
(1996) 05 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 86, 1966 and 2101 of 1996

Pritam Chand and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 3 RLW 157 : (1996) WLC 274 : (1996) 2 WLN 113

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Judgement

V.K. Singhal, J.—The petitioner has been given semi-permanent status from 1.1.95 while the claim is that it should have been given after completion of two years service as has been done in other cases.

2. In these matters, a committee was constituted in accordance with the directions of Deputy Secretary II Public Health Engineering Department, Vide the order dated 10.3.1995. It was directed that if any person has completed two years satisfactory service as on 31.3.1994, then he may be given semi-permanent status. The petitioners were accordingly given semi-permanent status on 1.1.1995. Now the grievance of the petitioner is that it should have been done immediately after completion of two years as has been done in other cases.

3. The submission of the learned Counsel for the petitioners is that in accordance with Rule 3 of the Rajasthan PWD (B & R) including Gardens, Irrigation, Water Works and Ayurvedic Departments, Work Charged Employees Service Rules, 1964, the semi-permanent status should have been given on completion of two years service. Rule 3 of the said rule provides that the employee in continuous service for 2 years or more except, those covered by Sub-rule (1), shall be eligible for the status of semi-permanent work charged employees or semi-permanent regular technical staff, provided their record of service in opinion of the competent authority, is satisfactory. This Rule 3 has excluded the casual workers and has also taken into consideration the satisfaction of the competent

authority with regard to record of service. The period of 2 years is the minimum period in which the eligibility is acquired. The use of words "2 years or more" contemplates that it can be even a period of more than 2 years. As a matter of fact the Head of Department has framed the rules and it is provided in Rule 3 that as soon as the appointing authority finds that certain posts are to be filled-in in accordance with rules, it shall prepare a seniority list of all eligible candidates. There is contemplation in the rules that the appointment has to be given in accordance with the seniority. The junior person is not eligible for even giving semi-permanent status and the respondents are expected to proceed only in accordance with the length of service subject to availability of post and the record of service. It appears that in accordance with the decision taken by the respondents, the committee has recommended the various names and has given the semi-permanent status from 1.1.1995. Whether it could have been given after the completion of two years only or on consideration by the committee constituted for the purpose is a matter which has been disputed before this Court. The status of semi-permanent has already been given from 1.1.1995 and the petitioners claim that he was eligible for conferring the status prior to 1.1.1995 i.e. after completion of two years continuous service. The question as to whether there was a satisfactory service record or not is a question of fact. Reliance has been placed on the decision of this Court in the case of *Tara Chand v. State of Rajasthan* and Ors. S.B. Civil Writ Petition No. 6535/91 decided on 6.3.1992. In that case reply was filed by the respondents and this Court came to the conclusion that the petitioners Tara Chand, Hari Singh and Prahlad Narain are skilled labours and Sube Singh is unskilled labour. It was found that all of them were entitled for confirmment of semi-permanent status after their completion of two years of service. There was no Committee constituted which examined the case in accordance with Rule 3 of the Rules of 1964 and also examining as to whether the petitioners are entitled or not because a remedy is available to the petitioner. In these circumstances, without observing anything on merits, as to whether the petitioner is entitled to claim the relief under Article 226 of the Constitution, it is observed that the petitioners are free to challenge the action of the respondents before the Industrial Tribunal. It may however be observed that the respondents are expected to follow the law uniformly and are not expected to adopt a policy of pick and choose. It may also be observed that if any matter is brought to the notice that any junior person has been given semi-permanent status, then he would look into the circumstance under which the semi-permanent status has been conferred to a junior person without looking to the seniority. It is incumbent on the respondents to adhere the seniority and also to look the service record. If the service record is satisfactory then the seniority alone has to be seen and if an action has been taken which is not in accordance with the seniority, the Chief Engineer should interfere in such a matter so that the Court is not burdened with such cases.

4. The writ petitions are disposed of with the above directions.