

Jammu & Kashmir High Court

R.K. Gupta vs State Of J And K And Ors. on 10 December, 2004

Equivalent citations: 2005 (1) JKJ 141

Author: P Kohli

Bench: P Kohli

JUDGMENT Permod Kohli, J.

1. Legality of Govt. Order No : 33-HUD/LSG/J of 2000 dated 9.3.2000 fixing seniority of Executive Officers of Local Bodies in the pay scale of (2000-3500 Pre-revised) has been questioned in this petition. Petitioner and respondents 4 to 7 are presently working as Executive Officers in different Notified Area Committees and born on the cadre of Local Bodies.

2. It is alleged that petitioner was appointed as Legal Advisor in pay scale of Rs. 900-1460 (Revised 2000-3500) w.e.f 11.2.1986 in Kathua Town Area Committee. He cleared efficiency bar w.e.f. 1.1.1993 in that pay scale. Subsequently two posts of Legal Advisors in pay scale (2000-3500) were re-designated as Executive Officers vide Govt. Order No: 83-HUD/LSO of 1994 dated 24.3.1994. Petitioner along with one Abdul Hafiz Sheikh came to be redesignated in terms of this order. As far respondents are concerned, respondent-3 came to be promoted as Food Inspector on 2.5.1975 and subsequently adjusted as Executive Officer vide Govt. Order No: 285HUD/LSG of 1987 dated 10.9.1987 in pay scale (900-1460). Respondent-4 came to be promoted as Legal Advisor in pay scale of Rs 900-1460/- from the post of legal Assistant vide Govt. Order No: 10-HUD of 1987 dated 12.01.1987 and subsequently adjusted as Executive Officer in his own pay and grade vide Govt. Order No: 5-HUD/LSG of 89 dated 4.1.1989 till post is filled up on regular basis. Respondent-5 came to be appointed as Secretary on 17.7.1978 in pay scale of Rs 280-520 and vide Govt. Order No: 83HUD/LSO of 94 dated 21.3.1994, he came to be adjusted as Executive Officer.

3. Respondents-6 and 7 also came to be posted as Executive Officers on adhoc basis. Final seniority list of Executive Officers (Local Bodies) came to be issued vide Govt. Order No; 33-HUD/LSG/J of 2000 dated 9.3.2000 after inviting objections from concerned to tentative seniority list earlier issued in the year 1998. In this seniority list, petitioner was at serial No: 10 whereas respondents-3 to 7 figured at serial Nos: 4, 8 9, 5 & 6 respectively. Main ground for challenging seniority position of private respondents is that petitioner was appointed as Legal Advisor in pay scale (2000-3500) on 11.2.1986. Post of Executive Officer also carried same pay scale (Revised 6700-10900). On 21.3.1994, two posts of Legal Advisors were re-designated. Petitioner on being re-designated was posted as Executive Officer in pay scale of Rs. 6700-10900 which scale was held by him when he was Legal Advisor. It is accordingly contended that private respondents, who were appointed as Legal Advisors latter in time than petitioner, should have ranked junior to him as petitioner's seniority has to be reckoned from 11.2.1986 and thus impugned seniority list showing seniority position of private respondents over and above petitioner is liable to be quashed.

4. Official respondents as also private respondents-4 and 5 have filed their separate objections. However, during course of arguments, Mr. D.C. Raina representing respondent-5 has submitted that said respondent having been retired on attaining age of superannuation, is not interested to contest this petition. As far respondents-6 and 7 are concerned, none appeared on their behalf. Stand of

official respondents is that petitioner was re-designated as Executive Officer on 24.3.1994 and thus his seniority has to be reckoned w.e.f. said date under Civil Services (Classification, Control and Appeal) Rules. It is further stated that final seniority list has been issued on consideration of objections to tentative seniority list. As far respondent-4 is concerned, he is sole contesting respondent. It is urged that said respondent was appointed as Executive Officer on substantive basis vide Govt. Order No. 33-HUD/LSG/J of 2000 dated 9.3.2000 and thus, he is entitled to seniority w.e.f. said date. As petitioner was adjusted as Executive Officer on 24.3.1994, he must rank junior to respondent-4.

5. On consideration of contentions, relevant question requiring consideration is whether petitioner is entitled to seniority w.e.f. his placement in pay scale of Rs 2000-3500 i.e. from the date of re-designation of post held by him as Executive Officer. Admittedly, there are no recruitment rules. In absence of recruitment rules, vide interlocutory order dated 10.2.2004, respondents were directed to file supplementary affidavit showing hierarchy of service, pay scale and posts to be filled up by promotion and quota thereof as also feeding channel for each promotional posts. Pursuant to interlocutory directions issued from time to time, respondents have placed on record copies of Govt. Order No: 45/HUD/LSG of 1986 dated 3.2.1986, Govt. Order No: 362-HUD/LSG of 1984 dated 17.10.1984 and Govt. Order No: 89-HUD/LSG of 1984 dated 6.3.1984. Vide order dated 6.3.1984, five posts of Executive Officers in pay scale (1000-1560) were created in Town Area Committees, Anantnag, Sopore, Udhampur, Kathua and Baramulla. These posts were directed to be filled up by promotion from the categories of Section Officers, Secretaries, Food Inspectors and Accountants. Vide Govt. Order dated 17.10.1984, post of Legal Advisor was indicated as feeding channel for promotion to the post of Executive Officer. It is further indicated in this order that ratio for appointment to the post of Executive Officer shall be 50% from direct recruitment and 50% by way of promotion. In addition to this, some procedure was laid down for such appointment. Subsequently vide Govt. Order dated 3.2.1986, feeding channels were re-designated. It was further provided that for filling up post of Executive Officer in various Town Area Committees and Notified Area Committees, feeding channel would be of three categories only i.e (i) Legal Advisors (900-1460 Scale), (ii) Food Inspectors (680-1240 Scale) and (iii) Secretaries (325-1240 Scale). Admittedly, it is this order which was invoked at the time of promotion of petitioner and private respondents. Dates of appointment as Executive Officers of petitioner and private respondents as indicated in the seniority list, is as under:

S. No.	Date of appointment as Executive Officer
1. Petitioner	24.3.1994
2. Respondent-3	10.9.1987
3. Respondent-4	4.1.1989
4. Respondent-5	24.3.1994
5. Respondent-6	6.2.1986
6. Respondent-7	23.10.1985

6. If date of appointment of petitioner in pay scale (2000-3500) is taken note of for purpose of reckoning seniority then he admittedly rank senior to respondents-3, 4 and 5. Mr. J. P. Singh

learned counsel for respondent-4 has vehemently argued that petitioner was working as Legal Advisor and in higher pay scale than pay scale of Executive Officer. Cadre of Legal Advisor is distinct cadre and petitioner was not entitled to consideration for promotion as Executive Officer. He came to be re-designated on 24.3.1994 and this should be the date from which his seniority has to be reckoned. Mr. Singh has referred to judgment of Apex Court in case of Rajender Singh and Ors. v. Union of India and Ors., (2001)10 SCC 400. In this case, appellant was working as Fetter in the service of Ordnance Factory in pay scale of Rs 196-232 plus Rs. 10 as special pay. This pay scale was revised and appellant placed in pay scale of Rs. 210-290 on 4.6.1982. He was re-designated as Examiner on 10.10.1986 after passing trade test on 8.4.1984. Tribunal held that appellant was entitled to seniority w.e.f. 10. 10. 1986. This finding of Tribunal was upheld by Apex Court.

7. From Govt. Order dated 3.2.1986, it appears that post of Legal Advisor was brought in feeding channel for promotion to the post of Executive Officer. At the relevant time, pay scale of Legal Advisor was Rs 900-1460. It was also pay scale for the post of Executive Officer. As far dates of appointment of private respondents as Executive Officers are concerned, there is no dispute. Petitioner, who was already in the pay scale of Executive Officer (Revised 2000-3500), was re-designated on 24.3.1994 as Executive Officer. This re-designation has not been questioned. While ordering re-designation of the post, petitioner was posted as Executive Officer and his pay scale remained same. Apex Court in case of Union of India v. Kuldip Singh Permer and Ors., 2004 (1) 162 Services Law Judgments (SC) has considered similar question. In this case, respondent-1 was appointed as TGT on 26.9.1970 in the pay scale of Rs 220-500 which was revised on 1.1.1978. He came to be deputed as Circle Organizer w.e.f 8.2.1977 and subsequently absorbed as Circle Organizer w.e.f. 8.8.1984. In view of Office Memorandum, for purpose of determining seniority of an absorbee, his seniority was fixed from the date of absorption. Apex Court while questioning the circular held that respondent-1 was holding the post in higher grade than grade of Circle Organizer in the parent department on regular basis and is entitled to seniority w.e.f. date he was placed in this grade as Circle Organizer and accordingly, his seniority was directed to be fixed on 1.1.1978. Facts of present case are similar to above case. Petitioner was admittedly in higher pay scale as Legal Advisor w.e.f. 11.2.1986, which post was re-designated on 24.3.1994 and petitioner came to be posted as Executive Officer. None of private respondents had challenged his re-designation. Even if claim of respondent-4 is considered that he was placed in pay scale of Executive Officer w.e.f 4.1.1989 by virtue of Govt. Order No: 33-HUD/LSG of 2000 dated 9.3.2000, whereby he was regularized, he should rank junior to petitioner as petitioner was already in said pay scale as he was holding the post of Legal Advisor on substantive basis w.e.f 11.2.1986. In view of above circumstances, I allow this petition. Seniority list issued vide Govt. Order dated 9.3.2000, is hereby quashed and respondents are directed to re-fix the seniority of petitioner in the light of observations herein made above.