
(1992) 01 RAJ CK 0057
In the Rajasthan High Court
Case No : Civil Writ Petition No. 187 of 1987

Kunji Raman

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 29-01-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 309, 39
Industrial Disputes Act, 1947 — Section 2, 3
Industrial Employment (Standing Orders) Act, 1946 — Section 6

Citation : (1992) 1 WLN 96

Hon'ble Judges : N.K. Jain, J;M.B. Sharma, J

Bench : Division Bench

Judgement

M.B. Sharma, J.—The petitioner is an employee in Mahi Project Banswara and at the time when this petition was filed i.e. on January 12, 1987, he was posted as Lathe Operator. He was initially appointed as a Fitter in the Mechanical Division-II in the aforesaid Project on March 28, 1974 and it was as a result of promotion on October 23, 1975 that he was appointed as Lathe Operator. The present petition has been filed by the petitioner on his own behalf as well as in representative capacity on behalf of the persons named in the Schedule annexed to the writ petition who too were appointed on various post mentioned against their names in Mahi Project Division I and II.

2. The grievance raised in this petition by the petitioner is that the provisions of Rajasthan Service Rules, 1951 (for short, RSR) as well as the provisions of Rajasthan Service (Concessions on Project) Rules, 1962 (for short Project Rule) have been made inapplicable to the petitioner and other employees named in the Schedule annexed to the writ petition and provisions of RSR as well as Project Rules under which they have been made inapplicable are invalid being discriminatory and as such violative of Articles 14, 16 and 21 of the Constitution of India.

3. The RSR were framed by the then Rajpramukh of Rajasthan in exercise of the

powers under the proviso to Article 309 of the Constitution of India. Rule 2 provides as to which of the employees the provisions of RSR will be applicable and under Rule 2(1), the RSR will apply to all persons appointed by the Government of Rajasthan to posts or services under its administrative control or in connection with the affairs of the State of Rajasthan on or after the seventh day of April, 1949 but under its second proviso the class of officers etc. to which the RSR is inapplicable has been specified and so far as present controversy is concerned, the Clauses (g), (h) and (i) are relevant. Under Clause (g) of Rule 2 of RSR, the provisions of RSR shall not apply to work charged employees, i.e. persons who are not on regular establishment and are paid out of provisions for expenditure on works, maintenance of works, or State trading schemes and similar other provision for funds other than provisions under budget unit of appropriation * Pay of Officers" and Pay of Establishment". Under Clause (h), RSR, are not applicable to persons for whom special or specific provision in respect of any matter covered by the RSR has been made in the rules regulating their recruitment and conditions of service framed under proviso to Article 309 of the Constitution or under any Law or rules for their time being in force applicable to such persons. Under Clause (i) the RSR are not applicable to persons paid out of the consolidated fund of the State under budget unit of appropriation Pay of Officers" and Pay of Establishment" and who are at the same time Workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 except to the extent provided in case of persons covered by Clause (h) above, in respect of (i) rules 43(c) and (d) regarding grant of honorarium, (ii) Chapter VI-Combination of Appointments, (iii) Chapter X and XI-Leave, (iv) Chapter XII--Foreign Service and (v) Chapter XIV-Service under Local Fund. A perusal of the aforesaid clauses of Rule 2 of RSR will therefore show that the RSR is applicable only to the persons who are on regular establishment and they are not applicable to persons who are employees and are paid out of works etc. as mentioned in Clause (g). They are also not applicable to persons in respect of whom special or specific provision in respect of any matter covered by the RSR has been made in the rules regulating their recruitment and conditions of service framed under proviso to Article 309 of the Constitution. They are also not applicable to the persons paid out of consolidated fund of the State and who are at the same time workmen as defined in Section 2(s) of the Industrial Disputes Act, 1947, except as mentioned above.

4. Chapter v. of RSR is in respect of "Addition to Pay and under its rule 42 power is vested in the Government subject to general rule that the allowance is not on the whole a source of profit to the recipient, the Government may grant such allowances to a Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn. In exercise of the aforesaid powers, the project Rules were framed. It may be stated that though the challenge in the present writ petition is to Rule 2 (b), (d) and (e) of the Project Rules, but the aforesaid Project Rules were superseded by the Rajasthan Civil Services [Project Allowance and Concessions in Project Areas]

Rules, 1974 and the aforesaid Rules of 1974 were superseded by the Rajasthan Civil Services(Project Allowance and Concessions in Project Areas) Rules, 1975 (for short, the 1975 Rules). One of the objections raised in the reply is that the challenge to the aforesaid Rules do not survive because they were superseded by the 1974 Rules and thereafter 1975 Rules which hold the field. But in our opinion a comparative study of the Project Rules as well as 1975 Rules will show that except that Rule 2(b) ,(d) and (e) Project Rules have been re-numbered as Sub-rules (2), (4) and (5) alongwith explanation respectively and there is not much difference. Thus the basic challenge being to the work charged employees, despite the fact that the writ petition was not amended and relief of the challenge to the aforesaid 1975 Rules not incorporated, we will proceed to examine the validity of the inapplicability of 1975 Rules so far as the petitioner and other persons named in the schedule annexed to the writ petition are concerned.

5. It was contended by the learned Counsel for the petitioner that the petitioner and other persons named in the schedule annexed to the petition that the workmen employed as work charged employees are discharging the same duties as are discharged by the workmen in the so-called regular establishment and they constitute one class and the more fact that some of those employees being appointed as workcharged employees, cannot justify any differential treatment being given to them. It is also the contention of the learned Counsel for the petitioner that the petitioner and others in the Mahi Project that the petitioner and others in the Mahi Project of Irrigation Department as well as the workcharged employees of PWD., Irrigation and Rajasthan Canal Project discharge the similar type of duties and therefore form one class and out of that class the petitioner and his likes have been picked up for being denied the benefit of House Rent Allowance, Project Allowances, Leave encashment benefit etc. for no reason. His contention therefore is that equals are being treated unequals and therefore there is discrimination between them which violates Articles 14 and 16 of the Constitution of India. The contention of the learned Counsel for the petitioner is also that on the principle of equal pay for equal work the petitioner and. his likes who are discharging the similar duties, cannot be denied the various benefits which are being given to the employees of the same class. On behalf of the State Mr. Joshi, Addl. Advocate General has contended that RSR as well as Project Rules or for that matter 1975 Rules are applicable only to the regular employees and so far as the petitioner and other like him whose names have been given in the Schedule attached to the writ petition are concerned, they are governed by the Standing Orders and in the year 1975 Standing Orders were framed under Industrial Employment (Standing Order) Act, 1946 (for short, the 1946 Act) and the petitioner and other are bound by the Standing Orders which have statutory force and could have been challenged in appeal provided in Section 6 of the 1946 Act. It is not disputed on behalf of the respondents that some of the employees who are on regular establishment of Mahi Project are governed by the RSR as well as Project Rule or for that matter 1975 Rules. This

position will be clear from para 1 of the reply to the grounds. Relevant portion of the same may be extracted here which reads as under:

As stated above in para No. 5 of the reply excluding the posts of drivers, telephone operators, chowkidar, Lab Assistant and sweepers, work charged employees in the Mahi Project are not discharging the same duties which are performed by the employees of regular establishment. For particular project, Government sanctions particular fund. After project is complete and amount sanctioned for completing fund is exhausted, the person employed to complete particular project have to be retrenched after the completion of the project. Persons employed on workcharged basis gets their salary from the fund sanctioned for carrying out particular project. Persons employed on the work charged basis cannot be equated with those employed on regular basis. It is therefore, clear that persons appointed on regular basis and those appointed for specific work governed by standing orders, constitute different class, hence there is no question of discrimination.

A perusal of the aforesaid extracted part of the reply will show that to some of the employees of Mahi Project who are on regular establishment, provisions of RSR as well as Project Rules or 1975 Rules, have been made applicable. But so far as the work charged employees are concerned they being not on regular establishment the aforesaid two sets of Rules are not applicable and the provisions has been made in the aforesaid two sets of Rules that they shall not apply to the workcharged employees. The question is as to whether the inapplicability of the aforesaid Rules namely, RSR and Project Rules or 1975 Rules amounts to discrimination so far as the workcharged employees are concerned ?. In other words, confining the applicability of the aforesaid set of Rules only to some of the employees who are on regular establishment of the Mahi Project and there by excluding their applicability to the workcharged employees is discrimination and hit by the provisions of Articles 14 and 16 of the Constitution of India? A reference to Clauses (g), (h) and (i) Rule 2 of RSR has already been made in the earlier part of this order. So far as the provisions of Project Rules or for that matter 1975 Rules are concerned, as stated earlier, they have been made in exercise of the powers conferred under rule 42 of RSR and a bare reading of rule 42 of RSR will show that it is under Chapter v. and is in respect of "addition to pay". The general rule is that the allowance is not on the whole a source of profit to the recipient and the Government has power to grant such allowance to a Government servant its control and may make rules prescribing their amounts and the conditions under which they may be drawn. So far as the work-charged employees are concerned, it is well known that they are not on regular establishment and are generally paid out of the provisions for expenditure on works and maintenance of works. The Rajasthan PWD (B&R) including Gardens, Irrigation, Water Works and Ayurvedic Departments Work-charged Employees Service Rules, 1964 (for short, 1964 Rules) were framed by the Government of Rajasthan under proviso to article 309 of the Constitution of India. . . .

A perusal of the aforesaid Rules will show that they are self-contained rules dealing with the recruitment, misconduct, retirement etc. of the work-charged employees. A work-charged employee who has put in two years service is entitled to confirmation of semi-permanent status and on completing 10 years services he is entitled to be conferred " permanent status. Once such of the work-charged employees who have completed 10 years service are conferred permanent status or are entitled to be conferred permanent status, it can be said that they come on regular establishment and then it may be said that they are entitled to all the benefits which are available to the Government servants on regular establishment. Thus, the employees who are on regular establishment, and such of the employees who are work-charged employees who as said earlier are paid out of the provisions of expenditure on works and maintenance of works etc. do not belong to the same class and they are governed by different set of rules and therefore, apart from the entitlement of pay on the principle of equal pay for equal work in case the regular employees and work-charge employees discharge the same type of duties, in our opinion, they cannot claim parity with the regular employees. In the instant case, as said earlier, the stand taken by the respondents is that the petitioner and other like him employed in the Mahi Project are governed by Standing Orders which were framed in the year 1975 under the 1946 Act. A look at the 1946 Act will show that it was framed with the object to have uniform Standing Orders providing for the matters enumerated in the Schedule to the said Act and that it was not intended that there should be different conditions of service for those who are employed before and those employed after the Standing Orders came into force and finally once the Standing Orders come into force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter. A perusal of Section 3(2) read with Schedule at this stage is necessary. Under Sub-section (2) of Section 3 provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed shall be, so far as is practicable, in conformity with such model. The matters to be provided in the Standing Orders according to the Schedule are--(i) classification of workmen, e.g. whether permanent, temporary, apprentices, probationers, or others, [ii] manner of intimating to workmen periods and hours of work, holiday, pay-days and wage rules, (iii) Shift working, (iv) attendance and late coming (v) conditions of, procedure in applying for, and the authority which may grant leave and holidays, [vi] requirement to enter premises by certain gates, and liability to search, (vii) closing and reopening of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom, (viii) termination of employment and the notice thereof to be given by the employer and workmen, (ix) suspension or dismissal for misconduct, and acts or omissions which constitute misconduct, (x) means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants, (xi) any other matter which may be prescribed. It will therefore be clear that holidays

also have to be intimated to the workmen. A perusal of the Standing Orders including the model standing orders will show that they deal with various matters as provided in the Schedule to the 1946 Act including leave which is allowed as provided in Chapter VIII of the Factories Act, 1948. Casual leave may also be granted but it will not exceed 10 days in any calendar year. We are, therefore, of the opinion that if the applicability of RSR is excluded to the work-charged employees, it cannot be said that exclusion as aforesaid of Clauses (g), (h) and (i) of Rule 2 of RSR to such employees is discriminatory before in our opinion there can be hardly any dispute that the Governor has power under the proviso to Article 309 of the Constitution to frame different rules for different category of Government servants in various services. So far as the petitioner and other employees like him are concerned, as said earlier, they are governed by 1975 Standing Orders.

6. It was contended by the learned Counsel for the petitioner that the regular employees are entitled to project allowances under the Project Rules or for that matter 1975 Rules, but the project allowance is not payable to the work-charged employees and according to him so far as the object of payment of project allowance is concerned, it is because of hard work being performed by the employees and therefore whether an employee is on regular establishment or nor, no discrimination could be made in the payment of project allowance. Learned Counsel further contends that on the principle of "equal pay for equal work" the petitioner and others like him, are entitled not only the equal pay with the employees who are discharging the same duties being on regular establishment, but also are entitled to the allowances which are being paid to the regular employees. In support of this contention, learned Counsel for the petitioner has referred to the case law on the point. In *Harbans Lal and Others Vs. State of Himachal Pradesh and Others*, , the Apex Court said in paras 6 and 7 that the principle of "equal pay far equal work" is not one of the fundamental rights expressly guaranteed by the Constitution of India. The principle was incorporated only under Article 39(d). As per the decision of the Apex Court the said principle was to be read into Articles 14 and 16 of the Constitution. The court further said that however there are in- built restrictions in that principle as pointed out in various decision of the Apex Court. In view of the Apex Court, a claim for equal pay can be sustained only if the impugned discrimination is within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishment with different management or even in establishment in different geographical locations, though owned by the same master. The court also said that by the general description of their job, one cannot come to the conclusion that every empolyees equal to the other in performance of his work. Dealing with the case of carpenters and craftsman, the court said that the two jobs by the mere nomenclature or by the volume of work performed cannot be rated as equal. It is not just a comparison of physical activity. It requires the consideration of various dimensions of the job. The accuracy required by the job and the dexterity it entails may differ form job to

job. It cannot be evaluated by the mere averments in the self serving affidavits or counter-affidavits of the parties. It must be left to be evaluated and determined by expert body. In *Jaipal and Others Vs. State of Haryana and Others*, , the court said that the doctrine of equal pay for equal work" applies if two classes of persons do same work under same employer, with same responsibility under similar working conditions. In the case of *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, , the court said that the doctrine of equal pay for equal work is inapplicable where employees claiming parity have been validly classified as constituting a distinct and separate category. The court further said that the classification may justify difference in pay scales. The court said that in judging the equality of work for the purposes of equal pay regard must be had not only to the duties and functions but also to the educational qualifications, qualitative difference and the measures of responsibility prescribed for the respective posts. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of "equal pay for equal work" would not apply. The court also said that if the classification has reasonable nexus with the object sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution of India. In view of the court the equality must be among equals and unequals cannot claim equality. In the case of *Dhirendra Chamoli and Another Vs. State of U.P.*, the Apex Court was dealing with a case of casual workers on daily wage basis engaged by the Government in different Nehru Yuvak Kendras in the country. They were discharging the same functions as were being performed by regular Class IV employees against the sanctioned posts, but they were not being paid to regular Class. IV employees. The court said that-

These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties they must receive the same salary and conditions of service as Class IV employees.

It will therefore be clear that the Apex Court said that the mere fact that such of the employees who are appointed on regular basis and others who are only appointed on temporary or daily wages basis, in case they are performing the same duties, they are entitled to the same salary and conditions of service and no discrimination can be made. In the case of *Grih Kalyan Kendra Workers" Union Vs. Union of India and others*, , the court said that equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in Article 39(d) of the Constitution equal pay for "equal work" has assumed the status of fundamental

right inservice jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution. Again in the case of K. Vasudevan Nair and others etc. v. Union of India and Ors., the court said that if the duties and responsibilities of Sections Officers in audit wing are entirely different from those of Section Officers of account wing, on parity in pay scale can be claimed.

7. From the above cases, it can be said that it will not make any difference whether a person is on regular establishment or not and if one on regular establishment and the other who is not on regular establishment, and both are discharging the same nature of duties, then no discrimination in their pay and allowances can be made.

8. Let us examine the instant case in the light of the aforesaid principle. A look at rule 42 of RSR under which the Project Rules, or for that matter 1975 Rules have been framed, will show that any allowance under the rules made thereunder is compensatory in nature and not on the whole a source of profit to the recipient. A perusal of the Project Rules or for that matter 1975 Rules will show that the object of the aforesaid Rules is for the grant of concession to the Government servants working in connection with various projects of the Government of Rajasthan. It was in the year 1974 that the Rules were made applicable to the government servants working in connection with the affaire of Mahi Bajaj Sagar Project and who were posted in the project area and actually residing in that area. It will further appear that even the Government servants of the departments of Irrigation, Account, Organisation, Land Acquisition Staff, Public Works Department (B & R), Medical Department, Rajasthan Canal Project Department, Electrical & Mechanical Staff employed directly by the Government, Labour Department, Soil Survey Staff of Agriculture Department in Rajasthan Canal Project other than staff working in Laboratories, Staff of Command Area and water utilisation Department posted in Rajasthan Canal Project Area, Staff of Forest Department posted in Rajasthan Canal Project, Staff of Word Food Programme Project Organisation in Rajasthan Canal Project Agriculture Department staff sanctioned for UNSF Soil Survey and Water Management Research and Demonstration in RCP area, and Staff of the Colonisation Department sanctioned for Rajasthan Canal Area including those working in connection with re-settlement of Pong Dam bustees although paid from Bias Project, are entitled to project allowance under the Project Rules or for that matter under 1975 Rules. The Government has thereafter added other staff working in other departments and reference in this connection may be made to mining department staff working at the site for mining or proving operation for rock phosphase at Jhamar Kotra which was introduced vide Order No. F.2(b) (12)FD(Rules) 69 dated August 26,1971. Therefore, it will be clear that even the government servants of aforesaid various departments who are holding posts or were appointed to the posts created in connection with the aforesaid projects were entitled to project allowances at the rates indicated in the rules. Therefore, as said earlier, the allowances under the Project Rules or for that matter 1975

Rules is compensatory in nature to compensate the persons working in Mahi Bajaj Sagar Project and if so it is. applicable irrespective of the fact as to what the nature of duties of the government servants working Mahi Bajaj Sagar Project. The Apex Court in the case of Jaipal and Ors. v. State of Haryana (supra) examined the question whether any discrimination can be made in the pay of temporary and permanent employees and said-

In view of these authorities it is too late in the day to disregard the doctrine of equal pay for equal work on the ground of one employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee.

In our opinion the said doctrine of equal pay for equal work for temporary or casual employees at par with the permanent employees can be extended and should be extended to the payment of compensatory allowance to the work charged employees also at the same rate which is being paid to employees who are on regular establishment. The law is settled that the classification must be have reasonable nexus with the object sought to be achieved and the State is justified to prescribe different pay scales and even providing allowances to various posts and taking distinction in the allowance, but if the classification does not stand the test of reasonableness and is founded on unreasonable basis, it would be violative of Articles 14 and 16 of the Constitution of India. We have already said that Project allowance under the Project Rules or under the 1975 Rules is compensatory in nature perhaps because the employees working in the Project are discharging and have to discharge hazardous duties. Therefore, so far as payment of allowance is concerned depending on the salary which an employee is getting irrespective of the fact whether he is work- charged employee or permanent or temporary employee, all the employees in our opinion form one class and the classification between the work-charged employees and permanent employees for the purpose of payment of allowance in different categories has no reasonable nexus with the object sought to be achieved and this classification does not stand the test of reasonableness and is founded on unreal and unreasonable basis and is violative of Articles 14 and 16 of the Constitution of India. Therefore, we are of the opinion that the provisions of Rule 2(b) (d) of the Project Rules as well as rule 4 (2),(4) of the 1962 Rules are violative of Articles 14 and 16 of the Constitution of India and should be struck down. In our opinion, the Project Rules apply to all the employees working in Mahi Project and they are entitled to project allowances under the 1975 Rules irrespective of the fact whether they are permanent, temporary or work-charged employees at the rates prescribed under the rules.

9. Consequently, we here by partly allow this writ petition and hold that the provisions of rule 4[2] and (4) of the Rajasthan Civil Services (Project Allowances and Concession in Project Areas) Rules, 1975 are violative of Articles 14 and 16 of the Constitution of India and they are struck down. The petitioner and others

working in Mahi Bajaj Sagar Project shall be entitled for the payment of Project Allowances at the rates under the rules on the similar lines as is payable to the permanent or temporary staff working in the Mahi Bajaj Sagar Project as well as various other departments to which reference has already been made in the earlier part of this order. But the petitioner and others will not be entitled to any arrears and the project allowance under the 1975 Rules shall be payable from the date of this order. Costs made easy.