

Dr. Ram Kumar Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Feb-11-1998

Reported in : 1998(1)WLN136

Judge : B.S. Chauhan, J.

Appeal No. : S.B. Civil Writ Petition Nos. 2105, 2169 of 1995

Appellant : Dr. Ram Kumar

Respondent : State of Rajasthan and ors.

Advocate for Def. : Ms. M.S. Chaturvedi-learned Counsel

Advocate for Pet/Ap. : Mr. Joshi-learned Counsel

Disposition : Petition Allowed

Judgement :

B.S. Chauhan, J.

1. The controversy in both these cases falls within a very narrow compass as the main relief, which the petitioners have sought in these writ petitions, has been granted to them by the respondents during the pendency of these writ petitions.

2. The petitioners were working as the Deputy Directors in different wings of the Animal Husbandry Department of the State of Rajasthan and they were asked to

look-after the additional work of the Joint Directors for some period in the year 1992. For the said period, the petitioner in the first writ petition was granted 5% of his then existing pay as the additional allowance under Rules 35 and 50 of the Rajasthan Service Rules, 1951 (hereinafter referred as 'the Rules, 1951') vide order dated 30.10.1993. Subsequently, the petitioner was asked to look-after the work of Deputy Director in addition to his own duties from 20.8.1993 as is evident from the order dated 16.8.1993 contained in Annexure. Rule 3 to the petition and for that under the said Rules of 1951, the petitioner was granted 10% of his existing pay as additional allowance for a maximum period of 180 days from the period commencing from 16.8.1993.

3. Similarly, the petitioner in another writ petition had been granted the same allowances for the period as is evident from the order dated 16.8.1993 and it was given from 4.7.1992.

4. The petitioners were considered for regular promotion for the post of Joint Director by the Departmental Promotion Committee (D.P.C.) held on 28.9.1994. However, the result could not be declared for a long time and being aggrieved and dissatisfied, these petitions have been filed seeking the direction to the respondents for declaration of the result of the D.P.C. held on 28.9.1994 and to pay them the salary which is payable on the post of Joint Director from the dates they were working on the said posts.

5. During the pendency of these petitions, the respondents declared the result of the D.P.C. vide order dated 31.5.1995 and the petitioners had been promoted in the vacancies of 1991-92 in the first case and in the vacancy of 1990-91 in the second petition. Now, the grievance of the petitioners is limited regarding the pay from the date they were looking after the work of the Deputy Directors.

6. Ms. M.S. Chaturvedi-learned Counsel for the respondents, has urged that the Rajasthan Animal Husbandry Service Rules, 1963 (hereinafter referred to as 'the Rules, 1963') were subjected to modification/amendment and no regular promotion could be made for a period of fifteen years and the same Rules have subsequently been amended and promotions have, now, been made according to the said Rules. Moreover, after holding the D.P.C, the respondents have received a very

large number of representations which required consideration by the Authorities etc. and hence some unexpected delay had occurred in making the regular promotions. However, she has submitted that the petitioners had been paid the additional allowances to look after the additional work as per the Rules of 1951 and the same had been withdrawn: thus, the petitioners are not entitled for any arrears of pay, however, they had already been promoted notionally from the years 1991-92 and 1990-91 respectively.

7. Mr. Joshi-learned Counsel for the petitioners, submitted that once the petitioners' claim for promotion had been accepted and they had been promoted with retrospective effect, they are entitled for the salary of the Joint Directors atleast from the dates they had been granted the regular promotions and they cannot be deprived of the said benefit by giving them promotion from the said retrospective dates notionally.

8. It is evident from the record, particularly Annexure. Rule 6 contained to the additional affidavit of the respondents, that the petitioner in the first case has been granted promotion w.e.f. 31.3.1992 and he has, also, been given the increments in the pay from the said date as his pay scale had been Rs. 3700-5000/- and the his pay was shown on 11.10.1992 at Rs. 3950/-; on 11.10.1993 at Rs. 4075/- and on 11.10.1994 at Rs. 4200/-. However the said order provides that they shall be entitled for the regular pay scale with effect from 2.6.1995.

9. In the second petition, a similar situation became evidence and he has been given promotion with effect from 1991 as his pay has been fixed on 11.10.1991 at Rs. 3825/-.

10. On the basis of the aforesaid documents, Mr. Joshi has submitted that the petitioners are entitled for the arrears of pay atleast from the dates they were looking after the work of the Deputy Directors in addition to the work of their own post. In support of his submission. Mr. Joshi has placed reliance on the judgment of the Supreme Court in *Yudhister Mohanti v. State of Orissa* 1987 SLR 2, wherein it has been held if the promotion is given with retrospective effect and the person concerned had been working on the said post in officiating capacity since long, he would be entitled for the pay scale of the higher post atleast from the date his

regular promotion has been assigned to him.

11. Reliance may, also, be placed on Ramakant Sripal Sinan Advalpalkar v. Union of India and Ors. AIR 1991 SC 1147. wherein the Apex Court has held that when an officer substantively holding a lower post is asked merely to discharge the duty of a higher post he cannot be treated as on promotion. In such a case he does not get the salary of (he higher post and he gets only that which in service parlance is called as 'charge allowances'. Such a situation will contemplate where exigency of public service necessitated such arrangement and in that case the person, though continues to hold his substantive lower post, only discharges the duties of the higher post essentially as a stop-gap arrangement.

12. Similar view has been taken in Smt. P. Grover v. Stole of Haryana and Anr. AIR 1983 SC 1060, wherein it has been held that promotion on acting basis would entitle the officer concerned of the pay of a higher post unless there are rules providing for contrary to it. The Apex Court has observed that in absence of any rules justifying such refusal to pay an officer promoted to a higher post the salary of such higher post it must be held that such an officer is entitled to be paid the salary of the higher post.

13. In Union of India v. Janki Raman. AIR 1991 SC 2011. the Apex Court has examined a case where a person though appointed with retrospective effect because of the pendency of the disciplinary proceedings against him. is entitled for back wages as the principle of 'no work no pay' was not applicable in such a case. But no such universal rule can be laid down and it will depend upon the facts and circumstances of the case where the officer has been facing the disciplinary proceeding and after exoneration, has-been given the promotion with notional seniority.

14. The same view has been taken subsequently by the Supreme Court by approving and following the said judgment in Janki Raman's case, in Stale of Madhya Pradesh v. Syed Nasim Jahir and Ors. : (1993)ILLJ174SC and the Apex Court has held that if an employee has been exonerated in the enquiry and after opening the seal cover it is found that the recommendations have been made in his favour, 'he shall be notionally promoted with effect from the date when the

person junior to him was promoted to the post.' In that event he shall be entitled to all consequential benefits including back wages.

15. In *State of Haryana v. O.P. Gupta and Ors.* : [1996]1SCR468 . notional promotion was directed to be made because there had been dispute regarding the interpretation of the Rules for making promotion and no person had been given opportunity to work on the post, following the law laid down by the Apex Court in *Palaru Ramkrishnath v. Union of India.* : (1989)11LLJ47SC and *Virendra Kumar v. Avinash Chandra Chaddha.* : [1990]2SCR769 . wherein the Apex Court has approved the principle of 'no pay for no work'.

16. Thus the legal position, which emerges from the aforesaid cases is that where a person was willing to work but he was not allowed to work for the circumstances and he was subsequently promoted to the post with notional seniority etc. he should be allowed the arrears of salary, also.

17. In the light of the above if the instant case is examined, it is not disputed by Ms. Chaturvedi that the petitioners in both these cases had been working till the date of actual promotion granted to them. However, her contention is that they had allowed additional charges as per the Rules applicable. The said rules specifically provide that such amount shall be paid only for a maximum period of 180 days; meaning thereby the Rules are not applicable in such cases beyond the statutory period of 180 days and looking to the totality of the circumstances of these cases where the petitioners had been given promotion with back dates and fixed their salary giving reference to back dates in each year as is explained in Annexure. Rule 6 by the State itself, there can be no justification of denying the arrears of salary to them.

18. Thus in view of the above, the ends of justice will meet if the petitioners remain satisfied with 10% allowances for a period of six months, as provided under the Rules referred to above, and the State is directed to pay the arrears of salary till the date of their regular selection.

19. In view of the above, the petitions succeed and are allowed. The respondents are directed to make the payment of arrears of salary so directed to the petitioners

within a period of six months from the date of submission of the certified copy of this order by the petitioner to the respondents. No order as to the costs.

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