

Delhi High Court

Ashok Kumar Sharma vs Government Of Rajasthan And Ors. on 27 March, 2006

Author: S R Bhat

Bench: S R Bhat

JUDGMENT S. Ravindra Bhat, J.

1. Rule. Mr. A. Chaudhary, Advocate for the respondent waive notice of Rule.
2. With the consent of the counsel for the parties, the petition was finally heard.
3. The petitioners in these proceedings were been working with the State of Rajasthan in its establishment at Bikaner House for about 12 years or more. They had approached this Court earlier in proceedings under Articles 226 of the Constitution by filing CWP No.5390/2001 and connected cases, claiming regularization and parity in pay scales with employees working in Rajasthan, in similar posts.
4. Learned Single Judge of this Court had allowed the petitions and directed as follows :

Following the ratio of the judgment of the Supreme Court in State of Punjab's case (supra) and Vijay Kumar's case (supra), the respondents are directed to pay the minimum scale of pay which is paid to the regular employee for the work done by the petitioners from the period for which the payment has not been paid at the said rates. Nothing has been brought on record that the petitioners were not performing the same functions as has been done by other employees regularly appointed by State of Rajasthan or they did not possess adequate qualification for appointment to the regular post. Let the same be paid within a period of four weeks.

Writ petition stands disposed of in terms of above observations. Pending applications also stand disposed of. Rule is made absolute.

5. The respondent carried the matter in appeal (LPA No.595/02). The Division Bench disposed off the appeal by its order dated 4.10.2002. The relevant portion of that order reads as follows :

With the consent of the parties, it is directed that the revised emoluments at par with the salary paid to the regularly appointed employees at the minimum of the scale as advised by the Advocate General by his letter dated 13th November, 2002 shall be paid to the respondent w.e.f. 13th November, 2000 till his services continue. It is further clarified that that in case the post has been abolished w.e.f. 10th July, 2002 the arrears shall be paid till the date of the abolition of the post, subject to any order being passed by a competent forum in a petition challenging the abolition of the post. The arrears shall be paid till the date of the abolition of the post, subject to any order being passed by a competent forum in a petition challenging the abolition of the post. The arrears shall be paid to the respondent within one month.

6. Apparently, two letters had been written on the subject on 13th/14th of November, 2000 and 13.11.2000. The said letters are extracted below :

Jaipur

Date: 13/14.11.2000

To

Sh. Sushil Kumar Jain,

Additional Advocate General

Bikaner House, Pandara Road,

New Delhi.

Subject: Regarding change of nomenclature of the staff working in the office of Additional

Ref: Your letter dated 20.10.2000.

Dear Sir,

I am in receipt of your letter along with enclosures dated 20.10.2000. On the facts stated in your letter I agree with your suggestion that Rakesh Kumar be appointed on contract basis against the post of Stenographer, Shri Naresh Kumar be appointed against the post of Peon by protecting his salary, Shri Narendra Kumar Rana may be adjusted against the post of LDC. From the list I find that there is no post of Accountant and as such it will not be possible to designate Shri Ashok Kumar Sharma as Accountant. By changing the designation (which is not at all in the existing strength) financial implication can arise and that can only be done after obtaining sanction of the Department of Personnel and the Finance Department both and thereafter by taking an undertaking from the person that you will not claim salary of Accountant.

So far as the increase in the emoluments is concerned, I am recommending the Finance Secretary to revise the emoluments at par to the salary paid to the regularly selected employees doing the same work. You may issue the orders accordingly.

AND Jaipur, Dated: 13.11.2000 To, The Secretary Finance Department Government of Rajasthan Secretariat, Jaipur Ref: Letter addressed by the Additional Advocate General, New Delhi to the undersigned and copy enclosed to you dated 20.10.2000.

Reg: Increase in the emoluments paid to the persons appointed on contract basis in the office of Additional Advocate General for the State of Rajasthan, New Delhi.

Dear Sir, This is just to inform you that I have agreed to certain proposals made by Shri Sushil Kumar Jain, Additional Advocate General with regard to the change of nomenclature of the staff. So far as the increments in the emoluments being paid to them is concerned, the same may be

increased by at least Rs.500/- per month. I think that looking to the increase in the prices of commodities and the work being performed by them it will be in the interest of justice to increase their emoluments by Rs.500/-, kindly do the needful.

7. It is the admitted case of the parties that after the order of the Division Bench, the respondents complied with the directions and started making payments on the basis of the minimum pay scale. It is also not denied that the petitioners were paid Dearness Allowance on the amounts as per the rules applicable. The petitioners approached this Court claiming to be aggrieved by what was perceived by them as willful disobedience of the orders; they filed contempt proceedings. The grievance was that respondents were not making full payments inasmuch as the amounts payable towards House Rent Allowance and CCA were withheld.

8. In these proceedings, the petitioners claim for release of the amounts in terms of the Division Bench orders. It was submitted that since the order of 4.10.2002 was to pay the minimum of the pay scales as was admissible to regular employees, the employer could not withhold any amounts.

9. Learned counsel relied upon the terms of the consent orders as also the letter dated 13.14.2001 to say that the intention of the parties which was duly recorded by the Division Bench, was to give full and effective relief. It was also contended that the initial order of the learned Single Judge was wider but the arrears were confined to the date of the abolition of the post, as per directions of the Division Bench.

10. Learned counsel for the respondent has relied on the averments in the counter affidavit. It is contended that the petitioners were never treated as regular employees; therefore, they could not claim the benefit of HRA and CCA. It was contended that the letter dated 13.11.2001 never conferred the benefit and in terms of that document the petitioners were only eligible for enhancement/revision of their wages to the tune of Rs.500/- per month.

11. Learned counsel for the respondent also submitted that the petitioners ceased to be in the employment of the State of Rajasthan.

12. The stand of the respondents is in my opinion not consistent. The question of the petitioners being regularly appointed employees is not in issue in these proceedings at all. The Division Bench by its order, after securing consent of parties, had expressly recorded that the petitioners would be paid amounts as per the regular pay scales, being given to regular employees of the Rajasthan Government. Had the intention of the respondent been only to confine the amounts as prescribed in the pay scale, they could possibly contended that even payment of DA was not mandated. In such an eventuality there would have been consistency in their approach. However, as per the understanding of the respondent, DA was payable and rightly so. Such being the case, I am of the opinion that no cogent much less convincing reason has been advanced to withhold other amounts. The only contention that the petitioners were not regular employees had been discussed in previous proceedings that did not find favor, and the Court directed payment of minimum of regular scale. Therefore, the same logic cannot be used to deprive the Petitioners amounts towards HRA and CCA.

13. In view of the foregoing reasoning the respondents are directed to calculate the entitlement of the petitioner towards payment of HRA and CCA benefits in terms of the Division Bench order dated 4.10.2002 and pay the same to the petitioners within 10 weeks from today. The petitioners shall present themselves within five weeks before the respondent and complete necessary formalities in the office of the respondents for this purpose.

14. This order is in view of peculiar facts of this case. Learned counsel for the respondents submits that it ought not to be treated as precedent. It is so clarified.

The writ petition is allowed to the extent indicated above. No costs.