

(2013) 05 RAJ CK 0207

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 659, 662, 663 of 2008, 818, 5865, 5866, 5867, 5868, 5869, 5870, 5874, 5928, 5929, 5930, 5931, 9483, 9484, 9485, 10584, 11276 of 2009 and 217 of 2010

Amrit Lal Gujar and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2013) 4 CDR 1865 : (2013) 4 RLW 3436 : (2014) 2 WLN 116

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : P.P. Choudhary, assisted by Mr. Amit Dave, Mr. R.S. Saluja and Mr. Sudheer Saruparia, for the Appellant; G.R. Punia, AAG-Sr. Advocate assisted by Mr. Rajesh Punia, Mahendra Choudhary, K.K. Bissa and Mr. I.S. Pareek, for the Respondent

Judgement

Vijay Bishnoi, J.—In all these writ petitions, the petitioners have sought common relief and, therefore, they are being decided by this common order. Facts of the case, necessary for disposal of all these writ petitions, are being taken from SBCWP No. 663/2008, which are thus, the Board of Revenue, Ajmer issued an advertisement dated 06.01.1999 (Annexure-P/1), inviting applications (from 25 Districts of Rajasthan) from eligible candidates for the post of Patwari under the provisions of Rajasthan Land (Land Records) Rules, 1957 (for short "the Rules of 1957" hereinafter). The petitioners, being eligible, applied for the post of Patwari and in pursuance of the advertisement, they were called for appearing in written test conducted on 8th and 9th May, 1999, result thereof was declared on 10th August, 1999 and the petitioners were declared successful.

2. In the meantime, on 23.07.1999, the Registrar, Board of Revenue wrote a letter to the Deputy Secretary, Revenue Department, Government of Rajasthan that the result of Patwar Examination, held in pursuance of the advertisement dated 06.01.1999, is expected shortly and the selected candidates are required

to send for Patwar Training but as the State Government has informed the Board of Revenue that the training course of selected Patwaris should not be started before getting the permission from the Finance Department, thus, the permission from Finance Department be accorded so that the training of the selected Patwaris be started immediately after 15th August, 1999. It is also mentioned in the order that the training of the selected candidates is necessary in the interest of the Government as the work will suffer if the Patwaris are not posted.

3. On 17.07.2000, the Director and Special Secretary, Panchayati Raj Department, Government of Rajasthan, Jaipur issued letters to the Vikas Adhikaris of the Panchayat Samities, informing that the State Government took a decision to appoint all the successful candidates of Patwar Examination, 1999 on the post of Gram Sewak purely on temporary basis on a fixed salary of Rs. 1200/- per month after giving relaxation in the Rajasthan Panchayati Raj Rules, 1996, (for short "the Rules of 1996" hereinafter) pertaining to appointment of Gram Sewak-cum-Secretary and directions were given to give appointments to those candidates as per the decision of State Government. In the letter dated 17.07.2000, it is mentioned that the sanction for appointing the successful candidates of Patwar Examination, 1999 on the post of Gram Sewak is in accordance with the concurrence given by the Personnel Department as well as the Finance Department of the State Government.

4. In pursuance of the letter dated 17.07.2000, all the petitioners were provided appointments purely on temporary basis, on the post of Gram Sewak on a fixed salary of Rs. 1200/- in different Panchayat Samities of the State of Rajasthan.

5. On 27.03.2002, the Secretary to the Revenue Department issued a letter to the Registrar, Board of Revenue and gave directions to send all the successful candidates of the Patwar Examination, 1999 for training, who were working as Gram Sewak on consolidated salary with the different Panchayat Samities. The Director, Panchayati Raj Department, Government of Rajasthan, Jaipur issued a letter dated 17.06.2002 to all the Chief Executive Officers of the Zila Parishads and the Vikas Adhikaris of Panchayat Samities and directed them to relieve all those candidates, who are working as Gram Sewak on consolidated salary for allowing them to give their presence in the Patwar Training Centres on 01.07.2002. In pursuance of the directions given by the Director, Panchayati Raj Department on 17.06.2002, all the petitioners were relieved for joining the training at the Patwar Training Centres. The petitioners, in pursuance of that, had joined the training at the Patwar Training Centres and after completion of their trainings, they were allotted posting vide order dated 28.04.2003 as Patwari. Since their postings as Patwari, the petitioners are getting their salaries in the pay scale 3050-4590 prescribed for the Patwari under the Rules of 1957.

6. The petitioners have filed these writ petitions while claiming that they are entitled for the salary of the Gram Sewak prescribed in the Rules of 1996 for the period they worked on the post of Gram Sewak-cum-Secretary of the Gram Panchayat and their services are also liable to be reckoned for all purposes from

the date when they were initially appointed on the post of Gram Sewaks. Alternatively, it is prayed by the petitioners that if they are not entitled for the salary of Gram Sewak for the period they had worked as Gram Sewak, then at least they are entitled for the salary of the Patwari as prescribed in the Rules of 1957 as they have been selected for the said post through competitive examination.

7. A reply to the writ petition has been filed on behalf of the State Government and the claim of the petitioners is denied and it is contended that the petitioners are not entitled for salary of Patwaris as prescribed under the Rules of 1957 for the period they have worked as Gram Sewaks purely on temporary basis on fixed salary as the entitlement of the petitioners for appointment on the post of Patwari could only be attained after getting the prescribed training and after obtaining a Patwar School Certificate as per the provisions of Rule 4(b) of the Rules of 1957. It is also contended that since the petitioners have obtained the Patwar School Certificate only in the year 2003, they were appointed as Patwari thereafter, and are getting the salaries in the pay scale prescribed under the Rules of 1957. It has also been contended on behalf of the respondents in the reply that since the petitioners were never selected for the post of Gram Sewak on regular basis and were appointed purely on temporary basis on a fixed salary on the post of Gram Sewak against the posts of Gram Sewaks Community facilitates and in the Lok Jumbish project, so, they were not entitled for salary of the Gram Sewak in the pay scale as prescribed under the Rules concerned. The State Government has also contended that as the surplus employees (Amins) from Land Records Department and the surplus Patwaris from the Irrigation Department were sent for training in the Patwar Training Centres, the selected candidates of the Patwar Examination, 1999 could not be provided training during that period and in the intermediate period, on a representation made by the Association of selected candidates of Patwar Examination, 1999, the State Government in a high level meeting presided over by the then Hon"ble the Chief Minister (Annexure-R/2) has decided to give temporary appointments to the petitioners on the post of Gram Sewak on consolidated salary and the petitioners have accepted the same without any objection. In such circumstances, now the petitioners cannot claim the salary in the pay scale of Gram Sewak or Patwari for the period when they have worked as Gram Sewak because the State Government has made the said arrangements while taking a benevolent view on the request of the petitioners themselves. Therefore, the learned counsel for the State Government has prayed for dismissal of the writ petitions.

8. Learned Senior Counsel - Mr. P.P. Choudhary, while arguing the writ petitions, has contended that the action of the State Government of providing appointments to the candidates selected in the Patwar Competitive Examination, 1999, on the post of Gram Sewak was nothing, but posting the selected candidates on deputation in other department. It has also been contended that if the State Government had taken a decision to send the petitioners for posting in the department other than the parent department, then the petitioners are

entitled for the salary of the said post on which they were selected or the salary of the post on which they have been sent on deputation. It has been contended that the action of the State Government of nonpayment of salary to the petitioners in a regular pay scale either of the post of Gram Sewak or the post of the Patwari, from the date of their initial appointments is unjust, unreasonable and violative of Art. 14 of the Constitution of India. It has further been contended by the learned counsel for the petitioners that the petitioners were Government employees before joining the training at the Patwar Training Centre for the post of Patwari and they have completed the training while remaining in the Government service, therefore, they are entitled for salary as provided either under the Rules of, 1957 for the post of Patwari or under the Rules of 1996 for the post of Gram Sewak. The learned counsel for the petitioners has further contended that the action of the State Government of appointing the petitioners on the post of Gram Sewak without paying them the regular salary in regular pay scale was nothing but taking Begar from the petitioners. It has further been contended that the State being a model employer and cannot take any Begar from its employees without paying them their due salary and, therefore, it is a fit case where a direction should be given to the respondents either to provide them regular salary of the Gram Sewak or of the Patwari for the period when they had worked on the post of Gram Sewak as per the orders of the State Government.

9. The learned counsel for the petitioners has invited attention of this Court towards the advertisement (Annexure-P/1) dated 06.01.1999 and argued that in the advertisement, it has nowhere been mentioned that on being selected, the petitioners will be provided appointments purely on temporary basis on a consolidated salary and, therefore, it was not open for the State Government to give appointment to the petitioners purely on temporary basis on a consolidated salary and the petitioners were entitled for salary under the regular pay scale of the post of Patwari as mentioned in the advertisement.

10. The learned counsel for the petitioners has further contended that the petitioners were selected for the post of Patwari in the Patwar Examination, 1999 but were not provided posting on the post of Patwari and were appointed on the post of Gram Sewak in the year 2000 for an intermediate period and finally appointed on the post of Patwari only in the month of April/May, 2003. However, the petitioners were not provided the benefit of service period wherein they had worked as Gram Sewak and their services have only been reckoned from the date when they joined on the post of Patwari but since the petitioners were duly recruited and selected in the year 1999 itself, therefore, their services are entitled to be reckoned with effect from the date of their initial appointment on the post of Gram Sewak. It is not permissible for the respondents to reckon the services of the petitioners only with effect from the date when the petitioners were posted on the post of Patwari and such an action of the State Government is arbitrary, discriminatory and illegal and is liable to be quashed and set aside.

11. The learned counsel for the petitioners has relied upon a decision of Division

Bench of this Court in Prashant Vohra & Anr. vs. State of Rajasthan & Ors., reported in 2005 (1) WLC (Raj.) 264, wherein this Court has taken a view that the candidates selected on the post of Gram Sewak are entitled for regular salary in the pay scale of Gram Sewak and the action of the State Government of providing fixed salary for initial period has not been approved. This Court, while allowing the appeal, has ordered for granting benefit or seniority to the Gram Sewaks from the date of initial appointment but declined to order for paying regular pay scale for the period, the Gram Sewaks were paid consolidated salary.

12. The learned counsel for the petitioners Mr. P.P. Choudhary has argued that he is relying on the principle laid down in the above referred judgment that a person is entitled for salary in regular pay scale of post for which he has been selected and the action of the State Government of providing consolidated salary cannot be approved but asserted that in this batch of writ petitions, the petitioners are not giving up their claim for salary in regular pay scale for the period they have worked on the post of Gram Sewak on a consolidated salary and prayed that applying the same principle, the respondents may be directed to provide the salary to the petitioners under the regular pay scale of the post of Gram Sewak or Patwari and a direction may be issued to reckon the services of the petitioners from the date when they were initially appointed on the post of Gram Sewak.

13. The learned counsel for the petitioners has, therefore, prayed that these writ petitions preferred by the petitioners may kindly be allowed and the respondents may kindly be directed to give the salary to the petitioner either in the pay scale of Gram Sewak or in the pay scale of Patwari for the period when they had worked on the post of Gram Sewak with the Panchayati Raj Department and their services should also be reckoned from the date when they were appointed on the post of Gram Sewak in pursuance of the order dated 17.02.2000 passed by the Director, Panchayati Raj Department.

14. Per contra, the learned counsel for the respondent-State has argued that the writ petitions have been preferred by the petitioners with a delay of about 5, 6 and 8 years and, therefore, the petitioners are not entitled to get any relief on the ground of delay only. It has further been contended on behalf of the respondent-State that the petitioners are not entitled for the pay scale of the Patwari for the period when they had worked on the post of Gram Sewak purely on temporary basis because during the said period, the petitioners did not obtain Patwar School Certificate, which is mandatory for the appointment on the post of Patwari as per the provisions of Rule 4(b) of the Rules of 1957. It has also been contended that the petitioners have obtained the Patwar Training Certificate only in the year 2003 and from that date, the regular salary to the petitioners is being given by the respondents in prescribed pay scale. It has also been contended that the petitioners are also not entitled to get the salary under the regular pay scale of the Gram Sewak for the period when they had worked as Gram Sewak because the petitioners have never been selected for the post of Gram Sewak as per the procedure prescribed under the Rules of 1996 and the appointments of

the petitioners on the post of Gram Sewak were neither as per the procedure prescribed under the Rules of 1996 nor the petitioners were provided appointments on the post of Gram Sewak on regular basis. It has further been argued by the learned counsel for the respondent-State that the appointments to the petitioners on the post of Gram Sewak were accorded purely on temporary basis on a consolidated salary on the request of the petitioners themselves and, therefore, now it is not open for the petitioners to claim salary for the post of Gram Sewak or the Patwari under the concerned Pay Scale Rules. It has further been contended that on account of availability of surplus employees from the Land Records Department and the Irrigation Department, it was not possible for the State Government to send the candidates selected in the Patwar Examination, 1999 for training in the different Patwar Training Centres and during the said intermediate period, the State Government had made this stopgap arrangements on the request of the petitioners only and the petitioners without any objection has accepted the same and, therefore, it is not open for the petitioners to claim the regular salary of the Gram Sewak or Patwari for the period they had worked on the post of Gram Sewak. The learned counsel for the respondent-State has, therefore, prayed for dismissal of the writ petitions.

15. This Court has considered the submissions made on behalf of the rival parties and perused the material on record.

16. It is not in dispute that the petitioners were selected for the post of Patwari in the Patwar Examination, 1999. It is also not in dispute that even after their selection, the petitioners were not sent for training in the Patwar Training Centres, which is mandatory for providing appointment on the post of Patwari as per the provisions of Rule 4(b) of the Rules of 1957. Vide order dated 17.07.2000, the Director, Panchayati Raj Department has ordered for appointing the selected candidates of Patwar Examination, 1999 as Gram Sewak purely on temporary basis on a consolidated salary of Rs. 1200/-. The petitioners have joined their duties on the post of Gram Sewak in pursuance of the directions dated 17.07.2000 issued by the Panchayti Raj Department. The petitioners had worked on the post of Gram Sewak till the year 2002 when they were relieved for joining the training for the post of Patwari in the Patwar Training Centres to be started w.e.f. 01.7.2002. After completion of the training, the petitioners have joined their duties as Patwaries and are getting their salaries in the regular pay scale for the post of Patwari since April, 2003. The petitioners have filed these writ petitions in the year 2008, 2009 and 2010.

17. The Hon"ble Apex Court in M.P. State Textiles Corpn. Ltd. Vs. Mehendra and Others, , while adjudicating the question of parity in pay of the persons appointed on contract basis vis-a-vis the regularly appointed labourers, has held as under:

We think that the respondent workmen who have accepted their employment on a contract, the terms of which specified the pay scale of each of these workmen, cannot claim the pay scale of the appellant Corporation when their services were

retrenched by Indore Textile, Ujjain. In our opinion, since the respondents accepted the pay scale and did not challenge the same for more than a decade, it is not open for them to demand the pay scale that may be available to similarly situated workmen in the appellant Corporation.

18. In the present case, the petitioners have approached this Court after a lapse of about 8 to 10 years after their appointments on the post of Gram Sewak on a consolidated salary. The petitioners have accepted the appointments offered by the State Government on the post of Gram Sewak on a consolidated salary purely on temporary basis without raising any objection. The petitioners have worked on the said post up to joining the training at the Patwar Training Centres and have not raised any demand or objection with the State Government prior to the filing of these writ petitions. In such circumstances, in view of the decision of Hon''ble Apex Court in M.P. State Textile Corporation Ltd. vs. Mahendra & Ors. (supra), the petitioners are not entitled to get any relief as claimed in the writ petitions.

19. Apart from that in the writ petitions filed by the petitioners, no material has been placed by the petitioners to buttress their claim for equal pay for equal work that what type of duties were discharged by them while working as Gram Sewak and what was the responsibilities of the petitioners during the course of discharging of their duties as Gram Sewak. No foundation, in support of their claim, has been laid by the petitioners in the writ petitions.

20. The Hon''ble Apex Court in Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, , has held as under:

Equal pay for equal work is a fundamental right. But equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Often the difference is a matter of degree and there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bonafide, reasonably on an intelligible criteria, having a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. Equal pay for equal work is a concomitant of Art. 14 of the Constitution. But it follows that equal pay for unequal work will be a negation of that right.

21. The Hon''ble Supreme Court in State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., has held as under:

Though "equal pay for equal work" is considered to be a concomitant of Art. 14 as much as "equal pay for unequal work" will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a

real and substantial difference.

In State of T.N. & Anr. vs. M.R. Alagappan, this Court observed that substantial similarity in duties and responsibilities and interchangeability of posts may not also necessarily attract the principle of "equal pay for equal work" when there are other distinguishing features like educational qualifications for appointment, mode of recruitment, status, nature of duties, functions, measure of responsibility and over all duties and responsibilities even outside duty hours. The principles laid down in Jasmer Singh were also applied and followed in the decision reported in Gujarat Agricultural University vs. Rathod Labhu Bechar.

22. The Hon"ble Apex Court, in State of Haryana Vs. Surinder Kumar and others, has held as under:

That contention cannot be given acceptance for the reason that since the respondents were appointed on contract basis on daily wages, they cannot have any right to a post as such until they are duly selected and appointed. Merely because they are able to manage to have the posts interchanged, they cannot become entitled to the same pay scale which the regular clerks are holding by claiming that they are discharging their duties as regular employees. The very object of selection is to test the eligibility and then to make selection in accordance with rules prescribed for recruitment. Obviously the respondents' recruitment was not made in accordance with the rules.

23. In view of the aforesaid authoritative pronouncement of the Hon"ble Supreme Court and in the absence of any material regarding duties discharged and responsibilities of the petitioners while working as Gram Sewak, no definite finding can be given in this respect and, therefore, no relief can be granted to the petitioners.

24. It is very strange that the State Government has provided appointment to the petitioners on the post of Gram Sewak, though the petitioners have never applied for the said post, while relaxing the procedure prescribed under the Rules of 1996 for providing appointment on the post of Gram Sewak but as per the State Government, the same arrangement was made on the request of the petitioners themselves and the said claim of the State Government has not been disputed by the petitioners. The appointments of the petitioners on the post of Gram Sewak were given with a clear understanding that as and when the State Government would be in a position to send them for training for the post of the Patwari for which they have been selected, their appointments on the post of Gram Sewak would come to an end. Though, this Court has doubts about the validity of the action of the State Government of providing appointments to the petitioners on the post of Gram Sewak while relaxing the Rules of 1996 but since the petitioners have not objected to the same and have accepted the said appointments, the action of the State Government cannot be questioned at this stage.

25. The judgment of this Court rendered in Prashant Vohra & Anr. vs. State of

Rajasthan & Ors. (supra), also does not help to the petitioners because in the said case, the persons had applied for the post of Gram Sewak and were provided appointments on the post of Gram Sewak after regular selection but were paid consolidated salary for a fixed period, though there was no such mention in the advertisement and there was no provision to this effect in the rules. In the case in hand, the petitioners were never applied for appointment on the post of Gram Sewak and they have also not been selected for the post of Gram Sewak in a regular selection but provided appointment on the said post for intermediate period up to sending them for training for the post of Patwari for which they have been selected, with a clear understanding and stipulation in the appointment order that the appointments are purely on temporary basis and they will get a consolidated salary. Hence, there is no question of paying salary to the petitioners under the regular pay scale of Gram Sewak for the period they have worked temporarily on the said post. The petitioners are either not entitled for salary in regular pay scale of Patwari for the period they had worked as Gram Sewak because they acquired qualification for appointment on the said post only after getting the training at Patwar Training Centre as per Rule 4(b) of the Rules of 1957. Even in the case rendered in Prashant Vohra & Anr. vs. State of Rajasthan & Ors. (supra), this Court has observed as under:

It is however, made clear that where the State has offered fair terms of employment and the candidate accepts the same by taking up the job without demur, in that event he is bound by the terms and he cannot be allowed to challenge the same subsequently.

In the present case, since the petitioner have accepted the offer given by the State Government, now it is not open for them to challenge the terms of appointment after lapse of so many years.

In view of the above discussions, no writ can be issued in favour of the petitioners and the writ petitions filed by the petitioners are hereby dismissed.

No order as to costs.