
(2014) 03 RAJ CK 0069

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4107 of 2011

Gopal Sharan Gupta

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Citation : (2015) 2 RLW 1638

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Rajendra Soni, Advocate, for the Appellant; Ajeet Kumar Sharma, Senior Counsel and Rachit Sharma, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J. This writ petition has been preferred by petitioner Dr. Gopal Sharan Gupta, inter alia with prayer that respondents University of Rajasthan be directed to grant him benefit of higher pay scale, proper pay fixation and re-designation of post of Assistant Professor, which has been given to persons working as Research Assistant/Research Associates, and also grant him benefit of regularization with continuity of service in the terms of direction contained in Division Bench judgment of this court in Special Appeal (Writ) No. 733/2000, dated 24.03.2009 and order dated 20.12.2010 to the extent it denies such benefits to petitioner be modified and he be granted similar benefits at par with Research Assistant/Research Associate regularized in service by that order. Shri Rajendra Soni, learned counsel for petitioner, argued that petitioner was appointed in the service of the University of Rajasthan, after regular selection was held, by order dated 26.04.1991. He filed S.B. Civil Writ Petition No. 3800/1996 seeking mandamus to respondents to grant him regular pay scale with regularization. His services, however, were terminated during pendency of aforesaid writ petition, on 31.03.1997. Petitioner got aforesaid writ petition amended thereby challenging the order of his termination. Learned Single Bench vide order dated 12.05.2000 allowed the writ petition and set aside order of

termination directing respondent University to reinstate him in service with continuity. Respondent University filed Special Appeal (Writ) No. 733/2000, before the Division Bench challenging aforesaid judgment of Single Bench, which was disposed of by judgment dated 24.03.2009 directing that petitioner be reinstated in service without back wages and further that in the meantime if salary of Research Assistant in the University of Rajasthan is increased on consolidated basis or otherwise, petitioner shall be entitled for same salary. It was also directed that for other purposes including for the purpose of regularization, the intervening period of service should be counted. Respondent University of Rajasthan challenged aforesaid Division Bench judgment of this court before the Supreme Court by filing Special leave to Appeal (Civil) No. 19500/2009, which came to be dismissed by judgment dated 17.08.2009. Respondent had to thereafter reinstate petitioner in service. Petitioner submitted representation on 20.04.2009 requesting respondents to grant him pay scale at par with one Shri S.S. Ranawat, Research Associate, who has been given pay scale of Rs. 700-1600 of Research Assistant, vide order dated 07.07.1994. Respondent University by notification dated 16.06.2008, absorbed the ad-hoc teachers working with them and subsequently appointed them by order dated 05.04.2008 from the date of their initial appointment. Vide order dated 21.07.2009 pursuant to Syndicate Resolution No. 56, eight Research Associates were re-designated as Assistant Professor. When Division Bench judgment of this court dated 24.03.1999 was not complied with by respondents, petitioner filed Contempt Petition No. 967/2009 and it was only thereafter that petitioner was offered appointment and was reinstated on the post of Research Assistant on consolidated salary of Rs. 9300/- per month. Contempt petition was disposed of vide order dated 04.11.2010.

2. Shri Rajendra Soni, learned counsel for the petitioner, argued that reinstatement of petitioner was made vide order dated 20.12.2010 as Research Assistant in the Centre for Rajasthan Studies but complete benefits in terms of Division Bench judgment of this court were not extended to petitioner. Petitioner submitted representation to respondents on 28.02.2011 and thereafter served legal notice for demand of justice on 07.03.2011. When his grievances were not remedied, petitioner had to file present writ petition. Learned counsel has referred to order dated 19.08.2008 and argued that while petitioner has been working with respondent University since 26.04.1991, yet he has not been absorbed. Four of incumbents named in that order, who were working with respondent University since 1995-96, were absorbed, though their date of appointment was later than date of the appointment of petitioner. Learned counsel has relied on Certificate granted to him by Director of Centre for Rajasthan Studies, University of Rajasthan, Jaipur, dated 26.05.2012 (Annexure-14).

3. Learned counsel has relied on judgment of the Supreme Court in Gopal Krishna Sharma and others, and argued that in that case the Supreme Court directed the University of Udaipur to grant salary to the Research Associates

appointed on ad hoc basis for duration of projects of Council of Agriculture Research on the basis of minimum of pay scale allowed to Assistants. Learned counsel also relied on Division Bench judgment of this court in Raj. Agri. University Vs. Dr. Zabar Singh Solanki, , in which case also benefit of career advancement scheme was granted to Research Assistants, who were designated as Assistant Professors.

4. Shri Ajeet Kumar Sharma, learned Senior Counsel appearing on behalf of respondents, opposed the writ petition and submitted that appointment of petitioner was made for a particular project on consolidated salary of Rs. 1200/- per month with stipulation that this will not involve any financial liability to University either to absorb him in service or to continue him in that capacity, after completion of that project. The Division Bench of this court in appeal did not issue any direction for regularization of petitioner in service. In fact, a consent order was passed in Contempt Petition on 24.11.2010 on account of which the University offered appointment to petitioner on consolidated salary of Rs. 9300/-, which he accepted and at that time it was admitted by petitioner that he was in service elsewhere and therefore he requested four weeks time to join the service and besides, petitioner was appointed in a particular project. He cannot, therefore, claim regularization. Learned Senior Counsel referred to averments made in para 8 of reply and also advertisement No. 1/2009 dated 11.2.2009 and argued that post of Research Assistant is a non-teaching post and is entirely different than that of the post of Research Associate. Absorption on the post of Research Assistant was made pursuant to recommendation of the Screening Committees constituted as per provisions of clause-4 of the Rajasthan University Teachers (Absorption of Ad-hoc Teachers) Ordinance. Distinction between the two is that the incumbents, who were absorbed vide order dated 19.08.2008, were working on the post of Research Associate, which was a teaching post, whereas petitioner was working as Research Assistant, which is a non-teaching post.

5. Shri Rajendra Soni, learned counsel for petitioner, rejoined and submitted that Division Bench judgment of this court dated 24.03.2009 in Appeal No. 733/2000 and order dated 24.11.2010 in Contempt Petition No. 967/2009 reserved the right of petitioner to claim regularization and therefore can maintain present writ petition. It is contended that despite direction of the Single Bench of this court vide judgment dated 12.05.2000 in earlier writ petition of petitioner to reinstate him, he was not reinstated in service even after Division Bench Appeal was dismissed vide judgment dated 24.03.2009. It is only when petitioner filed Contempt Petition, respondent reinstated him in service. Learned counsel for petitioner submitted that respondent did not reinstate petitioner despite specific direction of this court and therefore he joined some temporary job elsewhere. But his right to reinstatement immediately on acceptance of writ petition would not be affected thereby. It is therefore prayed that writ petition be allowed.

6. I have given my anxious consideration to rival submissions and perused the

material on record.

7. Admittedly, petitioner was appointed vide order dated 26.04.1991 as Research Assistant with approval of the Vice Chancellor of respondent University. Despite stipulation in that order that this will not involve any financial liability on respondent to absorb or continue him in any other capacity in service after completion of the project, he was continued in service for as many as six years, and his services were terminated on 31.03.1997. The writ petition filed against that order was allowed by this court with direction to respondent to reinstate him in service. Benefit of continuity of service was also granted to him. The Division Bench while partly allowing Special Appeal of respondent University, modified the judgment of Single Bench to the extent of grant of back wages and set aside the direction with regard to grant of back wages, however, clarified that petitioner shall be entitled to increase of consolidated salary. The Division Bench at the same time also ordered that for the purpose of regularization, petitioner would be entitled to count the period of service of intervening period. Even then, respondent University did not reinstate him in service. The SLP filed against that judgment has been dismissed by the Supreme Court. When the respondent University still did not comply with the order of reinstatement, petitioner had to under compulsion file Contempt Petition. In Contempt Petition also the Division Bench has noted that respondent University offered appointment to petitioner on consolidated salary of Rs. 9300/- per month, which was accepted by petitioner, however, reserved his right to file appropriate proceedings to claim proper relief in accordance with law. Thus, it is evident that the Single Bench and Division Bench in both proceedings, kept the right of petitioner to claim regularization, intact. Since the Division Bench upheld that direction of the Single Bench, by which benefit of continuity was granted to the petitioner, it would be deemed as if petitioner had continued in service of respondents as Research Assistant from the date of initial appointment on 26.04.1991. In this manner, petitioner would have completed twenty three years of service till now. Respondent University has on recommendation of screening committee, constituted as - per clause 4 of the University Ordinance, screened and regularized services of Research Associates two years after their initial appointment. Dr. Mahipal in Sanskrit subject, initially appointed on 01.02.1996, was deemed as confirmed on 01.02.1998. Dr. Surendra Singh Chauhan, in Indra Gandhi Centre for HEEPS, initially appointed on 27.12.1996, was deemed as confirmed on 27.12.1998. Shri Naresh Malik, in Geography subject, initially appointed on 13.01.1996, was deemed confirmed on 13.01.1998, Dr. Ramesh Chawla, in Political Science subject, initially appointed on 21.09.1996, was deemed confirmed on 21.09.1998, Dr. K.L. Batra, in Management subject, initially appointed on 14.08.2003, was deemed confirmed on 14.08.2005 and Dr. Ashok Singh, in Public Administration subject, initially appointed on 01.11.1995, was deemed confirmed on 01.11.1997. It is contended that their services were regularized on the basis of provisions contained in the Rajasthan University Teachers (Absorption of Ad-hoc Teachers) ordinance duly approved by the Syndicate in its meeting held on 19.08.2008, but respondents

themselves have admitted that post of Research Assistant was very much existing in the University and Advertisement (Annexure R/1/2) has included the same. Even if such post is non-teaching, advertisement (Annexure R/1/2) included the post of Research Assistant at Serial No. 2E in the pay scale of 5500-9000.

8. In Certificate issued in favour of petitioner by Director, Centre for Rajasthan Studies, University of Rajasthan, Jaipur, it has been certified that petitioner had previously worked as Lecturer in History in permanent capacity for 14 years in Chirawa College, Chirawa. Presently he is the only one Research Assistant working in the Centre for Rajasthan Studies, University of Rajasthan, Jaipur. He is presently discharging the duties of a Research Associate as well as that of a Teacher. In view of his qualification, he has been assigned the work of teaching classes in the M.A. Course in Rajasthani Language, Literature and Culture being run by the Centre for Rajasthan Studies, University of Rajasthan, Jaipur. It has also been certified that petitioner has done his Ph.D. Work on the Historiography of Kavi Raj Shaymaladas, which is a significant piece of research work and has been published by the Rajasthan Hindi Granth Academy, Jaipur.

9. The Supreme Court in Gopal Krishna Sharma, *supra*, held that the work done by Research Associate is more or less identical to work done by Research Assistant. It was held" that the University cannot be permitted to exploit the market condition of large scale unemployment of educated youth and availability of surplus qualified persons by offering them a paltry consolidated pay of Rs. 1100/- per month. It was held that the University created the posts of Research Associates by resolution with the same educational qualifications, selection process, job-charge, etc., as in the case of Research Assistants, to avoid equation claims that may arise. Direction was given to work out consolidated salary of Associates on the minimum scale of pay allowed to the Assistants.

10. The Division Bench judgment of this court in Rajasthan Agriculture University, Bikaner vs. Dr. Zabar Singh Solanki, *supra*, dealt with the case where Research Assistants were designated as Lecturers and the Board of Management of Agricultural University resolved to give UGC pay scales to Lecturers and Research Assistants. By notification dated 4/6.5.1989, all duly selected Lecturers/ Research Assistants were designated as Asstt. Professors. The Research Assistants so designated as Assistant Professors were deprived of career advancement scheme by the State Govt. Therefore, the Single Bench of the High Court allowed the writ petitions. The appeal filed by the Rajasthan Agricultural University before the Division Bench was dismissed.

11. In the present case, petitioner has asserted in Para 11 and 12 of the writ petition that the persons working as Research Assistants and Research Associates have been designated and adjusted as Assistant Professors. Respondents in reply to those paras, have though denied the same but not very specifically that persons working on the post of Research Assistants have been given designation of Assistant Professors. Even then, this much has been

admitted by respondents that post of Research Assistant is a non-teaching and such post does exist in the set up of the University of Rajasthan and in fact two such posts were advertised vide advertisement Annex. R/1/2 on 11.9.2009. The said post carries pay scale of Rs. 5500-9000, whereas post of Asstt. Professor carries pay scale of Rs. 8000-13500. This court, therefore, can safely proceed on assumption that post of Research Assistant is a non-teaching post, and carries lower pay scale of Rs. 5500-9000, whereas post of Asstt. Professor is a post of teaching staff and carries higher pay scale of Rs. 8000-13500. Petitioner was initially appointed with respondent University on 26.4.1991 and his services were terminated vide order dated 31.3.1997, which order was declared illegal by order of Single Bench dated 12.5.2000 with effect from 31.3.1997, and respondents were directed to continue the petitioner on the post of Research Assistant with all consequential benefits with effect from 1.4.1997. The Division Bench has maintained that direction except the part relating to back wages. Even if 1.4.1997 is taken as the basis, petitioner would have still completed 17 years of service, if not 23 years. Petitioner has been working with respondent University for 17 long years. He has been able to make out a case for regularization because the respondent-University has regularized many such ad-hoc Research Associates, who were working with them for lesser number of years than the petitioner. Action of respondents in making petitioner to work on consolidated salary of Rs. 9300/- per month for such a long time, is nothing but an exploitation of a qualified and experienced person. In the result, writ petition succeeds and same is allowed. Respondents are directed to consider case of petitioner for regularization and pass appropriate order with regard to his appointment on regular basis within a period of two months from the date a copy of this order is produced before them. Petitioner has filed writ petition with such prayer on 23.03.2011 and therefore his regularization may take place with effect from 01.04.2011, though he shall be entitled to only notional benefits for the intervening period and actual benefits shall be payable to him from the date of passing of order of his regularization within the aforesaid period of three months, which shall in any case not later than 01.04.2014.