
(2005) 11 RAJ CK 0065
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2141 of 2005

Ajay Pal Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 — Rule 10

Citation : (2006) 1 RLW 320 : (2006) 1 WLC 161

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : S.N. Kumawat, for the Appellant; G.S. Gill, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

K.S. Rathore, J.—The petitioner passed his Higher Secondary School Examination in the year 1956 from the Rajasthan Board of Secondary Education, Ajmer which is the qualification required to be appointed on the post of House Keeper/ Telephone Operator/Receptionist. The petitioner was initially employed as House Keeper in the Rajasthan House, New Delhi on daily wage basis on 15.5.88 vide order dated 26.6.90, he was continued on the said post and was working as House Keeper till 1991. Thereafter, the services of the petitioner were regularised as Class-IV employee vide order dated 21.1.91.

2. The appointment was made on the post of Class IV but the petitioner since inception discharging the duty and working as House Keeper till today in the Rajasthan House, New Delhi.

3. The petitioner while discharging the duties as House Keeper though he was regularly appointed on the post of Class IV submitted an application dated 28.7.94 to the Special Secretary GAD Govt. of Rajasthan through Manager, Rajasthan House, New Delhi for consideration and appointment on the post of House Keeper as the petitioner is possessing the requisite qualification.

4. One Miss Kavita Sharma was also working on daily wages and was assigned duties as House Keeper along with the petitioner and since she was discharging the duties as House Keeper she filed a writ petition which was registered as S.B. Civil Writ Petition No. 5825/90 "Miss Kavita Sharma v. State of Rajasthan and same was decided on 12.1.94 and this Court while allowing the writ petition, directed the respondent that from 3rd October, 1990 i.e. the date of filing of the writ petition, the petitioner shall be paid wages in the minimum of the pay scale admissible to House Keeper/Telephone Operation. It was further directed that the amount shall be paid to the petitioner within a period of four months from the date of passing of the order.

5. Since the petitioner is also similarly situated person filed a writ petition before this Court which was registered as SB Civil Writ Petition No. 184/96 and same was decided by this Court vide judgment dated 17.3.98 and this Court observed as under:

However, the ends of justice requires that in case the petitioner was asked to serve as House Keeper for certain period, he should be paid the minimum of the salary of the House Keeper during the period he has so worked on the doctrine of equal pay for equal work.

6. Against the order of the learned Single Judge dated 17.3.90, the petitioner filed a DB Special Appeal Writ No. 1007/98 as order with regard to appointment on the post of House Keeper not passed by the court and while deciding the appeal, the Division Bench held as under:

We are unable to accept the contention on behalf of the respondents that the appellant has not been discharging functions of a House Keeper in the Rajasthan House at New Delhi since 1991. The appellant is accordingly entitled to the minimum of the salary as House Keeper since 1991 on the doctrine of equal pay for equal work.

7. Against the judgment of Hon"ble Division Bench dated 9.5.2002 the respondents filed SLP before Hon"ble Supreme Court which was dismissed on 20.12.2002 and Hon"ble the Supreme Court has observed that-

though the learned Counsel for the petitioners states that there are no statutory provisions for taking additional work of higher responsibility from a class IV employee however, considering the reasons recorded by the High Court, the impugned order does not call for any interference and the SLP was dismissed.

8. Even after the judgment of Hon"ble the Supreme Court, the respondents have failed to comply with the direction of Hon"ble the Supreme Court in true and letter spirit and deprived the petitioner from his legitimate rights therefore, the petitioner has no option to serve a legal notice upon the respondents through his counsel on 25.3.2004. Ultimately, the payment of the minimum salary of the post of House Keeper was made to the petitioner.

9. The judgment passed in the writ petition filed by Miss Kavita Sharma was not

challenged before the Division Bench and before the Hon''ble Supreme Court. On the contrary, not only the respondents have made the payment as directed by this Court in the minimum of pay scale of the House Keeper/Telephone Operation but also appointed on the post of House Keeper/Telephone Operator vide order dated 6.11.93. But the same treatment has not been given to the petitioner despite of the fact that petitioner''s case is also at similar footing and time and again petitioner was compelled to file writ petitions and this present writ petition is also filed by the petitioner seeking writ order or direction directing the respondents to consider the case of the petitioner as he is fully qualified for the post of House Keeper/Telephone Operator and further seeks direction to appoint him on the post of House Keeper/Telephone Operator in the regular pay scale as similarly situated person Miss Kavita Sharma is given appointment on the post of House Keeper/Telephone Operator way back on 6.11.93.

10. Since similar treatment has not been given to the petitioner as has been given to Miss Kavita Sharma this is not only in violation of Articles 14 and 21 of the Constitution of India. It is also strange enough as to why the auction of the respondents is arbitrary and unjustifiable as the petitioner''s case was not considered for the post of House Keeper/Telephone Operator though he is fully qualified and having experience to work on the post of House Keeper since inception in service as Class IV daily rated employee whereas the surplus operators were considered on the post of House Keeper who were not at all possessing the requisite qualification. Not only they were considered for the post of House Keeper but also given relaxation under Rule 10 of the Rajasthan Civil Services Absorption of Surplus Employees Rules, 1969 vide order dated 2.8.2003 whereas on the contrary though the petitioner possession the requisite qualification has been deprived from the appointment on the post of House Keeper/Telephone Operator ignoring his experience on the said post since 1990. The services of the petitioner were always appreciated by his seniors and he is discharging his duties with due diligence and utmost sincerity. It is also pertinent to mention here that 13 pump drivers have been absorbed on the post of House Keeper while granting relaxation in their educational/technical qualification under Rule 10 of the Rule 1969 and the similarly situated persons namely Pushpa, Anil Mathur, Anup Singh, Shankar Saini, Ram Behari and Santosh Kumawat have been regularized on the post of House Keeper without holding any screening and written test or any short of test and more over the above named persons were not possessing the specific qualification so as enable and to hold them suitable and eligible to the post of House Keeper. Therefore, discrimination and distinction has been made in a utter prejudicial manner against the petitioner whereby the petitioner was left from appointment on the post of House Keeper as the petitioner was also working on the said post.

11. During the course of arguments, learned Additional Advocate General, looking to the facts and circumstances of the case, candidly agreed that looking to the hardship faced by the petitioner, he may be allowed time to seek instruction from the State whether the State is ready to consider the case of the

petitioner for the post of House Keeper/Telephone Operator or not. Today, learned Additional Advocate General submits that despite of his best efforts, no such assurance has been accorded by the State to this effect despite of the fact that time was granted from 26.9.2005 to 8.11.2005 and after lapse of two months since the State has not passed any appropriate order therefore the matter was heard on merit.

12. During the course of arguments, it is also informed by the learned Counsel for the petitioner that after filing of writ petition for equal pay for equal work since the petitioner has filed writ petition and got relief upto the level of Hon''ble the Supreme Court, the respondents are reluctant to consider the case of the petitioner and vindictive attitude is adopted.

13. Having considered all the submissions and observations made herein above it is no doubt that the petitioner is working as House Keeper in the Rajasthan House, New Delhi since 1990 and it is also not disputed by the State that he is possessing the requisite qualification and only submitted that the petitioner was employed as Class IV employee but he worked as a House Keeper due to requirement of work at that time. The petitioner has been paid difference of the wages of house keeper and Class IV employee as per direction of the High Court.

14. So far the case of the petitioner is at par with Miss Kavita Sharma or not, the respondents in para No. 7 of their reply submitted that Miss Kavita Sharma was first appointed on the post of porter, but she worked as telephone operator. Similarly, petitioner was also appointed as Class IV employee and is working as house keeper.

15. It is strange enough that the petitioner as well as Miss Kavita Sharma discharging the duties as house keeper but different treatment is given and it is hostile discriminatory attitude adopted by the State as Miss Kavita Sharma was regularized on the post of house keeper in the year 2003 whereas till date, poor petitioner is redressing his cause for appointment on the post of house keeper by way filing writ petitions before this Court. Since it is not disputed that whether the petitioner has worked as house keeper or not and it is also not disputed that in view of the direction issued by this Court under the principle of equal pay for equal work the difference of the wages has been paid by the respondents with effect from 31.1.91 till 31.1.2003 but the learned Additional Advocate General failed to submit that as to why the case of the petitioner was not considered at par with that of Miss Kavita Sharma to give appointment to the petitioner on the post of House Keeper/Telephone Operator and the reason best known to the respondents why the petitioner is not appointed on the post of House Keeper/Telephone Operator. It appears that unnecessarily the respondents are making it prestige point with regard to the low paid employees like the petitioner.

16. Accordingly, looking to the facts and circumstances of the case as Miss Kavita Sharma who was given appointment on the post of Telephone Operator from 6.11.93 and since it is not dispute that the petitioner is qualified and having

experience since 1990 to till date for the post of House Keeper, I deem it proper to direct the respondents to give appointment to the petitioner on the post of House Keeper/Telephone Operator with effect from 10.1.1996 the date on which the earlier writ petition No. 184/96 filed by the petitioner and the petitioner shall be paid all consequential benefits with effect from 10.1.1996. It is also observed that the aforesaid exercise shall be completed within a period of three months positively failing which the respondents shall be liable to pay interest @ 9% on the aforesaid amount till the actual payment is made.

17. Accordingly, the writ petition stands allowed.