

(2015) 04 RAJ CK 0127

In the Rajasthan High Court

Case No : Special Appeal (Writ) Nos. 765, 766, 767, 768, 769, 772, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382 and 1383 of 2013

Ajeet Kumar Jain and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(4), 226, 309

Citation : (2015) 04 RAJ CK 0127

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Sandeep Saxena and Gayatri Rathore, for the Appellant; D.V. Tholia, Additional Advocate General, Rajan Prajapati and Varun Choudhary, Advocates for the Respondent

Judgement

Ajay Rastogi, J.—Instant bunch of appeals has been preferred against order of the Id. Single Judge dt. 29.05.2013 directing the State of Rajasthan to consider the candidature of the respective employees for regularization of their services against the available vacant post, keeping in view that the employee has worked for 18-25 years in the cadre of Class-IV and working in the minimum of the pay-scale and this fact cannot be disputed that the duty discharged by him is of perennial in nature and to deny his grievance for regularization of his service is a lame excuse on the pretext that there was no sanctioned post available which is contrary to the factual statement available on record and the Id. Single Judge was of the view that against the available vacant posts, at least they can be considered for regularization or as and when it become available.

2. State of Rajasthan has preferred intra-court appeals against the directions issued by the Id. Single Judge for regularization of service of such of the employees within two months and each of them are presently working in the minimum of the pay-scale of Class-IV for at least two decades.

3. At the same time, the employees have preferred intra-court appeals for

modification of order of the Id. Single Judge impugned herein with the grievance that they should be regularized not when the vacant sanctioned post became available but should be regularized from the date of completion of ten years of service in the cadre of Class-IV.

4. Since both the issues are based on self-same facts, hence, with the consent of the parties, the instant bunch of appeals are being decided by the present order.

5. The facts of the appellant-Leela Devi have been taken note of from D.B. Special Appeal (Writ) No. 1378/2013 arising from S.B. Civil Writ Petition No. 921/2006 that too has been decided by the common order passed by the Id. Single Judge but for the sake of brevity, her case shall be separately dealt with at later stage.

6. The brief facts of the case are being noticed from D.B. Special Appeal (Writ) No. 765/2013 filed by one of the employee Ajeet Kumar Jain, since all the affidavits and counter-affidavits regarding availability of posts in the cadre of Class-IV, as inquired by this court are available in the present special appeal No. 765/2013, hence, facts are noticed with the consent of the parties.

7. There are 17 employees who have initially joined service on daily wage basis in the cadre of Class-IV and working for almost 18-25 years and from the statement which has been filed by the department, their comparative statement in the tabulation form is reproduced hereunder:--

(sic)

8. Indisputably, each of the employee had completed more than 19-20 years of service as on the cut-off date i.e. 10.04.2006 and working in the cadre of Class-IV in the minimum of the pay-scale and in terms of the amendment Notification dt. 27.02.2009 pursuant to which sub-R. (4) to R.6 was added under the Rajasthan Class-IV Service (Recruitment and other Service Conditions) Rules, 1999 (hereinafter referred to as "the Rules, 1999") each of the employee was considered for regularization of service in the cadre of Class-IV by the Screening Committee in its meeting held on 02.09.2009 but candidature of each of them was rejected by the Committee on the premise that the appointment of employees was not against sanctioned post and they have not completed ten years of service without intervention of the Court/Tribunal.

9. It may be clarified at this stage itself that in the case of few of the employees, at one point of time their services were terminated which came to be challenged by each of the employee individually either by raising an Industrial Dispute or by filing writ petition before this court and after their termination being set aside, each of them was directed to be reinstated in service. However, it is not the case or objection of the department that either of the employee has been allowed to continue in service in the cadre of Class-IV on daily wage basis under some interim orders of the Court/Tribunal.

10. Thus, the reason forthcoming, as recorded by the Screening Committee in its

report dt. 02.09.2009 that they have not completed ten years of service on 10.04.2006 without intervention of the court, appears to be an apparent factual error which the Screening Committee has committed in taking its decision rejecting claims of the employees for their regularization of service in the cadre of Class-IV in terms of amendment Notification dt. 27.02.2009. It has also come on record from the statement filed by the department, which is a part of the enclosure dt. 14.05.2013 (Ann.R/A) at page 160 of the paper book, that five posts of Jamadar/Dastry are lying vacant from the date of inception and out of 42 sanctioned posts in the cadre of Class-IV, the working strength is 36 and Jamadar/Dastry is a promotional post and if promotions are made from the cadre of Class-IV to the post of Jamadar/Dastry, which is also in the cadre of Class-IV itself, indisputably, 11 -posts in the cadre of Class-IV at that stage itself were available with the department.

11. Keeping that factual matrix into consideration, the Id. Single Judge while passing the order impugned observed that if each of the employee had worked for more than two decades by the time order came to be passed and each of them indisputably has completed more than ten years of service as on 10.04.2006 and apart from the availability of post in the cadre of Class-IV (6 posts of Class-IV and 5 posts of Jamadar/Dastry (6+5=11) and if the employees have been allowed to continue for such a long time at least a presumption can be drawn that one cannot be allowed to continue without sanctioned post and the Government must have sanctioned budget for payment of their pay and allowance and taking a plea at the fag end of their career that there was non-availability of sanctioned post at the relevant time is nothing but a lame excuse depriving them to regularize their services and accordingly directed the State Government to consider the case of each of the employee for regularization of service, keeping in view the observations made in accordance with the Rules, 1999.

12. The main thrust of submission of counsel for State Mr. D.V. Tholia, Additional Advocate General is that if the State Government at one point of time terminated the services of an employee who has been subsequently reinstated under the order/award of the Court/Tribunal that certainly appears to be an intervention of the Court/Tribunal and such of the employee who has completed ten years of service with intervention of the Court/Tribunal is not eligible for regularization of services.

13. At the same time, his further submission which applies to all the cases, in general, is that the Screening Committee has considered the case of each of the employee in its meeting held on 02.09.2009 and as there was no sanctioned post available on 10.04.2006, as such, they could not have been considered eligible for regularization of service in terms of the amendment Notification dt. 27.02.2009, which according to the counsel has been introduced keeping in view para-53 of the judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6

CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 and further submits that the order passed by the Id. Single Judge directing the State Government to regularize the services of the employees in the light of the amendment Notification dt. 27.02.2009 and of the amendment keeping in view para-53 of the judgment (supra) is not sustainable in law and deserves to be quashed.

14. Counsel for employees while supporting order of the Id. Single Judge submits that each of the employee has worked for more than two decades in the cadre of Class-IV and are presently working in minimum of the pay-scale and the records are within the absolute control of the department and apart from the statement which came on record regarding availability of 13 sanctioned posts in the cadre of Class-IV, other posts of like nature such as Security Guard and Jamadar/Daftry which comes to total $6+5+2=13$ are available with the department and taking excuse of non-availability of post is not supported by any factual material on record and taking note of the work/duty discharged by the employees for last 18-25 years and budget has been sanctioned by the State Government and each of them is working in minimum of the pay-scale, at least this court can take a judicial notice that the duty discharged by them is of perennial in nature and denial from being considered for regularization of their service for the reason which is beyond their control is otherwise not sustainable in law and violative of Art. 14 of the Constitution.

FACTS OF LEELA DEVI'S CASE:

15. The employee was appointed as Class-IV in the year 1985 and after intervention of this court in S.B. Civil Writ Petition No. 4898/1991, she was fixed in minimum of the pay-scale vide order dt. 17.09.1997 and at one stage it was recommended that she could be considered for regularization in the cadre of Class-IV against two sanctioned posts available, as evident from the document dt. 08.07.1998 and even till 15.10.2001 the total sanctioned strength of Class-IV was 20 and only 19 were filled and one post was lying vacant in the cadre of Class-IV and in the seniority list she was at No. 1 and when her services could not be regularized, she preferred appeal before the Id. Rajasthan Civil Service Appellate Tribunal i.e. Appeal No. 1198/2000 and the Id. Tribunal disposed of the appeal vide order dt. 12.02.2002 directing the employee to submit representation keeping in view the judgment of the Apex Court in the case of Malu Ram v. State of Rajasthan and Ors. reported in JT 2001 (Supl.) SC 126. However, her representation came to be rejected on the premise that in view of S.11 of the Rajasthan (Regulation of Appointment to Public Service and Rationalization of Staff) Act, 1999 all suits and proceedings pending in the civil court or Tribunal stands abated and accordingly her representation also came to be rejected vide order dt. 12.06.2012, which was again challenged by the employee in Appeal No. 1302/2002 before the Id. Tribunal seeking direction against the State Government for regularization of her services in the cadre of

Class-IV and after taking note of the fact that S.11 of the Act, 1999 has been struck down by the High Court in the case of Bhawani Singh Vs. State and Others, (2003) 3 RLW 1755 : (2002) 5 WLN 269 , the Id. Tribunal allowed the appeal filed by the employee vide order dt. 02.05.2006 and directed the department to regularize her services in the cadre of Class-IV. The order dt. 02.05.2006 came to be challenged by the department before this court in S.B. Civil Writ Petition No. 6544/2006 and pending writ petition, the impugned order came to be passed wherein the candidature of the employee was rejected by the Screening Committee in its meeting dt. 02.09.2009 and that came to be challenged by the employee by filing S.B. Civil Writ Petition No. 921/2013 before this court which came to be disposed of by the Id. Single Judge vide order impugned dt. 29.05.2013.

16. Apart from what has been argued by the counsel for the parties, counsel additionally submits that the employee has been allowed to work continuously from initial appointment since 1995 without any intervention of the Court/ Tribunal and as regards availability of vacancy in the cadre of Class-IV is concerned, from the document which is on record dt. 08.07.1998 and in support thereof the schedule which is annexed with the writ petition indicating vacant posts in the cadre of Class-IV in the department as on 15.10.2001 it is evident that against 20 sanctioned posts 19 were filled and one post was available but that was shown to be transferred to Jodhpur but still it is a vacant post in the cadre of Class-IV and the employee being senior-most in the cadre had first right to be considered for regularization of her services against the available sanctioned post.

17. We have considered the submissions made by the parties and with their assistance examined the material available on record.

18. It cannot be disputed that each of the employee had been in service for the last two decades in the cadre of Class-IV as on 10.04.2006 and all were fixed in minimum of the regular pay-scale of Class-IV and at the time of furnishing the statement, each of the employee is working in the regular pay-scale of Rs. 6900+DA (minimum of the pay-scale).

19. When we go through the history of judicial pronouncements as and when came up before the Hon''ble Supreme Court, there was a conflicting opinion earlier as to whether the scheme for regularization, as introduced by the respective State Governments from time to time for regularization of the members in the cadre of Class-IV is at all repugnant to Art. 16(4), 309, 320 and 335 of the Constitution and the Apex Court at a later stage was of the view that the question requires a deep probe and referred the matter to be heard by the Larger Bench which came to be noticed from the order of the Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 . Thereafter the question came to be examined by

the Larger Bench of the Hon"ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 . The decision in Umadevi's case (supra) was rendered on 10.04.2006 and the Constitution Bench of the Hon"ble Supreme Court held that appointments made without following the due process or the Rules relating to appointment did not confer any right on the appointees and the courts cannot direct their absorption, regularization or re-engagement nor make their services permanent and the High Courts while exercising its jurisdiction u/Art. 226 of the Constitution should not ordinarily issue mandamus for absorption, regularization or permanent continuance unless the recruitment had been done in a regular manner in terms of the constitutional scheme. However, it was also considered that the courts should not interfere unduly with the economic arrangement of its affairs of the State or its instrumentalities to facilitate the bypassing of the constitutional and statutory mandates. However, it was also observed that a temporary, contractual, casual or a daily wage employee does not have a legal right to be made permanent unless he had been appointed in fulfillment of the mandate of Art. 14 and 16 of the Constitution. However, the Hon"ble Supreme Court made an exception to the above preposition in para-53 of the judgment and the same being relevant for the present purpose is extracted ad infra:--

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanaapa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

20. It clear envisages from the above that there is an exception to the general principles against regularization enunciated in Umadevi's case (supra), if the following conditions are fulfilled:--

(i) The employee should have worked for ten years or more in duly sanctioned post without the benefit or protection of the interim order of the Court/Tribunal; and

(ii) The appointment of such employee should not be illegal even if irregular. Where the appointments are made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualification, the appointments should be considered to be illegal. At the same time, the person employed possess the prescribed qualification and was working against sanctioned post but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

21. In Umadevi's case (supra), the Government and its instrumentalities concerned were directed to take steps to regularize the services of such irregularly appointed employees who have served for more than ten years without intervention/protection of the Court/Tribunal which appointments were made obviously as one-time measure. The object behind the directions issued by the Hon"ble Supreme Court in para-53 of Umadevi's case (supra) appears to be twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of the Courts/Tribunals, obviously on the date of decision in Umadevi's case, be considered for regularization keeping in view their long service; and further to ensure that the State or its departments/instrumentalities shall not perpetuate the practice of engaging persons on daily wage/ad-hoc/casual basis for long periods and periodically regularize them on the pretext that they have served for more than ten years and reason appears to be very obvious that it was defeating the constitutional or statutory provisions relating to recruitment and appointment. The twin conditions taken note of by the Hon"ble Supreme Court, appears to be for the reason that all the persons who have worked for more than ten years without the protection or intervention of the Court/Tribunal in vacant posts and possessing the requisite qualification are entitled to be considered for regularization.

22. In the light of para-53 of the judgment of the Hon"ble Supreme Court in Umadevi's case (supra), the State Government made an amendment vide its Notification dt. 27.02.2009 and added a new sub-rule (4) to R.6 of the Rajasthan Class-IV Service (Recruitment and other Service Conditions) Rules, 1999. The extract of the amendment Notification dt. 27.02.2009 is ad infra:--

"Government of Rajasthan Department of Personnel (A-Group-II)

No. F.5(2)DOP/A-II/2008

Jaipur, dated: 27-02-09.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following

rules further to amend the Rajasthan Class-IV Service (Recruitment and other Service Conditions) Rules, 1999, namely:--

1. Short title and commencement.--(1) These rules may be called the Rajasthan Class-IV Service (Recruitment and other Service Conditions) (Amendment) Rules, 2009.

(2) They shall come into force with immediate effect.

2. Amendment of rule 6- After sub-rule (3) to rule 6 of the Rajasthan Class-IV Service (Recruitment and other Service Conditions) Rules, 1999 hereinafter referred to as the said rules, the following new sub-rule (4) shall be added, namely:--

"(4) Notwithstanding anything contained in these rules the persons irregularly appointed on any duly sanctioned posts mentioned in column number 2 against serial number 4 of schedule and completed ten years service on 10-4-2006 without intervention of any court or tribunal, and continuously working as such on the date of commencement of these amendment rules, shall be screened by a committee consisting of-

(i) Principal Secretary/Secretary to the Government, Department of Personnel;

(ii) Principal Secretary/Secretary to the Government, Finance Department or his nominee not below the rank of Deputy Secretary; and

(iii) Principal Secretary/Secretary to the Government, of the concerned department.

Provided they were eligible for appointment, as per rules on the date of their initial irregular appointment and vacancy is available at the time of screening. The Appointing Authority shall issue appointment order of the person, who is adjudged suitable by the screening committee and appointment shall be effective from the date of issue of such appointment order.

3) Amendment of rule 32.--After the existing proviso (5) of rule 32 of the said rules following new proviso (6) shall be added, namely:--

"(6) the inter-se seniority of the persons screened under sub-rule (4) of rule 6 shall be determined according to the length of continuous service after their irregular appointment. These persons shall rank junior to the persons appointed regularly before the commencement of these amendment rules."

23. It can be noticed from the amendment Notification dt. 27.02.2009 that the Hon"ble Supreme Court in para-53 of the judgment mandated that those who have completed ten years of service on 10.04.2006, subject to other conditions, be considered for regularization of their services. However, in the present amendment Notification dt. 27.02.2009, the State Government in its wisdom put an additional impediment that the employee must have completed ten years of service as on 10.04.2006 without intervention of any Court or Tribunal and

continuously working as such on the date of commencement of the amendment Notification dt. 27.02.2009 and eligible employees are to be screened by the Screening Committee constituted under the amendment Notification dt. 27.02.2009.

24. The case of each of the employee came to be considered by the Screening Committee constituted under the amendment Notification dt. 27.02.2009 and taking note of the salient facts of the employees who are working in the cadre of Class-IV and have completed more than ten years of service as on 10.04.2006 and are still in service on the date of issuance of amendment Notification dt. 27.02.2009, rejected the candidature of each of them assigning a general reason that there was no sanctioned post and each of the employee could not be accommodated against the sanctioned post and completion of ten years of service by the employees as on 10.04.2006 is under intervention of the Court/Tribunal.

25. From the statement filed by the department, it has come on record that there were five posts of Jamadar/Daftry, six posts of Class-IV and two posts of Security Guard which remained vacant almost from the date of its inception. Thus, 13 posts in all in the cadre of Class-IV were available at least from the date of exercise undertaken by the Screening Committee in its meeting dt. 02.09.2009 and in these facts and circumstances, the decision of the Committee to reject the respective claims of the employees, as there was no sanctioned posts available in the cadre of Class-IV, appears to be factually incorrect and the other reason assigned that their continuance of ten years of service as on 10.04.2006 is under intervention of the Court/Tribunal is a sheer misinterpretation construed by the department for the reason that if the service of an employee, at one stage is terminated who subsequently approached to the Tribunal or court and the termination order stands set aside and the employee has been reinstated in service that will not be construed as intervention of the Court or Tribunal but if someone is allowed to continue with protection of the interim order of the Court/Tribunal certainly that will be an impediment while considering candidature of the employee while regularization of his services in terms of amendment Notification dt. 27.02.2009 which is almost in the spirit of para-53 of the judgment in Umadevi's case (supra).

26. In the instant case either of the employee who had worked for more than ten years in the cadre of Class-IV on or before 10.04.2006 has not been allowed to continue because of some interim orders of the Court/Tribunal, as such, both the reasons assigned by the Screening Committee in its report dt. 02.09.2009 appears to be wholly unjust, illegal and not sustainable in law and this what the Id. Single Judge also considered while passing the order impugned dt. 29.05.2013.

27. We would further like to add and that can also be considered as one of the additional circumstance to be noticed that if an employee had worked for more than two decades and budget has been sanctioned by the State Government,

pursuant to which they are paid their pay and allowance and each of them is working in minimum of the pay-scale in the cadre of Class-IV, in the given facts and circumstances, at least this court can take a judicial notice of the nature of work being discharged by such Class-IV Employee being perennial in nature and if the State Government for good reasons has sanctioned budget and failed to sanction the post for a sufficient long time that too for two decades, in the instant case. It may be presumed that continuance of the employees was against the sanctioned post but there was no formal order of sanction came to be issued by the department in the cadre of Class-IV and the submissions made by counsel for the State Government in the light of what has been discussed above are not sustainable and deserve rejection.

28. At the same time, the submission made by counsel for the employees that they should be regularized from the date of completion of 10 years of service in the cadre of Class-IV deserves outright rejection.

29. As regards case of Leela Devi is concerned, sufficient material was placed before the Id. Tribunal that she has been allowed to continue in the cadre of Class-IV since 1985 and her continuance in service was not under interim order of the Court/Tribunal and the document dt. 08.07.1998 on record indicates that there was one post available in the cadre of Class-IV with the department and she being at No. 1 in the seniority list of Class-IV, certainly deserves consideration for regularization of her services.

30. Before parting with the order, we would like to observe that at one point of time a detailed order was passed by this court dt. 18.04.2014 directing the State Government through the Department of Personnel to file an affidavit as to whether the employees working in the cadre of Class-IV in various departments of the Government have at all being considered for regularization of their services in the light of the amendment Notification dt. 27.02.2009 and in compliance thereof a statement of each of the department has been placed on record and we find that most of the employees who have been working for almost 15 to 25 years have not been regularized by the Screening Committee only for the reason that there was no sanctioned post or continuance is on account of interim order passed by the Courts/Tribunals, we find that their candidature has not been considered in right perspective and if some of the employees at one point of time were terminated and subsequently reinstated in service by orders of the Courts/Tribunals, that may not be construed as continuance after intervention by Courts/Tribunals and as regards sanctioned post is concerned, it appears that no department has examined and looked into the strength of Class-IV Employee either on 10.04.2006 or on the date of amendment Notification dt. 27.02.2009 or on the date of meeting of Screening Committee and if post in the cadre of Class-IV became available at a later point of time, we do not find any impediment in considering the candidature of an employee for regularization, at least from the date sanctioned post in the cadre of Class-IV became available and it is expected from the State Govt. to give a

fresh look to the case of such employees who are working in the cadre of Class-IV for more than two decades for their regularization in service, keeping in view observations made by us supra.

31. Consequently, keeping in view the principles which have been taken note of by us, in our considered view, the appeals preferred by the State of Rajasthan and so also of the employees deserve to be dismissed and we direct State of Rajasthan/Department, in terms of order of the Id. Single Judge dt. 29.05.2013 to consider candidature of each of the employee for regularization of their services in the cadre of Class-IV from the date of availability of permanent posts in the cadre and after their fixation in regular pay-scale, arrears be paid to each of the employee within three months, failing which they are entitled for interest @ 12% on the arrears until actual payments. No costs.