

(2018) 07 RAJ CK 0236
In the Rajasthan High Court
Case No : Special Appeal Writ No. 516 of 2009

Krishna Gopal Pareek @APPELLANT@Hash Bundi Central Co-Operative Bank Limited

Date of Decision : 26-07-2018

Acts Referred:

Citation : (2018) 07 RAJ CK 0236

Hon'ble Judges : Munishwar Nath Bhandari, J;Dinesh Chandra Somani, J

Bench : Division Bench

Advocate : Amol Vyas, Virendra Dangi, Nidhi Khandelwal, Hemraj Rodiya, Kuldeep Verma, Sunil Kumar Sharma

Final Decision : Dismissed

Judgement

Petitioner preferred a writ petition to seek direction for his absorption on the post of Officer Grade-D in pursuance to the order dated 18.06.1996. It

was w.e.f. 01.04.1983 when he was absorbed on the post of Clerk. Alternatively, if absorption on the post of Officer Grade-D is not accepted then his

pay scale on the post of Clerk should be fixed by addition of allowance of Rs.125/ in the basic salary w.e.f. 01.04.1983.

The writ petition preferred by the petitioner has been dismissed by learned Single Judge finding not only laches but no merit therein.

It is a case where the petitioner, apart from many others were engaged on the post of Junior Accountant to work under Antyodaya Yojana.

The project was closed vide letter dated 11.03.1983. A direction was given to the Bank to absorb the employees subject to their qualifications.

Pursuant to the direction, respondent-Bank absorbed the petitioner-appellant on the post of Clerk vide order dated 26.09.1983. The Registrar,

Cooperative Societies, Rajasthan, Jaipur, thereupon, issued an order on 16.04.1985, directing that those who have been absorbed on the post of Clerk,

their pay should not be lower than the pay received by the Junior Accountant. It is, however, with the addition of Dearness Allowances in total salary.

The petitioner was thereupon given additional allowance so as to match the pay of Junior Accountant.

In the meanwhile, a litigation came before this Court to claim regularisation on the post of Junior Accountant. The writ petition was allowed in the year

1992 but it was with the direction not to reopen cases of the employees already absorbed. Pursuant to the judgment, the Registrar, Cooperative

Societies, Rajasthan, Jaipur issued an order on 18.06.1996 directing absorption on the post of Junior Accountant unless one is lacking in the

qualification. It was, however, with a clarification that case of those already absorbed would not be opened. If one has not been absorbed or the

absorption was accepted under protest, the benefit can be given. Since the petitioner-appellant had accepted absorption on the post of Clerk without

protest thus he was not covered by Para 2 of the Circular dated 18.06.1996.

The petitioner filed writ petition to seek absorption on the post of Officer Grade-D. Learned Single Judge, after considering the facts of this case,

came to the conclusion that writ petition is not only hit by laches but has no merit. The absorption of the petitioner was made in the year 1983 itself

and as no protest was ever made against it, rather, petitioner-appellant had drawn all the benefits out of it which include additional allowance to match

his total salary at the minimum of the pay scale of Junior Accountant, the writ petition was dismissed having filed after lapse of 14 years.

Learned counsel for the appellant submits that cause of action to file writ petition arose in the year 1996. It was after the judgment of this Court in the

year 1992. The petitioner-appellant was called along with record in the year 1996 for his absorption. When he was not absorbed on the post of Officer

Grade-D, writ petition was filed. It was thus not hit by laches. The petitioner-appellant, otherwise made a protest on his absorption on the post of Clerk.

In view of the above, his case was covered by Para 2 of the Circular dated 18.06.1996. Learned Single Judge failed to take note of all the relevant facts.

When the petitioner was called by the Registrar, Cooperative Societies in the year 1996 for absorption on the post of Junior Accountant, there was no

reason for the respondents to deny absorption on the post of Officer Grade-D after the judgment of this Court. The order of learned Single Judge thus

deserves to be set aside with the grant of benefit of absorption on the post of Junior Accountant. The alternative prayer is to merge the Special

Allowance in the basic.

We have considered the submissions of learned counsel for the appellant and perused the record.

Since the writ petition was filed pursuant to circular dated 18.06.1996, it would be relevant to quote Paras 1 and 2 of the said circular:-

1& foHkkx ds vknsâ??k fnukad 16-4-85 ds Å?e esa tks dfu""B ys[kkdkj fu/kkZfjr izk:i esa fodYi izLrqr dj cSadksa esa vfUre :i ls lek;ksftr gks pqds

gSa] ds ekeyksa esa dksbZ iquZfopkj ugha fd;k tkosaA

2& tks dfu""B ys[kkdkj vc rd lek;ksftr ugha gq, gSa vFkok v.Mj izksVsLV dk;Zjr gSa] buesa ls tks ^^Mh** xzsM vf/kdkjh dh ;ksX;rk j[krs gSa] dks

^^Mh** xzsM vf/kdkjh ds in ij lek;ksftr fd;k tkosa ,oa tks dfu""B ys[kkdkj ^^Mh** xzsM vf/kdkjh dh ;ksX;rk ugha j[krs gSa] mUgSa fyfid in ij lek;ksftr

fd;k tkos] fdUrq Hkfo""; esa ;fn os dHkh Hkh ^^Mh** xzsM vf/kdkjh dh ;ksX;rk vftZr dj ysrs gSa rks mUgSa ml frfFk ls ^^Mh** xzsM vf/kdkjh ds in ij

lek;ksftr fd;k tkosaA lek;kstu djus ds fy, ;fn cSad esa ml Lrj dk in fjDr ugha gks rks in l`tu@ifjorZu dk izdj.k i`Fkd ls foHkkx dks fHktok;k tkosaA

The circular was issued after the judgment of this Court dated 05.08.1992. Para 1 of the circular makes it clear that absorption of the candidates

pursuant to the order dated 16.04.1985 would not be opened. Para 2 provides absorption of those who were not earlier absorbed or it was accepted

under protest.

The petitioner pleaded about his protest but no document was filed to substantiate the averment. If the conduct of the petitioner is seen, he had not

only accepted the absorption made in the year 1983 but accepted the additional allowance given to him pursuant to the circular dated 16.04.1985. He

did not raise objection against the seniority list of Clerks. From the facts aforesaid, it comes out that the petitioner did not make a protest about his

absorption. In view of the above, the judgment of this Court dated 08.05.1992 gets relevance.

In the aforesaid judgment, it was held that case of those already absorbed would not be opened. Despite clarity in the judgment and circular dated

18.06.1996, if the petitioner was called for absorption, it was nothing but going contrary to the judgment. It may be due to unawareness of Registrar,

Cooperative Societies about absorption of the petitioner being an employee of the Bank and not of the department. In view of the above, calling the

record of the petitioner does not give cause of action to him, rather, it arose in the year 1983 when he was absorbed on a lower post of Clerk. It is by

those who were not absorbed, thus they had preferred writ petition. It was decided in the year 1992.

Now issue comes about merger of the Special Allowance in the basic pay. The perusal of the earlier circular dated 16.04.1985 does not provide for

merger but directs grant of additional benefits so that one may not get less wages than payable to the Junior Accountant at his minimum of the pay

scale. The prayer made by the petitioner for merger of the benefit of allowance in the basic cannot be accepted. For ready reference, Para 3 of the

Circular dated 16.04.1985 is quoted hereunder:-

3& dfu""B ys[kkdkj dks cSad esa fyfid ds in ij lekfo""V fd;k tkosxk mudk osru LFkjhdj.k djrs le; ;g /;ku j[kk tkosxk fd mudks fyfid oxZ esa feyus okys

osru rFkk eagxkbZ HkRrk feykadj dfu""B ys[kkdkj ds in feyus okys osru o eagxkbZ HkRrs ls de ugha gksxkA dfu""B ys[kkdkj dks fnukad 1-4-83 dks

feyus okys osru o eagxkbZ HkRrk feykadj cSad fyfid dks feyus okys osru o ega xkbZ HkRrk ds cjkcj dj vkxkeh mPp LVst ij osru LFkjhdj.k fd;k

tkosxkA budh vkxkeh osru o`f) dk fnukad lekfo""V gksus dh rkjh[k ls ,d o""kZ ckn gksxkA

In view of the above, petitioner was given benefit of Special Allowance. If proper benefit was not given then why petitioner did not approach the

Court immediately thereupon. The writ petition in reference to the circular of the year 1985 is highly belated as was preferred in the year 1997 i.e

after 12 years of the circular.

Taking into consideration overall facts of the case, we do not find any error in the impugned order of the learned Single Judge. The petitioner has

already attained the age of superannuation and thus retired from service. The appeal is having no merit, it is dismissed.