

(2013) 07 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petitions No's. 1723, 2289, 2412, 2419, 2643, 2674, 2686, 2687, 2827, 2856, 3205, 3234, 3235, 3240, 3242, 3243, 3252, 3253, 3254, 3276, 3372, 3640, 3684, 3696, 3707, 3717, 3719, 3737, 3751, 3792, 3794, 3799, 3859, 3867, 3875, 3876, 3880, 3882,

Mitendra Singh Rathore and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2013) 4 CDR 1927 : (2014) LabIC 1853 : (2013) 4 RLW 3451

Hon'ble Judges : Vishnu Kumar Mathur, J; Govind Mathur, J

Bench : Division Bench

Advocate : P.S. Bhati, Mr. Ravi Bhansali, Mr. Manoj Bhandari, Mr. R.S. Saluja, Mr. Harish Purohit, Mr. N.S. Rajpurohit, Mr. Trilok Joshi, Mr. Rakesh Arora, Mr. B.L. Bhati, Mr. Deepak Nehra, Mr. Tarun Joshi, Mr. Mahaveer Bishnoi, Mr. Nishant Bora, Mr. R.S. Choudhary, Mr. Sardul Bishnoi, Mr. P.S. Chundawat, Mr. Arjun Purohit, Mr. Hemant Dutt, Mr. Bharat Shrimali, Mr. N.R. Choudhary, Mr. A.K. Choudhary, Mr. V.N. Kalla, Mr. B.S. Tanwar, Mr. Ajay Vyas, Mr. Sanjay Nahar, Mr. Kailash Jangid, Mr. B.S. Deora, Mr. D.L. Motsara, Mr. H.S. Sidhu, Mr. V.R. Choudhary, Mr. Mahendra Prajapat, Mr. Abhinav Jain, Mr. Parmendra Bohra and Mr. M.S. Godara, for the Appellant; G.R. Punia and Additional Advocate General Assisted by Mr. Jamwant Gurjar, for the Respondent

Final Decision : Allowed

Judgement

Govind Mathur, J.—By 73rd amendment of the Constitution of India, a constitutional status was conferred on Panchayati Raj Institutions as the third stratum of governance. The amendment aforesaid was a landmark step to satisfy directives of the State Policy enshrined under the Constitution. With an object to bring a law relating to Panchayati Raj Institution in conformity with the constitutional status granted to such institutions, the Rajasthan State Legislature enacted Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as "the Act of 1994"). The Act of 1994 is a complete code of governance through Panchayati Raj Institutions in rural area of the State. Section 78 to Section 84 of the Act of

1994 deals with appointment and deputation of officers and staff, while Section 89 deal with the formation of service for the Panchayati Raj Institutions in the name of "Rajasthan Panchayat Samiti and Zila Parishad Service". Section 90 deal with the constitution and functions of District Establishment Committee and Section 91 pertains to discipline among the members of the Panchayat Samiti and Zila Parishad service.

2. Section 102 of the Act of 1994 empowers the State Government to make Rules to carry out objects and the purposes of the Act. Exercising this power, the State of Rajasthan framed "The Rajasthan Panchayati Raj Rules, 1996" (hereinafter referred to as the "Rules of 1996"). Chapter XII of the Rules of 1996 relates to the recruitment of staff for the Panchayati Raj Institutions and to regulate other service conditions for the employees.

3. A complete procedure i.e. required to be adhered while making direct recruitment to the Rajasthan Panchayat Samiti and Zila Parishad Service is given in Rules 270 to 277. As per Rule 270, the District Establishment Committee on receiving requisitions for direct recruitment by the Panchayat Samiti or the Zila Parishad, as the case may be, shall invite applications through open advertisement in daily newspaper having wide circulation. The application as per Rule 271 is required to be made in a format prescribed by the District Establishment Committee. After scrutiny of the applications, the District Establishment Committee is required to conduct written test for all categories of service except for Class IV service and for the post of Drivers. The written test aforesaid is to be conducted as per the procedure given in Rule 273 of the Rules of 1996. At the time of introduction of the Rules, the Rule 273 was in the following terms:

Rule 273. Written test--The Committee may hold a written test for all categories of service except drivers and class IV. [The examination shall be conducted as per directions of the State Govt. The syllabus for competitive examination for direct recruitment to the post of [School teachers class 1 to 5 shall be as specified in Schedule II and Teachers classes 6 to 8 shall be specified in schedule III.] D.E.C. Will prepare the merit list on such basis:

Provided that selections for the various posts shall be made in accordance with the general directions given by the State Government from time to time in this respect. It may not be necessary to call the candidate for interview if so provided in those directions.

4. A second proviso was added to Rule 273 under a notification dt. 11.5.2011 and that reads as under:

Provided further that for the recruitment of Teachers Classes I to V and VI to VIII, the District Establishment Committee shall prepare merit list on the basis of marks obtained in written test and adding 20% of marks obtained in Teacher Eligibility Test.

5. An amendment was further made in Rule 273 aforesaid by introducing a new proviso vide the Government of Rajasthan notification dt. 17.12.2012, however, the same was re-amended by the Rajasthan Panchayati Raj (Amendment) Rules, 2013 notified under a notification dated 29.1.2013 and the existing second proviso reads as under:

Provided also that in case of appointment to the post of Lower Division Clerk, merit shall be prepared by the Appointing Authority on the basis of such weightage as may be specified by the State Government for the marks obtained in Senior Secondary or its equivalent examination and such marks as may be specified by the State Government having regard to the length of experience exceeding one year acquired by persons engaged on the post of Junior Technical Assistant (J.T.A), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training, Coordinator Supervision, other than through placement agency, in MGNREGA or in any other scheme of the Department of Rural Development and Panchayati Raj in the State.

Explanation.--Wherever percentage of the marks can not be ascertained due to grade awarded to the candidate in the particular examination, the median of the grade awarded to the candidate in such examination shall be basis for the preparation of the merit list.

6. In view of the second proviso to Rule 273, the persons who have acquired experience of working exceeding one year as Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training, Coordinator Supervision in Mahatma Gandhi National Rural Employment Guarantee Scheme (hereafter referred to as "MGNREGA") or in any other scheme of the Department of Rural Development and Panchayati Raj in the State of Rajasthan are entitled to have additional weightage as specified by the State Government while getting their candidature considered for recruitment. The Government of Rajasthan in pursuant to the proviso aforesaid decided to allow 10 bonus marks on having experience of more than one year but less than two years on the specified posts. The bonus marks in the tune of 20 and 30 respectively are required to be given in the event of having experience of more than two years but less than three years and of more than three years. While providing such weightage an exclusion is made under proviso second for the persons having experience on the specified posts, if employed through Placement Agencies.

7. Suffice to mention that the process of selection has already been initiated by the different Zila Parishads in the State of Rajasthan to fill-up the existing vacancies relating to the post of Lower Division Clerk. While making such selection, a weightage is given against experience earned on the posts of Junior Technical Assistant (J.T.A). Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division

Clerk, Coordinator IEC, Coordinator Training, Coordinator Supervision, but the same has not been extended to the persons having experience on the same posts but employed through Placement Agencies. This exclusion is made on basis of proviso second to Rule 273 of the Rules, thus, vires of the same is questioned in this petition for writ.

8. The case of the petitioners is that the exclusion made under proviso second to Rule 273 of the Rules of 1996 is bad, being discriminatory. It is asserted that the persons working on the specified posts with MGNREGA and other schemes of the Rural Development and Panchayati Raj Department, irrespective of their mode of appointment, are discharging same duties, bearing same responsibility and carries same liabilities, therefore, they possess same experience, as such, they form one class. The persons employed on contract basis directly by the Panchayat Raj Institutions or under MGNREGA and the persons employed with the Panchayati Raj Institutions and under the Schemes of MGNREGA through Placement Agencies or through a contractor could not be treated by different yardsticks being a part of same class. The classification made among the employees on basis of the mode of employment for the purpose of grant of weightage, while considering their candidature for appointment to the Zila Parishad and Panchayat Raj service is having no rational, as such, the classification made is in contravention of Articles 14 and 16 of the Constitution of India. According to learned counsels the object of providing weightage on the basis of experience is to have experienced hands in service of Panchayati Raj Institutions ensure merit in public working and this object in no manner shall be adversely affected by taking into consideration candidature of the persons employed through Placement Agencies by providing them the same weightage, as a matter of fact, grant of such weightage shall be extension to achieve the object of granting weightage.

9. While opposing the writ petitions, the argument advanced by Shri G.R. Punia, learned Additional Advocate General is that the persons employed on specified posts in MGNREGA and the schemes of Department of Rural Development and Panchayati Raj through the Panchayati Raj Institutions or the Officers of MGNREGA constitutes a different class then the persons employed on specified posts through Placement Agencies. The stand of State Government as per its reply is as under:--

8) That in reply to the averments contained in para No. 8 of the writ petition, it is humbly submitted that the petitioners compare themselves with the persons initially engaged on contract by department because a person engaged through placement agency is not employee of any unit of Panchayati Raj Department because the agreement of contract is always between the Government/ Department and the placement agency. The person engaged by the contractor (Placement Agency) has no direct relationship of Principal and agent with the Government or the Department. Under the agreement of contract with the Placement Agency if a person is engaged through it, Government or the

Department is not concerned as to whether "A" person is engaged for particular work or any other person it is also not concern of Department whether "A" person is always working or substituted by another. That is to say under the agreement of contract between department and placement agency, a job work is to be performed by a person whether it is X or Y or A or B, therefore, there is no Principal and agent relation between department and person so engaged by placement agency, therefore, such persons are not employees of department.

13) That in reply to averments contained in para No. 13 it is humbly submitted that the petitioners are engaged by the placement agency and the contract has been executed between department and the placement agency and not with the petitioners. It goes without saying that the persons who are engaged on contract basis directly by the Panchayati Raj Department on the posts enumerated therein and certainly forming a different class/group then the one who are engaged through placement agency. The reason behind it is very clear that the persons directly engaged on contract under an agreement with the department are answerable to it as per terms and conditions of agreement but those who are engaged through placement agency are neither answerable to department nor they have any relation of employer and employee, on the contrary it is the placement agency who is directly answerable to the department on the basis of terms and condition of agreement between them and the persons so engaged through placement agency are thus employees of placement agency, therefore, this group of persons.

It is humbly submitted that the persons engaged through placement agency form a different group and are not on equal footing to the one who are directly engaged on contract by department because under an agreement between department and placement agency, any person can be sent by it for performing the work, whether it is A or B or X or Y, the department has given the contract on certain terms and conditions to placement agency. Thus in no manner persons engaged through placement agency are employee of department as such they are rightly differentiated then the other persons who are directly engaged on contract by the Panchayati Raj Department. Therefore, petitioners are not entitled to have the benefit as provided under 2nd Proviso to Rules 273.

In addition to whatever stated above, learned Additional Advocate General Shri G.R. Punia also provided certain facts relating to employment on the post of Computer Operator with Machine/Data Entry Operator through placement agencies. As per the factual details made available, in all 691 persons were employed through placement agencies in various Gram Panchayats of 33 districts in the State of Rajasthan and 749 persons were directly employed on the posts aforesaid.

According to learned Additional Advocate General at the first instance the Panchayat Samities and Panchayati Raj Institutions employed Computer Operators with Machine/Data Entry Operators directly, however, this mode was discontinued in view of the fact that the computers available with such persons

were not updated. The service of placement agencies was taken only with a view to have better technological equipments including computers. The placement agencies were supposed to complete the job work by utilizing services of any person. This mode of employment too was not found suitable or absolute to meet the need of service with MGNREGA and in other schemes available with the Panchayati Raj Institutions, therefore, mode of appointment on contract basis was subsequently introduced. The Government now has taken a policy decision to have regular cadre of employees to serve with different scheme under the Panchayati Raj Institutions. This decision is taken in view of the fact that most of the schemes available are of regular nature and looking to the constitutional status given to the Panchayati Raj Institutions, a perpetual need of manpower shall always be there.

10. While meeting with the stand taken by the Government, it is submitted by learned counsels for the petitioners that as a matter of fact, the Government utilized service of placement agencies only to ignore application and protection of various Labour Laws and also further to deprive the working man force from getting better service conditions as allowed to other Government employees and workmen. It is asserted that most of the persons employed through placement agencies are the persons who were earlier employed on contract basis directly by the Panchayati Raj Institutions and on later stage were taken on roll as the employees sponsored by the contractor. It is further submitted that some of the placement agencies, as a matter of fact, are nothing but Government Institutions. This fact is substantiated by pointing out case of the "Rajasthan Employment Facilitation and Skill Development Society" (RAJKAUSHAL). This Society is created by the Government of Rajasthan itself with an object to act as an intrinsically skilled focused, discipline focused and function focused centre of excellence for imparting technical and vocational training to develop skills and enhance capabilities, imagination and creativity in persons of the State to equip them for availing better opportunities of employment. The Chairman of the Society is a Minister to the Government of Rajasthan for Labour and Employment. The Co-Chairman of the Society are the Minister of State Department of Labour and Employment and Principal Secretary to the Government of Rajasthan, Department of Labour and Employment. The other Members of Governing Council of Society are the Principal Secretary, Technical Education; Principal Secretary, Industries; Principal Secretary, Tourism; Principal Secretary, U.D.H., Principal Secretary, Higher Education; Principal Secretary, Primary Education; Director, Information Technology; Joint Director, Employment Education and a Representative of Rajasthan Ministry of Labour. The Society is 100% funded by the Government of Rajasthan. The Executive Committee of the Society is consisting of Principal Secretary to the Government of Rajasthan, Department of Labour & Employment; Director, Department of Employment and Joint Director, Department of Employment. It is also asserted that as a matter of fact the persons employed through the placement agencies were putting their attendance in the office of Vikas Adhikari of the Panchayat Simiti concerned or in

Gram Panchayat under which the work related to the scheme was going on. It was not open for the placement agencies to change its workman day to day or as per its own free will or wish. In most of the writ petitions experience certificates are issued by the Vikas Adhikaries, Sarpanchs and other Officers of the Panchayati Raj Institutions given in favour of the persons employed through placement agencies are also placed on record.

11. By reiterating the facts averred in the writ petition and subsequently while meeting with the stand of respondent-State, it is reiterated that the persons employed on different posts in MGNREGA or in Panchayati Raj Institutions directly or through the placement agencies were discharging same duties and, as such, acquire same experience, therefore, they form only one class and the classification among them while assessing experience acquired is neither rational nor having any intelligible criteria.

12. Heard learned counsels for the parties.

The Panchayati Raj Institutions as per Schedule-XI of the Constitution of India read with Rajasthan Panchayati Raj Act, 1994 and the Rules framed thereunder are having a very significant role in nation building by extending and implementing various developmental plans. Several schemes under MGNREGA too are supposed to be accomplished through panchayati Raj Institutions in such circumstances the need of a big man force is obvious. The service further requires skill with insight of the nature of job to need the tasks given. An experience person by examining, understanding and factually undertaking same task catch an insight and propound understanding of the job concern. Such insight and understanding of the work extends an edge to such persons in doing the work assigned with passion and interest. It also introduces such persons with the world of work and to learn does and don'ts attached thereto. The experience comprises knowledge, skill, exposure, concept of the task given and procedural knowledge thereof. All these ingredients provides a merit that is necessary for service. This merit helps in accomplishing the task successfully, as such the grant of weightage for experience is in interest of service so also in interest of the object's for which service is created. The need of granting weightage under 2nd Proviso to Rule 273 of the Rules of 1996 is with this view only.

13. The experience required under Proviso second of Rule 273 of the Rules of 1996 is on definite posts under definite schemes sponsored by the Panchayati Raj Institutions and under MGNREGA. This too is having a rational as the schemes are required to be implemented with a new vision of development and governance at the grass root level through the Panchayat Raj Institutions as per thrust of the 73rd constitutional amendment and the State enactment made in consonance thereto. The need of experience hands in service, thus, is rational and required, but the issue deserves consideration is that whether the experience earned on the posts aforesaid in the schemes concerned have any distinction on the count of different mode of employment. It is not in dispute that the main requirement of the statutory weightage is experience on certain posts

in definite schemes and not the mode of employment. It is also a position accepted that the experience gained on the posts of Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training and Coordinator Supervision in MGNREGA or any other scheme of Department of Rural Development and Panchayati Raj is same and that does not differ due to mode of employment. The persons employed directly by the Panchayati Raj Institutions or under MGNREGA or through the placement agencies working on the posts aforesaid in MGNREGA or in other schemes of Department of Rural Development and Panchayati Raj discharge same duties with same responsibilities and liabilities, as such, the experience gained is also same, thus, the experience gained by the persons employed through the placement agencies in no manner can be treated as less or not relevant to have necessary skill, knowledge, insight or any other merit required by Panchayati Raj and Zila Parishad Service.

14. The object of granting weightage to the experienced hands is to have meritorious persons with insight, skill and knowledge of the job and that in no manner shall have adverse effect on giving weightage to the persons who acquired experience on being employed through placement agencies. The classification sought to be made under Proviso Second to Rule 273 of the Rules of 1996 on the basis of mode of employment or to say by denying weightage to the persons employed on posts of Junior technical Assistant (J.T.A), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training and Coordinator Supervision through placement agencies in MGNREGA or any other scheme of Department of Rural Development and Panchayati Raj, as a matter of fact, is having no nexus with the object sought to be achieved by granting weightage in the form of bonus marks to the experienced hands, therefore, the classification made under Proviso Second to Rule 273 of the Rule of 1996 on the basis of the mode of employment, is having no rational, hence, is in violation of Articles 14 and 16 of the Constitution of India.

15. The distinction sought to be made with the persons employed through the placement agencies is that those were under the control of the placement agencies and, as such, necessary details pertaining to their experience were with the placement agencies only. Much emphasis is given by the respondents that the State Government or the Panchayati Raj Institutions, as the case may be, entered into agreement with the placement agencies leaving it open for the placement agencies to accomplish the task given through the persons employed by that agency without definite identification of the person concerned by the Panchayati Raj Institution. The stand taken by the respondents is not at all acceptable at its face. It is not in dispute that the placement agencies are nothing but contractor to supply labour force. The roll of the labour force supplied through contractor is available with the principal employer i.e. the State Government and different Panchayati Raj Institutions who availed services of

such persons through placement agencies. The State Government, as such, is having all necessary details with regard to the work done by the persons employed through the placement agencies. On having these details, measurement of the experience acquired by the persons rendering service in MGNREGA or under different schemes relating to Department of Rural Development and Panchayati Raj can very well be assessed by the respondents. In any case, this procedural problem can not be a reason valid to make an unreasonable classification. At this stage it is also pertinent to note that the panchayat Raj Institutions have already issued experience certificates to the persons employed through placement agencies.

16. The writ petitions, in view of the discussion made, deserve acceptance, thus, are allowed. The distinction made for grant of weightage against experience earned by the persons employed on the posts of Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training and Coordinator Supervision through placement agencies in MGNREGA or any other scheme of Department of Rural Development and Panchayati Raj on basis of the mode of their engagement under proviso 2nd to Rule 273 of the Rules of 1996 is declared illegal.

17. As a consequent to the declaration above the proviso second to Rule 273 of the Rajasthan Panchayati Raj Rules, 1996 stands as under:--

Provided also that in case of appointment to the post of Lower Division Clerk, merit shall be prepared by the Appointing Authority on the basis of such weightage as may be specified by the State Government for the marks obtained in Senior Secondary or its equivalent examination and such marks as may be specified by the State Government having regard to the length of experience exceeding on year acquired by persons engaged on the post of Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training, Coordinator Supervision in MGNREGA or in any other scheme of the Department of Rural Development and Panchayati Raj in the State.

In light of the proviso second the respondents are required to extend the weightage against the experience to the persons employed through the placement agencies also.

No order as to costs.