

(2020) 02 RAJ CK 0242
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10614 Of 2016

Abhishek Sharma And Anr

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 12-02-2020

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 23, 38

Citation : (2020) 02 RAJ CK 0242

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Sushil Solanki

Final Decision : Disposed Of

Judgement

Learned counsel for the petitioner submits that the controversy involved in the instant writ petition stands resolved in view of the adjudication made by

a Division Bench of this Court at Jaipur Bench in DB Civil Writ Petition No.2963/2007 (Gopal Kumawat Vs. State of Rajasthan & Ors.), decided on

29th July, 2015, holding thus :

32. In the present case, no material has been placed before us, nor any plea has been taken in the reply that the probationers, during the period of

their probation, do not perform the same duties and responsibilities and are not required to carry out the same functions as confirmed employees.

33. We find the practice of payment of fixed remuneration without any allowances and benefit of increments to the probationers, who were appointed

after adopting the regular selection process, on substantive posts, or even after following the selection process on ad hoc basis, as well as all those

employees who are appointed on substantive posts, to be wholly illegal and arbitrary, and pernicious practice of forced labour.

34. We find no justification for the State Government, to adopt the practice of paying fixed remuneration to the probationers, which is not prevalent, either in the Central Government, or in any other States in the country. The Government of Rajasthan has adopted this evil practice of forced labour for its employees, taking advantage of the attraction of the Government service. The Notifications dated 13.03.2006, amending the Rules, are thus, declared to be unconstitutional, being violative of Article 14, 16, 21, 23 and 38 of the Constitution of India, and against the conscience of the Constitution of India.

35. The writ petition is allowed. The Notification dated 13.03.2006, amending the Rajasthan Service Rules, 1951, and the Notification of the same date

i.e. 13.03.2006, amending the Rajasthan Civil Services(Revised Pay Scale) Rules, 1998- Fixed remuneration to probationer trainees, are hereby

quashed. The State-respondents are directed to pay the entire differential amount of regular pay scale and allowances to the petitioner, after deducting

the amount of fixed remuneration paid to him during the period of probation.â??

In case, the claim of the petitioner is found to be covered by the adjudication referred to hereinabove; the petitioner be also allowed the same benefits.

Needless to observe that the rights of the parties would be governed by the final adjudication on SLP pending before the Apex Court of the land

wherein judgment in the case of Gopal Kumawat (supra), is under challenge.

In the result, the writ petition is disposed of in the light of the judgment of the Division Bench of this Court dated 29th July, 2015, in the case of Gopal

Kumawat (supra).

Accordingly, the petitioner is entitled to full salary for the period of probation; subject to adjudication on the SLP pending before the Apex Court of the

land which would govern the rights of the parties.

Before conferring actual benefits, it shall be required of the respondents to procure an undertaking from the petitioner to the effect that his

rights/entitlements shall be subservient to the fate of the SLP pending before Hon'ble the Supreme Court and in case the Division Bench is reversed or

modified in any manner, he shall be liable for restitution of any benefits/emoluments so received.