
(2001) 09 RAJ CK 0068

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1722 of 1993

Khem Chand Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 39

Citation : (2002) 4 RLW 2090

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Rajendra Prasad, for the Appellant; Praveen Balwada and A.K. Hemkar, Director, Social Welfare Deptt., for the Respondent

Final Decision : Allowed

Judgement

Verma, J.—The petitioner is qualified as possessing ITI diploma in Hindi Stenography having so qualified form a college run by the State and is working as an Instructor in Stenography in Ambedkar Training Institute run by Social Welfare Department. The other institute as run by the State are at Sriganganagar, Bharatpur, Jaipur, Kota, Sawai Madhopur an Nagaur. The instructors are appointed for training imparting in Stenography in the, instructors were also created. The petitioner before joining the present institute at Bharatpur was earlier working as Instructor Industrial Training Institute, affiliated by the State of Rajasthan, but had resigned to join as Instructor in the present institute and so appointed in Ambedkar Training Institute in the year 1991 at the fixed pay of Rs. 300/- per month initially for a period of 10 months. Copy of the order of appointment is Annexure-3. It is mentioned in the order of appointment that the post is a part time and temporary. His appointment was extended vide Annexure-4 on 7.9,1992 for another 10 months or till the regularly selected instructors are appointed. Vide Annexure-8 the Government had taken a decision dated 7.9.1991 to pay an amount of Rs. 40/- per lecture. But so far the lecturers of stenography are concerned, they were to be paid fixed pay of Rs. 300/- p.m.

The petitioner submits that initially working hours for Instructors in the institute were for five hours at a stretch which has been now extended to 7 hours per day as per order Annexure-5.

2. Grievance of the petitioner is that he is being discriminated in not paying equal pay for equal work violating Article 14, 16, 21 and 39(d) of the Constitution of India and, therefore, prayer has been made for direction to the respondents to pay salary in the pay scale of the Instructor. Vide Annexure-11, the District Social Welfare Officer, Bharatpur had recommended that the petitioner is rather teaching in two different shifts from 10.00 a.m. to 4.00 p.m. and, therefore, he should be paid for each shift @ Rs. 300/- p.m.

3. In the reply filed by the respondents preliminary objection is being taken that instead of approaching the High Court, the petitioner should have approached the Labour Court. However, it is admitted that respondent is running various institutes in the State of Rajasthan including one at Bharatpur where the petitioner is working. An objection is being taken that the post of Instructor is not a full time post and, therefore, the petitioner was appointed as part-time/temporary or till the regularly selected persons are appointed. For the reason that there is not post of Instructor having been created in the regular pay scale, therefore, arrangements are to be made as per norms, rule and regulations for part-time payment and that the petitioner is bound by the terms of employment. It has also been high lighted that the respondents are exploiting Instructors by appointing them for 10 months tenure and not to pay them for vacations or at the end of session and re-employ them for 10 months period once again.

4. This court vide its order had directed the State counsel to get instructions from the Director Social Welfare Department to apprise the fact to this Court whether it was true that the Instructors in Hindi shorthand and typing being employed in the training institute run by the Government was being paid Rs. 600/- p.m. The Instructors in Hindi stenography are working for whole of the day, but are being paid salary much less than even a Class IV employee. Class IV employee is getting a salary of more than Rs. 3,000/- p.m. but the Instructor like the petitioner is getting Rs. 600/- p.m. who is teaching and imparting the training of Stenography. The scale as prescribed for Instructors vide Government notification issued by the State in January 2001 the stenographers and Junior Instructors, ITI are in the scale of Rs. 5000- 8000 whereas Senior Instructors is in the scale of Rs. 5500-9000.

5. Here is a case where the petitioner is an Instructor in Hindi Stenography having been appointed in the year 1991 even though he is termed as part time or temporary and is being paid Rs. 300/- p.m. initially and now Rs. 600/- p.m. as fixed pay, he is instructing the students in teaching them Hindi Stenography as well Hindi Typing for full period as per the time table. The institutes are permanent establishments of the Government having been established for the welfare of the public. Plight can be imagined of person who is a diploma holder and teaching the students for last 10 years but getting the pay of Rs. 600/- p.m.

which is much less than Class IV employee and still lesser than the minimum daily wage fixed for un-skilled labourer.

6. The Director, Social Welfare, who present in the court at the time of hearing could not explain the said anomaly as to why the Government has not taken care of this aspect despite the repeated requests made by the petitioner and even by the respondents. The only answer in the written statement is that the petitioner is bound by the terms of employment which can hardly be a reason to deprive an Instructor of a training institute to get his due. However, it is not denied that the Junior Instructors are being paid a salary of Rs. 5000-8000 and the Senior Instructors Rs. 5500-9000, if they are regularly appointed in any of the training institute. The discrimination is writ large. The rights of the petitioners are enshrined under Article 14 and 39(d) of the Constitution of India are being violated by the State machinery which machinery is even otherwise to see that the benefits as per the constitutional provisions is to be conferred on the citizens/employees. Nothing has been brought on record to show the jurisdiction of not granting the regular pay scale to the petitioner. May be because of compelling circumstances the petitioner might have been attracted to the Government job in the year 1991 on what-ever terms of officer made by the State, but illegality and discriminatory treatment cannot be allowed to be perpetuated specially in the present case. The Director who was present in the court has shown his helplessness unless the State Government takes a policy or sanction that regular post. The State Government is silent on the point writ the result that the interference is necessary in the present case for a direction of writ of mandamus to the respondents to fix the petitioner in minimum regular pay scale of Junior Instructor from the date of filing of the writ petition and regularise him in the regular pay scale along with Dearness allowance and increments from five years of his first appointment i.e. he shall be paid the arrears of salary in the pay scale of Junior Instructor from March 1993 and be regularised after five years of his appointment i.e. w.e.f. July 1996. The arrears of salary shall be paid within four months after making adjustment of the amount whatever had been paid within interest and in case the arrears are not paid within stipulated period, the petitioner shall be entitled to interest on such arrears @ 9% p.a.

7. The writ petition is allowed with the above-said directions with a cost of Rs. 2000/-.