

(2011) 05 RAJ CK 0149
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1537 of 2003

Gangadhar Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2011) 4 RLW 2791

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : H.L. Kela and Vinay Jain, for the Appellant; Hemant Choudhary, Govt. Counsel and K.K. Bissa, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In this writ petition, following prayer has been made by the petitioner:

(a) record of the case may kindly be called for and Hon''ble Court may pleased to issue a writ of mandamus and/or a writ in the nature of mandamus or any other appropriate writ the order dtd. 28.3.2003 may kindly be quashed with all consequential benefits,

(b) respondents be directed to consider the case of petitioner for regularization,

(c) during the pendency of the writ petition petitioner should be taken back on duty and he should be paid salary month by month,

(d) respondents should also be directed to pay interest @ 12% on dues amount,

(e) by an appropriate writ, order or directions, any other relief which is deemed fit in the facts and circumstances of this case may kindly be granted in favour of the petitioner.

(f) costs of this writ petition may kindly be awarded in favour of the petitioners.

As per facts of the case, the petitioner was appointed as Class IV employee on part-time basis in the Primary School, Rajaji-ka-Khera, Panchayat Samiti, Mandal (District Bhilwara) vide order dated 01.01.1975. On 11.04.1989, the Govt. Primary School, Rajaji-ka-Khera was upgraded but the administrative control over the said school remained with the Panchayat Samiti. The administrative control of the school was taken over by the State Government in the month of April 1991 and all the staff of the school were taken over by the State Government and they were absorbed in the government service but the State Government did not absorb the services of the petitioner though the petitioner was allowed to continue as Class IV employee in the said school even after April 1991.

2. Case of the petitioner is that the petitioner was allowed to work but payment of salary was made by the Panchayat Samiti, Mandal up to 16.05.1992. Thereafter, neither the State Government nor the Panchayat Samiti made payment of salary to the petitioner. So also, the services of the petitioner were not regularized although he was performing the duties as Class IV employee in the school since 01.01.1975. Contention of the petitioner is that he was discharging the same duties and functions as being discharged by other regular Class IV employees, therefore, he was entitled for payment of salary for the post of Class IV employee, so also, he was further entitled for regularization of his services; but, neither the petitioner was paid salary after 16.05.1992 nor his services were regularized.

3. In the above circumstances, the petitioner preferred a writ petition before this Court which was registered as S.B. Civil Writ Petition No. 4680/1992, in which, the coordinate Bench of this Court issued following directions:

In the result, the writ petition, filed by the petitioner, is allowed and the District Education Officer, Bhilwara, is directed to make payment of salary to the petitioner in the regular pay scale applicable to the post of Class IV employees since the date of filing the writ petition, i.e., August 31, 1992. The arrears of salary should be paid to the petitioner within a period of one month from today and in future, he should be paid salary in the regular pay scale month by month. If the arrears of salary are not paid to the petitioner within a period of one month from today then the petitioner shall be entitled for interest @ 12% per annum from the date the same became due.

4. In pursuance of the said judgment rendered in S.B. Civil Writ Petition No. 4680/1992, dated 27.01.1994, the petitioner was paid salary up to 30.09.1994. On 01.10.1994, the District Education Officer relieved the petitioner and directed him to join in the office of Vikas Adhikari, Panchayat Samiti Mandal. The Vikas Adhikari, Panchayat Samiti Mandal vide order dated 03.10.1994 directed the petitioner to join in the office of District Education Officer for the reason that no post of Class IV employee was vacant in the Panchayat Samiti Mandal.

5. Being aggrieved and dissatisfied with the order dated 01.10.1994 passed by

the District Education Officer and, so also, order dated 03.10.1994 passed by the Vikas Adhikari, Panchayat Samiti, Mandal, the petitioner preferred second writ petition before this Court for seeking direction to the respondents to take him on duty. Said writ petition filed by the petitioner was registered as S.B. Civil Writ Petition No. 180/1994, in which, on 18.01.1995, following order was passed:

By an order dated 1.10.94 the Distt. Education Officer, Primary education, Bhilwara relieved the petitioner and directed him to report to Vikas Adhikari Panchayat Samiti Mandal after getting him paid in accordance with directions issued by this Court in S.B. Civil writ petition No. 4680/92 decided on 27.1.94. The petitioner in compliance of this order went to Vikas Adhikari Panchayat Samiti, Mandal and reported for duty. On 3.10.94, the Vikas Adhikari returned the original order to the Distt. Education Officer for the reason that no post of Class IV employee was vacant in the Panchayat Samiti and, therefore, it was not possible to take the petitioner on duty. The petitioner again returned to the Distt. Education Officer and on 3.10.94 itself reported back for duty. Since then, he is not being taken on duty at either place. On 1.12.94, the petitioner's counsel issued a notice for demand of justice, which has also remained unresponded. In these circumstances, it is directed that the petitioner shall be taken on duty by the Distt. Education Officer, Primary Education, Bhilwara and shall be paid salary as has been paid for period up to 30th Sept. 94 until further orders, as the petitioner's service has not been terminated by following any process of law.

6. Upon perusal of the aforesaid order, it is abundantly clear that on 18.01.1995 co-ordinate Bench of this Court specifically directed the District Education Officer, Bhilwara to take the petitioner on duty and pay salary to him with effect from 01.10.1994. In pursuance of the above judgment, the District Education Officer passed order on 03.04.1995, whereby, Head Master, Government Upper Primary School, Kareda was directed to take the petitioner on duty; but, unfortunately, the respondent Department issued show cause notice to the petitioner why his services may not be terminated. In the compelling circumstances, again, the petitioner preferred third writ petition before this Court which was registered as S.B. Civil Writ Petition No. 2898/1995. Said writ petition was transferred to the Rajasthan Civil Services Appellate Tribunal and, after transfer, the Tribunal registered the said appeal as Appeal No. 498/1999. Another appeal was filed by the petitioner before the Rajasthan Civil Services Appellate Tribunal for payment of salary which was registered as Appeal No. 337/1999.

7. Both the above appeals, Appeal No. 498/1999 and Appeal No. 337/1999, were heard together and finally the Tribunal, Circuit Bench, Jodhpur adjudicated both appeals on 19.12.2001, in which, following order was passed:

8. Upon perusal of the above order of the Tribunal passed in aforesaid appeals, dated 19.12.2001, it is revealed that the Tribunal took serious note of the fact that for no reason or no fault on the part of the petitioner, the respondents are harassing the petitioner and they have not paid salary to the petitioner for last five years. Further, it is observed that for the dispute between the departments

the petitioner cannot be made to suffer, therefore, the Tribunal passed order for payment of salary along with 18% interest.

9. Contention of learned counsel for the petitioner is that the petitioner is working as Class IV employee since his appointment but, till today, his services have not been regularized, so also, inspite of the clear order made by the Tribunal the petitioner is still waiting for due salary and, at last, when the petitioner claimed his salary vide Annex.-5 dated 28.03.2003, the Addl. Chief Executive Officer, Elementary Education, Bhilwara directed the Head Master, Government Upper Primary School, Kareda to remove the petitioner from service for the reason that no appointment order was issued in favour of the petitioner initially.

10. In this writ petition, the petitioner is challenging the validity of order Annex.-5 dated 28.03.2003, so also, prayed for direction to the respondents to consider the case of the petitioner for regularization of his services on the post of Class IV employee.

11. This writ petition was filed on 08.04.2003. Vide order dated 09.04.2003, the co-ordinate Bench of this Court stayed operation of order impugned dated 28.03.2003 and said stay order was confirmed on 15.05.2003. In the present writ petition, second stay petition was filed by the petitioner because inspite of order passed by this Court no salary was paid to the petitioner.

12. In the second stay petition an order was made on 18.07.2008, whereby, Addl. Chief Executive Officer, Primary Education, Bhilwara was directed to explain why the petitioner has not been paid regular salary after granting stay by this Court. The explanation shall be filed before this Court on or before 25th July, 2008 else the said authority shall remain present in the Court.

13. On 11.08.2008, following order was passed by this Court on the second stay petition:

On 9.4.2003, while admitting the writ petition, the operation of the order dated 28.3.2003 (Annexure-5) was stayed by this Court.

14. Upon perusal of Annexure-5, it is revealed that by the said order dated 28.3.2003, the petitioner's services were terminated. Meaning thereby, the order of termination was stayed by this Court while admitting this writ petition.

15. On 15.9.2003, Coordinate Bench of this Court has confirmed the stay order passed on 9.4.2003 till final decision of the writ petition.

16. Learned counsel for the petitioner while filing second stay application prayed that though the order of termination was stayed by this Court but from last five years, the respondents are not making payment of salary to the petitioner, therefore, on 18.7.2008, following order was passed by this Court:

The Additional Chief Executive Officer, Primary Education, Bhilwara is directed to explain why petitioner has not been paid regular salary after granting stay by

this Court. The explanation shall be filed before this Court on or before 25th July, 2008 else the said authority shall remain present in the Court.

Vide aforesaid order, it was specifically directed to explain why the petitioner has not been paid regular salary after stay order by this Court.

Now, explanation has been filed in this case, in which it is stated that in compliance of the aforesaid direction, the undersigned prepared the salary bill and sent to the treasury but till the date which is 25.7.2008, the said bill was not passed by the treasury and payment could not be made to the petitioner then undersigned sent back the bills of petitioner's again to the Treasury on 4.8.2008 but again Treasury Department has refused to clear the bills while imposing objection regarding sanction of special budget.

In para-3 of the additional affidavit, it is stated by the respondent - District Education Officer (Elementary), Bhilwara that now the undersigned sent a messenger to the Directorate for obtaining sanction and the matter is in process, therefore, some reasonable time can be consumed for the purpose of finalization and compliance of the order passed by this Court.

It is very strange that vide order dated 18.7.2008, an explanation was sought from the respondents why the regular salary was not paid to the petitioner after passing the said order by this Court on 9.4.2003.

Upon perusal of additional affidavit, there is no explanation with regard to non-payment of salary to the petitioner. More so, again certain facts are narrated in which it is prayed that some time may also be granted for finalization of payment of salary. In my opinion, it is a gross disobedience of the order passed by this Court.

In the aforesaid circumstances, I deem it just and proper to first issue notice to the District Education Officer (Elementary) Bhilwara and Treasury Officer, Bhilwara to explain why the order passed by this Court on 18.7.2008 is not complied with and why action should not be taken against them for committing disobedience of the order passed by this Court.

List on 18.8.2008.

A copy of this order may be sent to the Director, Primary Education, Government of Rajasthan, Bikaner immediately.

17. In pursuance of the said order, the petitioner was paid salary up to 14.08.2008 and vide order dated 18.08.2008, for the reason that amount of Rs. 3,03,862/- was paid to the petitioner towards arrears of salary for the period from 20.03.2003 up to 30.06.2008, the second stay petition was disposed of and the writ petition was directed to be listed in the Court for hearing in the second week of October 2008.

18. Learned counsel for the petitioner vehemently argued that although in the first writ petition coordinate Bench of this Court vide judgment dated 27.1.1994

passed order in presence of Government Counsel as well as counsel for the Panchayat Samiti and accepted the contention of the petitioner that he was appointed on 01.01.1975, therefore, when the said judgment attained Finality, there is no question of terminating the services of the petitioner vide the impugned order dated 28.03.2003, Annex.-5 on the ground that no appointment order was issued by the Panchayat Samiti in favour of the petitioner. In this view of the matter, it is submitted by learned counsel for the petitioner that the reason for terminating the services of the petitioner is totally baseless, so also, action of the respondents is against the principle of nature justice because vide order dated 28.03.2003 respondents passed order of discontinuance of the services of the petitioner who was admittedly appointed on 01.01.1975 and the said fact is accepted by this Court twice. Further, the Rajasthan Civil Services Appellate Tribunal while deciding the appeals filed by the petitioner categorically observed that the action of the respondents is glaring example of total illegality; more so, it is a case in which exemplary cost is required to be imposed upon the respondents because inspite of the judgment rendered by this Court in S.B. Civil Writ Petition No. 4680/1992 and judgment rendered by the Tribunal in appeals No. 498/99 and 337/99, decided on 19.12.2001, it is abundantly clear that the whole basis of terminating the services of the petitioner vide the impugned order is not only illegal but the same is in contravention of the adjudication made by this Court.

19. It is contended by learned counsel for the petitioner that the respondents cannot be permitted to throw out the petitioner from service in this manner who was admittedly appointed on 01.01.1975 and allowed to work up to 28.01.2003, therefore, this writ petition may be allowed and order dated 28.03.2003 may be quashed and the respondents may be directed to treat the petitioner regularly appointed Class IV employee and grant him all consequential benefits.

20. In this writ petition, no reply has been filed by the respondents though it is pending since 2003. It is very important to mention that the petitioner was initially appointed on 01.01.1975 and this fact was not disputed by the respondents in the earlier writ petitions filed by the petitioner for payment of salary and granting benefit of regularization. The said writ petition was registered as S.B. Civil Writ Petition No. 4680/1992 and the same was decided vide judgment dated 27.01.1994. The respondents complied with the directions issued by this Court in the said writ petition and payment of salary was made up to 30.09.1994; and, thereafter, again, payment of salary was stopped and, in the compelling circumstances, again, the petitioner preferred S.B. Civil Writ Petition No. 180/1994, in which, again, directions were issued by this Court for continuance of services of the petitioner, so also, for making payment of salary to the petitioner.

21. In my opinion, the above conduct of the respondents is totally arbitrary, illegal and in violation of Articles 14 and 21 of the Constitution of India. It is glaring example of gross illegality on the part of the respondents whereby the

respondents, inspite of the orders passed by this Court, dared to pass order for termination of the services of the petitioner on 28.03.2003 while observing that no appointment order was issued in favour of the petitioner.

22. It is very strange that inspite of the judgment rendered by this Court in favour of the petitioner twice on 27.01.1994 and 18.01.1995 and, further, order dated 19.12.2001 passed by the Rajasthan Civil Services Appellate Tribunal, Circuit Bench, Jodhpur, the respondents are treating the petitioner as dailyrated employee and vide impugned order Annex.-5 order is passed to remove the petitioner from service.

23. From the facts of this case, it emerges that right from 01.01.1975, the petitioner is working in the respondent Education Department and, till 28.03.2003, twice orders have been passed in favour of the petitioner by this Court and, once, by the Rajasthan Civil Services Appellate Tribunal for continuance of the services of the petitioner and, so also, for payment of salary in the regular pay-scale; but, still the respondents are treating the petitioner as daily-rated employee. So also, vide impugned order Annex.-5 respondents have terminated the services of the petitioner in gross violation of the principles of natural justice because admittedly the petitioner is working in the respondent Department since 01.01.1975 and while passing the order impugned dated 28.03.2008 terminating services of the petitioner neither any notice was served upon the petitioner nor any opportunity of hearing was provided to him, therefore, the impugned order Annex.-5 dated 28.03.2008 is illegal and cannot be sustained in the eye of law. In the above self-explicable facts and circumstances of the case, I am of the opinion that to secure the ends of justice, this writ petition deserves to be allowed with directions to the respondents. Accordingly, this writ petition is hereby allowed in the following terms:

- (1) Impugned order Annex.-5 dated 28.03.2003 is hereby quashed and set aside;
- (2) The respondents shall treat the petitioner as regular employee of the respondent Education Department with effect from 01.04.1992, the year in which the petitioner approached this Court for granting regular pay-scale;
- (3) The respondents shall grant all benefits to the petitioner as provided for regular Class IV employees with effect from 01.04.1992 and pay cost of the writ petition as Rs. 5,000/- to the petitioner; and,
- (4) The respondents are further directed to fix pay of the petitioner under the revised pay-scale rules as applicable from time to time while treating the petitioner as regular Class IV employee with effect from 01.04.1992 and shall treat entire period of service of the petitioner right from 01.01.1975 till the date of superannuation as qualifying service for the purpose of pension etc. The fixation of salary as per revised pay-scale rules shall be made within a period of four months from the date of receipt of certified copy of this order.