
(1998) 04 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1020 of 1995

Ramu Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-04-1998

Acts Referred:

Constitution of India, 1950 — Article 162, 309

Citation : (1998) 1 WLN 480

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Judgement

B.S. Chauhan, J.—The instant petition has been filed by the petitioners for issuing directions to the respondents to grant semi-permanent status and regular pay scale to them on the post of Beldar from the dates of their initial appointment and in the alternative to grant them semi-permanent status after completing two years service from their initial appointment.

2. As per the factual-averments made in this petition, the petitioners were appointed as Beldars in 1988 and onwards and their services are governed by the Rajasthan (Public Works Department (B & R) including Garden, Irrigation, Water Works and Ayurved Departments) Work-charge Employee Service Rules, 1964 (hereinafter referred as "the Rules, 1964"). During the pendency of the writ petition, the respondents had granted the semi-permanent status and the reliefs which are available to the semi-permanent employees as is evident from the orders dated 24.8.1995 (Annexure. Rule 1) and 16.9.1995 (Annexure. Rule 2) to the reply. The grievance of the petitioners is that under the provisions of the said Rules, they are entitled for the semi-permanent status from the date they completed two years" continuous service from the date of their initial appointment.

3. Heard Mr. Manish Singhvi, learned Counsel for the petitioners and Mr. K.L. Jasmatia, learned Additional Advocate General for the respondents with Smt. Raghuraj Kanwar, learned Assistant Government Advocate.

4. Mr. Manish Singhvi has placed reliance upon the judgment of this Court in *Vinod Kumar v. State of Rajasthan and Ors.* WLR 1991 (S) Raj. 192, wherein, after interpreting the provisions of Rule 3 of the said Rules, this Court held that in the work-charge services, all employees enter as a casual worker and once an employee completes two years period, he is eligible for the status of semi-permanent and on completion of the ten years service he is eligible for permanent status as work-charge employee, however, it will be subject to the only condition that his record of service should be to the satisfaction of the concerned authority. However, it has no concern whatsoever with the number of sanctioned posts because the posts are already sanctioned, against which the persons are continuing. Similarly, in *Om Prakash Meghwal v. State of Rajasthan and Ors.* WLR 1991 (S) Raj. 299, the Court took the same view and rejected this submission of the respondent State that prior sanction is necessary or mandatory requirement as per Sub-rule (4) of Rule 3 of the said Rules. Further, reliance has been placed by Mr. Singhvi on the judgment of this Court in *S.B. Civil Writ Petition No. 98/1993, Rana Ram v. State of Rajasthan and Ors.* decided on 19.5.1993. In the said case, the Court placed reliance upon the earlier judgment of this Court in *Chambal Vikas Yantrik Sinchai Karmachari Sangh Vs. State of Rajasthan and Others*, and rejected the contention of the State that to grant semi-permanent status, the existence of a sanctioned post is mandatory and the Court observed that the petitioner is entitled to the grant of a declaration to the effect that he has acquired the right to be treated as semi-permanent and directed as under"-

The writ petition is, therefore, allowed. Respondents are directed to declare the petitioner as semi-permanent Helper with effect from the date of completion of two years' service counted from the date of appointment. Petitioner shall be given all the consequential benefits with effect from the date of declaration of semi-permanency. Arrears payable to the petitioner in pursuance of this order shall be paid to him within six months, failing which the petitioner shall be paid interest @ 12% per annum from the date of this order.

5. Mr. Singhvi has submitted that the present petitioners are, also entitled for the same declaration which had been made by this Court in *Rama Ram (supra)*. With due respects to the Hon'ble Judge, I am of the considered opinion that passing such order is beyond the competence of this Court. The Court cannot take upon itself the functions of the statutory authorities. Even if the petitioners are entitled to the grant of semi-permanent status after completing two years continuous service from their initial appointment, such an order cannot be passed as grant of semi-permanent status is subject to the rider that their services had to be satisfactory. Therefore, the concerned Authority has to consider the service record of the employees and find-out whether the service record was to the satisfaction of the employer.

6. A Division Bench of this Court considered this aspect of the case in *State of Rajasthan and Ors. v. Rajendra Kumar Verma* 1998 (1) RLW 409 and after

placing reliance on the various judgments of the Hon"ble Supreme Court, i.e., Veerappa Pillai Vs. Raman and Raman Ltd. and Others, ; Narain Das and Ors. v. P. Purshottam Rao and Ors. 1993 (1) JT 17 ; Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, , and State of Haryana Vs. Naresh Kumar Bali, and came to the conclusion that issuing such a direction does not fall within the scope of mandamus. The Court can merely direct the concerned Authorities to consider the claim of the petitioners in accordance with the Rules. Thus, no such direction can be issued.

7. Mr. Jasamtia, learned Additional Advocate General, on the other hand, has submitted that the cases referred to above by the learned Counsel for the petitioners have not correctly been decided for the reasons that the interpretation given to the relevant provisions have rendered part of the Rules nugatory. The relevant provisions involved therein are contained in Rule 2(a) which defines the "work-charge employees" as "any person actually employed for or on the execution and/or supervision of works both original and maintenance, supervision of departmental labour, stores, machinery and works, etc, paid on daily or monthly basis". Rule 3 lays down the categorisation which reads as under:

(1) Work charged employees (including the regular technical staff of Water Works Department) for the purpose of these rules shall be divided into the following three categories:

- (i) Permanent status,
- (ii) Semi-permanent status, and
- (iii) Casual:

Provided, however, that nothing in these rules shall entitled any work-charged employee, categorised permanent or semi-permanent to claim the status of benefits of permanency or semi-permanency to which a regular Government employee is entitled under the Rajasthan Service Rules.

(2) Employees, who have been in service for ten years or more, shall be eligible for the status of permanent work-charged employees provided their record of service in the opinion of the competent authority is satisfactory. (Emphasis added)

(3) Employees in continuous service for two years or more except those covered by Sub-rule (1) shall be eligible for the status of semi-permanent work charged employees or of semi-permanent regular technical staff, provided their record of service in the opinion of the competent authority, is satisfactory.

(4) No employee shall acquire the status specified in Sub-rules (2) and (3) without the prior sanction of the competent authority, as may be notified by the Head of the Department from time to time.

Clarification: It has been observed that in the matter of declaring of semi-

permanent of permanent status of work-charged employees under Rule 3 of the Rajasthan Public Work Department (B &R) including Garden, Irrigation, Water Works and Ayurvedic Department Work, Charged Employees Service Rules, 1964, a uniform policy is not being adopted by the departments where work-charged employees are engaged. The casual work-charged employees are declared as semi-permanent and allowed regular pay scale with other benefits like leave, medical facilities, traveling and daily allowances etc., as soon as they complete 2 years under the plea that it is obligatory to declare them semi-permanent on completion of 2 years according to Rule 3 of the above said Rules.

8. It is clarified that Rule 3(3) only mentions that an employee becomes entitled to be declared as semi-permanent on completion of two years service provided his service record is satisfactory and sanctioned post is available besides other conditions, such as age at the time of recruitment and medical fitness etc., are fulfilled. It is, therefore, enjoined upon all the concerned departments that the casual workers should not be declared semi-permanent on completion of two years service only and allowed pay scales unless other conditions mentioned above are also fulfilled. (Vide D.O.P. Notification No. F. 5 (11) DOP (A-II/74) dated 19.8.1980).

9. Sub-rule (3) of Rule 3 provides that an employee in continuous service for two years or more shall be eligible for the status of semi permanent and Sub-rule (4) further provides that the condition precedent for grant of such semi permanent status is to have prior sanction of the competent authority as may be notified by the Head of the Department. If the interpretation given by this Court in the above earlier referred cases is examined carefully, it appears that attention of the Court was not drawn to words "or more" alongwith two years in Sub-rule (3) of Rule 3 and interpretation given in the said cases has rendered the Sub-rule (4) as nugatory. This Court has categorically held that existence of sanctioned post may not be necessary. It is not in dispute that grant of such semi-permanent status burdens the public exchequer and requires financial involvements. This Court has taken a note that Sub-rule (4) does not mention anything regarding financial involvements. It is settled proposition of law that the Courts cannot issue directions to the concerned authorities for making appointment or grant of such a status as it burdens the public exchequer and for that purpose reference may be made to the judgment of the Hon'ble Apex Court in Lieutenant (Mrs.) India Kumari Kartiayoni Vs. The Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi-I and others, and Government of Orissa through Secretary, Commerce and Transport Department, Bhubaneswar Vs. Haraprasad Das and Others, Such matter are of public policy and unless it is shown to be arbitrary, the Court cannot interfere and no such direction cannot be issued.

10. In none of the cases referred to above, this Court has considered as what is the meaning or usefulness of the words "or more" alongwith two years continuous service in Sub-rule (3) of Rule 3. In fact this particular term has escaped the attention of the Court. If this term is interpreted and given effect to

its meaning, it may provide for a different result. Moreover, even if the sanctioned post is not required to grant semi-permanent or permanent status, Sub Rule (4) cannot be made redundant as it may provide for a sanction by the competent authority and it may be necessary to do so particularly in view of the fact whether the authority concerned can bear the financial burden created by the grant of such status.

11. In *The State of Bihar Vs. Hiralal Kejriwal and Another*, , it has been held that to ascertain the meaning of a section, it is not permissible to omit any part of it. The whole section is to be read together as no part of it can be made redundant. In *A.K. Gopalan Vs. The State of Madras*, , the Hon''ble Supreme Court observed that every word of that Clause must be given its true and legitimate meaning and in the construction of a statute and it is improper to omit any word which has a reasonable and proper place in it or to refrain from giving effect to its meaning. In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, it was observed that it is not a sound principle of construction to brush aside words in a statute as being in appropriate surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. It was further held that the words of a statute never should be added to or subtracted from without almost a necessity. (Vide *Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another*,

12. In *Martin Burn Ltd. v. Corporation of Calcutta* AIR 1966 SC 529, the Hon''ble Supreme Court held as under:

That a result flowing from a statutory provision is never an evil. A Court has power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must, of course, be given effect to whether a Court likes the result or not.

13. An interpretation of the Act without giving full effect to the language used, would be unsupportable and hence cannot be made. (Vide *Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another*, .

14. After considering a large number of its earlier judgment, the Supreme Court, in *Sultana Begum Vs. Prem Chand Jain*, , has observed as under:

In *Canada Sugar Refining Co. v. R.* 1898 A C 735 , Lord Davy observed "every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter." This Court has adopted the same rule in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, ; *Gammon India Ltd. and Others Vs. Union of India (UOI) and Others*, ; *Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another*, ; *V. Tulasamma and Others Vs. Sessa Reddy (Dead) by Lrs.*, ; *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, ; *CIT v. National Taj Traders* 1980 1 SCC 370; *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, and *The J.K. Cotton Spinning and Weaving*

Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, This rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute. On a conspectus of the case law indicated above, the following principles are clearly discernible:

(1) It is the duty of the Court to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the Court, in spite of its effects, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule to "harmonious construction."

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.

(Emphasis added)

15. The same view has been taken by the Supreme Court in State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., wherein it has been held that an interpretation which renders an enactment an exercise in futility, should be avoided. The cases decided by this Court have rendered the provisions of Sub-rule (4) of Rule 3 to otiose. It means that enacting such a provision in subordinate legislation was "an exercise in futility" and the product came as a "purposeless piece" of subordinate legislation and this provision has been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable."

16. In Institute of Chartered Accountants of India Vs. Price Waterhouse and Another, , the Court has held that the interpretation making any provision as surplusage is not permissible. Rule of Interpretation does not permit to render any particular part of a provision as notice.

17. In view of the above, I am in agreement with Mr. Jasmatia that such an interpretation has rendered Sub-rule (4) of Rule 3 as otiose and the Court had not given any effect to the words "or more" alongwith two years service in Sub-rule (3) of Rule 3. The presumption is that the legislature has not left any lacuna and the courts are bound to give effect to every word as none of the words incorporated in the Rules or enactment can be rendered meaningless. While interpreting, courts are bound to give full effect to each and every word

contained in the provision.

18. In *Om Prakash Meghwal (supra)* this Court has considered the scope of clarification to the said Rule 3 as given vide D.O.P. Notification No. F. 5 (11) DOP (A. II/74) dated 19.8.1990. The clarification given by such a notification was also considered in the said case and the Court came to the conclusion that such a clarification is void and cannot be taken into consideration as it runs counter to Proviso to Rule 3. I am of the considered opinion that this notification is in consonance with the provisions of Sub-rule (4) of Rule 3 and it cannot be rejected being in contravention of the said rule.

19. The issue was considered by the Hon''ble Supreme Court time and again and a Constitution Bench of the Hon''ble Supreme Court, in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, , has observed as under:

It is hardly necessary to mention that if there is a statutory rule or an Act on the matter, the executive must abide by that Act or the Rules and it cannot, in exercise of its executive powers under Article 162 of the Constitution, ignore or act contrary to that Rule or the Act.

20. Similarly, another Constitution Bench of the Hon''ble Supreme Court, in *Sant Ram Sharma Vs. State of Rajasthan and Another*, , has observed as under:

It is true that the Government cannot amend or supersede statutory Rules by administrative instruction, but if the Rules are silent on any particular point, the Government can fill up the gap and supplement the rule and issue instructions not inconsistent with the Rules already framed. (Emphasis added)

21. The law laid down above has consistently been followed and it is a settled proposition of law that the Authority cannot issue the orders/office memorandum/executive instructions in contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. (Vide *Commissioner of Income Tax, Gujarat Vs. A. Raman and Company*, ; *Union of India (UOI) and Others Vs. Majji Jangamayya and Others*, ; *Ramendra Singh and Others Vs. Jagdish Prasad and Others*, ; *P.D. Aggarwal and Others Vs. State of U.P. and Others*, ; *Beopar Sahayak (P) Ltd. and Others Vs. Vishwa Nath and Others*, ; *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another*, ; and *Comptroller and Auditor General of India and others Vs. Mohan Lal Mehrotra and others*,

22. Thus, it is settled law that executive instructions cannot amend or supersede the statutory rules or add something therein. The orders cannot be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law; while statutory Rules have full force of law as held by the Constitution Bench of the Hon''ble Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, ; and *State of Tamil Nadu Vs. Hind Stone and Others*,

23. In *Union of India v. Sri Somesundram Vishwanath* AIR 1988 SC 2255, the

Hon"ble Apex Court has observed that if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail. Similarly, if there is a conflict under the Rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.

24. In view of the above, it cannot be said that such a notification runs counter to the provisions of Rule 3. in view of the above, I am of the considered opinion that even after completing two years continuous service, an employee does not become entitled for grant of semi-permanent status. It only makes him eligible for grant of the said status subject to the requirement of sanction under Sub-rule (4) of Rule 3 of the Rules by the competent Authority and same situation must be regarding confirmation of permanent status. If Sub-rules (3) and (4) of Rule 3 are read together, the cumulative effect comes that the service record of all the casual work-charge employees who had completed the continuous two years or more service and their service records are satisfactory in the opinion of the Authority concerned and there are no financial constraints, the Authority concerned grants sanction/ approval for grant of semi-permanent/permanent status, such employees, after being considered their service record, may be granted the said status. Thus, completion of two years or ten years continuous satisfactory service makes an employee only eligible for consideration for the grant of semi permanent or permanent status.

However, the judicial decorum and discipline require that in case I am not in respectful agreement with the law laid down earlier by the learned Single Judge of this Court, the matter may be referred to a Larger Bench. Thus, the matter is referred to a Larger Bench to examine the correctness of the judgments referred to above interpreting the provisions of Sub-rules (3) and (4) of Rule 3 of the Work Charge Rules, 1964 and notification dated 19.8.1980. The record may be placed before Hon"ble the Chief Justice for appropriate direction/order.