
(2008) 08 RAJ CK 0009
In the Rajasthan High Court

Paras Mal Mali

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Rajasthan Panchayati Raj Rules, 1996 — Rule 273

Citation : (2009) 3 SLJ 166

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—By way of filing the present writ petition, the petitioner has prayed for quashing the order dated 20.6.2005 (Annexure-10) passed by Secretary, Panchayati Raj Department whereby the representation of the petitioner filed in accordance with the order passed by this Court in S.B. Civil Writ Petition No. 2591/2003 was rejected.

2. Brief facts of the case are that initially the petitioner was appointed for collection of revenue/octroi by the Gram Panchayat, Samdari, Panchayat Samiti Siwana. Not only the petitioner but so many other persons were also appointed as "chungi nakedar" for collection of octroi in different Gram Panchayats. The petitioner was appointed on 7.4.1995 and continued upto Agril, 1998. The petitioner is possessing qualification of Senior Higher Secondary acquired from Board of Secondary Education, Rajasthan. The octroi collection system was abolished in the year 1998 and the persons including the petitioner were directed to be absorbed against the post of Gram Sevak. For the said purpose a circular dated 14.11.2000 was issued in which relaxation was granted under the Rules 265, 266 and 270 to 273 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter for short "the Rules of 1996" only).

3. In pursuance of the said circular dated 14.11.2000, the names of similarly situated persons were sent for considering their candidature for absorption on

the post of Gram Sevak. Unfortunately, at that time due to mistake of Panchayat Samiti, the name of the petitioner was not sent initially but later on when this mistake was pointed out then Vikas Adhikari, Panchayati Samiti, Sivana referred the matter to the Director vide letter dated 23.11.2000. After receiving the said letter by the Government, the name of the petitioner along with other persons was forwarded to the Chief Executive Officer to absorb them on the post of Gram Sevak. The name of the petitioner was included in the letter sent by Dy. Secretary, Panchayati Raj Department dated 30.12.2000. The Addl. Chief Executive Officer, Barmer ascertained some information from the Vikas Adhikari, Panchayat Samiti, Sivana and in the report submitted by the Vikas Adhikari to the Addl. Chief Executive Officer, Barmer, it is accepted that the petitioner was initially appointed in the year 1995 and continued upto 1.4.1998, therefore, after receiving information, the petitioner was appointed as Gram Sevak vide order dated 23.3.2001 along with four other persons.

4. The case of the petitioner is that report give by Vikas Adhikari was in consonance with the letter dated 30.12.2000 in which it was ascertained whether the petitioner was appointed as "chungi nakedar" or not, so also, whether he was paid salary or not. The case of the petitioner is that after appointment, he went to Office of Vikas Adhikari, Siwana to join on the post of Gram Sewak but for the reasons best known to him, the petitioner was not permitted to join duties and after waiting for long time when no reasons were informed to him for denial of joining, then a representation was made by the petitioner before the Dy. Secretary (Group-2), Panchayati Raj Department, Jaipur. The Dy. Secretary, Panchayati Raj Department again directed the Additional Chief Executive Officer to allow the petitioner to join duties and to report immediately but unfortunately again the petitioner was not allowed to join duties and it was informed by the Vikas Adhikari vide letter dated 23.5.2003 that he was not working on the date abolition of chungi system and presently not continuing as such in the Gram Panchayat, therefore, he cannot claim absorption on the post of Gram Savak in view of the Circular dated 14.11.2000.

5. As per petitioner, appointment order was issued as per the directions issued by the Government and after due satisfaction by the Addl. Chief Executive Officer of Zila Parishad, Banner and upon the report given by Vikas Adhikari concerned but petitioner was not allowed to join duties, therefore, against the said illegal action for denial of joining, a writ petition being S.B. Civil Writ Petition No. 2591/2003 was preferred by the petitioner before this Court in which on 6.8.2004, an order was passed by learned Single Judge of this Court to file a representation arid respondents were directed to consider the case of the petitioner within a period of six weeks.

6. In pursuance of above directions, representation was filed before the respondents in which petitioner has pointed out that similarly situated person, who were also not in service on the date of abolition of chungi have already been provided appointed as Gram Sevak. In case of respondent No. 5-Champalal, the

appointment order was passed in pursuance of the similar directions issued by this Court, for deciding his representation in the writ petition filed by him. The writ petition filed by Champalal was registered as S.B. Civil Writ Petition No. 4837/2002 decided on 23.4.2003. As per petitioner, his case is also on same footings of respondent No. 5 Champa Lal who had already joined duties in pursuance of the order passed by this Court, therefore, the respondents cannot discriminate his case for providing appointment. Further, it is submitted by the petitioner that in the representation, filed by him it was pointed out that Hon''ble Division Bench of this Court has passed an order in case of Bal Kishan Ojha in D.B. Civil Special Appeal No. 165/2001 decided on 24.3.2003 whereby Hon''ble Division Bench has passed an order for absorption of Bal Kishan Ojha, who was working as an employee like petitioner in the Gram Panchayat concerned for performing duties of collection of octroi, therefore, in pursuance of the directions issued by Hon''ble Division Bench of this Court in aforesaid special appeal filed by Bal Kishan Ojha, he was provided appointment on the post of Gram Sevak. In this view of the matter, it is prayed that the respondents cannot be allowed to discriminate the case of the petitioner for providing appointment as Gram Sevak, so also one Parasmal S/o Sawar Ram was also given appointment on the post of Gram Sevak, having same set of facts. In S.B. Civil Writ Petition No. 2592/2003 filed by another Parasmal S/o Shri Sawar Ram, the following order was passed on 9.9.2003:

Keeping in view the provisions of Rule 283 and the fact that the petitioner was appointed for collection of octroi in the year 1995 and similarly circumstanced persons have been absorbed by the Government in various other departments, I consider it just and appropriate to direct the respondents to consider the case of the petitioner for absorption in any other department of the Government on an equivalent post in accordance with law within a period of two months from the date of receipt of certified copy of this order.

7. In compliance of the aforesaid order, Parasmal S/o Sawar Ram was provided appointment. Therefore, the respondents cannot deny the joining to the petitioner in pursuance of the appointment order issued by Zila Parishad on 23.3.2001. Upon representation filed by the petitioner, a query was made by Secretary; Panchayati Raj Department and a detailed information was sent by Zila Parishad, Barmer in which the facts narrated by the petitioner with regard to appointment of Champa Lal has been accepted but vide Annexure-10, the representation of the petitioner was rejected while accepting that one Bal Kishan Ojha and Parasmal, both were provided appointment as per the judgment of this Court and case of Bal Kishan Ojha was decided by Hon''ble Division Bench on the basis of the consent of both the parties recorded by the Court. Therefore, the Department is going to file an application for reviewing of the order passed by Hon''ble Division Bench but it is nowhere stated that the respondent Nos. 5 and 6 have not been appointed because both these persons preferred writ petition, meaning thereby in all three writ petitions, this Court passed similar directions for deciding representation and in compliance of the order passed by this Court,

appointment orders were issued but out of three, only petitioner has been denied joining and others were allowed to join. Therefore, denial of appointment to the petitioner is totally discriminatory and unconstitutional because the petitioner has named three persons to whom appointments were given upon similar directions issued by this Court for considering their representation, names of those persons are Bal Kishan Ojha, Parasmal and Champalal but in case of petitioner, although same order was passed by this Court for deciding his representation and in pursuance of that although appointment order was issued by Zila Parishad but the petitioner was not allowed to join duties whereas other persons in whose writ petitions, this Hon"ble Court was pleased to pass an order for deciding representation and they were provided appointment but this benefit has not been extended to the petitioner till today although Zila Parishad issued appointment order for providing appointment on 23.3.2001. Therefore, the order Annexure-10 passed by the State Government whereby the claim of the petitioner has been rejected is illegal and have no foundation to stand being violative of Articles 14, 16 and 21 of the Constitution of India, therefore, the same may be quashed and set aside and respondents may kindly be directed to restore the appointment order dated 23.3.2001 and allow the petitioner to join duties in pursuance of the said order.

8. As per the reply filed by the respondents, it is submitted that the petitioner was engaged as daily rated employee on temporary basis n 1.4.1995 by the Gram Panchayat and he was asked to collect octroi (Chungi) on behalf of Gram Panchayat later on his services were terminated w.e.f. 1.4.1998, therefore the petitioner was not in service on the date of taking decision by the Government for absorption of chungi nakedar on the post of Gram Sevak. Admittedly, the petitioner was appointed as daily wages employee, therefore, there was no question of declaring him surplus in the event of abolition of octroi duty as such the petitioner cannot claim as a matter of right absorption on the post of Gram Sevak on the ground that he was working in the Gram Panchayat, Samdari from 1995 to 1998 to collect octroi although appointment order was issued but later on it has come to the knowledge of the respondents that the petitioner cannot claim any appointment as per decision taken by the Government after giving relaxation under the Rules, therefore, the petitioner was not allowed to join duties by the Vikas Adhikari in pursuance" of the appointment order issued by Zila Parishad, Barmer on 23.3.2001.

9. With regard to appointment of Bal Kishan Ojha, it is submitted by the respondents in Para 9 of the reply that the petitioner has not produced copy of the order which is said to be passed by Hon"ble Division Bench of this Court. Similarly in Para 10 of the reply, it is pointed out that no documentary evidence has been produced by the petitioner with regard to order passed by this Court in case of Parasmal S/o Sewa Ram dated 9.9.2002 passed in S.B. Civil Writ Petition No. 2592/2003. Therefore, there is no question of claiming benefit while raising ground of discrimination.

10. By way of filing an application by Additional Advocate General, it is pointed out that on abolition of collection of octroi duty w.e.f. 1.8.1998, certain persons who were working in octroi branch as "Sahayak Sachiva" of Gram Panchayat became surplus and as such with a view to accommodate such persons, who were working on the date of abolition of octroi and who were declared excess, steps were taken and while giving relaxation in Rules 265, 266 and 270 to 273 of Rajasthan Panchayati Raj Rules, 1996 they were ordered to be adjusted on the posts of Secretaries on the fixed remuneration of Rs. 1,200/- per month. Further, it is submitted that the said engagement was for the period of two years and it was made clear that before giving appointment/engagement, it must be verified that the incumbent was working in the Panchayat on the date of abolition of octroi i.e. on 1.8.1998 and was possessing the required qualification. Meaning thereby those persons who were appointed to collect octroi by the Gram Panchayat, on abolition of collection of octroi became surplus in the Gram Panchayat, therefore, for accommodating those persons, decision was taken for absorption and as per respondents date of abolition of octroi was 1.8.1998, therefore, only those persons who were working as chungis on 1.8.1998 were held entitled to be absorbed on the post of Gram Sewak.

11. Learned Counsel for the respondents has invited attention of this Court towards the judgment passed in S.B. Civil Writ Petition No. 958/2005 decided on 5.5.2008 in which this Court held that those persons who were working on the post of Assistant Secretaries on the date of taking decision by the Government shall be absorbed. Therefore, the petitioner cannot claim any right of absorption though appointment order was made by the Zila Parishad on 23.3.2001. Admittedly, the petitioner was allowed to work upto 1.4.1998. Thereafter, admittedly he was not in service, therefore, the petitioner cannot claim any appointment/absorption as a matter of right.

12. I have considered the rival submission made by both the parties.

13. In this case first of all it is to be seen whether any decision is taken by the State Government to absorption of those employees who were engaged in connection with collection of octroi. Answer is yes because admittedly a decision was taken by the Government to accommodate those persons who were engaged for collection of octroi by the concerned Gram Panchayat. In the application filed by the respondents during pendency of the writ petition on 2.5.2008, it is specifically stated that decision was taken by the State Government to accommodate those employees who were engaged in connection with work of collection of octroi but only those persons were held entitled for absorption after relaxation in the rules who were already working on the date of abolition of octroi. Although in the application filed on 2.5.2008, it is stated that the date of abolition of octroi is 1.8.1998 but that decision was taken on 14.11.2000 vide Annexure-R/3. Meaning thereby, the benefit of absorption was given retrospectively to those employees who were in service as on 1.8.1998.

14. In fact, the case of the petitioner and one Kalyan Singh for appointment was

forwarded to the Director, Panchayati Raj Department by the Panchayat Samiti, Siwana in which the date of appointment of the petitioner was shown as 3.4.1995 and date of termination is shown as 31.3.1998 and for Kalyan Singh, the date of appointment has been shown as 1995 and date of termination is shown as 2.9.1997. Upon the said recommendation vide Annexure-2, Dy. Secretary sent a communication on 30.12.2001 by which names of three persons namely Parasmal (petitioner), Kalyan Singh and Ganga were sent back to the Additional Chief Executive Officer, Barmer and upon receiving the said communication an enquiry was made from the Panchayat and Vikas Adhikar, Panchayat Samiti, Siwana vide Annexure-3 informed the Zila Parishad that four persons were working as chungli nakadar for collection of octroi and. they were paid Rs. 32 per day. Upon this information, appointment order was issued by the Zila Parishad on 23.3.2001. Meaning thereby, when decision was taken for absorption of those employees who were appointed by the different Gram Panchayats in connection with collection of Octroi (chungli) then obviously after abolition of chungli system, all those persons who were to be absorbed as per the decision taken by the State Government. The State Government took decision for absorption of those employees who were engaged for collection of octroi, then in my opinion they cannot discriminate the case of the petitioner who was also admittedly engaged in connection with collection of octroi on the ground that only those employees are entitled who were in service as on the date of abolition of octroi. As per the record of this case, except petitioner, one Kalyan Singh who was appointed on 1.9.1995 and worked upto 2.9.1997 was also appointed. Likewise, Bal Kishan Ojha, also appointed as per the order passed by Hon'ble Division Bench of this Court, which is admitted position of this case and only assertion has been made that the said judgment was rendered upon the agreement of the parties. In my opinion, the said fact is not correct which is mentioned in Annexure-10, which is as follows:

Vernacular Matter omitted

15. Meaning thereby, it is admitted by the respondents that the appointment was provided to Bal Kishan Ojha as per the directions of this Court. I have perused the order passed by Division Bench. The Division Bench of this Court has passed an order on 24.4.2003 in D.B. Civil Special Appeal No. 165/2001 in which the following directions were issued:

Keeping in view the provisions of Rule 283 and the fact that the appellant was appointed for collection of octroi in the year 1992 and similarly circumstanced persons have been absorbed by the Government in various other departments, we direct respondent No. 1 to consider the case of the appellant for absorption in any other department of the Government on an equivalent post in accordance with law. The consideration shall be bestowed to the case of the appellant within a period of one month from the date of receipt of certified copy of this order.

16. In pursuance of the aforesaid order, Bal Kishan Ojha was provided appointment having same set of facts of the petitioner. Now in the impugned

order while accepting the fact that Bal Kishan Ojha and Kalyan were provided appointment as per the directions of this Court. It is observed that the said judgment of Bal Kishan was passed on the basis of the concession given by the Government Counsel, therefore, review petition has been filed but upon perusal of the above order, it is wrong to say that above order of Division Bench is in pursuance of the agreement of the parties. In the order it is only observed that there is no dispute with regard to appointment of Bal Kishan Ojha as Class-IV employee but it is nowhere stated that any concession was given by Government Counsel that they will consider his case for absorption. Moreover, Hon'ble Division Bench has specifically passed an order to consider the case of petitioner at par with similarly circumstanced persons, who were absorbed, who were engaged in connection with collection of octroi as per decision taken by the Government.

17. In this view of the matter, in my opinion, after the order passed by Division Bench on 24.4.2003 when respondents have complied with the directions and provided appointment to Bal Kishan Ojha, so also in pursuance of order passed in Champa Lal's case, the respondents have provided appointment to Champa Lal and both these persons are similarly situated with the petitioner, then, there is no question of saying that judgment of Hon'ble Division Bench was made on the basis of concession given by the Government Counsel.

18. In my opinion, once welfare State has taken a decision to absorb those employees who were engaged in connection with collection of octroi by the Gram Panchayat then, the contention of the respondents is baseless that only those employees are entitled for absorption who were in service on the date of abolition of octroi. The above proposition is well supported by the judgment of Hon'ble Division Bench of this Court passed in Bal Kishan Ojha's case (supra).

19. With regard to judgment of this Court in two writ petitions being S.B. Civil Writ Petition Nos. 958/2005 and 948/2005 in Roopchand and Roop Singh's case as cited by learned Counsel for respondents, it is worthwhile to say that those persons were claiming their right on the ground that on the date of abolition of octroi they were in service, therefore, upon above facts, those cases were decided. The controversy in this matter is altogether different. Petitioner is claiming his right of absorption/appointment on the ground that once decision was taken by the Government to accommodate those employees who were engaged for collection of Octroi. The petitioner was undisputedly engaged for collection of Octroi and worked for three years, therefore, petitioner cannot be denied benefits of decision of Government to absorb those employees who were engaged in connection with collection of octroi by the Gram Panchayat after abolition of octroi duty by the Government.

20. In this view of the matter, this writ petition is allowed. The order impugned Annexure-10 is hereby quashed and set aside. The respondents are directed to allow the petitioner to join duties as Gram Sevak in pursuance of the order dated 31.3.2001 and grant him all consequential benefits of seniority, fixation of pay

etc. on notional basis but the petitioner will not be entitled for any back wages till judgment of this Court and he shall be taken on duty forthwith. No order as to cost.