
(2015) 07 RAJ CK 0140
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2963 of 2007

Gopal Kumawat

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 23, 309

Citation : (2015) LabIC 4507 : (2015) 3 RLW 2469

Hon'ble Judges : Sunil Ambwani, C.J;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Naina Saraf, for the Appellant; A.S. Khangarot, Addl. Govt. Advocate, Chetan Bairwa and Saurabh Saraswat, Dy. Govt. Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. By this writ petition, the petitioner, appointed as Lower Division Clerk(LDC) in the Office of the Public Health & Engineering Department, vide Office Order dated 03.06.2006, by the Chief Engineer (Rural), Public Health & Engineering Department, Rajasthan, on probation, has prayed for quashing the Notification dated 13.03.2006, notifying the Rajasthan Service (Amendment) Rules, 2006, to come into force with effect from 20.01.2006, issued by the then Governor of Rajasthan, in exercise of its powers under Proviso to Article 309 of the Constitution of India, by which it is provided that all the Government servants appointed on or after 20.01.2006, on probation, as probationer-trainee, for a period of two years, will be paid fixed remuneration at such rates as may be prescribed by the Government from time to time, and further that after successful completion of probation training, he/she will be allowed minimum pay in the pay scale of the post, and that the period of probation training shall not be counted for grant of annual grade increments. The amendment of the Rules also took away the benefit of leave during the period of probation, except for female probationer-trainees, who are provided to be granted maternity leave as per

Rules 103 and 104 of the Rajasthan Service Rules, 1951.

2. The writ petition was filed on 24.01.2007, and was directed to be listed after four weeks on 04.05.2007. On 30.07.2007, the notices were issued to the respondents. Dr. A.S. Khangarot, Additional GA, present in the Court, was directed to accept notice. On 09.08.2007, two weeks time was allowed to the respondents for filing reply. A reply was filed on 16.05.2008, after which the matter has remained pending for last seven years. It was listed before a learned Single Judge on 24.09.2014, who found that since the vires of the Rules is under challenge, in view of Rule 55(xi) of the Rajasthan High Court of Judicature for Rajasthan, 1952, the matter requires to be heard by the Division Bench.

3. The State counsel has not cared to appear in the Court despite the names of the Counsels shown in the cause list. Since the matter is an old matter, and in which a counter affidavit has been filed, we are proceeding to decide it on merits.

4. Brief facts of the case, are that the petitioner's father died in harness in May, 1970. He applied for appointment on compassionate ground. His application was kept pending for a long period of time, on which he filed Writ Petition No. 6404/1992, seeking direction to the respondents to consider his case for appointment under the Rajasthan Recruitment of Dependents of Government Servants Dying while in Service Rules, 1975. On 07.01.1998, the writ petition was disposed of with direction to consider the claim of the petitioner. A D.B. Civil Special Appeal(W) No. 371/1998, filed against the order dated 07.01.1998, was dismissed on 22.10.2002, and on which, the respondents approached the Hon'ble Supreme Court by filing a Special Leave Petition, which was also dismissed on 17.04.2003. After a long delay of three years, an appointment letter was issued on 03.06.2006, by which the petitioner was appointed on the post of Lower Division Clerk, on probation, on a consolidated salary of Rs. 3,000/- per month only. A reference was made in the letter of appointment about the Notification dated 13.03.2006, issued by the Finance Department(Rules Division), Government of Rajasthan, under which the petitioner was to be provided with consolidated salary of Rs. 3,000/- per month on two years probation.

5. The petitioner challenged the Notification dated 13.03.2006, by which the Rajasthan Service Rules, 1951, were amended, vide the Rajasthan Service (Amendment) Rules, 2006, and by which, item (iv) below the existing item (iii) of sub-clause (a) of Rule 7; a new Rule 8; a new clause (30A) below the existing clause (30) of Rule 7; a new Provisos at the end of existing Rule 24; a new Proviso at the end of existing sub-rule(1) of Rule 26; a new Rule 27C; and new Rule 122A, were inserted, providing for fixed remuneration for probationers.

6. It is submitted by learned counsel appearing for the petitioner that the petitioner was eligible and was appointed on substantive vacancy. Since he was eligible to be appointed on substantive post, he was entitled to full salary including minimum of the pay scale, and all allowances including Dearness

Allowance, House Rent Allowance and City Compensatory Allowance, payable to the regularly appointed employees in the Department under the statutory Rules. The appointment of the petitioner as probationer-trainee, cannot take away his right to receive minimum of the pay scale, Dearness Allowance, House Rent Allowance, City Compensatory Allowance and all other allowances, which are payable to regular employees. The denial of allowances, which are paid to them to set off the cost of living, is grossly illegal, arbitrary, and violative of Article 14, 16, 23 and Directive Principles of State policy under Article 38 of the Constitution of India. The dearness allowance is paid to compensate for the rise in the cost of living, and is payable to all Government servants, irrespective of the nature of appointment on the post. A probationer-trainee is not expected to survive on a fixed pay, which is far below the minimum wages. A provision for fixed remuneration for probationer-trainees, is wholly illegal and is also violative of Article 23 of the Constitution of India. Any amount less than living wage paid to an employee amounts to "begar", and is violative of Article 23 of the Constitution of India. The State, as a model employer, can not deny living wages to the employees performing same duties and carrying same responsibilities, which are payable to a confirmed employee.

7. It is submitted that denial of minimum of the pay scale, DA, HRA and CCA to a probationer-trainee, serving on probation for a period of two years, is illegal, inasmuch as employment on probation is to find out the suitability and conduct of a probationer. He cannot be allowed to serve on the wages less than minimum wages, which are payable to the regularly selected and appointed Government servants on their confirmation, after completing the period of probation.

8. It is further submitted that the denial of annual grade increments to a probationer is also violative of Article 14 and 16 of the Constitution of India, as on completion of the probation period, the employee is not put to any special position, except that his work and conduct is found suitable to allow him to be confirmed and to continue on the post, in which he has rendered the services during the period of probation, and which must be counted after probation towards his annual grade increments.

9. In order to appreciate the contentions of the petitioner, we find it appropriate to quote the Notification dated 13.03.2006, as follows:--

"GOVERNMENT OF RAJASTHAN FINANCE DEPARTMENT (RULES DIVISION)
NOTIFICATION

No. F.1(2)FD/Rules/2006

Jaipur, dated: 13.03.2006

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor hereby makes the following rules to amend further the Rajasthan Service Rules, 1951, namely:--

1. These rules may be called the Rajasthan Service (Amendment) Rules, 2006.

2. They shall be deemed to have come into force with effect from 20.1.2006.

3. In the said rules-

(i) below the existing item (iii) of sub-clause (a) of clause (8) of Rule 7, the following new item (iv) shall be inserted, namely:--

"(iv) Probationer-trainee"

(ii) The existing Rule 8 shall be renumbered as Rule 8A and the following new Rule 8 shall be inserted, namely:--

"8. Notwithstanding anything contained in any rules all appointments in Government service on or after 20.1.2006 shall be made as a probationer-trainee for a period of 2 years and during the period of probation training, he/she will be paid fixed remuneration at such rates as may be prescribed by the Government from time to time. After successful completion of probation training he/she will be allowed minimum pay in the pay scale of the post and the period of probation training shall not count for grant of annual grade increment(s).

Note: In cases where recruitment process has started the following procedure shall be followed by the RPSC/recruiting authority:--

(i) Where a request of recruitment has already gone to the RPSC/recruiting authority but the RPSC/recruiting authority is still to issue the advertisement or last date of filling application is yet not over: Administrative department may request the RPSC/recruiting authority to ensure that the advertisement is issued in light of the amendment. In cases where advertisements have issued, but last date for filling application is yet not over. In such cases, the RPSC/recruiting authority, both through advertisement and letters, should inform the applicants about the amended rule and give him/her the option of withdrawing from the proposed examination, if he/she, so desired, on a full refund basis (refund of application fee).

(ii) In case where the request of recruitment to the RPSC/recruiting authority has gone and the advertisement has also issued, and last date of filling forms by the candidates is also over: In such cases, the RPSC/recruiting authority, both through advertisement and letters, should inform the applicants about the amended rule and give him/her the option of withdrawing from the proposed examination, if he/she, so desired, on a full refund basis (refund of application fee).

(iii) Where the RPSC/recruiting authority has already conducted the written examination but interviews have not been held: The RPSC/recruiting authority should inform all the interviewers in writing of the changed rules and take his/her written acceptance of his/her willingness to appear for continuing to be a candidate in the job, before the interview itself.

(iv) Where the RPSC/recruiting authority has conducted the interviews and made recommendations to the appointing authority: Before issuing the appointment

letters, the appointing authority should inform the candidates of the changed rules and obtain his/her consent for being appointed under the new rules before a final letter of appointment is issued.

(v) Where appointment letters have already been issued (prior to issuance of DOP Notifications dated 20.1.2006), the appointments will have to be made under the old rules."

(iii) below the existing clause (30) of Rule 7, the following new clause (30A) shall be inserted, namely:--

"(30A) Probationer-trainee means a person appointed through direct recruitment against a clear vacancy in the cadre of service and placed under training on fixed remuneration for a period of two years or extended period, if any."

(iv) at the end of existing Rule 24, the following new provisos shall be inserted, namely:--

"Provided further that a probationer-trainee will receive a fixed remuneration at such rates as may be prescribed by the Government from time to time and on completion of period of probation, minimum pay of the pay scale of the post shall be allowed under this rule, from the day following the day of successful completion of the period of probation.

Provided further also that a government servant, who is already in regular service of State Government, if appointed as probationer-trainee for a period of two years on or after 20.1.2006 shall be allowed pay in his/her own pay scale of the previous post or fixed remuneration at such rates as may be prescribed by the Government from time to time, whichever may be beneficial to him/her and after successful completion of period of probationer-trainee, his/her pay shall be fixed in pay scale of the new post as per provisions of Rule 26."

(v) at the end of existing sub-rule (1) of Rule 26, the following new proviso shall be inserted, namely:--

"Provided that during probation training period the provisions of this rule shall not be applicable. The probationer-trainee shall be allowed pay in his/her own pay scale of the previous post or fixed remuneration as per provisions of Rule 24. After successful completion of probation training his/her pay shall be fixed under the provisions of this rule."

(vi) below the existing Rule 27B, the following new Rule 27C shall be inserted, namely:--

"27C. The provisions of Rule 27A and 27B shall not be applicable to the probationer-trainee. After successful completion of period of probation training, the probationer-trainee, shall not earn annual grade increment (s) for the period of probation training."

(vii) below the existing Rule 122, the following new Rule 122A shall be inserted

by the following, namely:--

"122A (i) Probationer-trainee shall earn no leave during the period of probation.

(ii) Female probationer-trainees shall be granted maternity leave as per Rule 103 and 104."

By Order of the Governor,

Sd/- (M.L. Gupta) Officer on Special Duty"

10. By a separate Notification, issued on the same day on 13.03.2006, the Rajasthan Civil Services(Revised Pay Scales) Rules, 1998 were amended vide Rajasthan Civil Services(Revised Pay Scales) (First Amendment)) Rules, 2006, inserting new Rule 18 below existing Rule 17. The Notification dated 13.03.2006, amending the Rajasthan Civil Services(Revised Pay Scales) Rules, 1998-Fixed remuneration to probationer trainees, is quoted as below:--

"GOVERNMENT OF RAJASTHAN FINANCE DEPARTMENT (RULES DIVISION)
NOTIFICATION

No.F.12(6)FD(Rules)/05

Jaipur, dated 13.03.2006

Sub:-- Rajasthan Civil Services (Revised Pay Scale) Rules, 1998-Fixed remuneration to Probationer Trainees).

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan is pleased to make the following rules to amend further the Rajasthan Civil Services (Revised Pay Scales) Rules, 1998, namely:--

1. These rules may be called the Rajasthan Civil Services (Revised Pay Scales) (First Amendment) Rules, 2006.

2. They shall be deemed to have come into force with effect from 20.01.2006.

3. In the Rajasthan Civil Services (Revised Pay Scale) Rules, 1998-

i) below existing rule 17 the following new rule 18 shall be inserted namely:--

"18. Amount of fixed remuneration for a probationer-trainee:--

The amount of fixed remuneration for a probationer-trainee shall be as mentioned in schedule VI appended to these rules."

ii) after the existing Schedule V, the following shall be appended as Schedule VI namely:--

SCHEDULE VI "Amount of fixed remuneration for probationer-trainee.

Note: (1) The Probationer-Trainee shall be entitled only to fixed remuneration as above and he/she will not be entitled to Special Pay, Dearness Pay, Dearness

Allowance, House Rent Allowance, City Compensatory Allowance, Non-Practicing Allowance, Non-Clinical Allowance, Rural Allowance, Project Allowance, Mess Allowance, Washing Allowance or any other allowance(s) called by whatever name. Similarly, he/she will not be eligible for grant of Ad-hoc Bonus and uniform/liveries except wearing of uniform is a legal compulsion under the rules.

(2) No Traveling Allowance shall be admissible for joining as a probationer-trainee. In case journey on duty, he/she shall be allowed T.A. as on tour and in case of transfer only Mileage Allowance and incidental on the basis of fixed remuneration shall be admissible.

(3) No deduction towards General Provident fund and State Insurance shall be made from the fixed remuneration.

(4) Probationer-trainee shall be eligible for Casual Leave of 12 days in a calendar year and for period of less than a calendar year; it shall be admissible in proportion on the basis of completed months.

(5) No deputation allowance shall be admissible to a probationer-trainee, if, deputed to "Foreign Service" for training etc.

(6) For an existing employee already in service prior to 20.01.2006 an option shall be given to opt either for the "fixed remuneration" or the existing pay scale (not the scale of his/her new appointment), whichever is beneficial to him/her while he/she is under probation training. After successful completion of probation training period, pay may be fixed as per the rules, where such a Government servant will get due advantage of being in a regular pay scale earlier, and will get due protection of his/her pay.

By order of the Governor,

Sd/- (M.L. Gupta) Officer on Special Duty"

11. A reply, supported by an affidavit of Shri Sudheer Mishra, the Officer In-charge, was filed stating therein that as per the Notification of the Finance Department, dated 13.03.2006, the petitioner was appointed on a consolidated monthly salary of Rs. 3,000/- per month for probation period of two years, as per the Rules. The State-respondents have not given any reply to the grounds challenging the validity of the Notification. A short reply, supported by an affidavit of Shri Sudheer Mishra, filed by Shri Jugal Kishore Agarwal, Additional Government Advocate, is quoted as below:--

"1. That the contents of para No. 1 to 5 need no comments.

2. That the contents of para No. 6 of the writ petition are denied as stated. It is submitted that as per Notification of the Finance Department dated 13.3.2006 (copy whereof shall be kept ready for perusal of the Hon''ble Court at the time of hearing of the writ petition) petitioner has been appointed on a consolidated monthly salary of Rs. 3000.00 per month for probation period of two years, which is as per the Rules.

3. That the contents of para No. 7 of the writ petition are denied as stated. It is submitted that the Notification dated 13.3.2006 is clear for appointment of an employee on or after 21.1.2006. No exemption for appointment on compassionate ground has been given in the said Notification, as such the said Notification is equally applicable on the petitioner.

REPLY TO THE GROUNDS:

In the context of the aforesaid submissions, the contents of ground (a) to (d) are denied. It is reiterated and submitted that petitioner has been given appointment after 20.01.2006 as such in terms of Notification dated 13.03.2006 he is not entitled for regular pay scale and he has been rightly given appointment as per rules on a consolidated salary of Rs. 3000.00 per month for a probation period of two years.

8. That the contents of para 8 of the writ petition are denied.

9. That the contents of para 9 of the writ petition are denied.

Prayer as sought for in the writ petition is also denied. Petitioner is not entitled to seek any relief in this writ petition.

It is, therefore, most humbly prayed that aforementioned reply may kindly be accepted and taken on record and accordingly the Writ Petition filed by the Petitioner may kindly be dismissed with costs."

Yours" Humble Respondents Through Officer Incharge

Jaipur Dated

Through Counsel [Jugal Kishore Agarwal] Addl. Govt. Advocate"

12. Learned counsel appearing for the petitioner has relied on the judgments of the Hon"ble Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, AIR 1986 SC 1571 : (1986) 3 CompLJ 1 : (1986) LabIC 1312 : (1986) 2 LLJ 171 : (1986) 1 SCALE 799 : (1986) 3 SCC 156 : (1986) 2 SCR 278 : (1986) 2 SLJ 320 ; Daily Rated Causal Labour employed under P & T Department through Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, AIR 1987 SC 2342 : (1987) 4 JT 164 : (1988) LabIC 37 : (1988) 1 LLJ 370 : (1987) 2 SCALE 844 : (1988) 1 SCC 122 : (1988) 1 SCR 598 : (1988) 2 SLJ 31 , and the judgments of a Division Bench of this Court in Ramesh Chandra and Others Vs. State of Rajasthan and Another, (1988) 2 WLN 396 , and in Prashant Vohra & Another v. State of Rajasthan & Others, 2005(1) WLC(Raj.) 264, in support of her submissions.

13. In all these judgments, the Supreme Court and the Rajasthan High Court have held that the State must act as a model employer. It cannot take undue advantage of the need of the employee, who does not have any real choice in the matter of employment due to economic compulsions. The payment of wages less

than living wages which are provided by way of allowances, for employees who have been regularly selected and appointed on substantive posts, is unjust, unfair, unreasonable and violative of Article 14 of the Constitution of India. The Court acting as sentinel on the qui vive is under an obligation to prevent the contravention of the fundamental rights. Where the State has offered unfair terms of employment and the candidate accepts it taking up the job without demur, he cannot be held to have accepted the employment on such terms, which are unfair and unconstitutional.

14. In *Ramesh Chandra and Ors. v. State of Rajasthan and Anr.* (supra), considering the principle of "equal pay for equal work", reiterated that where similar employees who are working on probation in the same job, the minimum of pay scale and allowances are payable to them as a part of the constitutional mandate of the Supreme Court.

15. Article 38(1) of the Constitution of India, provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Clause (2) of Article 38, inserted by the Constitution (Forty-fourth Amendment) Act, 1978, provides that the State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

16. Article 23 of the Constitution of India, provides fundamental rights against exploitation, and reads as follows:--

"23. Prohibition of traffic in human beings and forced labour.--(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

17. In *Vasudevan S. v. Mittal S.D.*, AIR 1962 Bombay 1943, it was held that "Begar" means labour or service extracted by Government, or a person in power without giving remuneration for it.

18. In *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1943, the payment of remuneration less than minimum wages were found to be an unfair and inhuman practice of begar and would amount to forced labour. It has a wider expression, which would be attracted when a person is compelled to give labour or service even though remuneration paid for it, on the wages less than minimum wages. Such a practice will amount to "begar", which is

punishable in respect of the labourers under the Labour Laws, and is violative of Article 14, 16 and 21 of the Constitution of India, which guarantees equality before law and equal protection of law and right to life.

19. It is difficult to believe that a person who is appointed on regular basis on a substantive post and is put on probation, could survive on fixed remuneration of Rs. 3,000/- per month in the year 2006. Even today, the survival on fixed wages is virtually impossible as the cost of living has risen considerably, for which dearness allowance is payable to all Government servants. A Government servant is not expected to borrow or beg to survive in the period of his/her probation.

20. In the State of Rajasthan, by operation of the impugned Notifications and Rules, all classes of employees, whether appointed after undergoing statutory process of selection on substantive post, or otherwise on ad hoc basis under the Rules, are appointed on probation for two years, during which they are paid fixed remuneration, without any benefit of allowances and increments. As on date, a class-IV employee, appointed in the State service on regular basis, is paid fixed remuneration of Rs. 6,200/- per month, and a class III employee is paid Rs. 8900/- per month. Even a Rajasthan Administrative Service Officer, a Doctor, Assistant Professor or any Engineer is appointed on probation on fixed pay of Rs. 12,000/- per month for two years without any increment or leave benefit. He has to undergo two years of service on probation, on completion of which, he is entitled to regular salary including minimum of the pay scale and allowances, without any benefit of increment or arrears for the period during which he was on probation. This practice is wholly illegal, arbitrary, unreasonable and violative of Article 14, 16, 21 and 23 as well as Article 38 of the Constitution of India, which together form the conscience of the Constitution. A person appointed on fixed remuneration without the benefit of allowances, which are paid to him to meet the cost of living and inflation, has no option but to accept the employment, and has to wait for two years for regular pay and allowances, which amounts to forced labour, prohibited by the Constitution of India.

21. We do not find any justification, nor any explanation is given by the State of Rajasthan, as to why the persons eligible for appointment and appointed on substantive posts, placed on probation, are not paid allowances, which are payable to all the employees confirmed after probation of two years.

22. We are informed that all categories of employees in Rajasthan, even if they are selected through Rajasthan Public Service Commission and appointed on substantive post in the regular cadre put on probation, are paid a fixed pay, and is denied the benefit of allowances and increments, which is applicable to all the Government servants, serving in the State of Rajasthan, except the Officers of the Rajasthan Judicial Service, who have been saved by the judgment of Hon''ble Supreme Court in All India Judges'' Association case.

23. An appointment is initially made on probation to guard against errors of

human judgment in selecting suitable personnel for service. The period of probation gives an opportunity to the employer to observe the work, ability, efficiency, sincerity and competence of the employee. If he is not found suitable for the post, a right is reserved by the employer to dispense with the services of the probationer. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, AIR 1958 SC 36 : (1958) 1 LLJ 544 : (1958) 1 SCR 828 , the concept was explained in these words:--

"An appointment to a permanent post in government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial."

24. In *Ajit Singh and Others Vs. State of Punjab and Another*, AIR 1983 SC 494 : (1983) LabIC 614 : (1983) 1 LLJ 410 : (1983) 1 SCALE 262 : (1983) 2 SCC 217 : (1983) 2 SCR 517 : (1983) 1 SLJ 370 , the Supreme Court observed:

"To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to take post. Period of probation gave a sort of locus poenitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation."

25. A probationer appointment, by its very nature, has been held of transiently in character and in the absence of any special contract or special rule; regulating conditions of service, the implied term of such appointment may be terminated at any time. His right to continue arises only on confirmation. The period of probation is normally provided in the service rules or in the order of appointment. A probationer is entitled to be considered for confirmation upon successful completion of probation in accordance with the service rules. On confirmation he secures a right to the post. The confirmation, however, is at the discretion of the employer who is to form an opinion before the period of probation is completed regarding the suitability and satisfactory service of the probationer. The discretion, however, has to be exercised on the basis of his performance and conduct of the employee. In case the work of the probationer is not satisfactory his services can be terminated without giving any right to the employee, provided there is material to justify termination on the ground of inefficiency and unsuitability which is subject to judicial review.

26. The emoluments to be paid to an employee on probation, however, do not depend upon his appointment on probation. For the purpose of payment of salary and allowances, he must be treated as a regular employee if he is appointed after selection under the rules of appointment on a substantive post in the cadre. His emoluments can not be reduced on the ground that he is on probation. The employer can not discriminate a probationer for the payment of pay and allowances by treating him differently than a confirmed employee for pay and

allowances, for the same nature of the work and the responsibility. Any discrimination in payment of pay and allowances to a probationer as against regular employee is violative of Articles 14, 16, 21 and 23 of the Constitution of India.

27. The State as an employer, may provide different pay scales for different grades. Where, however, the employee at the entry level is placed on probation and is discharging the same duties and responsibilities as a confirmed employee, he cannot be discriminated on the ground that the period of probation has not come to an end with confirmation. The State Government cannot cause hostile and invidious discrimination between the employees performing the same nature of duties and responsibilities on the ground that a probationer has not been confirmed.

28. We may also add that the pay and allowances of an employee are fixed on the recommendations of pay commission. No material has been placed before us to demonstrate that the Central Pay Commission or the State Pay Commission has made any such recommendation in which a probationer may be entitled to receive a fixed pay without any allowances during the period of his probation.

29. The public services comprise different grades of employment. It is basically a hierarchical system. The pay scales are framed in a descending order. The highest scale is prescribed for the highest grade and thereafter, followed by lower scales attached to the descending grades of service. In *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, AIR 1992 SC 1630 : (1991) 4 JT 548 : (1991) 2 SCALE 1217 : (1992) 1 SCC 558 : (1991) 3 SCR 121 Supp , the Supreme Court held that the provision of different grades for employees in the descending order is consistent with Article 14 of the Constitution of India, which mandates that unequals cannot be treated as equals. The pay scale may also be different for a promotional post, but just as unequals cannot be treated as equals, the State Government cannot discriminate between equals. There cannot be discriminatory treatment in fixing, awarding or granting pay scales or pay to similarly situate employees carrying out the same duties and responsibilities. Such a discrimination, as in the present case, between a probationer and a confirmed employee is violative of Articles 14 and 16 of the Constitution of India. The Notification dated 13.03.2006 providing for a fixed pay for the probationer until he is confirmed, creates two classes of employees at the entry level, for same duties and responsibilities.

30. The differential treatment meted out to similarly situate employees is violative of Article 14 of the Constitution of India. In *Union of India (UOI) and Others Vs. Satya Brata Chowdhury and Others*, (2009) 120 FLR 760 : (2009) 1 SCALE 101 : (2009) 3 SLJ 245 , the differential treatment between the Time-keepers in Eastern Railways, who were given the revised pay scales of the Fifth Pay Commission from 18.2.2000 instead of 1.1.1996, on the ground that their pattern of recruitment was different from the Time-keepers in other Railways and because Eastern Railway Time-keepers were treated as workers under the

Factories Act, 1948 for grant of overtime allowance, was held to be unconstitutional.

31. In Union of India and Others Vs. Anil Kumar and Others, AIR 1999 SC 2229 : (1999) 4 JT 502 : (1999) 4 SCALE 61 : (1999) 5 SCC 743 : (1999) 3 SCR 835 : (2000) 2 SLJ 129 : (1999) AIRSCW 2264 : (1999) 6 Supreme 50 , the allocation of two pay scales for the same post was held to be discriminatory. In P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, AIR 1985 SC 1124 : (1986) 1 LLJ 79 : (1985) 1 SCALE 1091 : (1985) SCC 94 Supp : (1985) 1 SCR 101 Supp : (1985) 2 SLJ 331 , the division of Senior Droughts-men in the Ministry of Defence Production into two categories with a different pay scale, although the duties and functions discharged by both the categories remained the same, was held to be discriminatory.

32. In the present case, no material has been placed before us, nor any plea has been taken in the reply that the probationers, during the period of their probation, do not perform the same duties and responsibilities and are not required to carry out the same functions as confirmed employees.

33. We find the practice of payment of fixed remuneration without any allowances and benefit of increments to the probationers, who were appointed after adopting the regular selection process, on substantive posts, or even after following the selection process on ad hoc basis, as well as all those employees who are appointed on substantive posts, to be wholly illegal and arbitrary, and pernicious practice of forced labour.

34. We find no justification for the State Government, to adopt the practice of paying fixed remuneration to the probationers, which is not prevalent, either in the Central Government, or in any other States in the country. The Government of Rajasthan has adopted this evil practice of forced labour for its employees, taking advantage of the attraction of the Government service. The Notifications dated 13.03.2006, amending the Rules, are thus, declared to be unconstitutional, being violative of Article 14, 16, 21, 23 and 38 of the Constitution of India, and against the conscience of the Constitution of India.

35. The writ petition is allowed. The Notification dated 13.03.2006, amending the Rajasthan Service Rules, 1951, and the Notification of the same date i.e. 13.03.2006, amending the Rajasthan Civil Services(Revised Pay Scale) Rules, 1998- Fixed remuneration to probationer trainees, are hereby quashed. The State-respondents are directed to pay the entire differential amount of regular pay scale and allowances to the petitioner, after deducting the amount of fixed remuneration paid to him during the period of probation.

36. Now since by this judgment, we have declared the Notification dated 13.03.2006, amending the Rajasthan Service Rules, 1951, and the Notification of the same date i.e. 13.03.2006, amending the Rajasthan Civil Services(Revised Pay Scale) Rules, 1998- Fixed remuneration to probationer trainees, to be

unconstitutional and consequently quashed the same, we direct that the State Government shall, pay to all its employees, appointed on regular or ad hoc basis under the statutory Rules on substantive posts, except the employees appointed on contract, daily rated or work charged employees, regular pay in time scale along with all allowances including Special Pay, Dearness Pay, Dearness Allowance, House Rent Allowance, City Compensatory Allowance, Non-Practicing Allowance, Non-Clinical Allowance. Rural Allowance, Project Allowance, Mess Allowance, Washing Allowance or any other allowance, as are admissible to a confirmed employee in the same department. The payment of these allowances will not be dependent upon the period of probation, or successful completion of the period of probation. The probationer-trainees will also be entitled to deductions towards General Provident Fund(GPF), State Insurance, and Travelling Allowance, as are admissible and payable to the regular employees. They shall also be entitled to annual grade increments for the period of probation, after confirmation and Casual Leave, as in the case of other regular employees.

37. The petitioner is made entitled to the cost of Rs. 10,000/- (Rs. Ten thousand), for pursuing the writ petition.