
(1996) 01 RAJ CK 0047
In the Rajasthan High Court
Case No : Civil Writ Petition No. 443 of 1995

Kamal Kishore Vyas and Others	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1996) 2 WLC 129 : (1996) 1 WLN 1

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.—This is a joint writ petition filed by 13 petitioners seeking the relief that the respondents may be directed to grant regular grade-increments to them with effect from the date of their initial appointment in service alongwith other admissible allowances and not from the date from which they have been regularised in service as has been done by the respondents.

2. Petitioners Rakesh Bhandari, Dinesh Bafna, Deepak Mohnot, Surendra Raj Mohnot and Manmohan Lalas were given appointment by the Registrar, Rajasthan High Court purely on urgent/ad hoc/temporary basis by orders dated 21.01.86, 20.02.86 and 26.06.86 for a period of six months in the first instance. Later on, they were transferred on their request to the office of the Government Advocate, however, they remained ad hoc employees in the office of the Government Advocate till they were regularised. Petitioner K.K. Vyas was appointed by the Special Judge, Sati Niwaran Court, Jaipur by order dated 20.01.87 upto 30.12.87. Later on, he was transferred to the Government Advocate's office and remained ad hoc employee till regularisation. Petitioner Suresh Kumar Khatri was appointed in the office of the Special Public Prosecutor, Designated Special Court, Ajmer vide order dated 25.10.86 upto 28.02.87 and, was transferred to the Government Advocate's office on his request. Petitioner Naresh Kumar was appointed by the Advocate General, Rajasthan by order dated

01.02.86 upto 28.02.86 and was posted in the office of the Government Advocate at Jodhpur where he continued to be ad hoc employee till his regularisation. Petitioners Satya Narain Sharma and Jaswant Singh were appointed as Class IV employees by order dated 21.01.85 for a period upto 28.02.85 on ad hoc basis. Satya Narain Sharma was appointed as Record Keeper-cum-Weeder and Jaswant Singh was appointed as Record Keeper. Petitioner Bhoopat Singh was appointed as Class IV employee by the Registrar, Rajasthan High Court, Jodhpur by his order dated 16.01.84 purely on ad hoc basis for a period of three months and was transferred to the Government Advocate's office on his request where he joined as Class IV employee on ad hoc basis. Petitioner Chandra Shekhar was appointed as Class IV employee by order dated 20.04.85 by the Addl. Advocate General on ad hoc basis for a period of three months. Petitioner Ashok Acharya was initially appointed on ad hoc basis on the office of Assembly Secretariat and he also came to be transferred to the Government Advocate's office on his request on 27.07.86 and continued to remain ad hoc employee till regularisation. Petitioner Ashok Mathur was appointed by the Special Judge, Sati Niwaran Court, Jaipur on 28.01.88 on ad hoc basis and was transferred on his request to the Government Advocate's office where he continued as ad hoc employee till his regularisation. It is in this manner that these petitioners were appointed as ad hoc employees by various orders issued by different authorities and most of them came to be transferred on their request to the Government Advocate's office where all of them remained ad hoc till regularisation in service.

3. The State Government vide notification dated 12.10.92 amended Rule 25 of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (for short to be called The Rules of 1957" hereinafter) and inserted Sub-rule (10) and further added proviso (XXVI) to Rule 27 thereof. An amended, Sub-rule (10) of Rule 25 of the Rules of 1957 runs as under:

(10) Notwithstanding anything contained, in Rule 7, all persons appointed as LCDs on ad hoc basis or on daily wages basis during the period from 01.01.85 to 31.03.90 and are still working as such on the date this amendment comes into force shall be appointed on regular basis on availability of vacancy subject to the condition that they pass a performance test conducted by the Head of the Department concerned within a period of three years in accordance with the syllabus prescribed in Part IV of Schedule I. Such persons shall be allowed three chances to pass the said test to be availed within a period of three years.

Provided that if a person fails to pass the said test in three chances to be availed within a period of three years, he shall be liable to be removed from services.

Proviso (XXVI) to Rule 27 of the Rules of 1957 runs as under:

(XXVI) that notwithstanding anything contained to the contrary in substantive part of Rule 27, the persons appointed as LDCs under Sub-rule (10) of Rule 25 shall rank junior to the persons appointed regularly as a result of passing the

competitive Examination conducted by the Commission and their inter-seniority shall be determined on the basis of length of continuous service on ad hoc basis and/or daily wages basis.

4. In pursuance of the amendment coming into force the respondents conducted a written-test where at all the petitioners appeared and were declared successful. Thereafter, vide order dated 28.04.93 issued by the Joint Legal Remembrancer & Director, Litigation, services of all these petitioners were regularised on the posts of L.D.C. with effect from the date mentioned in column 4 of the order.

5. It has been contended by learned counsel for the petitioners that as the petitioners were serving the department in the capacity of Lower Division Clerk they are entitled to annual grade-increments from the date of their initial appointment as such. It has been submitted that one Smt. Girija Devi whose name appeared at S. No. 1 in the order dated 28.04.93 was allowed annual grade-increments by this Court in S.B. Civil Writ Petition No. 4294/92 filed by her from the date of her initial appointment and, therefore, the petitioners should also be given the same relief following the aforesaid decision. On the other hand, it is the case of the respondents that the petitioners cannot be brought at par with the regularly appointed L.D.C.s it is not the intention of the legislature and method of appointment has, therefore, been provided under the relevant rules. Thus, the petitioners cannot be given annual grade-increments from the date of their initial appointment as Lower Division Clerks which, in fact, was purely temporary in nature.

6. To appreciate the respective contentions it is worthwhile to look into the relevant service rules and to consider as to how the appointments have been made and whether the appointments accorded to the petitioners can permissibly be held to be regular appointments from the respective dates of their initial appointments in the service. In this context, Section 4(j), Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 which defines substantive appointment reads as under:

Substantive appointment means appointment made under the proviso of its rules to substantive vacancies after due selection by any of the methods of recruitments prescribed under these rules and includes appointment on probation or as probationary followed by confirmation on the completion of probationary period. (Note: Due selection by any method of recruitment prescribed under these rules will include recruitment either on initial constitution of service or in accordance with the provisions of any rules promulgated under proviso to Article 309 of the Constitution except urgent/temporary Appointment)

Rule 7(b) of the Rules of 1957 is in respect of method of recruitment to the post of Lower Division Clerk which is by competitive examination to be conducted by the Commission. Thus for substantive appointment to the post recruitment has to be through competitive examination. Rule 34-A, Rajasthan Service Rules,

1951 defines substantive appointment to mean the appointment of a Government servant on a permanent post and on which he acquires a lien. Thus for claiming substantive appointment it should be established that the government servant acquired a lien over the post to which he was appointed. Admittedly, such is not the petitioners' case. They were neither appointed through competitive examination nor any of them held substantive post on being appointed in the service. Their appointments were purely urgent/ad hoc/temporary in nature. Afore-quoted proviso (XXVI) to Rule 27 of the Rules of 1957 is significant in this respect and states in unequivocal terms that persons appointed as LDCs under Sub-rule (10) of Rule 25 shall rank junior to the persons appointed regularly as a result of passing the competitive examination conducted by the Commission and their inter se seniority shall be determined on the basis of length of continuous service on ad hoc basis. Thus for the purpose of consideration of seniority vis-a-vis persons appointed regularly to the post, services rendered on ad hoc basis cannot be taken into consideration and they shall be ranked junior to the persons appointed regularly irrespective of the length of their services. The services so rendered shall be taken into consideration only for the purpose of fixing inter se seniority among themselves only.

7. Temporary government servants having been appointed on ad hoc basis without following the procedure laid down in relevant service-rules promulgated under proviso to Article 309, Constitution of India are entitled to minimum of the pay-scale. The annual grade-increments are payable to persons appointed regularly to the post unless otherwise provided in the rules and regulations or notification issued by the State Government. As such the petitioners are not entitled to get annual grade-increments in the time-scale on the basis of their respective dates of initial appointment in the Service.

8. The decision in the case of Smt. Girija Devi (S.B. Civil Writ Petition No. 4294/92), strongly relied on by the petitioners, has no application under the facts of the present case. Smt. Girija Devi was given annual grade-increments from the year 1986 on account of her passing the typing-test and thereby she became entitled to grade-increments under the circular dated 7th May, 1985. It is not the case of the petitioners that they had passed the typing-test/proficiency test. Circular dated 17.05.85 says that a Lower Division Clerk who passes type-test/proficiency test in first attempt after issuance of these orders will have his pay fixed on 01.04.85 after taking into account annual increments falling due to him on notional basis upto 01.04.85 but no arrears shall be payable to him for the period upto 01.04.85. Under this clause, this Court directed for fixation of annual grade-increments of Smt. Girija Devi from 01.04.86. It is further apparent from circular dated 17.05.85 that persons holding temporary posts are not entitled to grade-increments and their grade-increment shall be notionally calculated for the period of such service to arrive at the pay to be fixed on 01.04.86.

9. As a result of the foregoing discussion this writ petition fails and is hereby dismissed. There shall be no order as to costs.