one increment on assumption of charge of the post of Director.

16. After careful reading of Rule 22(1)(a)(I) and Rule 22(III), of FRSR, we have no hesitation to hold that findings returned by the learned Single Judge that the petitioner having been appointed to the post of Director for a fixed duration or on tenure basis assume significance while interpreting the provisions of sub Rule 22(III) of FRSR against applicability of Rule 22(1)(a)(I) of FRSR.

17. A plain reading of Rule 22(I)(a)(1) itself suggests that a Government servant

holding a post, other than a tenure post, if promoted or appointed in the substantive, temporary or officiating capacity to another post carrying duties, responsibilities of greater importance than to the post held by him, his initial pay in the time scale of the higher post would be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued.

18. Harmonious reading of Rule 22(I)(a)(1) and Rule 22(III) of FRSR suggests that any person who is appointed to a post carrying duties and responsibilities of greater importance even if the pay scale attached to the said post is equivalent to the pay scale drawn by him while previously serving in a capacity not involving assumption of duties and responsibilities of greater importance shall be entitled for step up of an increment. Bar created by Rule 22(III) of FRSR specifically prohibiting applicability of Rule 22(1)(a)(I) of FRSR would not apply in the case of person appointed on tenure basis. Hence, the findings of the learned Single Judge that bar created under Rule 22(III) of FRSR qua assumption of duties and responsibilities of greater importance would not be applicable in the case of tenure appointment, are based on correct interpretation of rule in vogue and as such no interference is called for.

19. Next argument advanced by Mrs. Parmar also deserves outright rejection by this Court where she submits that the learned Single Judge has fallen in grave error while directing the respondent-University to pay benefits to the petitioner while applying Rule 22(I)(a)(1) of FRSR. The petitioner had specifically prayed for consequential benefits which have been rightly granted by the learned Single Judge in terms of the impugned judgment.

20. In view of aforesaid discussion, we do not find any illegality and infirmity in the impugned judgment passed by the learned Single Judge, as such the same is upheld and the appeal is dismissed along with pending application, if any.