

Dr. G.A. Gujri Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Apr-25-2006

Reported in : 2007(1)JKJ489

Judge : Bashir A. Kirmani, J.

Appellant : Dr. G.A. Gujri

Respondent : State and ors.

Judgement :

Bashir A. Kirmani, J.

1. About to complete 25th year of its sad continuation, this writ petition forms the latest round of litigation that was waged by petitioner against respondent-State and its functionaries as far as back in 1982 but did not end despite express court orders in his favour, and arises now with the following circumstantial backdrop.

2. Claiming to have been wrongfully denied his appropriate and rightful seniority in the department the petitioner, who has been member of the Gazetted service of the State Animal Husbandry Department, instituted SWP No. 111/82 along with some co-petitioners which was disposed of by this court in September 1998 in following terms:

This petition is accordingly disposed of with the direction that respondent authorities would take notice of the observations made above and the requisite consequential relief be granted to the petitioner, Government has already granted such a benefit to a person similarly situate namely Dr. S.S. Dua vide Government Order No. 245-ASH of 1995 dated 6.12.1995. this can also not be ignored. Government as a model employer has to act consistently. The Government would take notice of above order and grant requisite relief. Let matter be considered and decided within a period of three months. Period of three months would begin from the date copy of order passed by this Court today along with Writ petition and annexures and the Government order referred to above is made available to the Government/Respondents.

3. The judgment was however assailed by respondents before D.B through a time barred LPA which was turned down with total refusal to condone the delay, in following terms:

We are satisfied that delay in filing this appeal is gross. In the absence of sufficient cause being established, delay cannot be condoned. Accordingly, this application is dismissed.

Aggrieved thereby the respondent-State preferred a Special Leave Petition before Hon'ble Apex Court which was dismissed on 14.02.2000, and thus, the order of this court dated 4th Sept. 1998 assumed finality.

4. The finality of order as such did however not prove to be so final as to impress the respondent-State, who instead of respecting it in letter and spirit tried to find in roads into essence of the order between its own lines, and instead of treating the petitioner at par with one Dr. S.S. Dua in terms of S.B Judgment mentioned herein above, who had been allowed promotions on notional basis from 11.9.74 to 31.3.76 as Deputy Director and from 08.07.78 to 04.04.1984 as Joint Director, the benefit covering a span of 7 years and 2 months, even though, as per petitioner's claim he did not possess even the basic qualifications as per eligibility criterion prescribed for the entry level posts in Gazetted services of the department. Instead the petitioner was given the benefit of notional promotions as Live stock Officer from 05.04.1972, as Project Officer from 01.05.1982, as Dy. Director from

19.05.1984, and as Joint Director from 16.09.1992, under Government order No. 64-ASH/2000 dated 09.08.2000; only to be modified by a subsequent Order 16-ASH of 2003 dated 31.01.2003 which even violated the assurance of Government counsel as given before this court in contempt proceedings on petition No. 68/2001. In both orders however, the grade benefit as Joint Director has been given to petitioner from 1992 while to Dr. S.S. Dua aforementioned, the same has been given w.e.f 1984. Otherwise also in so far as the question of promotions involved in both the cases are concerned, the petitioner claims to have been meted out a treatment quite different from and inferior to that allowed in favour of said S.S. Dua which he has brought out according to following table:

Petitioner Sh. S.S. Dua

Significantly Sh. S.S. Dua id not even possess

the basic qualification prescribed as a matter of

eligibility for the appointment to the entry level

post borne on the Cadre of the Animal Husbandry

Gazetted Service.

Appointment: 11/59 Appointment: 11/59

1. Notionally promoted as L.D.O 1. Promoted as regular as SDO in the
in the Grade of 540-950 w.e.f 1972. grade of 540-950 with effect from 1963.

2. Notionally promoted as project 2. Promoted as regular as Project
Officer with effect from 1982. Officer with effect from 1969.

3. Notional Promotion as Deputy 3. Promoted as regular Deputy
Director, Animal Husbandry with Director, Sheep with effect from
effect from 1984. 1974.(Notiqnal period from 1974 to 1976)

4. Notionally promoted as Joint 4. Promoted as Joint Director, Sheep Director with effect from 1992 till with effect from 1978 (Notional period date of retirement e.g 6/93. from 1978 to 1984).

5. Regular from 1984 to 3/96
upto date of his retirement.

and sought quashment of the aforesaid orders as being violative of the court direction, & petitioner's rights to treatment at par with aforesaid Dr. S.S.Dua thereunder.

6. In reply, respondents have inter-alia pleaded that impugned order has been passed in compliance of judgment of this court dated 04.09.1998 and while maintaining that petitioner's service profile was inferior to Dr. S.S. Dua, have also pleaded that said S.S. Dua was an officer of Sheep Husbandry department which is different from than Animal Husbandry Department where the petitioner was serving. During course of threshold submissions the counsel for petitioner has in addition to contents of writ petition, also argued, that the respondents have through out been dis-criminating against petitioner despite court direction to the contrary, while respondents' counsel has contended that in view of his service profile the petitioner could not claim similarity with the aforesaid S.S. Dua and as such equality of treatment with him.

7. I have heard learned Counsel and considered the matter. With agreement, the matter is admitted and taken up for final disposal. The fountain head of the present round of litigation between the parties is court order dated 04.09.1998 wherefrom petitioner derives his cause to agitate the matter presently by alleging violation thereof, while respondents claiming compliance, seek rejection of the cause projected, which necessitates a reference to aforesaid judgment in its detail, which is quoted verbatim herein below:

Petitioner came to be appointed as Extension Officer in the Veterinary service in the year 1959. At that point of time, there were no specific rules. Appointments

were being made in pursuance of General Rules namely Rules Regulating recruitment to Gazetted Services, 1939. It was in the year 1970 that specific rules dealing with the Department in question came to be framed in terms of Section 124 of the J&K; Constitution. This section is similar to Article 309 of the Constitution of India. The Service by the name of Jammu and Kashmir Animal Husbandry (Gazetted) Service Recruitment Rules of 1970 came into existence. Qualifications were laid down. Petitioner became member of the service, in terms of Rule 14 of the Rules. This Rule which is in the nature of a repeal and saving clause made a special provision to the effect that any appointment made under the old Rules shall be deemed to have been made under the Rules of 1970.

Somehow or the other, petitioner was placed below those members of the service who came to be appointed directly to the service after framing of the Rules of 1970. It is this factor which led the petitioner to approach this court. He submits that as there was no Service Rules in 1959 and as he was inducted in the service in pursuance of Rule 14 of the Rules of 1970, therefore, he should rank senior to all those employees who came in service after him. This claim of the petitioner is being denied on the ground that he did not fulfill the requisite educational qualifications which were required to be there for becoming a member of the service.

It be seen that once a person becomes member of the service, then this artificial distinction cannot be created with a view to deprive the benefit of service which the petitioner had rendered for 11 years. If for any reason, petitioner was not eligible, then he should not have been inducted into the service. Once he was inducted in the service, then the question of his not fulfilling the qualification would not arise. Independently of above it be seen that the petitioner had acquired the qualification later on. This he did in 1972.

In view of the above situation, I am of the view that the petitioner is well within his rights to contend that his services should be counted with effect from 1959 and he be allowed benefit thereof.

It be seen that this petition is perused by Dr. G.A. Gujree, Other petitioners have not pressed this petition. Petitioner has since retired from service. He has been

given some benefits by the State Government on its own level. He wants these benefits to be given retrospectively, and thereafter wants same to be reflected in his pension claims.

The operative portion of the judgment has already been quoted in para (2), herein before. Thus, reading the judgment as an organic whole, the contents of para 4 and the first part of concluding para sufficiently indicate that while taking the view that petitioner was well within his rights to contend that his service should be counted w.e.f 1959 alongwith the consequential benefits, the court wanted the respondents to grant requisite consequential relief to petitioner in due notice of the view expressed. While doing so the court has cited the example of Dr. S.S. Dua for the Government to follow in the matter, as a model employer obliged to act with consistency, without saying anything about petitioner's similarity of placement or parity with the said Dr. S.S. Dua. This distinction clearly brings out the intention of court to give benefit of its view and direction to the petitioner in his own right and without drawing any parallels between him and the aforesaid Dr. S.S. Dua. The reference to Dr. S.S. Dua, it may be repeated was only by way of an instance which is clear by the use of words. 'Government has already granted such a benefit to a person similarly situated namely Dr. S.S. Dua vide Government order No. 245ASH of 1995 dated 6.12.1995. This cannot be ignored....' Thus, in terms of the judgment the petitioner's service was required to be counted w.e.f 1959 with all consequential benefits to him, and any parallels drawn by petitioner or the respondents either to canvass or reject the claims and counter claims though certainly permissible within purview of the judgment, do not effect the essence thereof in which the judgment benefits the petitioner in his own right.

8. Taking the impugned order as they are, it appears that under the first one i.e Govt. order No. 64-ASH/2000 dt. 09.08.2000 the benefit under aforesaid judgment is claimed to have been given to petitioner notionally only w.e.f 1972 in different capacities and scales as mentioned therein, which stands repeated in the later order no : 16-ASH of 2003 dated 31.1.2003, with slight modification regarding release of the scale 3000-5000(old) from 09/92 to 06/93.

9. In first place therefore, the respondent-department appears to be a loggerheads with itself by passing two different and varying orders ii pursuance of the same judgment, which by itself sufficiently indicates the much of thought has not gone into, the matter before its claimed settlement in terms of the court judgment above quoted. In addition thereto, the benefit of the direction regarding reckoning of his service from an earlier year the accrues to the petitioner under the judgment of this court dt, 4th Sept. 1998 does not appear to have been correctly reflected in the impugned order purporting to have been passed in compliance thereof particularly the dated o petitioner's, date of entry in service even while the aforesaid S.S. Dua seems to have received all benefits substantially and that too from an earlier date.

10. Accordingly the impugned orders even while claimed to have been in compliance to the judgment of this court are not so and being without substance thus, are set aside, with a direction to respondents for passing fresh orders in strict accordance with aforesaid judgment within a period o three months from now, failing which, in addition to other consequence.¹ those may follow in case of re-agitation of the matter, they would also be deemed to be guilty of contempt. Costs of Rs. 10,000/- (Rs. Ten thousand) an also imposed upon them to be paid to petitioner for having pushed him in to avoidable litigation within aforesaid period of time.

11. The matter stands accordingly disposed of along with all connected CMP(s).