
(2017) 01 RAJ CK 0016
In the Rajasthan High Court
Case No : 9231 of 2012

District Education Officer (secondary Education), Education	APPELLANT
Vs	
Girdhari Ram S/o Shri Bagta Ram	RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

[Rajasthan Service Rules, 1951](#), Rule 10

Citation : (2017) 01 RAJ CK 0016

Hon'ble Judges : Sanjeev Prakash Sharma

Bench : SINGLE BENCH

Advocate : B.L. Bhati

Final Decision : Dismissed

Judgement

1. By way of the writ petition, the petitioner-District Education Officer, Barmer has challenged the award dated 28.12.2011, passed in Labour Misc. Case No.11/2005, by the Industrial Tribunal & Labour Court, Jodhpur, whereby an applicant Girdhari Lal has been held to be a workman and further the petitioner District Education Officer action of not granting regular service to the respondent w.e.f. 24.05.1985 and the regular pay scale of Class IV employee from that date, has been held to be bad in law with further directions to the petitioner to treat him on the regular pay scale w.e.f. 24.05.1985 and pay regular pay scale to him from the said date.

2. In brief, the facts which come up before the Industrial Tribunal & Labour Court, Jodhpur (herein after referred as "the Tribunal") were that a Reference was made by the State Government on 17.09.2004 with regard to the dispute raised by the respondent No.1 Girdhari Ram through his Union, for not allowing him regularisation w.e.f. his initial date of appointment i.e. 24.05.1985 and not pay him regular pay scale w.e.f. the said date. It was claimed by the respondent No.1-applicant Girdhari Ram that he was initially appointed after calling names from the Employment Exchange on 24.05.1985, for the substantive post of Class IV employee and is continuously performing his duties on the said post even as on today. Initially, he was being paid Rs.234/- per month which was increased to Rs.286/- per month and then to Rs.572/- per month.

3. It was his submission before the learned Tribunal that his services were governed by the Rajasthan Class IV Service Rules, 1963 and there is no post available under the Schedule thereto, of a daily wage Class-IV employee and he was entitled to get his regular pay scale. He further demanded that he should be paid the regular pay scale. It was further his submission that he has wrongly been shown as a part-time employee, while he was regularly working as a Class IV employee. It was further submitted that when he submitted his representation, he was placed in regular pay scale w.e.f. 27.03.1992, but his previous service was not counted and he was treated as a fresh appointee. It was his claim that he could not have been appointed afresh when he had already been appointed earlier through a regular selection process by calling his

name through Employment Exchange and was, therefore, being subjected to exploitation. It was his further case that when he was initially appointed, he had completed all the formalities as prescribed for a regular employee, under Rule 10 of the Rajasthan Service Rules, 1951 and there was no occasion to regularise him only from 27.03.1992 and deny his previous service rendered with the Department.

4. The respondent further stated that similarly placed other Class-IV employees were given benefit. One of them filed S.B. Civil Writ Petition No.284/1993 Chetan Ram Vs State Of Rajasthan decided on 13.02.1996 in which following order was passed:-

"It is not disputed that this case is squarely covered by my judgment announced today in S.B. civil Writ Petition No.260/93. For the reasons recorded therein it is held that the petitioner will entitled to be paid the same salary as was

being paid to regularly appointed peons in the office of the respondents in the minimum of the scale of the peon from the date of his appointment i.e. 23.09.85. Consequently, it is directed that the petitioner should be paid the salary from the date of his appointment in the minimum of the scale of the peon and the arrears in this respect should be paid to him within a period of three months from today."

5. The case of the respondent was similar to that of Chetan Ram but when the benefits passed in the Chetan Ram's case were not extended to him. He submitted his claim before the Tribunal through his Union. It was his case that another Class IV employee Meetha Lal and other similarly situated employees had also been given benefit of regularisation, from the date of their initial appointment.

6. As he was on the lowest post of service, he had not approached the Court earlier holding that in view of the order, he would be also given benefits as all similarly placed

persons were given.

7. The petitioner in the reply to the claim before the Tribunal admitted the position as it stood and claimed by the respondent, however, it was stated that the respondent had not put up his claim at the relevant time and the same could not be now granted to him.

8. The Tribunal after considering all aspects of the matter and having treated the petitioner being Class-IV employee working with the Department as a Workman, proceeded to pass the directions as stated herein above.

9. Feeling aggrieved of the order, the petitioner has challenged the said award and the main argument which the counsel for the petitioner has raised before the Court is with regard to delay and laches in coming up before the Court. It is submitted that while Chetan Ram had filed Writ Petition in the Year 1993 itself and the other persons had also claimed before the Tribunal. Earlier the petitioner who has come up with much late, cannot be given the said benefit from the said date, as he will be treated to have accepted the order dated 27.03.1992.

10. It is further submitted that the Tribunal could not have passed the order, as the matter could have only been agitated before the Rajasthan Civil Services Appellate Tribunal. In support of the submissions, the counsel for the petitioner has relied upon the judgment in the matter of Union of India & Ors. Vs. Tarsem Singh reported in (2008) 8 SCC 648, which is a case relating to disability pension and the respondent who was working in Indian Army and had been invalidated, claimed disability pension but had approached the High Court in the Year 1999 while

he had been invalidated in the Year 1983 and the Court after taking into consideration the law relating to laches and belated claims has held as under:-

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and

laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

11. From the perusal of the aforesaid verdict of the Hon''ble Apex Court, it is apparent that the Court has carved out as an exception that where the issue relates to payment or re-fixation of pay or pension, relief may be granted inspite of delay as it does not effect the right of the third party. In the present case too, the matter is only with regard to the re-fixation of his pay and is not going to effect any third person/third party.

12. On the other hand, it would also be seen that this Court as well as the Hon''ble Apex Court has time and again held that once relief has been granted by the Court, similarly placed citizens are not required to apply for the

same relief and not knock the doors of justice as it is not an individual claim which is decided by the Court to question of law, which has been decided that once a Class IV employee is regularised, his date of regularisation will be counted from the date when he was originally appointed against a substantive post. In this regard, it would be useful to refer to the case of Ghanshyam Singh Rajoria Vs. State of Rajasthan & Ors. reported in 1994 (3) WLC (Raj.) 738 wherein in Para 8 it has been held as under:-

"In the present case, the order passed by the Division Bench clearly shows that the Court granted relief in accordance with rules. The very fact that the High Court itself thought it proper to grant relief to the two petitioners in accordance with rules goes to show that the Court never intended that the relief should be confined to two persons who had approached it. Even when statutes are construed by the Court, attempt is made to harmonise them and to interpret the same in the manner which makes it workable and constitutional. If two interpretations are possible then that one is accepted which renders the statute constitutional, rather than one which makes it unconstitutional. If that principle

is applicable for interpretation of statute, there is still a more greater reason and justification to interpret the decisions of Court in such a manner that the decision does not result in contravention of Art. 14 of the Constitution. It is, therefore, reasonable to hold that while passing the orders dated 10th February, 1992 and 20th August, 1992, the Division Bench did not intend to confine the relief to the two petitioners and the Government had no justification to limit the relief in the matter of seniority and promotion to the only those who had approached the High Court. Rather, it was the duty of the Government and the Department to have assigned seniority to all the erstwhile Wool Graders on the basis of their seniority in the Sheep and Wool Department. Clearly, by denying the seniority to the petitioners and further promotion, respondents No.1 and 2 have contravened their fundamental right under Arts. 14 and 16 of the Constitution."

13. In view of the above, this Court is of a firm view that merely because the petitioner had submitted his claim through Union, which came to be decided by the Tribunal. The benefit of service from 1985 to 1992 could not have been denied and the order passed by the Tribunal does not

call for any interference.

14. The writ petition is accordingly dismissed with directions that the order dated 28.12.2011 passed by the learned Tribunal in Labour Misc. Case No.11/2005 be now complied with within a period of three months from today.