
(1992) 08 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1949 of 1990

Mahendra Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Rajasthan Civil Services (Revised Pay Scale) Rules, 1983 — Rule 7

Citation : (1992) 3 WLC 438 : (1992) 2 WLN 85

Hon'ble Judges : R.S. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Verma, J.—This matter was directed to be put up for final hearing by order dated 17.7.1992. This is how the matter has come up today before me for final hearing and disposal.

2. The facts of this case are not very much in dispute. Mahendra Singh passed his Intermediate examination in the year 1955 from the Board of High School and Intermediate Education, Uttar Pradesh (Annx. 1). The petitioner obtained his certificate of Montessori training from the Association Montessori International in the year 1958 (Annx.2) The petitioner initially joined service as Teacher in Nehru Bal Mandir Rajgarh where he worked upto 1967. In the year 1967, the petitioner was appointed as Assistant Teachers in Gr. III in Bal Niketan School (respondent No. 3) with effect from 25,7,1967. Respondent No. 3 is a society registered under the Societies Registration Act. It is an aided school and gets aid from the Government to the extent of 90% of its expenditure and is governed by the provisions contained in the Grant in Aid Rules,1963.

3. Since the petitioner was serving as Teacher Gr. III, he was getting the same pay as was admissible to Teachers Gr. III under the State Government. The petitioner's pay was revised in accordance with the Revised Pay Scale Rules, 1976. Till then there was no controversy whatsoever regarding the entitlement of

the petitioner to get the same pay as was admissible to Assistant Teacher Gr. III serving under the State Government.

4. It appears that the Rajasthan Civil Services (Revised Pay Scale) Rules, 1983 came into force with effect from 1.9.1981. By virtue of rule 7 of these Rules, the petitioner was entitled to get the pay scale revised with effect from 1.9.1981 on the basis of the salary he was drawing immediately prior to this date on the post of Teacher Gr. III. In this connection proper proforma (Annx. 3) was submitted by respondent No. 3 to the office of Deputy Director, Education (Women), Jodhpur. According to this proforma, the petitioner's existing pay scale was 355-10-415-15-550-20-570. His pay scale was to be revised with effect from 1.9.1981 in the pay scale i.e. 490-10-550-15-640-20-840. Annx. 3 shows that the basic salary alongwith allowances at which the petitioner was liable to be fixed was to be Rs. 760/- per month with effect from 1.9.1981 and his next date of increment was to be 1.9.1982. It was at this stage that the Assistant Accounts Officer in the office of Deputy Director, Education (Women) Department, Jodhpur raised an objection regarding the recognition of the training certificate held by the petitioner. Upon this, correspondence took place between respondent No. 3 and the concerned authorities. Copies of some letters have been placed on record being Annx. 4 to Annx. 15A. Eventually respondent No. 3 was informed by the authorities that the matter has been referred to the Government and the decision will be communicated as and when received. It appears that when no final decision from the Government was received, the petitioner filed the present writ petition and prayed that respondents be directed to fix his pay under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1983, the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 and the Rajasthan Civil Services (Revised Pay Scales), Rules, 1989 with effect from the dates from which these Rules respectively came into force.

5. The writ petition has been opposed by respondent No. 3 by filing a reply to the show cause notice. The other respondents have not chosen to file any reply. The stand of respondent No. 3 was that the petitioner did not hold the qualifications recognised for the purposes of appointment as Teacher Gr. III. It submitted that it will be bound by such decision as is taken by the Government in the matter as it is receiving grant in aid from the State Government in accordance with the Rules. It submitted a photostat copy of letter No. F.19(5)FD/Gr.2/78 dated 12.12.1978 issued by Finance Department, Jaipur purporting to be a notification with reference to the Rajasthan Civil Services (Revised Pay Scales) Rules, 1969. The petitioner filed a rejoinder and submitted that the petitioner was in service for more than one and half decade and he was at the verge of retirement and respondents could not challenge the eligibility of the petitioner for appointment as Teacher Gr. III at such belated stage.

6. I have heard the learned Counsel for the parties and have perused the record. Mr. M.S. Singhvi has contended that respondents were not right in raising the question of eligibility of the petitioner regarding his appointment as Teacher Gr.

III in as much as the petitioner had been appointed way back on 25.7.1967 and had been, thereafter, receiving the same salary as Teacher Gr. III had been receiving under the aided schools. It is submitted that the objection is very much belated and is not germane for purposes of fixation of pay under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1983 or the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 and the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989. It is submitted that under the provisions of the relevant rules the entitlement to fixation depended upon the salary which the petitioner was drawing immediately prior to the date the relevant rules came into force.

7. It is contended that in none of these Rules there is a provision entitling the respondents to re-open the question of eligibility by the appointment of the petitioner to the post of Teacher Gr. III. Alternatively, it is urged that the petitioner having served all through and having been fixed earlier in a prescribed pay scale, the respondents are estopped from challenging the qualification of the petitioner at this belated stage. Had such an objection been taken soon after the appointment of the petitioner, the petitioner could have resigned from the post under the respondents and could have joined service elsewhere. He submits that now, when the petitioner is in the December of his career, the respondents cannot be permitted to take such a stand.

8. I have considered the rival contentions and have perused the record. The question of eligibility of the petitioner for appointment to the post of Teacher Gr. III should have been examined when the petitioner was initially appointed and when the petitioner was initially granted relevant pay scale. It is to be noticed that the petitioner entered service as back as on 25.7.67. Thereafter, the petitioner's pay was revised in the Revised Pay Scales Rules, 1976. The authorities slept over the matter in the style of Rip Van Winkle and did not challenge the eligibility of the petitioner to be appointed as Teacher Gr. III. It was for the first time in the year 1984 that the respondents were aroused from their deep slumber. It appears that for the first time, it was on Annx. 3 being submitted that an Assistant Accounts Officer in the office of the Deputy Director, Education Department (Women), Jodhpur raised an objection regarding the recognition of the qualification of the petitioner. For fixation under the relevant rules, this question was not at all germane. Rule 7 of these 1983 Rules specifically lays down that an employee electing a revised pay scale is entitled to be fixed in the revised pay scale on the basis of the salary he was drawing immediately prior to 1.9.1981. Rule 11 of these 1983 Rules deals with fixation of initial pay in the revised pay scale. Rule 12 of 1983 Rules deals with the increment admissible to such an employee. I have gone through the 1983 Rules. Nothing in these Rules lays down that the question of eligibility of an employee at the time of initial appointment could be re-opened or could be taken into consideration. The same appears to be the position under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1987 and the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989.

9. It would be pertinent to note that on an interim application being made, this Court directed on 3.12.90 that the petitioner shall be paid the salary in accordance with the Revised Pay Scales Rules, 1989. It was also directed that Government should release the grant-in-aid for making payment to the petitioner in accordance with the Revised Pay Scales Rules, 1989. I have been told at the bar that the petitioner has been fixed in the Revised Pay Scales Rules, 1989 and is drawing his salary under these Rules from December, 1990 and the grant-in-aid has also been released in accordance with the aforesaid directions.

10. Annx. R.3, which has been placed on record by respondent No. 3 is really neither here nor there. It pertains to the Rajasthan Civil Services (Revised Pay Scales) Rules, 1969, whereby a special provision was made for un-trained teachers, who had been appointed within a particular period. It is not the case of the parties that the petitioner had been at any stage of his service fixed in accordance with rule 3 of the Rules contained in Annx. R.3.

11. It is surprising that the Assistant Accounts Officer in the office of the Deputy Director, Education Department (Women), Jodhpur raised an objection on 27.2.84 but the respondents have not finally settled the controversy at rest even though a period of more than eight years had elapsed. This is even when a lot of correspondence had taken place between the department and the respondent No. 3. This speaks volumes of the efficiency of the administration in the Education Department. In my opinion, this is a fit case where the Director of Education should take those persons to task due to whose lapses the matter has remained pending for such a long period.

12. It is difficult to understand the plight of petty, low paid employees by those who sit in Air-conditioned chambers but the dictates of justice demand that the administration should be more responsive and sympathetic to the plight of these poorly paid employees, whether of the State or whether State aided institutions.

13. No other point was raised before me.

14. In view of what I have stated above, I am of the opinion that this writ petition deserves to be accepted. Respondent No. 3 is directed to fix the pay of the petitioner under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1983, 1987 and 1989 with effect from the dates these rules came into force. Respondents No. 1 and 2 shall release grant-in-aid to respondent No. 3 to enable it to discharge the liabilities of respondent No. 3 towards petitioner in this regard. Respondent No. 3 should submit revised fixation statements of the petitioner within a period of two months from today to the Director, Primary & Secondary Education, Government of Rajasthan, Bikaner. Upon receipt of the fixation statements, respondent No. 2 shall release grant-in-aid payable to respondent No. 3 on account of the liability aforesaid. If respondent No. 2 fails to discharge this obligation within the specified period, it shall pay entire arrears of grant-in-aid with interest @ 18% p.a. In the circumstances of the case, respondents No. 1 and 2 shall pay Rs. 500/- as costs to the petitioner. Since the

petitioner has retired, his retiral benefits if admissible under the rules may also be paid to him on the basis of revised salary.