
(2018) 08 RAJ CK 0149
In the Rajasthan High Court
Case No : Civil Writ No. 7147, 3651 of 2017

Nemi Chand Jain @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 24-08-2018

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 26(1)(a)(ii)
Rajasthan Civil Services (Absorption of Surplus Personnel) Rules 1969 — Rule 14
Rajasthan Civil Services Pension Rules, 1996 — Rule 38

Citation : (2018) 08 RAJ CK 0149

Hon'ble Judges : P.K. LOHRA, J

Bench : Single Bench

Advocate : K.R. Saharan, Manish Patel

Final Decision : Allowed

Judgement

Matters come up on applications for early hearing.Â

For the reasons mentioned in the application, same is allowed.

Both these writ petitions are founded on identical facts and afflictions of all of the petitioners are common, therefore, they are heard together and

disposed of by a common order.

Scorning the detailed factual matrix, suffice it to notice that in all these writ petitions petitioners have set out their case for desired reliefs on the anvil

of their absorption in the respondent department upon declaring surplus by the Irrigation Department or Rajasthan Small Industries Corporation

Limited, a Government of Rajasthan Undertaking.Â For substantiating their claim of pay fixation in appropriate pay scales and all consequential

benefits flowing from the said fixation, petitioners have taken shelter of Rule 26(1)(a)(ii) of the Rajasthan Service Rules, 1951 (for short, â??Rules of

1951â??) and Rule 14 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules 1969 (for short, Rules of 1969â??).

A similar issue came up before the Jaipur Bench of this Court in *Rajkumar Agarwal Vs. State of Rajasthan & Anr.* (S.B. Civil Writ Petition

No.5400/2015, decided on 12.04.2017), wherein the incumbent-petitioner, on being declared surplus by the Irrigation Department, was absorbed on the

post of Gram Sewak in the Panchayati Raj Department.Â Â The Coordinate Bench, while examining the matter threadbare and the true purport of

Rule 26(1)(a)(ii) of the Rules of 1951 and Rule 14 of the Rules of 1969, observed as under:

â??A conjoint reading of the two rules, extracted herein above, would reflect that the case of the petitioner falls within the contemplation of Rule

26(1) under Clause(ii). A glance of Clause (ii), would reveal that it deals with an eventuality wherein the maximum of the scales of the new post is

equal to the maximum of the old post, which is not the case at hand. The stand of the petitioner that he was never given an option to opt for lower pay

scales, is not in dispute, therefore, he cannot be deprived of the right accrued to him in view of specific contemplation under communication/order

dated 23rd January, 2001, which specifically provided for protection of pay of the petitioner on the substantive post.â??

The Court upon consideration of the clarification/instruction, quoted below Rule 38 of the Rajasthan Civil Services Pension Rules, 1996, held as under:

â??A glance of the clarification/instruction as referred to below Rule 38 of Rajasthan Civil Services Pension Rules, 1996, it would further reflect that

the employee who is absorbed on a lower post owing to the abolition of the post held by him, said employee should be intimated of the pay being

offered to him on his appointment to the new post as required by Clause (b) of the Rule. It is further provided that on abolishing of post, the permanent

incumbent should, as far as possible, be absorbed on an equivalent post. It will be relevant to consider the text of instruction which reads thus:

Rule 38 (1) of the Rajasthan Civil Services (Pension) Rules, 1996 provides that when a Government servant is selected for being absorbed on a lower

post owing to the abolition of the post held by him, the employee should be intimated of the pay being offered to him on his appointment to the new

post as required by Clause (b) of the said Rule. Instead of intimating the pay offered, the Government is moved for protection of pay the employee

was last drawing while holding the permanent post. It is to state that when a post is abolished, the permanent incumbent should as far as possible be

absorbed on an equivalent post.

On the principles laid down under Rule 26(a) (ii) of the Rajasthan (9 of 10) [CW5400/2015] Service Rules. In case where it is not possible to absorb

an employee on an equivalent post, the employee should be given two options as mentioned in the said Rule namely (I) taking the compensation

pension or gratuity to which he is entitled for the service already rendered or (ii) accepting another appointment on such pay as may be offered. In

regard to the pay to be offered on the new post, since the employee does not retain any substantive pay on abolition of his permanent post, he will be

treated a fresh employee for the purpose of initial fixation in the new post. The Government, can, however, fix his pay at a stage higher than the

minimum of the pay scale but not exceeding the last pay drawn by the employee. This pay, however, would be further limited to the maximum of the

scale of the new post to which he is appointed.

A glance of the instruction, as extracted herein above, would reflect that absorption of the employee on abolition of a post held by him, is to be made

as far as possible on an equivalent post and on appointment on an equivalent post, pay is to be fixed on the principle as contemplated under Rule 26 (1)

(a)(ii) of the Rajasthan Civil Services Rules, 1951. In the case at hand, the petitioner was not absorbed on the equivalent post, and therefore,

contemplation under order/communication dated 23rd January, 2001, for protection of pay was provided. The petitioner, accepting the contemplation of

pay protection joined the post of Gram Sewak, with the Panchayati Raj Department. Hence, the case at hand falls within the contemplation of clause

(iii) of rules 26 (1)(a).â??

Finally, while relying on a decision of Gujarat High Court in case of M.M. Bhavsarâ?? Peon Vs. State of Gujarat (2000 1 GLR 822), the Court

adjudicated the controversy with following observations:

â??In the case of M. M. Bhavsar (supra), in somewhat similar circumstances and factual matrix the option of the incumbent to lower category of

post under the State with pay (10 of 10) [CW-5400/2015] protection was not treated as waiver of protection of pay to which incumbent was entitled

on the date of absorption. In the case at hand, the petitioner opted for absorption under the Panchayati Raj Department on the post of Gram Sewak in

the backdrop of a specific contemplation as to pay protection accorded to him

vide order/communication dated 23rd January, 2001. That fact that the petitioner continued in the same protected pay scale and retired attaining the age of superannuation on 30th September, 2016, is also not in dispute.

Thus, while the petitioner was absorbed on the post of Gram Sewak a post in lower pay scale but with pay protection, would not amount to his waiver of the protection of pay accorded by the State-respondents vide order dated 23rd January, 2001.â??

During the course of arguments, it is pointed out by the learned counsel for the petitioners that respondent Department has implemented the verdict

rendered in Rajkumar Agarwal (supra) for allowing benefits to the other similarly circumstanced employees.

Â In my view, lis involved in the present petitions is squarely covered by the decision rendered in Rajkumar Agarwal (supra) and accordingly all these

writ petitions are allowed and the decisions taken by the respondents to the detriment of the petitioners regarding grant of pay protection are declared

as null & void for facilitating grant of consequential benefits in terms of aforesaid verdict.