

(2014) 05 RAJ CK 0254

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4905/2014 and Stay Application No. 4520/2014

Devendra Kumar Sharma

APPELLANT

Vs

The Director, Secondary Education, Rajasthan, Bikaner and
Another

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0254

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : D.P. Sharma, Counsel, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner assailing the judgment dated 21.10.2013 of the Rajasthan Civil Services Appellate Tribunal passed in Contempt Petition No. 61/2010 (690/2002) filed by petitioner. Before the Tribunal, the petitioner claimed that the selection scale ought to be granted to him by counting the period of ad hoc service.

2. Petitioner has retired from service on 30.11.2007. In view of Circular dated 25.01.1992, he was granted selection scale on completion of 18 years of service vide order dated 19.08.1992. Thereafter vide order dated 26.10.1996 withdrawn the said benefit. Petitioner challenged the same before the Tribunal by filing Appeal No. 690/2002, which came to be allowed vide order dated 26.04.2010 by quashing the said order of withdrawal of selection scale, in view of the Circulars dated 26.06.2001 and 19.07.2001. Respondents challenged the order of the Tribunal dated 26.04.2010 before this Court by filing Writ Petition No. 11871/2011, which was partly allowed by this court by order dated 20.03.2012 upholding the order dated 26.10.1996 of the respondents thereby making correction of the date of grant of first and second selection scale, however, it was directed that such correction would be prospective in that, no recovery shall be made from the petitioner and whatever amount has been recovered shall be

refunded to him with interest.

3. The third selection scale became due to petitioner on 30.08.1996 as he was initially appointed on 30.08.1969 as untrained teacher, and the respondents, in view of various Circulars and judgments of this Court, allowed the third selection scale with effect from 30.08.1996. The Tribunal though agreed to allow selection scale to the petitioner on completion of 15 years of service from the date of first appointment on the basis of Circular dated 23.01.1985. The Tribunal recorded so on the wrong interpretation of judgment dated 20.03.2012 of this court.

4. Learned counsel for the petitioner submitted that untrained teachers are entitled to the benefit of selection scale on completion 9, 18 and 27 years of service, counting their services rendered on ad-hoc basis because running could be undertaken by subsequent appointment and therefore this court in earlier judgment rendered in Writ Petition No. 11871/2011 filed by the respondents, dated 20.03.2012 has not been correctly decided. It is contended that this court in aforesaid judgment has stated that order dated 26.10.1996 of respondents thereby making correction in date of grant of selection scale, would be only prospective and that no recovery shall be made from the petitioner, and that whatever amount has been recovered shall be refunded with interest.

5. The aforesaid judgment was passed by this court in the writ petition filed by the respondents because the petitioner had earlier also filed an appeal before the Rajasthan Civil Services Appellate Tribunal. The Tribunal had allowed the aforesaid appeal vide judgment dated 26.04.2010. Reliance in the appeal was placed on the judgment of this Court in Smt. Pushplata Thada and Others Vs. State and Others, . However, in the meantime, the matter was again taken to the Supreme Court challenging the judgment of the Larger Bench of this Court in Mohammad Farooq. The Supreme Court in State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, held that the ad-hoc/temporary employees would be entitled for grant of selection scale from the date of their regular appointment. Subsequently, the State of Rajasthan issued a Circular dated 20.08.2010, which provided that those employees, who have already been granted selection scale prior to 29.06.2009, benefits are not being withdrawn however if any further selection scale becomes due after issue of the aforesaid clarificatory circular, that selection scale would be applicable by the corresponding date. Thereafter clarificatory Circular dated 18.11.2010 came to be issued and in Clause 94) whereof it is provided that in all such cases in which the benefit of the selection has already been withdrawn prior to 29.06.2009, the concerned incumbent would not be entitled to the benefit of aforesaid clarificatory circular.

6. AS a result of the applicability of aforesaid Circular dated 20.08.2010, although the respondent would not be entitled to recover the amount paid to the petitioner while counting the period of ad-hoc/temporary service but if that Circular is applied for grant of benefit to the petitioner, it has to be applied fully because that very Circular was clarified on 18.11.2010, which provides that if subsequent to 29.06.2009 any other selection scale became due, the period of

ad-hoc/temporary service shall be liable to excluded and ignored.

7. The learned Tribunal, in my considered view, has rightly decided the appeal filed by the petitioner, as the writ petition filed by respondents against earlier judgment of the Tribunal having been allowed in part by this court, the learned Tribunal could not reopen the issue again, which is already decided in the earlier judgment passed in earlier writ petition having attained finality. It is not open to be reexamined.

8. Writ petition is dismissed. This also disposes of the stay application.