

(2018) 07 RAJ CK 0081
In the Rajasthan High Court
Case No : Civil Writs No. 12236 of 2018

Ratan Lal Sharma @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 02-07-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2018) 07 RAJ CK 0081

Hon'ble Judges : VEERENDR SINGH SIRADHANA, J

Bench : Single Bench

Advocate : Hanuman Choudhary

Final Decision : Disposed Off

Judgement

Learned counsel for the petitioners, at the very outset, submits that the controversy raised in the instant writ application stands resolved in view of the

adjudication made by a Division Bench of this Court in the case of Mitendra Singh Rathore & 121 Ors. v. State of Rajasthan & Ors.: 2013(4) WLC

(Raj.) 523, decided on 30th July, 2013, observing thus:

â??15. The Panchayati Raj Institutions as per Schedule-XI of the Constitution of India read with Rajasthan Panchayati Raj Act, 1994 and the Rules

framed thereunder are having a very significant role in nation building by extending and implementing various developmental plans. Several schemes

under MGNREGA too are supposed to be accomplished through panchayati Raj Institutions in such circumstances the need of a big man force is

obvious. The service further requires skill with insight of the nature of job to need the tasks given. An experience person by examining, understanding

and factually undertaking same task catch an insight and propound understanding of the job concern. Such insight and understanding of the work

extends an edge to such persons in doing the work assigned with passion and

interest. It also introduces such persons with the world of work and to learn does and don'ts attached thereto. The experience comprises knowledge, skill, exposure, concept of the task given and procedural knowledge thereof. All these ingredients provides a merit that is necessary for service. This merit helps in accomplishing the task successfully, as such the grant of weightage for experience is in interest of service so also in interest of the object's for which service is created. The need of granting weightage under 2nd Proviso to Rule 273 of the Rules of 1996 is with this view only.

16. The experience required under Proviso second of Rule 273 of the Rules of 1996 is on definite posts under definite schemes sponsored by the Panchayati Raj Institutions and under MGNREGA. This too is having a rational as the schemes are required to be implemented with a new vision of development and governance at the grass root level through the Panchayat Raj Institutions as per thrust of the 73rd constitutional amendment and the State enactment made in consonance thereto. The need of experience hands in service, thus, is rational and required, but the issue deserves consideration is that whether the experience earned on the posts aforesaid in the schemes concerned have any distinction on the count of different mode of employment. It is not in dispute that the main requirement of the statutory weightage is experience on certain posts in definite schemes and not the mode of employment. It is also a position accepted that the experience gained on the posts of Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training and Coordinator Supervision in MGNREGA or any other scheme of Department of Rural Development and Panchayati Raj is same and that does not differ due to mode of employment. The persons employed directly by the Panchayati Raj Institutions or under MGNREGA or through the placement agencies working on the posts aforesaid in MGNREGA or in other schemes of Department of Rural Development and Panchayati Raj discharge same duties with same responsibilities and liabilities, as such, the experience gained is also same, thus, the experience gained by the persons employed through the placement agencies in no manner can be treated as less or not relevant to have necessary skill, knowledge, insight or any other merit required by Panchayati Raj and Zila Parishad Service.

17. The object of granting weightage to the experienced hands isto have meritorious persons with insight, skill and knowledge of the job and that in no manner shall have adverse effect on giving weightage to the persons who acquired experience on being employed through placement agencies. The classification sought to be made under Proviso Second to Rule 273 of the Rules of 1996 on the basis of mode of employment or to say by denying weightage to the persons employed on posts of Junior technical Assistant (J.T.A), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training and Coordinator Supervision through placement agencies in MGNREGA or any other scheme of Department of Rural Development and Panchayati Raj, as a matter of fact, is having no nexus with the object sought to be achieved by granting weightage in the form of bonus marks to the experienced hands, therefore, the classification made under Proviso Second to Rule 273 of the Rule of 1996 on the basis of the mode of employment, is having no rational, hence, is in violation of Articles 14 and 16 of the Constitution of India.

18. The distinction sought to he made with the persons employedthrough the placement agencies is that those were under the control of the placement agencies and, as such, necessary details pertaining to their experience were with the placement agencies only. Much emphasis is given by the respondents that the State Government or the Panchayati Raj Institutions, as the case may be, entered into agreement with the placement agencies leaving it open for the placement agencies to accomplish the task given through the persons employed by that agency without definite identification of the person concern by the Panchayati Raj Institution. The stand taken by the respondents is not at all acceptable at its face. It is not in dispute that the placement agencies are nothing but contractor to supply labour force. The roll of the labour force supplied through contractor is available with the principal employer i.e. the State Government and different Panchayati Raj Institutions who availed services of such persons through placement agencies. The State Government, as such, is having all necessary details with regard to the work done by the persons employed through the placement agencies. On having these details, measurement of the experience acquired by the persons

rendering service in MGNREGA or under different schemes relating to

Department of Rural Development and Panchayati Raj can very well be assessed by the respondents. In any case, this procedural problem can not be

a reason valid to make an unreasonable classification. At this stage it is also pertinent to note that the panchayat Raj Institutions have already issued

experience certificates to the persons employed through placement agencies.

19. The writ petitions, in view of the discussion made, deserve acceptance, thus, are allowed. The distinction made for grant of weightage against

experience earned by the persons employed on the posts of Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozgar Sahayak, Data Entry

Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training and Coordinator

Supervision through placement agencies in MGNREGA or any other scheme of Department of Rural Development and Panchayati Raj on basis of

the mode of their engagement under proviso 2nd to Rule 273 of the Rules of 1996 is declared illegal.

20.. As a consequent to the declaration above the proviso second to Rule 273 of the Rajasthan Panchayati Raj Rules, 1996 stands as under:--

â??Provided also that in case of appointment to the post of Lower Division Clerk, merit shall be prepared by the Appointing Authority on the basis of

such weightage as may be specified by the State Government for the marks obtained in Senior Secondary or its equivalent examination and such

marks as may be specified by the State Government having regard to the length of experience exceeding on year acquired by persons engaged on the

post of Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha

Sahayak, Lower Division Clerk, Coordinator IEC, Coordinator Training, Coordinator Supervision in MGNREGA or in any other scheme of the

Department of Rural Development and Panchayati Raj in the State.

21. In light of the proviso second the respondents are required to extend the weightage against the experience to the persons employed through the

placement agencies also.

22. No order as to costs.â??

It is further contended that for the present; the petitioners would be satisfied, if the State-respondents are directed to decide the representation of the

petitioners, within a time frame, in the backdrop of the law declared by the Division Bench of this Court in the case of Mitendra Singh Rathore & 121

Ors. (supra), which they are ready and willing to address within two weeks hereinafter.

In view of the limited prayer addressed; the instant writ proceedings are closed with a direction to the petitioners to address a comprehensive representation ventilating their grievances raised in the writ application.

In case, a representation is so addressed within the aforesaid period, the State-respondents are directed to consider and decide the same by a

reasoned and speaking order as expeditiously as possible in accordance with law. However, in no case later than six weeks from the date of receipt of

the representation along with a certified copy of this order.

In case, the claim of the petitioners is found covered by the adjudication in the case of Mitendra Singh Rathore & 121 Ors. (supra), they too be

extended the same benefit.

With the observations and directions, as indicated above, the writ application stands disposed off.