
(2002) 07 RAJ CK 0127
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1391 of 1992

Gordhan Lal

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 39

Citation : (2003) 96 FLR 561 : (2003) 3 RLW 1991

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : P.P. Choudhary, for the Appellant; H.N. Calla, for the Respondent

Final Decision : Allowed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 9.3.1992 against the respondents with the prayers that by an appropriate writ, order or direction, the order dated 31.12.1985 (Annex.P/9) issued by the Assistant Engineer, Vehicle Sub Division, Mechanical Division-2, Mahi Project, Banswara be quashed and set aside and the respondents be directed to make payment of the salary to the petitioner for the post of Generator Driver with effect from 1.1.1986 with all consequential benefits on the basis of principle of equal pay for equal work and the respondents be further directed to regularise the services of the petitioner on the post of Generator Driver with effect from 23.2.1983 etc. etc.

2. It arises in the following circumstances:

The petitioner for the first time came to be appointed on the post of Beldar with effect from 1.10.1974. Thereafter, he was promoted to the post of Helper from the post of Beldar vide order dated 1.10.1977, a copy of which is marked as Annex.P/1.

It was further submitted in the writ petition that thereafter, after due selection and recruitment and on the basis of the recommendations of the Promotion

Committee, the petitioner was promoted to the post of Generator Driver vide order dated 23.2.1983 issued by the Chief Engineer, Mahi Bajajsagar Project, Banswara and that promotion was on probation basis. A copy of the said order dated 23.2.1983 issued by the Chief Engineer, Mahi Bajajsagar Project, Banswara and that promotion was on probation basis. A copy of the said order dated 23.2.1983 is marked as Annex.P/2. Vide order dated 28.2.1983 (Annex.P/3) issued by the Executive Engineer, Mechanical Division-2, Damsite, Banswara, the petitioner was posted in Vehicle Sub Division.

It was further submitted in the writ petition that thereafter vide order dated 1.11.1983 (Annex.P/4) issued by the Assistant Engineer, Vehicle Sub Division, Mechanical Division - 2, Banswara, the petitioner was reverted from the post of Generator Driver to the post of Helper despite the fact that he was earlier promoted to the post of Generator Driver vide order dated 23.2.1983 (Annex.P/2).

It was further submitted in the writ petition that thereafter, the petitioner was again promoted to the post of Generator Driver from the post of helper vide order dated 18.2.1984 (Annex.P/5) Issued by the Chief Engineer, Mahi Bajajsagar Project, Banswara. Thereafter, vide order dated 31.10.1984 (Annex.P/6) issued by the Chief Engineer, the petitioner warranted revised new pay scale, 1983 for the post of Generator Driver and his services were also regularised on the post of Generator Driver.

It was further submitted in the writ petition that vide order dated 7.12.1984 (Annex.P/7), the tenure of the services of the petitioner on the post of Generator Driver was extended upto 31.2.1985 and thereafter, vide order dated 15.7.1985 (Annex.P/8), the services of the petitioner were further extended upto 31.7.1985. However, surprisingly vide order dated 31.12.1985 (Annex.P/9) issued by the Assistant Engineer, Vehicle Sub division, Mechanical Division-2, Mahi Project, Banswara, the petitioner was reverted from the post of generator Driver to the post of Helper with effect from 1.1.1986.

Against the said reversion order dt.31.12.1985 (Annex.P/9), the petitioner submitted representation to the Superintending Engineer on 23.1.1992 (annex.P/1), but since no action was taken, therefore, he preferred this writ petition with the prayers as stated above contending inter-alia that the order dt.31.12.1985 (annex.P/9) reverting the petitioner from the post of Generator Driver to the post of Helper is wholly illegal and without jurisdiction. It was further submitted that no doubt the petitioner was reverted from the post of Generator Driver to the post of helper with effect from 1.1.1986, but he was continuously working on the post of Generator Driver, but he was not being paid the salary of the post of Generator Driver. In support of the plea raised in the writ petition, the learned Counsel for the petitioner has invited attention to various annexures issued by the respondents from time to time in favour of the petitioner.

A reply to the writ petition was filed by the respondents on 28.10.1992 and after

admitting factual position as mentioned in the writ petition, it was asserted by the respondents that the petitioner is not entitled to any relief sought for.

A rejoinder was filed by the petitioner to the reply submitted by the respondents and alongwith the rejoinder, some annexures have also been annexed.

3. I have the learned counsel for the petitioner and the learned counsellor the respondents and gone through the materials available on record.

4. There is no dispute on the point that through order dated 23.2.1983 (annex.P/2), the petitioner was promoted to the post of Generator Driver and that promotion was on probation basis for one months and through order Annex.P/3 dated 28.2.1983, the petitioner was posted in Vehicle Sub Division.

5. There is also no dispute on the point that through order Annex.P/4 dt. 1.11.83, the petitioner was reverted from the post of Generator Driver to the post of Helper.

6. There is also no dispute on the post that through Annex.P5 dated 18.2.1984, the petitioner was again promoted to the post of Generator Driver from the post of Helper and through order Annex.P/6 dated 31.10.1984, the petitioner was granted revised pay scale, 1983 of the post of Generator Driver and his services were also regularised on the same post.

7. There is also no dispute on the point on the point that through order Annex.P/7 dated 7.12.1984, the term of the services of the petitioner on the post of Generator Driver was extended upto 31.3.1985 and through through Annex.P/8 dated 15.7.1985, the services of the petitioner were further extended upto 31.7.1985.

8. There is also no dispute on the point that the rough order Annex.P/9 dated 31.12.1985, the petitioner was reverted back to the post of Helper from the post of Generator Driver with effect from 1.1.1986.

9. There is also no dispute on the point that Annex.P/19 was filed alongwith the rejoinder and from perusing Annex.P/19, it appears that on 2.12.1991, the petitioner submitted representation before the Executive Engineer stating therein that his reversion was against the Rules and in fact, even after reversion, the work of the post of Generator Driver was being taken form him and since 1.1.1986, he was working as Generator Driver and thus, formal order appointing him as Generator Driver be issued. On annex.P/19, there is endorsement by the Asstt. Engineer that the work of Generator Driver was being taken from the petitioner and thus, he recommended the case of the petitioner for being appointed as Generator Driver to the Executive Engineer.

10. There is also no dispute on the point that through letter dt.16.11.87 (Annex.P/12), the Assistant Engineer also made a request to the Executive Engineer that promotions to the post of Generator Driver be made as the work was being suffered.

11. There is also no dispute on the point that through letter dated 11.12.1987. (Annex.P/13), the Assistant Engineer further recommended to the Executive Engineer that atleast two Helpers, namely, Gordhan Lal (present Petitioner) and Rajendra Kumar be promoted to the post of Generator Driver.

12. There is also no dispute on the point that through letter dated 18.12.1987 (Annex.P/14), the Executive Engineer made recommendations to the Superintending Engineer that five Helpers including the present petitioner be promoted to the post of Generator Driver. Again, vide letter dated 4.11.1988 (annex.P/15), the executive Engineer made recommendations to the Superintending Engineer that eight Helpers including the present petitioner be promoted to the post of generator Driver.

13. There is also no dispute on the point that in the latter dated 5.3.1992 (Ex.P/16), which was written by the Assistant engineer to the Executive Engineer, there is a mention of the fact that from the petitioner, the work of the post of Generator Driver was being taken and it was recommended that the petitioner be promoted to the post of Generator Driver.

14. Thus, from the materials available on record, it is very must clear that through vide order dated 31.12.1985 (Annex.P/9), the petitioner was reverted back to the post of Helper from the post of Generator Driver with effect from 1.1.1986, but he was continuously doing the work of Generator Driver though he was being paid salary of the post of Helper. This position has not been controverted even by the learned counsel appearing for the respondents.

15. Thus, the case of the petitioner that he was discharging the duties of Generator Driver for the last many years even after his reversion vide order Annex.P/9 dated 31.12.1985 w.e.f. 1.1.1986 is well established and, therefore, it should be treated as if the petitioner was working on the post of Generator Driver, though he was being paid the salary of the post of helper and not of Generator Driver.

16. It may be stated here that though "equal pay for equal work" is not a fundamental right under the Indian Constitution, it is a constitutional goal which must colour the interpretation of Articles 14 and 16, so as to be elevated to the rank of a fundamental right, the" denial of which must result in a in "irrational classification". The Hon"ble Supreme Court in the recent judgment in State Bank of India and Anr. v. M.R. Ganesh Babu and Ors. (1), while interpreting Articles 39(d) and 14 of the Constitution of India held that for applicability of equal pay for equal work, the relevant criteria is nature of work and not volume of work done.

17. In the present case, looking to the entire facts and circumstances of the case, the principle of equal pay for equal work as enshrined in Article 39(d) read with Article 14 of the Constitution of India is attracted and therefore, the petitioner is entitled to get the pay in the pay scale of Generator Driver even with effect from 1.1.86 and the petitioner shall also be entitled to all consequential

benefits including regularisation.

18. For the reasons stated above, the impugned order dated 31.12.1985 (Annex.P/9) reverting the petitioner from the post of Generator Driver to the post of Helper cannot be sustained and the same is liable to be set aside and this writ petition deserves to be allowed.

Accordingly, this writ petition filed by the petitioner is allowed and the impugned order dated 31.12.1985 (Annex.P/9) passed by the Assistant Engineer, Vehicle Sub Division, Mechanical Division-2, Mahi Project, Banswara so far as it relates to the petitioner is set aside and the respondents are directed to give salary to the petitioner for the post of the Generator Driver with effect from 1.1.1986. The petitioner shall also be entitled to all consequential benefits including regularisation with effect from 1.1.1986.

19. No order as to costs.