
(2003) 10 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4139 of 2000

Prashant Bohra and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 1 RLW 457

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : R.N. Upadhyaya, for the Appellant; Mahipal Bishnoi, Assistant Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Panwar, J.—By this writ petition, the petitioners seek the relief of grant of salary in the pay scale of Rs. 3200- 85-4900 from the date of their initial appointment and the arrears of salary alongwith interest @ 18% per annum.

2. The facts and circumstances giving rise to this writ petition are that in pursuance of the advertisement No. 1/99 dated 26-2-99 issued by the District Establishment Committee, Zila Parishad, Udaipur, the petitioners applied for the post of Gram Sevak cum Paden Sachiv, As per the advertisement itself, the said posts were carrying the pay scale of Rs. 3200-85-4900/-. The petitioners qualified the written examination and they were declared successful. Meanwhile, a ban was imposed on appointment and after lifting of the ban, they were given appointment vide orders dated 28-10-99 and 15-11-99 on the consolidated salary of Rs. 1200/- per month. Thereafter petitioners were sent for training and they completed the same. The grievance of the petitioner is that as per the terms of the advertisement itself, the post in question was carrying the pay scale of Rs. 3200-85- 4900/- and as such giving appointment to them on the consolidated salary of Rs. 1200A per month is arbitrary, illegal and contrary to the terms of the advertisement itself. Hence this writ petition.

3. The respondents filed reply stating therein that the process of appointment had to be withheld as per the order dated 29-6-99 (Annx. R/i) issued by the State Government due to financial constraints and ultimately it was decided at the highest level that the process of selection can be continued provided the selected candidates are paid the fixed salary of Rs. 1200/- per month and their cases for extension and regularisation shall be considered on rendering satisfactory service by them. Petitioners joined the post without any protest and how they cannot assail the same in view of the principles of acquiescence as well as approbate and reprobate. It has further been contended that the terms of appointment are governed by the appointment orders and not by the terms of the advertisement as the order of appointment is a contract, to which consent was given by the petitioners by way of joining the duties without any protest.

4. I have heard learned counsel for the parties and perused the record.

5. There cannot be any doubt that the petitioners applied in pursuance of the advertisement for the post in question carrying the pay scale of Rs. 3200-85-4900/- and on their being selected, they were expecting their salary in the said pay scale. However, the financial exigencies prevented the State Government to give appointment in this pay scale and the candidates were offered appointment on the consolidated salary of Rs. 1200/- per month. Once the petitioners accepted the appointment on the consolidated salary of Rs. 1200/- per month without any protest, they cannot claim the salary in the aforesaid regular pay scale and the principle of acquiescence come in their way.

6. Undoubtedly, acquiescence, being the principle of equity, must be made applicable in a case where the order has been passed and complied with without raising any objection, as held in *Pannalal Binjraj and Ors. v. Union of India and Ors.* (1), *Maj. Chandra Bhan Singh v. Latafat Ullah Khan and Ors.* (2), *Om Prakash Shukla v. Akhilesh Kumar Shukla* (3), *State of Punjab v. Krishan Niwas* (4), *State of Orissa and Ors. v. Narain Prasad* (5), *State of Rajasthan and Ors. v. Anil Kumar, Sunil Kumar & Party and Anr.* (6), and *Kali Prasad and Ors. v. Deputy Director of Consolidation and Ors.* (7).

7. In *Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amaravati and Ors.* (8), the Hon"ble Supreme Court summarised the law of acquiescence observing that once an order is passed and accepted by the party, it derives benefit and advantage from it for some time, it would amount to acquiescence and such a party cannot be permitted to assail the validity of the order.

8. Further, once the petitioners accepted the appointment and joined the duties without any protest, they cannot, now, raise the grievance that the appointment was not made in terms of the advertisement. The financial contingencies prevented the respondents to provide appointment in the aforesaid pay scale and simultaneously the respondents wanted to provide appointment to the youth on the consolidated salary of Rs. 1200/- per month to make an equilibrium in

between the financial hardship and the problem of unemployment faced by the youth. Thus, the services of the petitioners are governed by the terms of appointment order and not by the terms of advertisement. Once the petitioners accepted the appointment on consolidated salary of Rs. 1200/-per month, the principle of approbate and reprobate prevents them to raise the grievance for grant of salary in the regular pay scale. It is settled proposition of law that appointment cannot be claimed as a matter of right. Once appointment had been offered to the petitioner on the consolidated salary of Rs. 1200/- and they accepted the same without any protest, the same cannot be challenged on the ground that the same has not been given in terms of the advertisement. The appointment orders became the contract between the petitioners and the respondents and once the petitioners entered into that contract, they cannot raise the question regarding grant of salary in the pay scale shown in the advertisement.

9. Lastly, the petitioners are claiming the salary in the regular pay scale as provided in the advertisement. The appointment orders tantamount to an offer by the respondents, which was accepted by the petitioners without any protest. The petitioners could not establish their right to get the salary in the regular pay scale on the principle of "equal pay for equal work" and they even failed in making such pleadings in the writ petition. The petitioners failed to make averment regarding the nature of work, responsibilities attached to them as compared to the regularly recruited persons on the post in question. In *Orissa University of Agriculture and Technology and Anr. v. Manoj K. Mohanti* (9), the Hon'ble Apex Court held that in absence of necessary averments and materials placed on record, there was no scope to give direction by the Court because the burden was on the employees to establish that they have a right to equal pay on the principle of "equal pay for equal work" relying on Article 14 of the Constitution of India and that having not been done, they are not entitled to the direction to get regular pay scale, the Apex Court further held as under:-

"The High Court before directing to give regular pay scale to the respondents w.e.f. September 1997 on the principle of "equal pay for equal work" did not examine the pleadings and facts of the case in order to appreciate whether the respondent satisfied the relevant requirements such as the nature of work done by him as compared to the nature of work done by the regularly appointed Junior Assistants, the qualifications, responsibilities etc. When the services of the respondent had not been regularized, his appointment was on temporary basis on consolidated pay and he had not undergone the process of regular recruitment, direction to give regular pay scale could not be given that too without examining the relevant factors to apply the principle of "equal pay for equal work." It is clear from the averments made in the writ petition extracted above, nothing is stated as regards the nature of work, responsibilities attached to the respondent without comparing them with the regularly recruited Junior Assistants. It cannot be disputed that there were neither necessary averments in the writ petition nor was any material placed before the High Court so as to

consider the application of the principle of "equal pay for equal work.""

10. Moreso, a perusal of the appointment orders makes it clear that the appointments have been made for a probation period of two years and their case shall be considered for regularisation on rendered two years' satisfactory service. As such, the respondents may keep themselves abide by the aforesaid term in the appointment orders and consider the case of the petitioners for regularisation if their services have been found satisfactory.

11. With these observations, the writ petition is dismissed. There shall be no order as to costs. As a consequence of this order, the stay petition also stands dismissed.