
(2015) 09 RAJ CK 0093

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 8683/2014, 11695/2012, 11696/2012, 13695/2012, 828/2013, 6534/2013, 7345/2013, 7796/2014, 8312/2014, 8404/2014, 8415/2014, 8684/2014, 8685/2014 and 4470/2014

Nanag Ram Koli and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Citation : (2015) 09 RAJ CK 0093

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Dron Kaushik, Mukesh Vyas and Sanjay Nahar, for the Appellant; G.R. Punia, Senior Advocate, Rajesh Punia and B.D. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—The petitioners herein are all, employed in the capacity of teaching staff at the Maharana Pratap University of Agriculture & Technology, Udaipur. They were appointed in the year 2007 on probationary basis for a period of two years. During the probation period, based on a resolution of the University's Board of Management (hereinafter referred to as the BOM), the petitioners were given all service benefits admissible to confirmed employees viz. regular pay scale, increments etc.

2. By way of the instant writ petitions, the petitioners have approached this Court assailing the legality and validity of numerous orders of similar nature passed by the respondent authorities. The datewise details of various orders under challenge in all the writ petitions are summarized hereinbelow in a tabular form for the sake of convenience:--

3. By these orders, the respondents proposed to retrospectively fix the petitioners as fixed salaried employees during their probationary periods; to offer

them regular pay scales with effect from the date of their respective regularisation in service and possible recovery of the excess amounts allegedly paid to the petitioners as a consequence of erroneously granting them regular pay scales from the date of their initial appointment in the University.

4. With the coming into force of the 6th Pay Commission in the year 2006, the University decided to extend the benefit thereof to all its employees including the petitioners. A further decision was taken that cash arrears shall be given to the employees w.e.f. October 2009 and for arrears from January 2006 to September 2009 as the case may be, the mode of payment was left open for being decided later. It was resolved to revise the petitioners' salaries based on the recommendations made by the 6th Pay Commission.

5. It is not in dispute that the University has adopted the Rules and Regulations of the State Government to govern the service conditions of its employees. The Department of Agriculture, Government of Rajasthan, issued a list of revised pay scales admissible to teaching staff in the Agriculture Universities of Rajasthan in concurrence with the Finance Department vide an office order dated 18.11.2009.

6. The petitioners have raised a grievance that the effect of revision of pay scales resulting from the above order, retrospectively reduced them to a lower pay scale and caused a significant loss to them. By the effect of the revised pay scales, they were deprived of two increments and various other service benefits, which had already been extended to them during their probation period. The said action was perpetrated on account of the notification dated 13.3.2006 issued by the Finance Department of the State of Rajasthan, whereby, all future appointees in State services were directed to be appointed as probationary trainees on fixed remuneration during two years' probation period and upon regularisation of service, the employee concerned was to be fixed in the minimum of pay scale prescribed for the post. The State Government directed the University in the year 2009 to apply the notification dated 13.3.2006 on all employees inducted in service after 20.1.2006. The Comptroller of the University sought a clarification from the Dy. Secretary, Agriculture Department, Government of Rajasthan regarding the mode of fixation of the appointees in the University after 20.1.2006. The Dy. Secretary, Agriculture Department, Govt. of Rajasthan issued an order dated 28.4.2010 directing the Administrative Department and the Comptroller of the University to modify and alter the University's BOM's decision dated 12.6.2006 and allow only fixed remuneration during the two years probation period to all appointees, who were inducted in service of the University on or after 20.1.2006 and to effect recovery of the excess amount paid to such appointees, who inadvertently had been paid regular pay scales from the date of their initial induction in service. Acting in pursuance of the above directions, the University issued an order dated 18.11.2009, whereby the petitioners were fixed in the minimum pay scale in their pay band without adding annual grade increment during the period of probation. Owing to this retrospective revision, the petitioners were fixed in a pay band lower than the one, which they were

already drawing. Being aggrieved of the said order, the petitioners submitted representations to the University, but when the representations were not responded to, numerous writ petitions were filed before the Hon"ble Division Bench of this Court by the aggrieved persons including the petitioners assailing the impugned action. The bunch of writ petitions came to be decided by Hon"ble Division Bench of this Court by a common order dated 13.9.2011 passed in the leading case being D.B. Civil Writ Petition No. 11491/2010 "Dr.Bhim Singh v. State of Rajasthan & Ors." and the University was directed to decide the representations of the writ petitioners in accordance with law and communicate the decision taken thereupon to the respective petitioners. Pursuant thereto, representations were filed and the University passed an order dated 25.2.2012 directing that each of the petitioners would be entitled to fixed remuneration of Rs. 18200/- per month during their two years" probation period. Upon successful completion of two years" probationary training, the petitioners would be placed/ fixed in the pay scale of Rs. 15600+6000 (AGP) = Rs. 21,600/-. It may be noted here that the petitioners were already drawing much higher salaries by this time owing to the annual grade increments given to them.

7. The University, in pursuance of the said revision/modification issued an order dated 14.8.2012 the language whereof is reproduced below:

"The pay of following teachers who are recruited on or after 20.1.2006 are hereby fixed on fix remuneration for probation period of two years thereafter fixed at the minimum of their respective running pay band and grade pay on the following day complete his two years probation period satisfaction.

Note 1. This order will supersede all the previous orders in this respect."

8. The petitioners apprehend that as a consequence of the said order, the difference amount, which had been paid to the petitioners allegedly beyond their entitlement by erroneously treating them to be in regular pay scale during their probationary period is likely to be recovered.

9. Being aggrieved, the petitioners have approached this Court by way of these writ petitions assailing the impugned action of the University in retrospectively reducing their pay scale, withdrawing the increments and the possible recovery of the excess amount allegedly drawn by them.

10. Learned counsel for the petitioners contended that the foundation of University"s action was the notification dated 13.6.2006 whereby The Rajasthan Service (Amendment) Rules, 2006 were promulgated w.e.f. 20.1.2006. They placed reliance upon the judgment dated 29.7.2015 rendered by Hon"ble Division Bench of this Court in the case of Gopal Kumawat v. The State of Rajasthan & Ors. (D.B. Civil Writ Petition No. 2963/2007), whereby the notification dated 13.3.2006 and the Rules of 2006 have been declared ultra vires and struck down. Learned counsel submitted that in view of the above judgment and the striking down of the Rules of 2006, the belated and arbitrary action of the University in modifying the petitioners" service conditions and

retrospectively fixing them in reduced fix pay during the probationary period cannot be sustained. They further contended that even otherwise, the service conditions of regularly selected government servants cannot be retrospectively modified or altered to their detriment and they cannot be made to suffer financial loss by such action. They thus urged that the writ petitions deserve to be accepted in the terms prayed for.

11. Per contra, the learned counsel representing the respondents tried to put up a feeble opposition to the submissions advanced by the learned counsel for the petitioners. However, they too were not in a position to dispute the fact that the impugned action was entirely founded on the Rajasthan Service (Amendment) Rules, 2006. The said rules have been quashed and struck down by the Hon'ble Division Bench by its judgment dated 29.7.2015 in the case of Gopal Kumawat *ibid*.

12. I have heard the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

13. At the outset, it may be stated that the impugned action of the University, which is under scrutiny in these writ petitions, was entirely founded on the Rajasthan Service (Amendment) Rules, 2006, notified on 13.3.2006. These Rules provided that all government servants appointed on or after 20.1.2006 on probation as probationary trainees will be paid fixed remuneration at such rates as may be prescribed by the government from time to time for a period of two years and that after successful completion of probation training, he/she will be allowed minimum pay in the pay scale of the post and that the period of probation training shall not be counted for grant of annual grade increments.

14. The admitted case of the parties in the cases at hand is despite the introduction of the service rules by the State Government in the year 2006, the petitioners, right from the date of being inducted in service of the respondent University were treated in regular pay scales and continuously received the benefits of regular service including annual grade increments even during their probationary period. The attempt to revise and refix the petitioners in a fixed pay during their probation period was perpetrated for the first time in the year 2009/2010. It cannot be gainsaid that the service conditions of a regularly selected government employee cannot be unilaterally and retrospectively altered to his/her detriment without following the procedure established by law. It is not the case of the University that the petitioners procured the service benefits of regularized appointees during their probationary period by practicing any fraud or malpractice. These benefits were consciously extended to them on the strength of a resolution dated 12.6.2006 adopted by a statutory body i.e. the Board of Management. Thus, the action of the respondent University in retrospectively withdrawing the benefits of regular pay scale and annual grade increments afforded to the petitioners during their probation period and directing recovery to be effected of the alleged excess amount paid to them from their salary is oppressive, arbitrary and illegal. Furthermore, as discussed above, the

very foundation of the impugned action became non-est with the striking down of the Rajasthan Service (Amendment) Rules, 2006 by the Division Bench Judgment dated 29.7.2015 in Gopal Kumawat's case (supra) and therefore also, the same cannot be sustained.

15. As an upshot of the above discussion, the writ petitions deserve acceptance and are, thus, allowed. The impugned orders under challenge in the instant writ petitions are hereby quashed and set aside. The respondents shall continue to treat the petitioners in regular service and regular pay scale right from the date of their initial appointment and shall extend them the benefits of all consequential revisions in salary, annual grade increments and other admissible service benefits as per law.

16. No order as to costs.

17. A copy of this order be placed in each file.