

**(1992) 01 RAJ CK 0005**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No's. 248, 249 and 250 of 1986

J.C. Calla and Others

APPELLANT

Vs

University of Jodhpur and Others

RESPONDENT

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**Date of Decision :** 03-01-1992

**Acts Referred:**

Constitution of India, 1950 — Article 309

**Citation :** (1992) 1 WLN 197

**Hon'ble Judges :** Rajesh Balia, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Rajesh Balia, J.—Aforesaid these three petitions raise common questions of law and, therefore, they are decided by a common order. In order to appreciate the controversy, the facts relating to S.B. Civil Writ Petition No. 248 of 1986 are detailed hereinafter.

2. Petitioners J.C. Calla was appointed as L.D.C. on 2.6.58 in Excise and Taxation Department. The petitioner was thereafter transferred to Directorate of Technical Education, Rajasthan, Jodhpur.

3. By University of Jodhpur Act, 1962, the University of Jodhpur was established on 1 4th July, 1 962. This newly established Jodhpur University tookover the teaching staff as well as the ministerial staff of the constituent colleges employed in various posts in ministerial cadre. The University also invited the applications for giving appointment on various posts under it from persons already working at various places including other Govt. Departments. As a consequence of holding interview, petitioners was appointed vide order dated 15/25.1.63 as L.D.C. by the University of Jodhpur. The appointment order inter-alia stated that the terms and conditions of service shall be governed by the rules and regulations to be framed by the University from time to time. In pursuance of this appointment order, the petitioner was relieved from his parent department on 28/1/1963 and

he joined the service of the University of Jodhpur. By its resolution No. 15, dated 25.1.64 which is placed on record as Ex.3, the Syndicate resolved that the draft rules as given in the modified form in appendix "K" be accepted and Rules 1,2,3 & 4 thereof be made applicable for purposes of determining the seniority of the existing ministerial staff as on 1st Jan. 1964 and rules 5,6 & 7 thereof be treated as general rules for determination of seniority in future. It may be noticed here that the petitioner was appointed in the University vide order dated 15/25.1.63 who had joined the same, by 28.1.1963, therefore, he was amongst existing ministerial staff as on 1st January, 1964. Petitioners in the other two petitions viz; Bansilal and D.D.Dave were also likewise appointed as L.D.C. prior to 1.1.1964 on different dates and before their appointments by the University, the said Bansilal and D.D. Dave were also members of ministerial service of different departments of Rajasthan State. They were also amongst existing staff as on 1.1.64. The seniority of the staff existing on 1st Jan. 1964 according to resolution was to be governed according to the Rules 1,2,3 & 4 reproduced hereinbelow:

1. All the members of the ministerial staff of the various constituent colleges that have now come under the University will form one general pool for purposes of seniority.
2. For the purpose of determining the seniority the service rendered in the various colleges that now go to constitute the University will be the main criterion.
3. Since the service in the previous colleges was Rajasthan Government service, service rendered in other Department of the same Govt. will also be taken into consideration on the same level if the member has been taken in the University without any break or if there has been any break, it has been condoned by the Syndicate.
4. Service rendered in the sister Universities of the State of Rajasthan or of the Central Govt. or any semi-government officer or the Board of Secondary Education, Rajasthan will be taken on the same level as in the Department of Rajasthan.
4. It is obvious that according to these rules as approved above, the Ministerial staff existing on 1st January, 1964 was to be given the benefit of past service under any Govt. department of the Rajasthan State, for the purposes of determining the seniority. On 6th may, 1965 a final seniority list of the L.D.Cs. of the University as on 1st January, 1964 was published under the signatures of the Registrar of the University which was placed on record as Ex.4 in which the name of the petitioner J.C. Calla was shown at S.No.7 and the names of Banshilal and D.D. Dave, the petitioners in other two writ petitions, were shown at S. Nos. 5 and 6 respectively.
5. Acting upon the said seniority, all the petitioners in the aforesaid writ petitions were promoted as U.D.Cs. by a common order dated 1st June, 1965. All the

three petitioners in the aforesaid petitions were confirmed on the post of U.D.Cs, with effect from 1st June, 1966 by separate order dated 29th Sept. 1967, 11th Feb. 1967 and 8th June, 1967 respectively. After being promoted on ad-hoc basis on the post of Assistant from the post of U.D.C., all the three aforesaid petitioners were confirmed on the post of Assistant by a common order dated May 4, 1985 with effect from 13.2.1980.

6. While on the one hand, the petitioners were given regular promotion on the next higher post as and when the same became due to them and were confirmed on the higher posts, the respondent Jodhpur University in the first instances issued a new final seniority list of ministerial staff cadre as Assistants, U.D.Cs. and L.D.Cs. as on 16.11.75 and onwards as approved by the Syndicate in its meeting held on 3/4th Jan. 1986 which has been produced as Ex. 10/A alongwith writ petition. In Ex. 10/A, the names of petitioners did not find place in the cadre of Assistants or U.D.Cs. But their names were shown in the category of LD.Cs. giving the date of entry in the cadre as 28.1.63, 19.9.63 and 15.9.62 respectively at S. Nos. 22,44 and 10 respectively. As a consequence of the new seniority list Ex. 10/A, vide order dated Jan, 22, 1986 all the three petitioners were ordered to be de-confirmed in the cadre of Assistants and were ordered to be reverted to the substantive posts of U.D.Cs. vide Ex.12.

7. Aggrieved with the aforesaid orders Ex. 10/A and Ex. 12 final seniority list of ministerial staff and order of de- confirmation and reversion respectively, the above named three petitioners have preferred the aforesaid three petitions. After issuing show cause notices and hearing counsel for the respondents, petitions were admitted on 24.2.1987.

8. The respondents have filed reply to the show cause notices. No further reply has been filed.

9. I have heard the learned Counsel for the parties and perused the record.

10. It is contended by the learned Counsel for the petitioners that when the petitioners entered the services of the University according to existing rules governing their seniority, they were entitled to the benefit of past service rendered under any Govt. Department and benefit of such past service was given to such of the petitioners while assigning seniority in the cadre of L.D.C. issued by the Registrar of the University on 6th May, 1965. Subsequently, all the petitioners were given regular promotions first on the post of U.D.C. on 1.6.1965 and were confirmed on the post of U.D.C. with effect from 1.6.1966. On such confirmation on the post of U.D.C, their lien on the post of L.D.C. came to an end. Likewise, they were promoted substantively on the post of Assistant from the post of U.D.C. and confirmed on the post of Assistants with effect from 13.2.80 and on such confirmation, vested right accrued in them to continue in the cadre of Assistants on the basis of such regular promotion as has been accorded to them. It was contended that by subsequent amendments in the rules for determining seniority of the ministerial staff of the University, the rights,

which have already vested and accrued in the petitioners before such amendment, could not have been taken away. It was also contended that before denying them place in the seniority amongst Assistant to the post of U.D.C, no notice against the proposed action was ever given to them and the orders have been made in gross violation of the principles of natural justice.

11. In reply, it has been countered by Mr. Parekh learned Counsel appearing for the respondent Jodhpur University that seniority is not a vested right nor chances of promotion based on seniority, which cannot be affected by amending the rules. It was pointed out by Mr. Parekh that Syndicate in its meeting held on 6.12.1980 has resolved to frame new rules for determining the seniority of the ministerial staff and such new rules were notified by the Notification dated 13th Dec. 1980. Consequently, the seniority of the petitioners had to be redetermined in accordance with the new rules adopted by the Syndicate w.e.f. 13.12.80. He further contends that since the appointment order unequivocally spoke that the petitioner's appointment will be subject to the rules and regulations framed by the University from time to time, therefore, the seniority of the petitioner was liable to be changed in accordance with the newly framed rules and as a consequence of such change in the seniority they could also have been reverted from the higher post to the lower post.

12. Having given my anxious consideration to the rival contentions, I am of the opinion that the contentions raised by the petitioners merit acceptance. It is not disputed that as on the date when the petitioners joined, there were no rules but when rules were first brought into force, the persons who were already in service as on 1st Jan. 1964 were entitled to the benefit of their past service under and department of the State Government for the purpose of determination of their seniority and the petitioners were infact given benefit of such past service in the matter of assigning them seniority as has been detailed hereinabove. It is also not disputed that even before the new rules were approved by the Syndicate in 1980, all the petitioners have already been promoted substantively on the post of U.D.C. way back in the year 1 966. From the post of U.D.C, the petitioners had further been promoted to the post of Assistant and they were further confirmed on the post of Assistant with effect from 13.2.1980 which is a date anterior to bringing into force of the new rules which further clearly goes to show that on 13.2.1980, substantive vacancies did exist and against these substantive vacancies, petitioners were confirmed. In this connection, it may also be stated that law is well settled that even in regard to the rules framed under article 309 while retrospective effect can be given to such rules but no retrospective rules can be framed so as to deprive any employee of the rights which have vested and accrued to him before such amendment has been made. In this connection, reference may made to Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, In same what similar circumstances, the question that crapped-up before the Hon''ble Supreme Court was that when Ex. Commissioned Officers were recruited in the service of the Haryana Government according to the existing rules, such Ex Emergency Commissioned Officers were entitled to count

period of emergency service for their seniority. By subsequently amending the rules, the Haryana Government sought to deprive such Ex Emergency Commissioned Officers from the benefit of counting their emergency service for the purpose of seniority by adding a proviso to Rule 4(ii) of the Punjab National Emergency (Concessions) Rules, 1956 and Their Lordships of the Supreme Court observed as under:

The Haryana could not take away the accrued rights of such persons by making amendment of the rules with retrospective effect by adding proviso to Rule 4(ii) taking away the benefit of counting military service towards seniority or by making amendment in the definition of the expression "military service" in Rule 2 restricting the benefits of military service upto 10th of January, 1968.

13. The ratio of the decision is fully applicable to the facts and circumstances of the present case. The University having already given the benefit of past service while determining the seniority of L.D.Cs. way back in the year 1965 and thereafter according two successive promotions to the petitioners on the higher posts could not have amended the rules to retrospectively alter their seniority in the cadre of L.D.C. in which they have long ceased to hold their respective lien and to revert them from the higher post to the lower post as a consequence thereof. Neither the University had an authority to frame retrospective rules so as to take away already vested and accrued rights under the prior existing rules nor in fact there is anything in the rules to suggest that the rules were intended to be retrospective so as to affect already transacted actions under the previously existing rules. The petitioners having already been appointed on the higher posts on the basis of the seniority assigned to them by giving benefit of the past service which undoubtedly they were entitled to under the then existing rules, and having secured substantive appointments on the promotional posts with effect from a date prior to the commencement of the new rules, petitioners' rights to hold such posts remained unaffected.

14. I, therefore, allow all the petitions, quash the final seniority list Ex. 10/A so far as it assigns new seniority to the petitioners of the L.D.Cs. and the order Jan. 22, 1986 by which the petitioners have been reverted from the posts of Assistant to the posts of U.D.C. with all consequential benefits. There will be no order as to costs.