

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 530/2009
CMP No.694/2009

Date of Decision: 19.07.2011

Ghulam Mustafa Sheikh v. State of J&K & ors.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s) : Mr. S.K.Shukla, Advocate.

For the Respondent(s) : Mr. Tashi Rabstan, CGSC for R-4 to 6.

i)	Whether approved for reporting in Press/Media	:	Yes/No
ii)	Whether to be reported in Digest/Journal	:	Yes/No

During the course of Audit Inspection of Service Books of the employees of Municipal Committees/Local Bodies, who were to retire within next ten years, the Assistant Accounts Officer of the Accountant General, Jammu, affected entry/correction in the Service Book of the petitioner indicating that having already availed two Functional Promotions and one In Situ Promotion on 01.08.1978, 09.08.1982 and 01.01.1995 respectively, the petitioner was not entitled to In Situ Promotion, in the pay scale of Rs.7450-11500 w.e.f 01.09.2000. Recovery of excess pay drawn by the petitioner from 2000 to 2006 too was suggested.

In taking the view that the petitioner was not entitled to the higher pay scale of Rs. 7450-11500 w.e.f 01.09.2000, the Officer treated the up-gradation of the pay scale of the post of Work Mistry to Rs. 220-430, which was held by the petitioner,

as his Functional Promotion.

Aggrieved by the Entry in the Service Book and the recoveries ordered, the petitioner has approached this Court seeking annulment of the Accountant General's action.

Responding to the petitioner's Writ Petition and dealing with the issues raised therein, the Accountant General, justifies the Entry in the Service Book and the recovery of the amount drawn in excess by the petitioner on the ground that up-gradation of the pay scale of petitioner's post of Work Mistry, was his Functional Promotion and in this view of the matter, the petitioner was not entitled to be placed in the higher pay scale of Rs.7450-11500 in terms of SRO 14 of 1996.

I have considered the submissions of learned counsel for the parties and perused the documents placed on records.

The post of Work Mistry was created in Notified Area Committee Bhaderwah in the pay band of Rs. 200-320 vide Director Local Bodies, Jammu and Kashmir Government, Jammu's Order dated 13.12.1974.

The petitioner was appointed as Work Mistry in the pay scale of Rs.200-320 vide Order dated 17.12.1974.

Vide Director Local Bodies's Order of April 18, 1978, the post of Work Mistry was up-graded to the pay scale of Rs. 220-430, without any change in its nomenclature.

The question that arises for determination in the Petition

is as to whether the up-gradation of the pay scale of the post of Work Mistry, which was held by the petitioner, amounts to his Functional Promotion thereby disentitling him to the benefit of the higher pay scale.

The question raised need no detailed discussion in view of the clarification issued by the Government of Jammu and Kashmir in the Finance Department vide its O.M No. A/29(96)-1034 dated 22.10.1996 on the issue in question. The clarification, reads thus:-

“GOVERNMENT OF JAMMU AND KASHMIR,
FINANCE DEPARTMENT
O.M. No. A/29(96)-1034
Dated 22.10.1996
Subject : J&K Civil Service (Higher Standard Pay Scales Scheme
Rules, 1996-Clarifications thereof.

Consequent upon the introduction of J&K (Higher Standard Pay Scale Scheme) Rules, 1996 vide SRO-14 dated January 15th, 1996 references from the representatives of various Unions of Government employees/Departments have been received in Finance Department raising various points for clarifications. The same have been examined in the Finance Department. Accordingly, clarifications as detailed here below against each point are issued for guidance and references by the Department viz-a-viz implementation of the aforementioned scheme :-

Point of doubt	Clarification
(g) Whether the up-gradation of a post in respect of the pay scale without change of its nomenclature should be treated as a promotion for purposes of grant of In-Situ promotion under J&K Civil Service (HSPSS) Rules, 1996.	g) Since in such cases the existing pay scale ceases to exist and the same is entirely replaced by a new scale of pay without any change in nomenclature of the post, as such, up-gradation should not be construed to be functional, promotion for the purpose of grant of In-Situ promotion under the relevant provisions of the J&K (HSPSS) Rules, 1996.”

In view of the above clarification of the State Government, the questioned entry in the petitioner’s Service Book may not be justifiable.

Even otherwise, the up-gradation of the pay scale of the post, does not amount to Promotion or Functional Promotion because promotion may be contemplated only against those posts which the Rules governing the Service would indicate as the Promotional Posts.

The petitioner was a Work Mistry before up-gradation of his pay scale and continued to remain as such even after the up-gradation. The up-gradation of his pay scale, neither changes the nomenclature of his post nor permits him to work against any Promotional Post in terms of the rules governing the service. Such being the case, the petitioner cannot, therefore, be treated to have been promoted.

The Entry made by the Assistant Accounts Officer in the Service Book of the petitioner is, therefore, unwarranted and the petitioner cannot be denied the benefit of the higher pay scale.

For all what has been said above, the Entry made in the petitioner's Service Book indicating his disentitlement to the higher pay scale, therefore, needs to be annulled. No recoveries are, therefore, warranted against the petitioner.

This Petition, accordingly, succeeds and is, therefore, allowed annulling, the Entry made in the petitioner's Service Book treating the up-gradation of the pay scale of Work Mistry as petitioner's promotion, and his disentitlement to the higher

pay scale of Rs. 7450-11500 w.e.f 01.09.2000.

A direction shall, therefore, issue to the respondents not to affect any recoveries against the petitioner pursuant to the Assistant Accounts Officer's Entry in the petitioner's Service Book, which shall be treated as non-est.

(J.P. SINGH)
JUDGE

JAMMU
19.07.2011
Pawan Chopra