

(2015) 03 RAJ CK 0211
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4116 of 1998

Ramniwas and Others

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 39 (d)

Citation : (2015) 03 RAJ CK 0211

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Suresh Kashyap, for the Appellant; Saurabh Saraswat, Govt. Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Veerender Singh Siradhana, J.—This is second round of litigation by the petitioners.

During the pendency of the writ proceedings, out of five petitioners, three i.e. Shri Ramniwas, Shri Vasudev and Shri Bhairon Singh, have already been regularized, and therefore, the claim qua these three petitioners no more survives. The petitioners have instituted the instant writ proceedings praying for the following relief(s):

"(A) Issue a writ of Certiorari, thereby quashing and setting the orders Ex.8 and Ex.9 and similarly such other orders, which are likely to be issued during the pendency of the Writ Petition, purporting to revert the petitioners as Beldars or any other such illegal and unlawful orders, causing irreparable loss and injury to them.

(B) Issue a writ of mandamus or order or direction directing the Respondents to declare the petitioners as permanent Drivers in view of their discharging the duties and functions of Drivers for last more than 10-12 years.

(C) Issue a writ of mandamus, order or Direction, directing the respondents to take from them the Work of Driving the vehicles (from the petitioners) looking to their vast and sufficient experience of driving for last more than 10-12 years and directing as such to immediately regularise their services in the pay scales of Drivers, as evolved by 1989 Revised Pay Scale Rules, and 1998 pay-Scale Rules, now in-existence.

(D) Issue a writ of Mandamus or direction or order, directing the Respondents to pay them salary and wages in the Revised Pay Scale of Drivers from 1.9.98 and onwards.

(E) Costs of the Writ Petition, in the facts and circumstances of this case, may also be quantified and awarded to the petitioners.

(F) Grant any other relief, in the facts and circumstances of the case, as may be considered appropriate and proper by the Hon"ble High Court, in the interest of justice and fair play."

2. Shorn off unnecessary details, the indispensable material facts necessary for appreciation of the controversy needs to be first noticed.

(a) The petitioners instituted earlier petitions being SBCWP No. 326/1992 (Bhairon Singh Vs. State of Raj. and others), SBCWP No. 393/1992 (Ram Niwas and Others Vs. State of Raj. and others) and SBCWP No. 394/1992 (Om Singh Vs. State of Raj. and Others). The writ applications were disposed of by the Court on 3rd February, 1998, by a common order, holding thus:

"In all these three petitions the grievance of the petitioners is that they had been appointed as Beldars long back. However, they had been assigned the work of Drivers and they are being paid the salary of the Beldars. Thus, the instant petitions have been filed for seeking relief that they may be ordered to be paid the salary in the minimum pay scale of regular Drivers.

The claim of the petitioners has been accepted by the respondents in paragraph No. 8 of the reply to the effect that from the long time they are being driving the vehicles. In view of the admission made by the respondents themselves in the reply, the petitioners become entitled for minimum pay scale of regular drivers and the respondents, being the model employer, are not supposed to exploit the helplessness of the petitioners and under the mandate of the provisions of Article 39 (d) of the Constitution of India, they are entitled for the minimum pay of the regular drivers.

In view of this, the petitions stand allowed and the petitioners are held to be entitled to get the minimum pay scale of regular drivers from the date of filing of the writ petitions, i.e. from January, 1992. The respondents are further directed to consider their claims for regularization strictly in accordance with law. The parties are left to bear their own costs."

(b) In view of the order aforesaid, the respondents passed the orders dated 28th

July, 1998 (Ex.8) and 31st July, 1998 (Ex.9), which are a subject matter of assailment in the instant writ application. The respondents while complying with the direction in releasing the minimum of the pay scale of the post of regular driver from the date of filing of the writ application i.e. from January, 1992, observed that services of the petitioners be utilized on the post of "Beldar". At the motion stage, on the institution of the present writ application, this Court passed the interim order on 17th August, 1998, directing the respondents to allow the petitioners to work as Drivers w.e.f. 1st August, 1998. Consequent there upon, the petitioners have been continuing to work as Drivers with the State-respondents.

(c) It is pleaded case of the petitioners that the State-respondents while conferring status of "semi permanent" under the Work-charged Employees Service Rules, 1964 (hereinafter referred to as the "Rules of 1964"), conferred status of "semi permanent" and "permanent" to the persons junior to the petitioners, ignoring their claim, without any reason or rhyme. The relevant documents (Annexures-11, 12 and 13) have also been placed on record to substantiate the averments.

3. In response to the notice of the writ application, the State-respondents have filed their counter affidavit pleading that in compliance of the order passed by the High Court on the earlier writ applications; minimum of the pay scale of the post of regular driver, for the period of the petitioners worked, was released. It is further pleaded that subsequently the petitioners have also been accorded the benefit of status of "semi permanent" as well as "permanent" after completion of 2 years, and 10 years of service, respectively, in accordance with the Rules of 1964. Further, the petitioners were accorded the benefit of conferment of status of "semi permanent" and "permanent", on completion of the required period under the Rules of 1964, even prior to institution of the writ proceedings, and therefore, the present petition merits rejection on that count alone. To reinforce his submissions the counsel for the State-respondents has relied upon the opinion in the case of Ramu Ram and Others Vs. State of Rajasthan and Others, (2003) 3 LLJ 123 : (2003) 1 RLW 641 : (2002) 2 WLN 558 and Ashok Kumar Sharma Vs. The State of Raj. and Ors.: DBCWP No. 1003/1988.

4. I have heard the learned counsel for the parties and with their assistance perused the materials available on record.

5. During the pendency of the writ proceedings, the counsel for the petitioners placed on record Annexure-11 dated 22nd June, 1988, which reflects that one Shri Mahadev S/o Shri Dhannaram, who was initially appointed as a driver on daily wages basis, was accorded the status of "semi permanent" in the pay scale of Rs. 490-840 of driver, whereas one of the petitioner namely Shri Om Singh, whose initial date of appointment as "driver on daily wages basis" was w.e.f. 2nd March, 1981, was ignored. From another order dated 3rd September, 1990, it is further reflected that Shri Kan Singh S/o Shri Laxman Singh was initially appointed on 7th June, 1981, and Shri Manakchand S/o Shri Pratapji Bhad was

appointed on 22nd February, 1987, were also accorded appointment on the post of regular driver(s) against the vacancies that became available, in the pay scale of Rs. 950-1680, along with other admissible allowances, consequent upon their interview wherein they were declared successful. By another order dated 12th November, 1991, the State-respondents while considering the cases for direct recruitment, including the employees of the Department, under the Rajasthan Subordinate Services (Public Health Branch) Rules, 1967, conducted recruitment process and accorded appointments: Similar exercise of recruitment process was also undertaken, as would be reflected from the order dated 20th December, 1991 (Annexure-14), wherein employees with the status as petitioners were accorded regular appointment.

6. It may be true that the petitioners might not have been successful in the interview conducted under the Rules of 1967, but while according status of "semi permanent" after completion of 2 years of service, to the similarly situated employees, as is reflected from the office order dated 22nd June, 1988 (Annexure-11), the case of the petitioner-Om Singh, was not considered and reasons have been detailed out for declining similar benefit to the petitioner(s).

7. From the additional affidavit and the documents annexed thereto, filed by Shri Om Singh, it is reflected that his initial appointment was made on 2nd March 1981 as "driver on daily wages basis". His appointment as vehicle driver is further fortified in view of the office order dated 16th August, 1982.

8. From another office order dated 13th October, 1982, it is reflected that the State-respondents constituted a Screening Committee under the Rules of 1967, as amended in the year 2008, for the purpose of consideration of the cases of work-charge employees and to accord benefits, who have been working and had completed 5 years of service as vehicle driver in the Department and had been engaged on or before 31st March, 1994. The names of three petitioners, in the instant writ petition, find place at serial No. 29, 44 and 62, in the order.

9. The Screening Committee, while declining the case of the petitioners, has not recorded any reason for not according same benefit to them; though the learned counsel for the respondents has placed on record the minutes of the Screening Committee convened on 8th October, 2008, as Annexure-R/9, along with reply to the additional affidavit.

10. Neither from the reply nor from the response filed to the additional affidavit, submitted on behalf of the State-respondents, nothing is discernible so as to ascertain the denial of claim of the petitioners while according benefits of regularization subsequent to recommendations of Screening Committee as reflected from office order dated 13th October, 2008. The case of the petitioners is identical to that of three of the petitioners, who have been regularized, is not in dispute.

11. The opinion, of the Division Bench, referred to and relied upon by the learned counsel for the State-respondents in the case of Ramu Ram and Ors. (supra),

has no application to the facts of the present case. In the case of Ramu Ram (supra), the question that fell for consideration before the Court was "whether it will be sound exercise of powers under Article 226 of Constitution of India, to compel the State Government by issuing writ of mandamus on interpretation of Sub-rules (3) and (4) of Rule 3 of the Work Charge Employees Service Rules, 1964, to provide status of semi-permanent to all work charge employees who have completed two years continuous service satisfactorily or to provide status of permanent to such employees who have completed ten years of service or more satisfactorily, ignoring the financial constraints in grant of sanction of posts by the competent authority?".

12. There cannot be any dispute on the proposition of law declared by the Division Bench of this Court and such a direction may not stand the test of judicial scrutiny.

13. In the instant case at hand, it is not the claim of the petitioners for conferment of status of "semi-permanent" or "permanent" immediately after completion of 2 years and 10 years of service. The grievance raised by the petitioners is as to whether the petitioners' claim for regularization was declined while according similar benefits to the similarly placed employees of the department, who were junior(s) to the petitioner(s). Moreover, out of total five petitioners, who instituted the instant writ application, three have already been accorded the benefits of regularization by the Screening Committee, as would be reflected from Annexure-8 dated 28th July, 1998 whereas similar benefits have not been accorded to the petitioners and no reasons have been detailed out either in the reply or in the response to the additional affidavit for declining the claim of the petitioners. The minutes of the Screening Committee, placed on record, also did not reflect any reason to sustain the plea of defence on behalf of the State-respondents.

14. Another opinion of the Division Bench, referred to and relied upon by the learned counsel for the State-respondents in the case of Ashok Kumar Sharma (supra), decided on 25th April, 1988, is also of no help to the State-respondents for the reason that the petitioner therein was initially appointed as "Helper" though he discharged the duty of "Lower Division Clerk". The Division Bench of this Court held that so long as the petitioner worked as LDC, he was entitled for the wages of that post on the principle of "equal pay for equal work"; but that cannot mean that the petitioner was appointed/recruited as LDC. The Division Bench further observed that for appointment/recruitment proper procedure is prescribed. There cannot be any dispute on the proposition of law as declared in the facts of that case.

15. In the instant case at hand, the petitioners have not claimed regularization/selection. All that has been claimed by the petitioners is equal treatment to equals and the benefits extended to other three petitioners who instituted the present writ petition along with them. The Screening Committee while considering the case of the petitioners, along with others, has recorded no

reason for declining their claims while according benefits to three of the petitioners i.e. Ramniwas, Shri Vasudev and Shri Bhero Singh. In absence of any reason put-forward either in the reply or materials placed on record to justify the action of the respondents in declining the claim of the petitioners, cannot be sustained in law being violation of equality clause of guaranteed by the Constitution of India.

16. In view of the uncontroverted facts and materials available on record, it is evident that the petitioners though being senior, have been deprived of the benefits of regularization and no reasons have been put forward to justify the denial of the same benefits to the petitioners while according regularization on the post of regular driver(s) to juniors to the petitioners who too were engaged on daily wages basis as drivers. No cogent reasons have been furnished for denial of the benefit of regularization to these two petitioners while according benefits to other three, who have jointly instituted the writ proceedings.

17. Consequently, the writ application succeeds and is hereby allowed. The impugned orders Ex.8 and Ex.9 are hereby quashed and set aside.

18. The respondents are directed to accord same benefits to the petitioners, as have been accorded to other three petitioners in the instant writ application and to the immediate junior to the petitioner(s).

19. The respondents shall complete this exercise and release the due benefits to the petitioners, within a period of two months form the date of receipt of a certified copy of this order.

20. No costs.