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**(2014) 09 RAJ CK 0023**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 1663/2010**

Jagdish Prasad Bishnoi

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 17-09-2014

**Acts Referred:**

**Citation :** (2014) 09 RAJ CK 0023

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Advocate :** R. Bhatnagar, Advocate for the Appellant; Manish Patel and R.R. Kanwar, Government Counsels, Advocate for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Dr. Vineet Kothari, J.—The writ petition has been filed by the petitioner on 16.02.2010 with the following prayers:-

"i) It is, therefore, respectfully prayed that the writ petition may kindly be accepted and allowed and by an appropriate direction, order or writ in the nature of certiorari, the authorities may kindly be directed to consider the study period within the service time and to grant the salary and other consequential benefits for the period of study in Teacher's training program.

ii) by an appropriate writ, order or direction the respondents be directed to consider the study period for the purpose of seniority and other consequential benefits to the petitioner.

iii). By a further writ, order or direction, the Respondents be directed to revise and prepare the seniority list while taking into consideration the study period as 2001 to 2002 and 2003 to 2004 and to pay consequential benefits accruing to the petitioner in pursuance thereof; and

iv). the cost of writ petition may be awarded; and

v). any other appropriate order or direction which the honourable court deems fit

in the circumstances of the case may be passed in favor of the petitioner."

2. The petitioner was appointed on the post of Teacher Grade-III on compassionate grounds though he was not fully qualified to be posted as Teacher Grade-III vide Annexure-1 dated 13.05.1993 with the stipulation in the appointment order itself that he should undergo the requisite training for three years and on completion of the training, he will be entitled to get the regular salary with annual grade increments. The petitioner undertook the said training on being selected for training for the Sessions 1995-96 and 1996-97 at D.I.E.T., Chunawadh, District Sriganaganagar and was directed to be relieved to remain present in the D.I.E.T. On 28.05.1995, as stated in para 6 of the writ petition. The petitioner had completed his B.S.T.C. Course to be regularly appointed on the post of Teacher Grade-III and thereafter filed the present petition with the prayers above-quoted. The learned counsel for the petitioner has relied upon a decision of the coordinate bench of this Court in the case of Chandrakanta w/o late Chandra Shekhar Vs. Government of Rajasthan & Ors. CWP No. 1664/2010 along with two other connected matters, decided on 25.01.2012 and submitted that the petitioner may be granted the benefits/reliefs as directed by this Court in the above referred judgment.

3. Before approaching this Court, the petitioner had already served a legal notice for demand of justice on the respondents vide Annexure-11 dated 20.04.2009 but without awaiting response of the respondents thereto and decision thereon, the petitioner has filed the present writ petition.

4. After issuance of the notices on 12.04.2010, the respondents have filed a detailed reply to the writ petition and have contested the writ petition.

5. The learned Government Counsels Mr. Manish Patel and Ms. R.R. Kanwar appearing for the respondents have relied upon Rule 9 of the Compassionate Appointment to the Dependents of the Deceased Government Servant Rules, 1996 ("the Rules of 1996") which is quoted herein below for ready reference:-

"Rule 9. Procedural Requirement etc.-The procedural requirement for selection such as training or departmental examination or typing test shall not be insisted upon at the initial appointment. The dependants shall however, be required to clear such training or departmental examination or typing test within a period of 3 years for entitlement for confirmation failing which his/her appointment shall be liable to be terminated. No annual grade increments will be allowed until he/she acquires such qualifications. On acquiring such qualifications annual grade increments shall be allowed notionally from the date of appointment but no arrears shall be paid:

Provided that the widow appointed under the provisions of these rules shall be exempted from passing the typing test.

Note-for the purpose of this rule the Director, Bhasha Vibhag shall conduct typing test every year irrespective of the number of candidates."

6. Therefore, it is submitted by the learned Government Counsels that the annual grade increments as per the terms of the appointment order and the aforesaid Rule will be allowed to the petitioner only upon acquiring the requisite qualification and that too notionally from the date of initial appointment but no arrears shall be payable to the petitioner on that count. It is also submitted that for grant of study leave, the petitioner is not entitled because the said provision is only for the widows and deserted women as provided in proviso to Rule 11 of the Rajasthan Educational Subordinate Service Rules, 1971 which is quoted herein below for ready reference:-

7. Having heard the learned counsels for the parties and having perused the record of the case, this Court is of the opinion that these rival contentions need not be decided here in the present writ petition and both the parties deserves to be directed to decide the legal notice for demand justice served upon the respondents vide Annexure-11 dated 20.04.2009.

8. Accordingly, the writ petition is disposed of with a direction and liberty to the petitioner to pursue his legal notice/representation Annexure-11 dated 20.04.2009 before the Chief Executive Officer, Zila Parishad, Sriganganagar who is expected in law to decide the said legal notice/representation dated 20.04.2009 of the petitioner, after providing an opportunity of hearing to the petitioner in accordance with law, viz. Rules of 1996 and 1971, above referred while keeping in view the judgment cited by the learned counsel for the petitioner, within a period of three months from today. No order as to costs.

9. A copy of this order be sent to the parties concerned forthwith.