

HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU

SWP No. 1646/2002

Date of order: 30.01.2014.

Dr. J.L.Tikoo

v.

State and another

*Coram:*

**HON'BLE MR. JUSTICE MOHAMMAD YAQOOB MIR, JUDGE**

Appearing Counsel(s):

For the petitioner(s)

:Mr. Abhinav Sharma, Advocate.

For the respondent(s)

:Mrs. Seema Shekhar, AAG

Whether approved for reporting : Yes

**1.** In compliance to judgment dated 11.05.2000 rendered by this Court in SWP No. 951/1988 on consideration of the case of the petitioner, Govt. Order No.83-ASH of 2001 dated 13.09.2001 has been issued. In pursuance whereof, sanction has been accorded to the (i) Grant of notional promotion in favour of petitioner to the level of Joint Director w.e.f. 24.10.1981 to 28.04.1982; and (ii) Grant of notional promotion to the level of Director w.e.f. 03.05.1987 to 05.06.1991.

**2.** The grievance of the petitioner is that notional promotion granted is in contravention to the judgment dated 11.05.2000, further more is to the

disadvantage of the petitioner as he has retired in the year 1994, therefore, would not get any benefit in pursuance of said Govt. order dated 13.09.2001.

**3.** In the earlier filed SWP No.951/1988 titled J.L.Tickoo v. State and another, it has been noticed that admittedly the petitioner had been appointed as Veterinary Assistant Surgeon in the year 1956 whereas the private respondents were appointed as such in the years 1957 and 1958. It has also been noticed that the official respondents had taken a stand that private respondents were given higher grade earlier to the petitioner that is how they were treated as senior. The petitioner was promoted as Project Officer in the year 1969 whereas private respondents were promoted in the year 1974. Petition in the said premise was allowed and respondent-State stand directed as under: -

“to reconsider the claims of the petitioner and grant him the requisite benefits. He would also be entitled to the consequential benefits. These would be reflected in his pensionary benefits also. Let the exercise be completed within a period of four months from the date, a copy of this order is made available to the official respondents by the petitioner. The petitioner would be entitled to interest at the rate of 6%. In case the claims are not considered and settled

and ultimately some monetary claims are found to be due, the petitioner would be entitled to interest @12%. This enhanced interest would be paid by the person on whose account the delay occurs.”

4. In the order dated 13.09.2001 passed in compliance to the judgment dated 11.05.2000, it has been recorded that one Dr. I.S.Bakshi was granted promotion to the level of Joint Director on 24.10.1981 vide Govt. Order No.176-GAD of 1990 dated 25.04.1990 and Dr. Narotam Singh from 29.04.1982 to 30.01.1983 on notional basis and from 04.01.1983 on regular basis. The petitioner was promoted to the level of Joint Director w.e.f. 29.04.1982 vide Govt. Order No.76-GR of 1990 dated 25.04.1990. Private respondents, viz. Dr. I.S.Bakshi and Dr. Narotam Singh were elevated to the level of Directors w.e.f. 03.06.1987 and 01.08.1990 respectively vide Govt. Order No.153-ASH of 1991 dated 21.06.1991 and the petitioner was promoted to the level of Director w.e.f. 02.04.1993 vide Govt. order No. 72-ASH of 1993 dated 02.04.1993. Thereafter, sanction has been accorded for grant of notional promotion in favour of

the petitioner so as to bring him at par with said two doctors. Now the claim of the petitioner is that he should have been granted monetary benefits to which he was entitled to. Therefore, the word 'notional benefits' incorporated deprives him of his valuable rights.

5. Respondents in the counter affidavit have stated that consequential benefits to which the petitioner was entitled to have been granted to him. The petitioner has retired in the year 1994. So far as grant of monetary benefits is concerned, the same could not be paid for the period he has not actually worked against the commensurate posts. Learned counsel for the petitioner has highlighted that respondents have not been able to demonstrate anything which would deprive him of monetary benefits to which he has been held entitled to in terms of judgment dated 11.05.2000. Supporting his contention, he placed reliance on the judgment rendered by the Apex Court in case of **the Commissioner, Karnataka Housing Board v. C. Muddaiah**, reported in **2007 (6) Supreme 97**.

6. In opposition, learned counsel for the respondents has alleged that the petitioner is not entitled to the monetary benefits as arrears of salary in view of principle of 'no work no pay' in case of retrospective promotion. Relied upon the judgment rendered by the Apex Court in case of **Union of India v. B.M.Jha**, reported in **2007 (8) Supreme 135**. The case relied upon by the learned counsel for the petitioner has been decided on 07.09.2007 whereas the case as relied upon by learned counsel for the respondents has been decided on 24.10.2007. Therefore, the judgment dated 24.10.2007 reported in 2007(8) Supreme 135 has to be followed. Paragraph No.5 of the said judgment reads as under:-

"5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent normally he is entitled to all benefits flowing therefrom. However, this Court in the case of *State of Harayana and others v. D.P. Gupta & Others*, (1996) 7 SCC 533 and followed in the case of *A.K.Soumini v. State of Bank of Travancore*, JT (2003) 8 SC 35 has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not principle of no work no pay. The learned Division Bench in the impugned judgment has placed reliance on the case of *State of Andhra Pradesh v. K.V.I. Narasimha Rao & Ors*, JT (1999)3 SC 205. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the

view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the above-mentioned cases, arrears of salary cannot be granted to the respondents in view of the principle of no work no pay in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17.05.2000 passed by the Division Bench of the High Court as also the order dated 11.01.2000 passed by the Central Administrative Tribunal, Principal Bench."

7. Applying the principle as has been laid down, the petitioner's claim for monetary benefits for the period he has not actually worked as Director and notional promotion granted, cannot be found fault with.

8. Since the petitioner had been promoted as Director vide Govt. Order No. 72-ASH of 1993 dated 02.04.1993, his pension must have been fixed on the basis of last pay drawn, but that may not have included notional promotion as granted in pursuance of order dated 13.09.2001 which otherwise has to be taken into account for the purpose of pay fixation at the time of his regular promotion as Director.

9. In terms of earlier judgment dated 11.05.2000, it was specifically directed that consequential benefits to which the petitioner was entitled to, shall also be reflected in his pensionary benefits.

Compliance order dated 13.09.2001 requires follow up action so as to bring it in tune of the directions as noted above, i.e., pay of the petitioner on the date of his regular promotion to the level of Director w.e.f. 02.04.1993 requires re-fixation. Therefore, the monetary benefits are to be calculated after taking into account his notional promotion, as such, after re-fixation, he has to be paid the monetary benefits w.e.f. 02.04.1993 for the period he rendered the service in the capacity as Director. Based on this, his last pay certificate has to be prepared and forwarded to the Accountant General's office for fixation of his pension. The aforesaid exercise be undertaken and completed within a period of three months positively from the date copy of order is served upon the respondents.

**10. Disposed** of as above.

**(MOHAMMAD YAQOOB MIR)**  
**JUDGE**

Jammu  
30.01.2014.  
'Madan'PS