**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Satya NaraIn and ors. Vs. State of Rajasthan and ors.**

**Satya NaraIn and ors. Vs. State of Rajasthan and ors.**

**SooperKanoon Citation** : sooperkanoon.com/768313

**Court** : Rajasthan

**Decided On :** Apr-07-1992

**Reported in** : 1993(1)WLC425; 1992(1)WLN473

**Judge** : Milap Chandra Jain, J.

**Appeal No.** : S.B. Civil Writ Petition Nos. 4012, 4450, 4590, 4593, 4449 and 4800 of 1990

**Appellant** : Satya NaraIn and ors.

**Respondent** : State of Rajasthan and ors.

**Judgement** :

**Milap Chandra Jain, J.**

1. These Writ Petitions have been filed for quashing the order No. PHQ/Re-0rg./89/467-91 date July 19,1990(Annexure 2) of the Inspector General of Police (Reorganisation), Rajasthan, Jaipur by which he has clarified his earlier order No. PHQ/Re-org/89/281-85 dated October 4,1989 (Annexure 1). As the facts and involved in all these cases are similar, they are being disposed of by this common order.

2. In all these cases, petitioners were employees of the police department. They along with others took part in the non-gazetted police employees' strike held in the

year 1979. Subsequently, they were dismissed from the service. Their cases went to the Supreme Court. It directed that the petitioners should prefer appeals against the orders of their dismissal, the Director General of Police would designate the appellate authority to dispose of the appeals & the Inspector General of Police (Re-organisation), Rajasthan Jaipur (respondent No. 3) was designated as the appellate authority. By order dated October 4, 1989 (Annexure 1), the appeals were partly allowed and the punishment of dismissal was altered to stoppage of two grade increments without cumulative effect. The appellate authority also directed that the appellants shall be paid 3/4th of the pay and allowances of the period from the date of dismissal to the date of reinstatement (in short the said period), the rest shall stand forfeited, the said period will be treated as on duty for the purposes of pension, gratuity, fixation and seniority only and the stoppage in the grade increments will be effected from the date of joining the duty. The pay of the petitioners was fixed in the revised pay scales after taking into account grade increments which fell due during the said period. They have not been paid the arrears of pay and allowances in terms of the order Annexure 1. On July 19, 1990, order (Annexure 2) has been passed by the respondent No. 3 modifying the earlier order Annexure 1 that the grade increments secured during the said period would not be taken into consideration.

3. The respondents No. 1 to 3 admit in their reply almost all the aforesaid averments made in the writ petitions. They have averred in it that in compliance with the order Annexure 1, the pay of the petitioners was fixed in the revised pay scales of 1981 and 1986, due to wrong interpretation of the said order annual grade increments which fell due during the said period were taken into consideration, a bill for arrears of pay and allowances in respect of Shantilal was got prepared and sent to the Treasury Officer, Udaipur, he returned it with the objection that the order of reinstatement (Annexure 1) does not specifically direct that the said period will be treated as on duty for the purpose of annual grade increment also as required under Rule 54 (5) Rajasthan Service Rules and as such fixation of pay taking into consideration grave increments falling due during the said period was not in accordance with the Rules and desired explicit order for the grant of annual grade increments vide Annexure 1. It has further been averred that the order dated July 19,1990 [Annexure 2) is clarificatory in nature and the

earlier order Annexure 1 is not modified by it.

4. It has been contended by the learned Counsel for the petitioners that as provided under Rule 29, Rajasthan Service Rules annual grade increments are drawn as a matter of course, accordingly they were taken into consideration while fixing the pay of the petitioners under the revised pay scales of 1981 and 1986 the petitioners cannot be deprived of their annual grade increments simply on the said objection of the Treasury Officer. He further contended that after passing of the order dated October 4, 1989 (Annexure 1 ], the Disciplinary Authority became functus officio and it could not subsequently pass impugned order dated July 19, 1990 (Annexure 2). He, also contended that the impugned order being against the interest of the petitioners could not be passed without giving them an opportunity of hearing and on this ground also it deserves to be quashed. He lastly contended that the order Annexure2 amounted to reviewing the earlier order Annexure 1 which could not be reviewed as there is no provision for the review of an earlier order by the Appellate Authority under the Rajasthan Civil Services (Classification, Control and Appeal] Rules, 1958.

5. In reply, it has been contended by the learned Government Advocate that the order Annexure 1 does not specify that the said period will be treated as on duty for the purpose of annual grade increment, the Treasury Officer, Udaipur rightly raised objection when fixation of the pay of the petitioners was done under the revised pay scale rules of 1981 and 1986 after taking into consideration the grade increments which fell due during the said period and has rightly sought express order for this. He further contended that the order Annexure 2 is simply an order of clarificatory nature as it has neither modified nor amended the earlier order Annexure 1. He lastly contended that if was not necessary to pass order Annexure 2 as the earlier order Annexure 1 did not specifically direct that the said period would be treated as on duty for the purpose of annual grade increments also as required under Rule 54(5), Rajasthan Service Rules.

6. Admittedly, the petitioners were dismissed from service, the dismissal orders were set aside on their appeals and they were reinstated vide order dated October 4,1989 (Annexure 1). Rule 54, Rajasthan Service Rules deals with reinstatement.

It would be best to quote it here. It runs as under:

54. Re-instatement.--(1) When a Government servant who has been dismissed, removed, compulsorily retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension, the authority competent to order the re-instatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government Servant for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and

(b) Whether or not the said period shall be treated as a period spend on duty.

(2) Where such competent authority holds that the Government Servant has been fully exonerated or, in the case of suspension that it was wholly unjustified, the Government servant shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or compulsorily retired as a penalty or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and dearness allowance as such competent authority may prescribe.

(4) In a case falling under Clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under Clause (3) the period of absence from duty shall not be treated as a period on duty unless such competent authority specifically directs that it shall be so treated for any specified purposes-

Note:- The order of the competent authority regarding the treatment of the Period of absence from duty passed under this proviso is absolute and no higher sanction would be necessary for the grant of extra-ordinary leave in excess of three months in so far as temporary Government servants are concerned.Provided that if the Government so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the

Government servant.

7. It is clear from order dated October 4, 1989 (Annexure 1) that the petitioners have not been fully exonerated as they have been allowed 3/4th of the pay and allowances only and the rest have been forfeited. As such their cases fall under clause [3] of the above quote ruled. Sub-rule [5] clearly provides that in a case falling under clause [3] the period of absence from duty shall not be treated as a period on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose. The last para of the order dated October 4, 1989 [Annexure 1) runs as under:

The period from the date of dismissal to restoration will be treated on duty for the purpose of pension, gratuity, fixation and seniority only. The stoppage in grade increments will be effected from his date of joining the duty.

It is clear from it that it does not specifically direct that the period from the date of dismissal to reinstatement shall be treated as a period on duty for the purpose of annual grade increment as has been done for the purposes of pension, gratuity, fixation and seniority. The word 'Only' appearing after the words 'and seniority' is significant. It may also be mentioned here that the above quoted paragraph clearly specifies that stoppage of grade increments (inflicted as penalty) will be effected from the date of joining the duty. It cannot, therefore, be said that the words 'annual grade increment' escaped mention in the first part of the above quoted para of the order Annexure 1 inadvertantly or accidentaly. The appellate authority consciously did not specify that the said period will be treated as a period on duty for the purpose of annual grade increment also. The Treasury Officer rightly raised objection that the annual grade increments falling due during the said period could not be taken into consideration while fixing the pay of the petitioners under the revised pay scales rules of 1981 and 1986 and has rightly desired express order of the competent authority in this direction. It may also be mentioned here that clause [a] of Rule 209, Rajasthan Service Rules provides that a government servant who is dismissed, removed or compulsorily retired from public service, but is re-instated on appeal or revision, is entitled to count his past service. Its Clause (b) further provides that period of break in service between the date of dismissal and the date

of re-instatement shall not count unless regularised as duty or leave by a specific order of the authority which passed the order of re-instatement.

8. Admittedly, the order dated, October 4, 1989 (Anx.-1 ) does not specifically direct that the said period of absence shall be treated as on duty for the purpose of annual grade increment also. As such no order in negative was required to be passed in this connection. For allowing annual grade increment, a positive order was necessary. In view of its specific omission in the order Annexure 1, the order Annexure 2 was superfluous and was not necessary.

9. It is correct that Rule 29, Rajasthan Service Rules provides that an increment shall ordinarily be drawn as a matter of course. After the orders of dismissal, the petitioners no more remained in service. Drawal of increment arises only when one is in service and not otherwise. Rule 31, Rajasthan Service Rules contains provisions prescribing the conditions on which service counts for increments in a time scale. 'TIME PAY SCALE' has been defined in Rule 7(37], Rajasthan Service Rules is follows:

(37) Time Scale pay--means pay which, subject to any condition prescribed in these Rules, rises by periodical increments from a minimum to a maximum.

Time scales are said to be identical if the minimum, maximum, the period of increment and the rate of increment of the time-scales are identical.

A post is said to be on the same time scale as another post on a time-scale if the two time-scales are identical and the post fall within a cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degrees of responsibility, in a service or establishment or group of establishment, so that the pay of the holder of any particular posts is determined by his position in the cadre or class and not by the fact that he holds that post.

No such condition is fulfilled in these case. Rule 54, Rajasthan Service Rules only deals with this subject.

9. In view of the aforesaid finding that the order Annexure 2 is superfluous and unnecessary, it is not necessary to decide other objections raised by the learned Counsel for the petitioner against its validity and to quash it.

10. Consequently, the writ petitions are disposed of with the aforesaid observations. The respondents are directed to pay the entire arrears of the pay and allowances to all the petitioners in terms of the order dated October 4, 1989 (Annexure 1) within three months from today. The annual grade increments which fell due during the period from the date of dismissal to the date of re-instatement will not be taken into consideration.

11. No order as to costs in all cases.

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**