

(2024) 11 RAJ CK 1305

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 3021 Of 2008

Subhash Kashyap

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 13-11-2024

Acts Referred:

Citation : (2024) 11 RAJ CK 1305

Hon'ble Judges : Yogendra Kumar Purohit, J

Bench : Single Bench

Advocate : Ramprakash Dudi, Sanjay Bishnoi, Pawan Kumar Bhati, Deepak Menaria

Final Decision : Disposed of

Judgement

Arun Monga, J

1. Grievance of the petitioner herein is against an order dated 15.06.2005 (Annex.P/14), vide which his representation seeking to absorb him on the post of Gram Sevak or other equivalent post, was rejected.

2. Succinctly stated relevant facts as pleaded in the petition are that the petitioner was appointed as Chungi Nakedar in Gram Panchayat Samdari (Respondent No. 3) by order dated 1/4/1995. He performed his duties satisfactorily until 1998 when the Octroi scheme was abolished. Following abolition of the scheme, the petitioner, along with other Chungi Nakedars, were declared surplus and were to be absorbed into other government departments as per Rule 283 of the Rajasthan Panchayati Raj Rules, 1996. The Sarpanch of Gram Panchayat Samdari submitted a list of unabsorbed Chungi Nakedars to the Vikas Adhikari, with the petitioner's name listed at Serial No. 17.

2.1 A previous list was sent to the Secretary, Panchayati Raj Department, who requested further details from the Chief Executive Officer (CEO), Barmer. The Panchayat Samiti Siwana subsequently submitted the required information, and the petitioner's name appeared at Serial No. 16 in the list dated 23/6/2004.

2.2 The state government decided to absorb individuals like the petitioner. Matriculate persons were appointed as Lower Division Clerks (LDC) or Gram Sevak-cum-Panchayat Secretary, while non-matriculates were appointed as Class IV employees. Notably, Parasmal Prajapat, a Chungi Nakedar from the same Gram Panchayat, filed a writ petition (S.B. Civil Writ Petition No. 2592/2003), and this High Court, by order dated 09.09.2003, directed that his case for absorption be considered. Parasmal Kumhar was eventually appointed as Gram Sevak.

2.3 The petitioner asserts that since he and Parasmal Kumhar were appointed in the same year and served the same duration, he should have been given the same treatment. Similarly, other persons like Raadha Krishan, Paras Ram, Narsingh, and others, who were non-matriculate, were appointed as Class IV employees with relaxations of the relevant rules. The respondents also appointed another Chungi Nakedar, Sh. Champalal, as Gram Sewak Ex-officio Secretary by order dated 28.02.2004.

2.4 Aggrieved by the respondents' failure to consider his absorption, despite the appointment of similarly situated persons, the petitioner filed S.B. Writ Petition No. 3871/2004 (Ashok Kumar & Anr. Vs. State of Rajasthan & Ors.), which was disposed of on 09.09.2004, directing the respondents to decide the petitioner's representation.

2.5 Following the court's order, the petitioner submitted a representation requesting to be absorbed and appointed to an equivalent post. However, despite multiple follow-ups, the respondents did not respond. The petitioner sent a reminder on 02.01.2008, requesting information on the status of his representation. In response, the Deputy Legal Remembrancer sought a report from the CEO, Barmer, on 03.01.2008. On 14.01.2008, the Additional CEO informed that the petitioner's representation had been rejected on 15.06.2005 by the Secretary, Department of Panchayati Raj, Jaipur. However, this decision was never communicated to the petitioner, who only learned of it after submitting his reminder. Hence, this petition is filed.

3. The stand taken by the respondents in their reply inter alia is that the petitioner has not produced any records supporting his appointment, such as minutes from the Gram Panchayat proceedings or payment receipts. As such, the order dated 01.04.1995 (Annex.P/1) appears to be forged.

3.1 Allegations regarding Parasmal Kumhar are addressed stating that a writ petition filed by Parasmal Kumhar was decided on 09.09.2003 (Annex.P/6) in accordance with the Division Bench's judgment. Review petitions have been filed in both the Parasmal and Balkishan Ojha cases and are pending before the Court.

3.2 That the Octroi scheme was abolished on 01.08.1998, and by order dated 06.08.1998, the State Government decided that employees in Octroi collection would not be retrenched until further orders. Later, on 14.11.2000, the Department of Panchayat Raj decided that surplus Octroi employees with

secondary education or higher qualifications could be posted as Gram Sewak. 3.3 The petitioner has produced a certificate dated 31.07.1998 (Annex.P/2) to show that he worked until that date. However, this certificate is denied as forged.

3.4 The lists (Annex.P/3 &P/5) are false and forged. Annex.P/3 lacks a proper letterhead and shows inconsistent dates (12.01.2004 and 03.02.2004). Additionally, the second page of the list has evidence of tampering, with the number "3" being altered to "35". This proves that the petitioner created a forged document. Moreover, the petitioner's education is listed as "8th class" in Annex.P/3 but changed to "Senior Secondary" in Annex.P/5, indicating further falsification.

4. In the aforesaid backdrop, I have heard learned counsel for the petitioner while none appears for the respondents.

5. I have gone through the petition as well as the reply filed along with the record appended in support of the respective averments. The sum and substance of the defence taken by the respondents can be culled out from sub-clause II of the reply to the grounds which is as below:

"ii. That averments made in the ground (ii) are denied and in reply it is respectfully submitted that in the list produced by answering respondent there is no name of said Shri Parasmal Prajapat. Rest of averments are replied in the manner that Parasmal Prajapat was given appointment on the basis of judgment passed by this Hon'ble Court but later on review petition was filed in that case by answering respondent and same is pending till today with narrating clear facts of the case of Parasmal. As per answering respondents said Shri Parasmal was also not entitled to get any benefit of policy decision. It is also pertinent to mention here that Parasmal is not working on the post of Gram Sewak."

6. What thus transpires is that there is a candid admission that the petitioner was not accorded parity on the ostensible ground at the time of filing of the reply i.e. on 23.07.2012 that the respondents have filed a review petition before this Court for recalling of the judgment of which benefit was given to Parasmal Prajapat, though alleged to be wrongly given. Allegations of forgery have been pleaded against the petitioner in the reply filed by respondents, merely for the sake without any supporting proof as to what action was taken against him by respondents and outcome, if any. There is nothing on record except bald deposition. Otherwise, the case of the petitioner is *pari materia* with his counterpart namely Parasmal Prajapat, who has concededly been given appointment / benefit of absorption as has been sought by the petitioner herein.

7. Between 2012 to 2024, now 12 years have passed and despite ample opportunities granted during pendency of the proceedings, outcome of the review petition has not been disclosed. In all likelihood, it so appears, as is also apprised by learned counsel for the petitioner that he had checked the website of the High Court, which merely reveals that review petition was just filed without taking any steps for getting the same listed for hearing.

8. Be that as it may, had there been any positive outcome of the review petition, the same would have been placed on record by the respondents.

9. Apart therefrom, learned counsel for the petitioner appears to be correct in apprising the Court that review petition was merely filed and never got listed as no review number has been mentioned in the pleadings filed by the respondents. In the absence of the same being numbered, in all likelihood it must have remained lying under defects of the Registry over a period of time and consigned to the record room by now in the absence of any steps taken by the respondents to get the same listed.

10. In the premise, I see no reason as to why the petitioner be not accorded the benefit on parity with his counter-part Parasmal Prajapat.

11. Accordingly, the petition is allowed. It is directed that petitioner be accorded the same benefit in terms of the same judgment, which was made applicable to petitioner's counterpart i.e. Parasmal Parajapat. Consequential benefits be also accorded to the petitioner by passing appropriate orders within a period of three months from today.

12. Pending application(s), if any, stand disposed of.