
(2019) 03 RAJ CK 0157

In the Rajasthan High Court

Case No : Civil Writ No. 14906 Of 2017, 2841, 2906, 5076, 13824, 15411, 15414, 15417, 15432, 15433, 15441, 15443, 16524, 16525, 16541, 16544, 16547, 16548, 16551, 16566, 17234, 17260, 17263, 17269, 17270, 17347, 17350, 17353, 17427, 17765, Of 2018, 3472 Of 2019

Ashok Kumar Sharma And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Rajasthan Pension Rules, 1996 — Rule 24, 25(2), 26

Citation : (2019) 03 RAJ CK 0157

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Shreekant Verma, K.R. Saharan, B.R. Chahar, R.S. Choudhary, Sunil Beniwal, Utkarsh Singh

Final Decision : Allowed

Judgement

These writ petitions have been filed by the petitioners aggrieved against the Circulars / orders dated 2.9.2015 and 4.12.2017 issued by the respondents, whereby, it was indicated that those teachers, who were appointed under Recruitment, 2012 and have again got recruited under Recruitment, 2013 and joined pursuant to the fresh Recruitment, their past services shall not be counted.

Another aspect, which has been raised in the writ petitions pertain to the effect of resignation tendered by the petitioners from the post of Teacher Gr.III from the earlier posting and thereafter, they have taken up assignment based on the Recruitment, 2013.

Several submissions have been made in the writ petitions and essentially reliance has been placed on judgment of this Court in Dhanraj Meena v. State of Rajasthan & Ors.: S.B. Civil Writ Petition No.12846/2017, decided on 15.1.2018.

Learned counsel for the petitioners, in relation to the fact that petitioners had

resigned for taking up the assignment pursuant to Recruitment, 2013, made submissions that though the petitioners were granted permission to take up the fresh assignment, restrictions were put regarding the counting of their past services, which restrictions are de hors the rules.

Reliance has been placed on the provisions of Rule 25(2) of the Rajasthan Pension Rules, 1996 ('the Rules of 1996').

A prayer has been made that the writ petitions filed by the petitioners may be allowed and the respondents be directed to count the past services of the petitioners in terms of the judgment in the case of Dhanraj Meena (supra).

Learned Additional Advocate General appearing for the respondents made submissions that the petitions essentially have been rendered infructuous in view of the decision taken by the State by its Circular dated 9.8.2018 (Annex.R/1), wherein, the State decided to accept the directions in the case of Dhanraj Meena (supra) / Virender Singh v. State of Rajasthan & Ors.: S.B. Civil Writ Petition No.13544/2017, decided on 15.1.2018 and directions have been issued in this regard.

Regarding the fact that as the petitioners have resigned from service before taking up the new assignment pursuant to the Recruitment, 2013, feeble submissions were made that as the permission granted was conditional / no permission was sought, the petitioners cannot seek to go back from the conditions of the permission / seek any relief.

Additionally, replies have also been filed inter alia indicating that the resignations of the petitioners were accepted. It was prayed that in view of the above fact situation, the petitioners, despite issuance of the Circular dated 9.8.2018 (Annex.R/1), are not entitled to any relief.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is not in dispute that the petitioners were recruited as Teachers Gr.III during Recruitment, 2012 and were posted at particular districts. When Recruitment, 2013 was held, the petitioners with a view to take chance to get appointment in their home districts, again applied and were successful in getting appointments at district of their choice.

Based on the above situation, they applied for permission to get relieved from place of their posting. Apparently, the relieving was not granted forcing the petitioners to resign from the post for taking up the assignment at their home districts / districts of their choice pursuant to the Recruitment, 2013.

When similar nature matters came up before this Court, wherein, petitioners were directed to be relieved by way of interim order and they were relieved and the period of their service was not being counted for the purpose of provisions of Rule 24 & 26 of the Rules of 1996, petitions were decided by lead judgment in

the case of Dhanraj Meena (supra), wherein, following directions were issued:-

"In view thereof, the writ petitions filed by the petitioners are allowed, as the petitioners have already been relieved pursuant to the interim orders passed by this Court, the said interim orders passed by this Court directing to relieve the petitioners are made absolute.

It is further directed that the respondents while dealing with the cases of the petitioners pertaining to their pay fixation etc. would follow the provisions of Rules 24 and 26 of the RSR as per law.

In cases where the petitioners have been relieved provisionally under the directions of this Court, the Authorities would pass appropriate orders pertaining to relieving of the petitioners alongwith their last pay certificate (L.P.C.), where they were serving earlier."

Pursuant thereto, vide Circular dated 9.8.2018 (Annex.R/1), the respondents have decided not to challenge the order (supra) and have issued guidelines for following the directions in the case of Dhanraj Meena (supra) / Virender Singh (supra), while superseding the Circulars dated 2.9.2015 and 4.12.2017.

In view of the fact that the circulars, which have been challenged by the petitioners in the present writ petitions, already stand superseded by order dated 9.8.2018 (Annex.R/1) and essentially the relief as prayed has been granted by the respondents, the petitions to that extent have been rendered infructuous.

However, in view of the fact that in case of Dhanraj Meena (supra) / Virender Singh (supra), the candidates had not resigned and they were relieved under the directions of the Court and the present petitioners had resigned from previous service, their cases are sought to be distinguished. Such distinction is contrary to the express provisions of Rule 25 of the Rules of 1996, which reads as under:-

"Rule 25. Forfeiture of service on resignation

(1) Resignation from a service or a post, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time admissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government service on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him."

A bare look at sub-Rule 2 of Rule 25 reveals that even if a resignation is given to take up with proper permission, another appointment under the Government, where the service qualifies, the same does not entail forfeiture of past service

and in those circumstances, the stand sought to be taken by the respondents on account of the resignations given by the petitioners, cannot be sustained.

Even in cases, where it is submitted that permission was not taken, in view of the fact that the Circular dated 9.8.2018 (Annex.R/1) does not make any distinction in the case of resignation and as the petitioners instead of approaching the Court as in the case of Dhanraj Meena & ors. (supra) were forced to resign, they cannot be discriminated.

So far as the fact that in cases where permission was granted to the petitioners indicating restrictions is concerned, as the restrictions indicated are de hors the Rules and specifically Rule 25(2) of the Rules of 1996, cannot take away the benefits of the petitioners as conferred under the statute.

In view of the above factual and legal position, merely on account of petitioners have tendered resignation, they cannot be deprived of the benefit of counting of their past services.

In view of the above discussion, the writ petitions filed by the petitioners are allowed. The petitioners would be entitled to same relief as granted in the case of Dhanraj Meena (supra) / Virender Singh (supra) as per Circular dated 9.8.2018 (Annex.R/1).

Needful may be done by the respondents within a period of two months from today.

No order as to costs.