

(2012) 12 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3604 of 1997

Nena Ram Bishnoi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 — Rule 6

Citation : (2013) LabIC 721

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : P.P. Choudhary, assisted by Amit Dave, for the Appellant;

Judgement

Govind Mathur, J.—By order dated 16.11.1985 passed by the Vikas Adhikari, Panchayat Samiti, Osian, District Jodhpur appointment was accorded to the petitioner as Teacher Gr. III in the pay-scale of Rs. 490-840. The appointment was given on temporary basis for a period of six months or till the availability of selected incumbents, whichever is earlier. The term of appointment of the petitioner was extended time to time and as such, he remained in the employment of respondent-Panchayat Samiti for a pretty long time. The Government of Rajasthan while exercising powers under sub-section (1) of Section 79 of the Rajasthan Panchayat Samities and Zila Parishads Act, 1959 made certain amendments in the Rajasthan Panchayat Samities and Zila Parishads Service Rules, 1959 (hereinafter referred to as "the Rules of 1959") under a notification dated 17.3.1989 and a proviso to Rule 6 was added in following terms:--

Provided also that the persons appointed as teachers, village level worker, Lower Division Clerk, Stockman, Driver and fourth class servant by the Appointing Authority on ad hoc/officiating/temporary basis under rule 23 on or before 31.12.1985 and were continuously working as such on the date this proviso comes into force shall be screened by the Distt. Establishment Committee adjudging their, suitability for appointment on the post held, provided that they

possess the requisite qualifications prescribed in these rules either for direct recruitment or promotion or the prescribed qualification on the basis of which these persons were appointed under Rule 23. The Committee shall also recommend the order on which these persons are to be placed.

In view of the proviso added to Rule 6 of the Rules of 1959 the petitioner became eligible to be screened for regularization in service as Teacher. No steps in pursuant to the provision aforesaid were taken by the respondents, therefore, the petitioner preferred a petition for writ (SBCWP No. 1298/1993) to have a direction for regularization of his service after screening as per provisions of Rule 6 of the Rules of 1959.

2. A reply to the writ petition was filed on behalf of the respondents in the petition for writ aforesaid with the assertion that the case of petitioner for screening was sent to the District Establishment Committee, Zila Parishad, Jodhpur and the Zila Parishad was going to consider the case of petitioner for regularization at the earliest.

3. In view of the reply given on behalf of respondents, the petition for writ aforesaid came to be disposed of on 8.11.1995 in following terms:--

By this writ petition the petitioner seeks a mandamus directing the respondents to regularize the services of the petitioner on the post of Primary School Teacher with effect from his initial appointment.

In response to the show-cause notice it is stated that the case of the petitioner has been sent by the Panchayat Samiti for screening to the District Establishment Committee, Zila Parishad, Jodhpur and the Committee is going to consider and decide the same at the earliest. It is further submitted that if the petitioner is found eligible and his services are found satisfactory, the District Establishment Committee will pass orders as per law.

In this view of the fact that the matter shall be considered in accordance with law by the Committee respondent No. 1, no injury or grievance survives.

4. It is pertinent to mention here that prior to disposal of the writ, petition aforesaid, the petitioner faced a process of regular selection for appointment as Teacher in the year 1995 and on being selected an order of appointment was issued in his favour on 20.9.1995. The petitioner, as such, was continuing in the service of respondents in pursuance to his first order of appointment dated 16.11.1985 read with order dated 20.9.1995.

5. After disposal of the writ petition, though, the petitioner was appointed as a consequent to his direct recruitment, the respondents choose to consider his case for screening and a list of screened incumbents was communicated to the Government of Rajasthan by the Chief Executive Officer, Zila Parishad, Jodhpur on 2.11.1994. In the list aforesaid, the name of the petitioner appears at Sr. No. 6. The petitioner though was found suitable for regularization of his service as Teacher as a consequent to the screening made as per proviso to Rule 6 of the

Rules of 1959, but the Zila Parishad did not regularize his service, although, under an order dated 7.10.1995 the District Establishment Committee, Zila Parishad, Jodhpur regularized services of five other similarly situated persons. Suffice to mention here that the Teachers regularized in service under order dated 7.10.1995 are junior than the petitioner, being employed as Teacher in the year 1987.

6. The grievance of the petitioner is that the respondents have not regularized the petitioner in service, though, he was found suitable for the same. A direction, thus, is sought to regularize him in service as Teacher from the date of his initial appointment.

7. No reply to the writ petition has been filed on behalf of the respondents. Nobody is also appearing on behalf of the respondents.

8. As already stated in the preceding paras, appointment was accorded to the petitioner as Primary School Teacher under an order dated 16.11.1985 in the regular pay-scale. The Government of Rajasthan under a notification dated 17.3.1989 introduced a proviso to Rule 6 of the Rules of 1959 making all the Teachers working on temporary basis entitled for regularization in service after facing screening. The petitioner was also screened and he was found suitable for regularization in service. The regularization of his service would have not been made on the count that appointment was accorded to him in the same Panchayat Samiti, on the same post and that too by way of direct recruitment w.e.f. 20.9.1995. It is pertinent to note that by order (Annexure-7) dated 7.10.1995 the respondents regularized, five persons who were appointed as Primary School Teacher subsequent to the petitioner in service after subjecting them to screening in accordance with proviso to Rule 6 of the Rules of 1959. The petitioner too was subjected to screening but was not treated at par with other similarly situated persons. The resultant of it is that the persons employed as teacher atleast two years subsequent to the petitioner have become senior to him in the cadre of Teacher. If the respondents would have regularized services of petitioner also as a consequent to the screening as per proviso to Rule 6 of the Rules of 1959, then the petitioner would have also been regularized in service from the date of his initial appointment i.e. 16.11.1985. He has been put at lower pedestal vis-a-vis similarly situated persons only on the count that he got selected for appointment by way of direct recruitment also. Such denial for appointment as Teacher is apparently bad. The respondents should have regularized the petitioner as per proviso to Rules of 1995. The respondents were under a statutory obligation to extend the benefit of proviso to Rule 6, immediately after its inclusion in statute book under the notification dated 17.3.1989, but they instead of acting upon that kept the matter pending upto the month of November, 1995. In any case the right accrued in favour of the petitioner in the year 1989, as a consequent to inclusion of proviso to Rule 6 of the Rules of 1959 could not have been denied merely on the count that at a subsequent stage he stood appointed as Primary School Teacher by way of direct

recruitment. The affect of non-regularization of the petitioner's service despite screening is that for no fault on his part his seniority has been under led and he has become junior to the persons who were appointed Primary School Teacher subsequent to him.

9. For the reasons given above, this petition for writ deserves acceptance. Accordingly the same is allowed. The respondents are directed to give appointment to the petitioner as a consequent to screening made as per proviso to Rule 6 of the Rules of 1959 from the date he was initially appointed under the order dated 16.11.1985. He is further declared entitled for all consequential benefits. No order as to costs.