

(2015) 09 RAJ CK 0119

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 10655/2010 and 1952/2011

Champalal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Citation : (2015) 09 RAJ CK 0119

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Manoj Bohra and K.S. Lodha, for the Appellant; Mukesh Dave, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—These writ petitions have been filed by the petitioners seeking direction to the respondents to grant them semi-permanent status and permanent status under the "Rajasthan P.W.D. (B&R), including Gardens, Irrigation, Water Works and Ayurvedic Department, Work-Charged Employees Service Rules, 1964 ("the Rules")" on the post of Driver instead of Helper Gr.II (Mechanical).

2. The petitioners, were appointed on different dates and were conferred semi-permanent status and Permanent status on various dates as under:--

3. It is inter-alia indicated that the petitioners though appointed as Helper Gr.II (Mechanical) were working as Drivers with the respondent establishment and therefore, in terms of Rule 3 of the Rules, the respondents were required to pass orders conferring status of semi-permanent and Permanent as Drivers instead of Helper Gr.II (Mechanical).

4. It is submitted by learned counsel for the petitioners that the respondents passed the orders on various dates conferring the status as semi-permanent/permanent and as on that day, they were working as Drivers and for the purpose of conferring the status as semi-permanent /Permanent, the utilisation of their

services must be taken into consideration and not as to on what status they were initially appointed, the orders passed conferring the status on petitioners as semi-permanent/permanent by the respondents deserves to be modified to the extent that the petitioners be treated to have been made semi-permanent and Permanent as Drivers.

5. Reliance have been placed judgment of this Court in Hem Singh & Ors. v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No. 6423/2008 decided on 21.10.2009.

6. A reply to the writ petition has been filed by the respondents, inter-alia indicating that the petitioners are not entitled for grant of semi-permanent status and Permanent status as Drivers, inasmuch as, they were appointed as Helper Gr.II (Mechanical). It is submitted that at the point of time when the petitioners became entitled for grant of semi-permanent status i.e. 2 years from the date of appointment, they were working as Helper Gr.II (Mechanical) and therefore, even if they have discharged duties as Drivers subsequent thereto they are not entitled for grant of semi-permanent/permanent status as Drivers.

7. Though no plea has been raised in the reply, learned counsel for the respondents made submissions that the writ petitions filed are highly belated and the same, therefore, deserves to be dismissed on this count alone.

8. Learned counsel for the petitioners in S.B. Civil Writ Petition No. 1952/2011 made submissions that the petition has been filed by the petitioner treating the grant of status as semi-permanent/permanent as promotion, which in fact, is only conferment of status and is not promotion and therefore, the petitioner may be permitted to make submissions for grant of relief for conferment of the status instead of promotion as semi-permanent/Permanent status.

9. I have considered the submissions made by learned counsel for the parties and have perused the material placed on record. The petition in the case of Kalyan Singh is permitted to treated for the prayer of conferment of status.

10. So far as the facts are concerned, there is no dispute that the petitioners were initially appointed as Helper Gr.II (Mechanical) as Work-charged Employees. It is also not in dispute that the petitioners from time to time started discharging their duties as Drivers as the averments made in the writ petitions alongwith voluminous documents in support of discharge of duties as Drivers have not been denied by the respondents. In due course of time, the respondents passed orders conferring semi-permanent status on the petitioners as indicated in the table above.

11. It appears that despite passing of the orders way-back in the year 1994 & 1995, the petitioners did not question the said conferment of semi-permanent status as Helper Gr.II (Mechanical). Whereafter, on account of completion of 10 years" service by order dated 23.8.2006 in the case of Champalal and 19.1.2007 in the case of Kalyan Singh, the permanent status was conferred on the

petitioners and the present writ petitions have been filed in the year 2011 seeking the relief as stated herein-before.

12. Learned counsel for the petitioners when confronted with the above aspect, pleaded ignorance of the petitioners regarding their rights under the provisions of Rules and submitted that apparently on account of passing of the judgment of this Court in Hem Singh & Ors. (supra) vide judgment dated 21.10.2009, the petitioners became aware of the legal position and have approached this Court. It is further submitted that as the petitioners are being paid the difference of salary on account of working as Drivers under the orders passed by the respondents, they were as such not financially effected, which may also be one of the reasons for approaching this Court with delay.

13. The submissions made by learned counsel for the petitioners, though appears to be spacious and not convincing at all, in the circumstances of the case, wherein qua other workers working under the work-charged establishment such reliefs have been granted by this Court, for balancing equities the grant of monetary relief to the petitioners, can be molded on account of approaching this Court with delay, however, the petitioners cannot be shut out from seeking relief on account of delay only.

14. The provisions of Rule 3 of the Rules read as under:--

"3. Categorisation.--(1) Work charged employees (including the regular technical staff of Water Works Department) for the purpose of these rules shall be divided into the following three categories:--

- (i) Permanent status,
- (ii) semi-permanent status, and
- (iii) Casual :

Provided, however, that nothing in these rules shall entitle any work-charged employee, categorised permanent or semi-permanent to claim the status or benefits of permanency or semi-permanency to which a regular Government employee is entitled under the Rajasthan Service Rules.

(2) Employees, who have been in service for ten years or more, shall be eligible for the status of permanent work-charged employees provided their record of service, in the opinion of the competent authority, is satisfactory.

(3) Employees in continuous service for two years or more except those covered by sub-rule (1), shall be eligible for the status of semi-permanent work-charged employees or of semi-permanent regular technical staff, provided their record of service in the opinion of the competent authority, is satisfactory.

(4) No employee shall acquire the status specified in sub-rules (2) and (3) without the prior sanction of the competent authority, as may be notified by the Head of the Department from time to time."

15. This Court in the case of Hem Singh (supra), while interpreting the above provision held as under:--

"As per Rule 3 of the Rules of 1964, a work charged employee on completion of two years continuous service is entitled to be conferred with semi-permanent status subject to the satisfactory service record. The petitioners though were appointed as Helper, but they have discharged ministerial duties, therefore, they were serving as Store Munshi and not as Helper. As per Rule 3 of the Rules of 1964, the employees on completion of two years continuous satisfactory service are entitled for grant of semi permanent status. Prior to grant of semi permanent status, a workman in work charged cadre is only a casual employee, thus, it is only the factor of utilization of his service that may be a basis for awarding status as per sub-rule (2) and (3) of Rule 3 of the Rules of 1964. The respondents too accepted this position and, therefore, under the letter dated 20.11.2006 (Annexure 1) sought necessary details regarding the work charged employees, whose services were utilized in Ministerial Cadre despite their appointment as daily rated employee/helper. It is also pertinent to note that officers of the respondent department also, recommended cases of the petitioners for grant of semi permanent status in work charged cadre on the post of Store Munshi on completion of two years of service from the date of their initial appointment as helper."

(emphasis supplied)

16. From the material available on record, it is an admitted position and apparent that the petitioners were discharging the duties as Drivers at the point of time and in fact, two years from before passing of the order conferring the semi-permanent status on the petitioners and continues to do the same and in view of the law laid down by this Court in the case of Hem Singh (supra), wherein it has been categorically held that prior to grant of semi-permanent status, a workman in work-charged cadre is only a casual employee, thus, it is only the factor of utilization of his service that may be a basis for awarding status as per sub-rule (2) and (3) of Rule 3 of the Rules, as in the present case, the utilization of the petitioners as Drivers has been admitted by the respondents from before the date the order conferring status as semi-permanent was passed by the respondents, the respondents were required to confer the status on the petitioners as Drivers and not as Helper Gr.II (Mechanical) as has been done by the respondents and thereafter confer the permanent status as driver as well.

17. So far as the consequence of above finding is concerned, the petitioners would be entitled to grant of semi-permanent and Permanent status as Drivers w.e.f. the date the status was conferred on them as Helper Gr.II (Mechanical) with consequential benefits like fixation of pay etc. based on conferment of status as semi-permanent/permanent from the dates they were conferred the said status as Helper. However, as admittedly, the petitioners are already in receipt of difference of pay and they have approached this Court with delay, ends of justice would meet in ordering that they would not be entitled to grant of

monetary benefits on account of passing of this order till August, 2015.

18. In view of the above discussion, the writ petitions filed by the petitioners are allowed. The respondents are directed to modify the orders dated 27.7.1994 and 23.8.2006 qua Champalal and 11.8.1995 and 19.1.2007 qua Kalyan Singh passed by them conferring the semi-permanent/permanent status on the petitioners as Helper Gr.II (Mechanical) to Driver with consequential benefits only to the extent of grant of pay-scale, fixation etc. However, the petitioners would not be entitled to grant of monetary benefits as a consequence of the above orders till August, 2015. The petitioners would be entitled to salary of the said post of Driver w.e.f. 1.9.2015.

19. No order as to costs.