

Suresh Kumar and ors Vs. State (Finance) and ors

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Court : Rajasthan Jodhpur

Decided On : Sep-17-2013

Appellant : Suresh Kumar and ors

Respondent : State (Finance) and ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER

Suresh Kumar & ors. Vs. State of Rajasthan D.B.CIVIL WRIT PETITION NO.10493/2011 UNDER ARTICLE 22 OF THE CONSTITUTION OF INDIA. Date of Order: September 17, 2013 P R E S E N T HON'BLE THE CHIEF JUSTICE MR.AMITAVA ROY HON'BLE MR.JUSTICE P.K.LOHRA Mr.M.S.Singhvi, Sr.Advocate, with Mr.Manoj Bhandari) Mr.Hemant Dutt) for the petitioners. Mr.G.R.Punia, Sr.Advocate, assisted by Mr.R.S.Choudhary) for the respondents. BY THE COURT : (PER HON.MR.AMITAVA ROY, C.J.) 1. Petitioners, who are presently working as Court Masters with this court at its principal seat at Jodhpur, seeks judicial intervention for grant of third selection grade on completion of 27 years of service with consequential benefits including interest at the rate of 18% per annum on the accrued arrears. In addition, annulment of Clause(iii) of para 2, Clause (iii) of para 4 and para 5 of the Circular dated 17.2.1998, so far as it concerns the Court Masters, has been prayed-for. A declaration that persons working on the post of Court Masters are entitled to third selection grade,

equivalent to the pay scale of the post of Assistant Registrar; 2 alternatively, a declaration that the third selection grade cannot be less than 8000-13500, has been sought for as well.

2. We have heard Mr.M.S.Singhvi, Sr.Advocate, with Mr.Manoj Bhandari & Mr.Hemant Dutt, appearing for the petitioners and Mr.G.R.Punia, Sr.Advocate, assisted by Mr.R.S.Choudhary, for the respondents.

3. The pleaded facts outline the rival orientations. While contending that they, in the instant proceedings, project a common grievance based on identical grounds, the petitioners have averred that the service conditions of the staff of this Court, were hitherto governed by the Rajasthan High Court (Conditions of Service of Staff) Rules, 1953, for short hereinafter referred-to as the Rules of 1953, since replaced by the Rajasthan High Court Staff Service Rules, 2002, for short hereinafter referred-to as the Rules of 2002. Referring to the Schedule appended to the Rules of 1953 under the caption non- gazetted post at Serial No.5, the petitioners have recited the line of promotion i.e. from the post of Lower Division Clerk to that of Dy.Registrar (Admn.) with the intervening posts of Stamp Reporter cum Court Fee Examiner (for short hereinafter referred-to as Stamp Reporter) and Bench Reader (for short hereinafter referred-to as Court Master), above the post of U.D.C. in the hierarchy. They have averred that in the exercise of powers under Rules 4, 5, 7 and 22 of the Rules of 2002, the 3 Chief Justice of this Court did specify the mode of recruitment and qualifications for appointment to various posts referred-to in second column of the Schedule thereto vide order dt.5.12.2002. That the nomenclature of the posts was changed by the Notification dated 24.7.2004, has been stated as well. Further, the mode of recruitment and promotion in terms of the order dated 5.12.2002 from the post of Junior Judicial Assistant (earlier designated as LDC) to that of Assistant Registrar/Court Officer, has been detailed with the assertion that the avenue for promotion from the post of Stamp Reporter to the post of Court Master, as provided under the Rules of 1953, has been sustained under the Rules of 2002 as well. The petitioners have further averred that the State Government vide Notification dated 25.1.1992 did prescribe selection scale to the ministerial and subordinate services on completion of 9, 18 and 27 years' service with a view to remove stagnation in posts. The said benefit

has been extended to the staff of this Court as well. This Notification dt.25.1.1992 though has been superseded by another dated 17.2.1998, the pre-requisites for the grant of selection grades have been maintained. The petitioners have clarified that the selection grade is required to be granted as per the pay scales applicable for the promotional posts and, thus, the criteria to be applied therefor is as required for according promotions. According to the petitioners, they were initially appointed on the post of L.D.C. and thereafter promoted to that of U.D.C. and then as Stamp Reporter on various dates. That subsequent thereto, they were further promoted as Court 4 Masters in the same pay scale as admissible to the Stamp Reporter under the Rules of 1953 on different dates as mentioned in the Schedule, has been stated. They have pleaded further that thereby, the pay scale of Rs.5000-8000 as Stamp Reporter was later revised to Rs.5500-9000 and that in terms of the VI Pay Commission, the pay scale of Court Master and Stamp Reporter was further revised to Rs.9300-34800 with only difference in the grade pay for these posts i.e. Rs.3600/- for the post of Stamp Reporter and Rs.4200/- for that of Court Master. Contending that the transition of the petitioners to the post of Court Master from that of Stamp Reporter, is not a promotion, as both the posts carry the same scale of pay and further, no higher responsibility is attached to the post of Court Master and as a matter of fact, the duties of these two posts are often interchangeable, the petitioners have asserted that they are entitled to the third selection grade after completion of 27 years of service corresponding to the pay scale of Rs.10000-15200 (subsequently revised to Rs.15600-39100 with grade pay of Rs.6600/- on the implementation of VI Pay Commission) of the post of Assistant Registrar, the next promotional post. They have referred to the decision rendered by the coordinate Bench of this court in DBCSA No.860/1997 Rajasthan High Court, Jodhpur vs. Babulal Arora decided on 5.11.2009, ruling that as two posts of Stamp Reporter and Bench Reader (Court Master) carry the same pay scale, in absence of anything to demonstrate that the latter post carries with it any higher responsibility, it could not be construed to be in the promotional plane in the hierarchical set up. The petitioners also stated that the Special Leave Petition filed by the High Court against this decision was rejected by the Hon'ble Apex Court vide its judgment dated 26.4.2010. They have averred further that they thereafter submitted a representation before the respondent No.2 requesting for

conferment of third selection grade pursuant to the notification dt.25.1.1992 corresponding to the pay scale of Rs.10000-15200 (subsequently revised to Rs.15600-39100 with grade pay of Rs.6600/- on the implementation of VI Pay Commission) sanctioned for the post of Assistant Registrar on completion of 27 years of service. That reminders were submitted and that the Committee constituted by the Chief Justice of this Court to examine this issue also recommended that the Court Masters were entitled for grant of third selection grade by treating their appointments thereto from the post of Stamp Reporter, as not amounting to promotion, has been averred. It has been pleaded that so far as petitioners No.9 and 12 to 27 are concerned, they would complete 27 years of service subsequent to implementation of VI Pay Commission and that they are ready to opt for conferment of third selection grade then. Apart from referring to the judgment and order dated 19.5.2011 by another coordinate Bench of this court in DBCSA No.607/2010 State of Rajasthan vs. Sohanlal Mathur dismissing the same by relying upon the decision rendered in Babulal Arora (supra), petitioners have insisted that grant of third selection grade to them after completion of 27 years' service, is a matter of right in terms of the Notification dated 25.1.1992, since succeeded by one date

17. 2.1998. According to them, Clause (iii) of para 2 of the Circular dt.17.2.1998 and para 4(iii) read with para 5, apart from being incongruous is illegal, arbitrary and unreasonable, as these cumulatively propose restriction of the selection grade to Rs.6500-10500. That under the Rules of 2002, for those in the pay scale of Rs.5500-9000, the promotional avenue of L.D.C./J.J.A. has been constricted to their detriment and prejudice, has been underlined to contend that the ceiling of selection grade admissible to them to Rs.6500-10500 in addition, is grossly arbitrary, unfair and unjust.

4. The respondent No.1 in its reply, while refuting the impeachment of incongruity of Clause (iii) of para 2 and Clause (iii) of para 4 and para 5 of the Circular dated 17.2.1998, has in essence, sought to emphasize that having regard to the channel of promotion under the Rules of 2002, the recruitment to the post of Court Masters amounts to promotion being third in succession, if traceable from the post of LDC/JJA. While denying the petitioners' claim for third selection grade of

Rs.10000- 15200, in that context, the answering respondent has asserted that the pay scale of Court Masters has been revised with effect from 1.9.2006, consequent whereupon, their grade pay has been fixed at Rs.4200/-, compared to that of the feeder post of Stamp Reporter, pegged at Rs.3600/-. It has been stated that if the higher post carries a pay scale equal to that of feeder post, induction thereto (higher post) is also construed to be promotion, if accompanied by the benefit of fixation of pay under 7 Rule 26A of the Rajasthan Service Rules, for short hereinafter referred-to as the RSR. The answering respondent has, therefore, contended that as the petitioners have already been granted three promotions and sanctioned the benefit of Rule 26A of the RSR, their claim for the third selection grade of Rs.10000- 15200 with grade pay of Rs.6600/-, is misconceived.

5. The respondent No.2 in his reply has, at the outset, questioned the maintainability of the proceedings on the ground of multifariousness of facts and causes of action. They have contended as well that the challenge is liable to be rejected in limine on the ground of undue delay. While dismissing the plea of the petitioners for third selection grade, the answering respondent has insisted that their appointment to the post of Court Master tantamounts to promotion so much so that though the pay scale therefor is same as that for the post of Stamp Reporter, benefit of two annual grade increments (one lower and one upper) under Rule 26A of the RSR was sanctioned to them. While highlighting that under the revised pay scale Rules, 2008 (for short hereinafter referred-to as the Rules of 2008), the grade pay for the posts of Court Master and Stamp Reporter has been sanctioned to be Rs.4200/- and Rs.3600/- respectively, it has been pleaded that consequently, no pay anomaly does exist. That the post of Court Master carries higher responsibilities and is a promotional post, is also demonstrated by the conferment of gazetted status to it (Court Master) by the Government vide its order dated 3.3.2009, has been stated as well. It has been 8 averred that whereas the duties of the Stamp Reporters are confined to their Section, those of the Court Master are more onerous being directly attached to the court. While admitting that at times, in exceptional circumstances and on emergent exigencies, while a Court Master is on leave or is otherwise not available, his duties are attended-to by a Stamp Reporter, the respondent has denied that the duties of these two posts are

conceptually interchangeable. It has been insisted that with the advent of the Rules of 2002, the decision rendered in Babulal Arora (supra) based on the Rules of 1953, is not decisive and that the issues raised, ought to be, if found deserving, examined in the light of the Rules of 2002. The answering respondent has reiterated the stand of the respondent No.1 based on the grant of benefit of Rule 26A of the Rules of 1951 and higher grade pay attached to the post of Court Master to emphasize that the induction of Stamp Reporters thereto (Court Master) is, for all practical purposes, a promotion. Conferment of gazetted status to the post of Court Master has also been referred-to for reinforcing this contention. While refuting the petitioners' plea of constriction of promotional avenues of a Court Master, the respondent has insisted that having regard to the date of enforcement of the Rules of 2002 i.e. 5.12.2002 and the channel of promotion provided thereby depending on the date of completion of 27 years of service, the claim of petitioner, if acceded-to, would ensue in serious pay anomalies.

6. In the above conspectus of pleaded facts, Mr.Singhvi has 9 emphatically argued that the petitioners are entitled to the third selection grade equivalent to the pre-revised pay scale of Rs.10,000-15,200 prescribed for the post of Assistant Registrar on the completion of 27 years of service pursuant to the notification dated 25.1.1992/17.2.1998, and that, the denial thereof being without any justification ought to be adjudged illegal, discriminatory, unfair and unjust. Reiterating that induction to the post of Court Master from that of Stamp Reporter is not a promotion as has been held by this Court consistently in Babulal Arora (supra) and Sohan Lal Mathur (supra), and further apparent from the pay scale recommended by the Sixth Pay Commission for these two posts, the learned senior counsel has urged that in absence of any material on record to demonstrate that the post of Court Master carries duties of higher responsibilities, the respondents' plea to the contrary is wholly untenable, and thus, an appropriate writ ought to be issued to grant the Court Masters the benefit of third selection grade on completion of 27 years of service equivalent to the pay scale of the Assistant Registrar. Mr.Singhvi also placed reliance on the recommendations of the Committee of two Hon'ble Judges of this Court laid on 8.2.2011 also endorsing this interpretation and the claim based thereon. Dismissing the pleaded contention of the respondents that grant of annual grade increments under Rule 26A of the

Rules of 1951, conferment of gazetted status on the post of Court Master and difference in grade pay recommended by the Sixth Pay Commission, while prescribing the same pay scale for the two posts, to be wholly irrelevant for reckoning the appointment of Stamp Reporter as Court Master to be a promotion, the learned senior counsel has insisted that not only the petitioners are entitled to the third selection grade equivalent to the pay scale of the Assistant Registrar, but also interest thereon from the date of the verdict in Babu Lal Arora(supra) for want of any justification in withholding this benefit. He has submitted that the difference in grade pay per se did not render the progression of Stamp Reporter to the post of Court Master a promotion as envisaged in service jurisprudence. The learned senior counsel without prejudice to his contentions as above, has pleaded that the petitioners at least are entitled to the pay scale of 8000-13,500 referred to in the circular dated 25.1.1992/17.2.1998 as third selection grade pay. He urged further that paragraph (iii) of clause (2) and paragraph (iii) of clause (4) read with clause (5) of the circular dated 17.2.1998 are apparently contradictory and the ceiling on the selection grade, it purportedly seeks to impose, is wholly fallacious and unsustainable in law, more particularly, in the face of severe congestion in the promotional avenues of the Court Master under the Rules of 2002. Mr.Singhvi, to buttress his arguments, placed reliance on the decision of the Apex Court in Maharaja Kumar Vs. State of J&K, (2008) 9 SCC 2.and the decisions of the coordinate Bench in Babu Lal Arora(supra) and Sohan Lal Mathur (supra) as affirmed by the Hon'ble Apex Court in the corresponding special leave petitions filed against the same

7. Mr.Punia per contra has maintained that not only the appointment of the Stamp Reporter as Court Master, having regard to the scheme of the Rules in force at the relevant points of time, is a promotion, with the fixation of the pay scale of the court masters by granting two annual grade increments under Rule 26A of the Rules of 1951 and grant of higher grade pay to them following the recommendations of the Sixth Pay Commission, the plea of denial of third selection grade as made is wholly misconceived. According to the learned counsel, the grant of annual grade increments coupled with conferment of gazetted status on the post of Court Master did decisively make it a promotional post qua that of the Stamp Reporter, and thus, the petitioners' claim based on the

circular dated 25.1.1992/17.2.1998 is patently untenable. Abiding by the pleaded stand of the respondent No.2, Mr.Punia has urged that not only the grant of higher grade pay to the Court Master as recommended by the Sixth Pay Commission demonstrates in unequivocal terms that the appointment of a Stamp Reporter thereto amounts to promotion for all purposes, in view of the financial benefits received by them under Rule 26A as well, they are not entitled to any higher pay scale by way of selection grade, as otherwise the same would result in grant of double monetary benefits, otherwise impermissible in law. According to Mr.Punia, the decisions rendered in Babulal Arora (supra) and Sohan Lal Mathur (supra) are not applicable vis-a-vis the Rules of 2002, and thus, are of no assistance to the petitioners. Contending that the recommendations of the Committee of two 12 Hon'ble Judges is also not of any decisive significance as the issues are subjudice, the learned counsel has argued that the claim of the petitioners, if entertained, would even otherwise result in serious pay anomalies.

8. We have traversed the rival pleadings and the documents on record. The competing arguments have been analyzed as well.

9. Admittedly, the petitioners are the serving court masters governed by the relevant rules (earlier, Rules of 1953 and presently, Rules of 2002). That they have joined on different dates in the entry level posts and would thus, complete the required length of service to be entitled to the selection grades as contemplated under the notifications dated 25.1.1992 & 17.2.1998, is also not in dispute. There is no wrangle at the Bar that the benefit of selection grades contemplated in these notifications due to the adoption thereof by this Court, stand extended to its staff holding the posts envisaged. The petitioners, as court masters, principally seek the implementation of these notifications for grant of third selection grade on the completion of 27 years of service as is comprehended therein. In determining the tenability or otherwise of their claim, having regard to the recorded facts, in our estimate, a decision based on the interpretation of the Rules involved and the aforementioned notifications, in the backdrop of the sequence of events, is warranted and no analysis of 13 individual facts would be imperative for such adjudication. A community of interest of the petitioners as a class, is clearly discernible and the mere difference in dates of their joining the

service and completion of 27 years for claiming the third selection grade, in our view, does not render their collective legal pursuit untenable. The challenge to the maintainability of the writ petition on the ground of multifariousness of facts and causes of action, thus fails.

10. As would be detailed hereinafter, under the Rules of 1953 as well as the Rules of 2002, on various dates, the Chief Justice of this Court in exercise of the powers thereunder had by orders dated 18.2.1975 & 5.12.2002 specified the methods of recruitment and qualifications for appointments to various posts referred to in the second column of the Schedule-I, appended thereto. The avenue of contemplated promotion decipherable therefrom, evinces that the one existing under the Rules of 1953 from Stamp Reporter to Court Master, had been maintained under the Rules of 2002. The feeder post for upward movement to that of the Court Master is of the Stamp Reporter. Meanwhile, the Government of Rajasthan vide notification dated 25.1.1992 prescribed selection grades to the members of ministerial and subordinate services on completion of 9, 18 & 27 years of service with a view to remove stagnation in different posts, subject to the stipulations as contained therein. This notification was succeeded by one dated 17.2.1998 on the same terms and conditions. Though in the hierarchical set up, the post of Court Master was lodged higher in rank than that of the Stamp Reporter, both these posts carried the same scale of pay. Construing that the appointment of a Stamp Reporter as Court Master is only a ceremonial lift with no tangible financial benefits, one Babu Lal Arora who as promoted as Bench Reader (later on nomenclatured as Court Master) vide order dated 24.7.2004, invoked the writ jurisdiction of this Court in SBCWP No.402/1995 contending that his induction to the post of Court Master was not a promotion, and that in terms of the notification dated 25.1.1992, he was entitled to the third selection grade relatable to the next higher post. This claim was resisted substantially on the same grounds, as recited in the pleadings of the respondents herein.

11. The learned Single Judge by judgment and order dated 11.7.1997 sustained the claim holding that the appointment of the Court Fee Examiner/Stamp Reporter to the post of Bench Reader (now Court Master) could not be said to be a promotion in the real sense of the term and directed that the writ petitioner be

awarded the third selection grade being of Rs.2000-3200 from the date when any of his junior in UDC cadre had been granted the same. The appeal filed against the said determination was dismissed by a Division Bench of this Court on 12.5.1998, whereafter the challenge was taken to the Hon'ble Apex Court. By its judgment and order dated 12.12.2003, the matter was remanded to this Court for re-scrutiny of the aspect as to whether the appointment of the writ petitioner (Babu Lal 15 Arora) to the post of Bench Reader was really a promotion or a posting in another equivalent post, though termed as promotion by a coordinate Bench of this Court by its judgment and order dated 5.11.2009 in SAW No.860/1997 on an elaborate invigilation of the relevant aspects, both legal and factual, sustained the determination in the writ proceedings that the two posts of Court Fee Examiner/Stamp Reporter and Bench Reader (Court Master) carried the same pay scale and in absence of anything to demonstrate that the post of Bench Reader carried any higher responsibility, it could not be construed to be a promotional one qua that of the Court Fee Examiner/Stamp Reporter. It was thus, concluded that on the promotion of the writ petitioner therein i.e. Babu Lal Arora (supra) to the post of Bench Reader from that of Court Fee Examiner/Stamp Reporter, he could not be said to have been accorded promotion, say third promotion so as to deny him the grant of third selection grade on completion of 27 years of service.

12. In arriving at this finding, their Lordships placed reliance on the decision of this Court in Laxmi Narain Mathur Vs. High Court of Judicature for Rajasthan, 1988(2) WLN-607 deciding in essence vis-a-vis the grades of Senior Bench Readers, Private Secretaries -cum- Judgment Writers (Selection Grade) and Superintendents, all carrying the same pay scale, that the appointment to the post of Superintendent from Senior Bench Reader and/or Private Secretaries -cum- Judgment Writers (Selection Grade) could not be comprehended to be a promotion. The respondents' pleaded contention that the post of Bench Reader carried higher responsibilities, and thus, was rightly treated to be a promotional post was not sustained in absence of any elaboration in that regard or further corroborative materials on record. Significantly, while contesting the writ petition, the respondents had also pleaded that the grant of increments under Rule 26A of the Rajasthan Service Rules to the writ petitioner on his induction as Bench Reader was an index or a definitive determinant to demonstrate that the said lift

was a promotion for all practical purposes. This contention, as the ultimate conclusion recorded in the decision dated 5.11.2009 would legally convey, was rejected as well.

13. The Hon'ble Apex Court, by order dated 26.4.2010, dismissed the Special Leave to Appeal(Civil) CC 6138/2010 preferred against the judgment and order dated 5.11.2009, which in absence of any further challenge as on date thus, has attained finality. To complete the litigational course, suffice it to mention that thereafter a coordinate Bench of this Court decided D.B.Civil Special Appeal (Writ) No.607/2010 (State of Rajasthan & Ors. Vs. Sohan Lal Mathur) 17 (decided on 19.5.2011) founding the same on the ruling dated 5.11.2009.

14. Records reveal that thereafter representations were submitted by the serving Court Masters on 16.3.2010, 14.5.2010 and in August 2010 reiterating the claim for being granted the third selection grade equivalent to the pay scale of the next higher post. On the administrative side, in this factual backdrop, the issue was referred to a Committee of two Hon'ble Judges, which on 8.2.2011 submitted a report recommending as hereunder:- (1) the Stamp Reporter-cum-Court Fee Examiners are required to be treated at par with the Court Masters for the purpose of grant of grade pay in the pay scale of Rs.9300-34800. The fixation of the Stamp Reporters is also required to be made in the pay scale aforesaid with a grade pay of Rs.4200/- instead of Rs.3600/-; (2) the post of Stamp Reporter-cum-Court Fee Examiner being a post equivalent to the post of Court Master deserves consideration for grant of gazetted status at par with the Court Masters; and (3) the issue with regard to grant of selection grades to the Court Masters is required to be dealt with as per the law laid down by Division Bench in DB Civil Special Appeal (Writs) No.860/1997, Rajasthan High Court, Jodhpur v. Babulal, decided on 5.11.2009. Accordingly, the Court Masters are entitled 18 for grant of third selection grade by not treating appointment to the post of Court Master from the post of Stamp Reporter and Court Fee Examiner as a promotion.

15. As the above extract would attest, the Hon'ble Committee did recommend parity in grade pay, conferment of gazetted status to the post of Stamp Reporter - cum- Court Fee Examiner and grant of third selection grade to the Court Masters

by not treating their appointment to that post from the post of Stamp Reporter/Court Fee Examiner as promotion. As the report would further reveal, in concluding thus, the Committee did take note of the recommendations of the Sixth Pay Commission, whereby the Stamp Reporter and the Court Masters were accorded the same pay band of Rs.9300-34800 however with varying grade pay of RS.3600/- and Rs.4200/- respectively. That by notification dated 3.3.2009, the court masters had been conferred gazetted status, was also noticed. The Committee also recorded that the post of Court Master and that of the Stamp Reporter carried equal responsibilities for which, it was of the opinion that there ought to be parity in the grade pay as well. Placing reliance on the decision rendered in Babu Lal Arora (supra), the Committee also concluded that there was no foundation for differentiating these two posts in the matter of grade pay and opined that the gazetted status ought to be ascribed to the Stamp Reporter and Court Fee Examiner as well.

16. Having regard to the march of events, as recited 19 hereinabove, the respondents' exception to the maintainability of the writ petition on the ground of delay, thus, does not weigh with us.

17. Though the parties are not in issue with regard to the avenues of promotion provided by the two sets of rules i.e. Rules of 1953 & Rules of 2002, expedient it would be, for ready reference, to enumerate the channels thereof as hereunder:- Rules of 1953 Lower Division Clerk (by way of direct recruitment) Upper Division Clerk (By way of promotion by seniority) Stamp Reporter -cum- Court Fee Examiners (By way of promotion subject to passing the test) Bench Reader (Promotion on basis of seniority) subject to efficiency Senior Bench Reader/Senior Court Masters (On basis of seniority subject to efficiency) Superintendents (Judicial and General Sections) Assistant Registrar (On basis of Seniority -cum- Merit) Deputy Registrar (Administration) (by way of Selection) 20 Rules of 2002 Junior Judicial Assistant (Lower Division Clerk//Enquiry Clerk/Record Weeder) (by way of direct recruitment) Judicial Assistant(Upper Division Clerk prior to 24.7.2004 (by way of promotion by adjudging suitability under the criteria of seniority -cum- merit from among the junior judicial assistants Stamp Reporter -cum- Court Fee Examiners (by adjudging suitability of Upper Division Clerks as

per the criteria of Seniority-cum- merit Court Masters (by way of promotion by adjudging suitability of Stamp Reporters and Court Fee Examiners under the criteria of Seniority-cum- Merit Assistant Registrar / Court Officer (by way of promotion from among the superintendents, Guest House Manager Gr.I/Assistant Accounts Officers and Court Masters by adopting the criteria of Seniority-cum-merit) 18. To reiterate, the promotional step as contemplated under the Rules from the post of Stamp Reporter to that of Court Master did remain the same. Though under the Rules of 1953, the next promotional post was that of Senior Bench Reader/Senior Court Master followed by Superintendent and Assistant Registrar in the ascending order, under the Rules of 2002 the next promotional post from that of Court Master is of the Assistant Registrar / Court Officer. As a corollary, under the Rules of 2002, if the progression from the post of Stamp Reporter to that of Court Master is not construed to be a promotion, then the third promotion of an incumbent who had joined as Junior Judicial Assistant (earlier designated as Lower 21 Division Clerk) would be as Assistant Registrar /Court Officer, thereby determining his/her pay scale by way of third selection grade.

19. Rule 26A of the Rajasthan Service Rules predicates the manner of fixation of initial pay of a government servant in the time scale of the higher post on his/her promotion in the post in the regular line of promotion in his service, cadre or department, in a substantive, temporary or officiating capacity. Though this provision, in letter and spirit, is applicable to the members of the service of this Court governed by the aforesaid Rules of 1953 & 2002, the essential and indispensable requisite for the application thereof is the incidence of promotion. Grant of increment(s) as envisaged thereunder cannot be a substitute of a promotion or a supplement to an upward hierarchical motion, shorn of its essential legally recognized attributes. If such transition of an incumbent from one post to the other, though at different levels in service ranks, is not actually a promotion as comprehended in law, grant of increment(s) for the purpose of fixation of initial pay as a consequence per se, in our view, would not render the lift a promotion.

20. Vis-a-vis the aspect of conferment of gazetted status and high responsibilities qua the post of Court Master, in the face of the decision rendered in Babu Lal Arora (supra) and the renewed scrutiny made by the Committee of two Hon'ble

Judges, we are disinclined in absence of any overwhelming and unimpeachable material to the contrary, to conclude otherwise at this distant point of time. We are also in respectful agreement with the Committee qua its view with regard to the grade pay stipulated for the two posts. The difference in grade pay, as recommended by the Sixth Pay Commission and incorporated in the Rules of 2008, also does not, in our comprehension, make the post of Court Master a promotional one in comparison to that of the Stamp Reporter.

21. The Hon'ble Apex Court in *Maharaja Kumar Vs. State of J&K* (supra), did enounce in emphatic terms that though the constitutional guarantee enshrined in Articles 14 & 16 does not warrant that an illegality should be perpetuated by applying wrong decision in other cases, it was underlined as well that once a decision rendered by a court of law has attained finality, the same ought to be accepted for granting similar benefits, as extended thereby.

22. As recited hereinabove, the adjudication in *Babu Lal Arora* (supra) after a prolonged and repeated scrutiny of the issues involved by different forums did reach its finality on 26.4.2010. The eventual verdict has not only been relied upon for further adjudications, but also in deciding the same issues on the administrative side. In absence of any cogent, convincing and legally cognizable persuasive reasons, we are disinclined to sustain the plea of inapplicability of the decision in *Babu Lal Arora* (supra) to the post 2002 fact situations. We thus affirm that the appointment of a Stamp Reporter to the post of Court Master under the relevant Rules is not a promotion and cannot thus be acted upon to be a third promotion for the Lower Division Clerk/Junior Judicial Assistant in the service of this Court to determine their third selection grade under the notifications dated 25.1.1992/17.2.1998.

23. The impeachment of para 2(iii) and para 4(iii) read with para 5 of the notification dated 17.2.1998, next demands analysis. Admittedly, the stipulations contained therein are identical to those embodied in one dated 25.1.1992. The notification dated 17.2.1998 proclaims to be an instrument to provide relief to the employees in class IV and ministerial and subordinate services and those holding isolated posts and drawing pay in the Revised Pay Scales Rules 1998, the

maximum of which does not exceed Rs.10,500/-, by granting three selection grades on completion of 9, 18 & 27 years of service. The notification dated 17.2.1998 succeeds the one dated 25.1.1992 and stipulates that it would not apply to the government servants in the State Services as defined in the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 and to those who have got selection grades equivalent to the pay scales of the lowest post of State Service to which they are eligible for promotion or selection grade of 8000-13500 whichever is lower in terms of the order. Paras 2(iii), 4(iii) & 5 thereof read as hereunder:- "2. (i) (ii) 24 (iii) The third selection grade shall be granted from the day following the day on which one completes service of twenty seven years, provided the employee has got three promotions earlier as might be available in his existing cadre and first or the second selection grade granted to him as the case may be, was lower than the pay scale, the lowest post of State Service to which he is eligible for promotion or selection grade of 8000-13500 whichever is lower.

4. (i) (ii) (iii) The third selection grade wherever admissible in terms of this order, shall be the pay scale of the third promotion post available to that employee in the same service / cadre, provided that in case the third promotion post available in the same service/ cadre carries a pay scale higher than the pay scale of 8000- 13500 (13) or there is no third promotion post in the same service/cadre or the employee does not possess academic qualifications prescribed for promotion and in respect of the isolated posts, the third selection grade shall be the pay scale corresponding to his existing pay scale (pay scale of the posts held or the selection grade), as specified in paragraph 5.

5. In case there is no post for first, second or third promotion, as the case may be, in the same service/cadre or the employee does not possess academic qualifications prescribed for promotion and in respect of the isolated posts, the selection grades shall be as specified below:-

S.No.	Existing Pay scale	Selection Grade
1.	2550-3200 (1)	2610-3540 (2)
2.	2610-3540 (2)	2650-4000 (3)
3.	2650-4000 (3)	2750-4400 (4)
4.	2750-4400 (4)	2950-4475 (6)
5.	2950-4475 (5)	3200-4900 (7)
6.	3050-4590 (6)	4000-6000 (9)
7.	3200-4900 (7)	4000-6000 (9)
8.	3400-5200 (8)	5000-8000 (10)
9.	4000-6000	

(9) 5000-8000 (10) 10. 5000-8000 (10) (i) 6500-10500 (12) In those cases where next promotion post is in a state service. (ii) 5500-9000 11 In other cases 11. 5500-9000 (11) 6500-1050

12. 6500-10500 (12) 8000-1350

24. A conjoint reading of these excerpts does testify that under clause 2(iii), the third selection grade is to be granted from the date following the date on which one completes 27 years of service, if the employee concerned has not got three promotions earlier, as might be available in his/her existing cadre, and that, his/her first or second selection grade as granted was lower than the pay scale in the lowest post of State Services to which he/she is eligible for promotion or selection grade of 8000- 13500, whichever is lower. This paragraph therefore, marks the conditions of eligibility to be entitled to the third selection grade. Noticeably, a ceiling on the pay scale accorded to him/her, consequent upon first or second selection grade, has been prescribed thereby for adjudging his/her entitlement for the third selection grade.

25. Clause 4(iii) specifies the pay scale in case the third 26 selection grade, in terms of the other relevant covenants in the notification, is admissible. In terms of this provision, in case the third promotion post available in the same service/cadre carries a pay scale higher than the pay scale of 8000-13500 or the employees does not possess academic qualifications prescribed for promotion and isolated posts, the third selection grade would be the pay scale corresponding to his/her existing pay scale, as specified in paragraph 5.

26. Paragraph 5 catalogues the selection grades corresponding to existing pay scale of the employee.

27. Unmistakably, whereas paragraph 2(iii) codifies the norms of eligibility for grant of third selection grade with clear restriction on the pay scales accorded to the incumbent concerned by way of first or second selection grade, paragraph 4 (iii) specifies the pay scale by way of selection grade in the contingencies, as mentioned therein. Not only, in our estimate, these two paragraphs read with paragraph 5, are logically compatible with each other, having regard to the

supervening discretion and power of the competent authority as well as the nature of the benefit comprehended, it is always permissible to regulate the same on uniformly applicable criteria. The eventualities engrafted in paragraph 4(iii) have not been assailed to be irrelevant or arbitrary, and thus, reference to the pay scales embodied in paragraph 5 to determine the corresponding selection grade in those fact situations cannot be repudiated to be 27 illegal, discriminatory, unjust and null & void. The challenge based on incongruity of paragraphs 2(iii), 4(iii) & 5 thus, does not commend for acceptance.

28. Significantly, this aspect of the debate did not figure in Babu Lal Arora(supra). It cannot be gainsaid however that the third selection grade, even if available to the Court masters, as determined hereinbefore, actual entitlements have to be essentially in terms of the notification dated 25.1.1992 and/or 17.2.1998, as the case may be, and not beyond the same. At all relevant times, prior to the recommendations of the Sixth Pay Commission, the serving Court masters had been sanctioned the pay scale of Rs.5500-9000, which on revision, thereafter got enhanced to Rs.9300-34800 with grade pay of Rs.4200/-. To reiterate, the same revised pay scale was sanctioned also for the Stamp Reporter, however, with a revised grade pay of Rs.3600/-. The corresponding pay scale of the Assistant Registrar before and after pay revision was Rs.10,000-15,200 and Rs.15,600-39,100 with grade pay of Rs.6600/- respectively.

29. In this conspectus of facts, in terms of the notification dated 25.1.1992/17.2.1998, as the case may be, the Court masters, in terms of paragraphs 2(iii), 4(iii) & 5, the serving Court masters with pay scale of Rs.5500-9000 would be entitled to the third selection grade of Rs.6500-10500.

30. In view of the interpretation of paragraphs 2(iii), 4(iii) & 5, 28 we are unable to extend our concurrence to the claim of the pay scale of Rs.8000-13500 made by the petitioners or that of Rs.10,000-15200 of the Assistant Registrar before the pay revision. The relevant notification(s) having limited the third selection grade in conformity with the stipulations embodied therein, any claim based thereon has to abide by the same.

31. The upshot of the above determination is thus that the appointment of a Stamp Reporter to the post of Court Master is not a promotion under the relevant Service Rules and the petitioners would be entitled to the selection grade in the pay scale of Rs.6,500-10,500 as stipulated by the notification dated 25.1.1992/17.2.1998 on completion of 27 years of service. However, in computing and releasing the actual financial benefits, the date of conferment of gazetted status to the post of Court Master would be the cut off date therefor, having regard to the ambit of applicability of the notification dated 25.1.1992/17.2.1998, as the case may be. The actual relief of third selection grade would, thus, stand limited upto 2.3.2009. The challenge to paragraphs 2(iii), 4(iii) & 5 is negated. The petition is allowed to the extent indicated hereinabove. (P.K.LOHRA), J.

(AMITAVA ROY), CJ RANKAWAT JK, PS SHASHIKANT, Jr.PA

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