
(2014) 05 RAJ CK 0252
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7286/2013

Poonam Chand Soni

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Citation : (2014) LabIC 2634

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Pramendra Bohra, Advocate for the Appellant; Anirudh Purohit on behalf of Mr. V.K. Mathur, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Vineet Kothari, J.—The controversy about the grant of selection scale from the date of regularization and not from the date of initial appointment is no longer res-integra as concluded by the Hon"ble Supreme Court in the case of State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, , wherein it has been held that the benefit of selection grade can be given only from the date of regular appointment and not from the date of initial/adhoc appointment. The relevant extract of the aforesaid judgment of the Hon"ble Apex Court is quoted herein below for ready reference:-

Appellant Government framed a scheme for grant of stagnation benefits to those employees who had rendered, 9, 18 and 27 years of service. G.O. dated 25.1.1992 issued by the appellant Government in this regard used the expression "appointment in the existing cadre/service". The word "regular" was not used before this expression but the position regarding regular service was clarified in subsequent G.O. dated 17.2.1998.

Respondent employees who had initially been appointed on ad hoc, daily wages and work-charged basis contended that length of service in their cases should be counted from the date of their initial appointment and not from the dates of their

regularisation because the express "appointment in the existing cadre/service" was not qualified by the word "regular" in G.O. dated 25.1.1992. High Court accepted this contention.

Reversing the decision of the High Court, the Supreme Court held:

18. In order to become "a member of service" a candidate must satisfy four conditions, namely,

- (i) the appointment must be in a substantive capacity;
- (ii) to a post in the service i.e. in a substantive vacancy,
- (iii) made according to rules;
- (iv) within the quota prescribed for the source.

Ad hoc appointment is always to a post but not to a cadre/service and is also not made in accordance with the provisions contained in the recruitment rules for regular appointment.

Promotion has to be from the existing cadre in service. Ad hoc appointments are not made in terms of rules. In case of ad hoc employees, stagnation is till regularisation is made. The stress in the present case is on regular appointment to cadre/service. The question of promotion arises only when appointment is a regular appointment. Appointment to the post is not relevant; on the other hand, what is relevant is the period relatable to cadre of the service. While reckoning the required length of service, the period of ad hoc service has to be excluded.

The High Court failed to appreciate that the recruitment rules made a distinction between distinction between appointments made to the cadre/service in accordance with the relevant Recruitment Rules which are regular and appointments made de hors the regular Recruitment Rules which are ad hoc.

Although the adjective "regular" was not used before the words "appointment in the existing cadre/service" in para 3 of the G.O. dated 25.1.1992 which provided for selection pay scale, the appointment mentioned there is obviously a need for regular appointment made in accordance with the recruitment rules. What was implicit in the said paragraph of the G.O. when it refers to appointment to a cadre/service has been made explicit by the clarification dated 3.4.1993 given in respect of point No. 2. The same has been incorporated in para 3 of the G.O. dated 17.2.1998.

2. The Division Bench decision of this Court following the law laid down by the Hon"ble Apex Court in the case of Jagdish Narain Chaturvedi (supra) decided the intra-court appeal filed by the State being DBSAW No. 382/2013-State of Rajasthan & Ors. Vs. Karan Singh along-with 16 connected intra-court appeals, decided on 25.03.2014 headed by Hon"ble the Chief Justice, has held as under:-

The Hon"ble Apex Court in Jagdish Narain Chaturvedi (supra) on the same issue arising from the circular dated 25.1.1992 and noticing that the respondents-

employees therein had been initially appointed on adhoc, daily wages and work charged basis held that till their services were not regularized, they were not borne on a cadre and therefore, their services rendered prior to regularization could not be counted for eligibility for stagnation benefits. It was clarified that though the word "regular" was not used in the circular dated 25.1.1992, the appointment contemplated was obviously regular in nature and made in accordance with the recruitment Rules. The clear exposition of law that was thus recorded in the above decision is that services rendered on adhoc, daily wages and work charged basis cannot count to determine the eligibility for stagnation benefits comprehended and prescribed by the circular dated 25.1.1992.

Admittedly, after this decision was rendered, the State Government vide its orders dated 29.6.2009 and 20.8.2010 did take a decision not to review the cases where the benefit of selection grade had already been granted after counting the period spent on adhoc officiation prior to 20.8.2010. As the order dated 11.10.2011 passed in D.B. Civil Special Appeal (W) No. 994/2011 in State of Rajasthan & ors. V/s. Chandra Shekhar & ors. (supra) would reveal, the appeal stood dismissed solely on this consideration. In our considered opinion, therefore, in the attendant facts and circumstances, reliance on this order does not advance the case of the respondents-writ-petitioners. Instead, their challenge is squarely answered by the enunciation made by the Hon'ble Apex Court in Jagdish Narain Chaturvedi (supra). They having been admittedly appointed on adhoc basis initially to be confirmed later on, in view of the above decision of the Hon'ble Apex Court, their claim for first, second and third selection grades scales of pay in terms of the circular dated 25.1.1992 has to be essentially regulated thereby. We therefore find ourselves in respectful disagreement with the view taken in the impugned judgments and orders.

In the above view of the matter, we find substantial merit in the present appeals. The impugned judgments and orders are thus set aside. We make it clear that by the determination herein the aspect of entitlement to the selection grades scales of pay on completion of 9, 18 and 27 years of services on the basis of the legal proposition as propounded in Jagdish Narain Chaturvedi (supra) has only been made.

The appeals are allowed in the above terms. A copy of this judgment be placed in all the files.

Vijay Bishnoi, J.

Amitava Roy, C.J.

3. Therefore, prima facie, the writ petition filed by the petitioner deserves to be dismissed as the petitioner is claiming his selection scale from the date of his passing the qualifying typing test vide order dated 05.10.1981 and not his regularization w.e.f. 18.01.1984 vide order (Annex. 5). Learned counsel for the petitioner also pointed that the respondents have given the benefit of pay increments from 01.04.181 and not from 18.01.1984 under the order Annex. 5

and, therefore, they are bound to give the benefit of selection scale accordingly from 05.10.1981.

4. On the other hand, learned counsel for the respondents pointed out that the legal position has already been settled by the Hon''ble Supreme Court in the aforesaid judgment and, therefore, even if the benefit of selection sale or the pay fixation has been given from prior date that may be a mistake and that may be corrected by the respondents but the petitioner is not entitled to grant of selection scale from the date of passing of the qualifying typing test, the minimum eligibility criteria for being made regular in the cadre of LDC, the present petitioner as a result of his passing the qualifying test was so made permanent/regular vide the order (Annex. 5) dated 18.01.1984 only.

5. Having heard the learned counsel for the parties, this Court is of the opinion that the said issue is no longer res-integra and stands concluded by the aforesaid judgments of the Hon''ble Apex Court and this Court. The actual pay fixation and grant of selection scale, the petitioner will be free to move appropriate representation to the respondent competent authority, who is expected to pass appropriate speaking order in accordance with law after providing opportunity of hearing to the petitioner.

6. With these observations and directions, the writ petition is accordingly disposed of. No costs. A copy of this order be sent to the concerned parties forthwith.