
(2014) 09 RAJ CK 0089
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1034/2011

Roshan Lal Salvi

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2014) 09 RAJ CK 0089

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Mukesh Rajpurohit, Advocate for the Appellant; R.R. Kanwar, Government Counsel, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This writ petition has been filed by the petitioners on 01.02.2011 with the following prayers:-

"It is, therefore, humbly prayed that this writ petition may kindly be allowed and by issuing an appropriate writ, order or direction:

1] The impugned order Annx. P/10 dated 29.01.2010 and Annx. P/11 dated 31.04.2010 may kindly be ordered to be declared unjust, arbitrary and illegal, to the extent of fixing next date of increment for petitioner and other Upper Primary Teachers in July 2011;

2] the respondents may kindly be directed to treat probation period of the petitioners-Upper Primary Teacher also to have completed in September 2009, like similarly situated Primary Teachers and consequently, his next date of increment should also be fixed in July 2010; with all consequential benefits thereof;

3] The costs of this writ petition may kindly be awarded in favour of the petitioners.

4] Any other writ, order or direction which your Lordship may deem just and

proper in the facts and circumstances of the case, may also kindly be issued in favour of the petitioners."

2. The petitioners were offered appointment on the posts of Upper Primary Teachers in pursuance of the selections conducted by the respondent Rajasthan Public Service Commission ("RPSC") in the year 2007 under the advertisement dated 30.10.2006 and they were given their first annual grade increment w.e.f. 01.07.2011 vide impugned order Annexure-P/11 dated 31.04.2010 and Annexure-P/10 dated 29.01.2010.

3. The case sought to be made out by the petitioners in the present writ petition is that similarly situated Upper Primary Teachers, who were offered appointment in the month of September, 2007, and who were the persons in the same selection process conducted by the respondent RPSC but were given appointment at prior point of time w.e.f. 25.09.2007 in the pay-scale of Rs. 5200-20200 with grade pay of Rs. 2800 under the Revised Pay Rules, 2008 and after completion of probation period of two years, they were given annual grade increment w.e.f. July 2010 whereas, the process of counselling of the present petitioners was started after some time and they were given appointment in the month of January, 2008, on 15.01.2008 and on other different dates of January, 2008 vide Annexure-P/10 and Annexure-P/11 and accordingly, they were accorded their annual grade increment w.e.f. July, 2011. Being aggrieved against the same and while claiming parity with the similarly situated persons, the petitioners have filed the present writ petition with the prayers quoted herein above.

4. The learned counsel for the petitioners Mr. Mukesh Rajpurohit submitted that as per Rule 22 read with Rule 29 of the Rajasthan Service Rules, the petitioner are also entitled to be given annual grade increment w.e.f. July 2010 because they have been selected in the same process of selection conducted by the respondent RPSC in the year 2007 but merely because they have been given appointment later on after five-six months than the other candidates, therefore, their annual grade increment month cannot be postponed by one year further and, therefore, it was prayed that suitable directions be given to the respondents for giving the annual grade increment to the petitioners w.e.f. July 2010 and not w.e.f. July 2011 as has been sought to be done by the impugned orders Annexures-P/10 and P/11.

5. On the other hand, the learned Government Counsel Ms. R.R. Kanwar appearing for the respondents drawing the attention of the Court towards para. 6 and 7 of the reply to the writ petition filed by the respondents and submits that no retrospective effect can be given to the appointment offered to the petitioners, who were appointed in the month of January 2008 and after completion of probation period of two years in the year 2010, the next annual grade increment was given to them w.e.f. July 2011 as per Rule 29 of the Rajasthan Service Rules and, therefore, the petitioners cannot be said to be similarly situated to those as mentioned in the order Annexure-P/8 dated 29.10.2009 belonging to the persons who were appointed on 28.09.2007 and

other dates of September 2009. The petitioners cannot be treated similarly situated persons with the above persons merely because they participated in the same selection process and if the process of scrutiny of relevant papers and issuance of appointment has been spread over upto the month of January 2008 as compared to the month of September 2007, they cannot claim for grant of annual grade increment w.e.f. July 2010 and the grant of annual grade increment w.e.f. July 2011 cannot be said to be discriminatory or illegal in any manner.

6. The learned counsel for the petitioners Mr. Mukesh Rajpurohit was unable to point out any specific rule or judicial precedent on the basis of which such retrospective effect to the date of appointment in the case of the petitioners could be assumed, who were, in fact, appointed in the month of January 2008 and if that is the date of appointment, the next date for grant of annual grade increment after completion of probation of two years indisputably would be applicable on 01.07.2011 as per Rule 29 of the Rajasthan Service Rules. The Rule 22 and 29 of the Rajasthan Service Rules are quoted herein below for ready reference:-

"Rule 22. Condition for drawing pay and allowances: Subject to any exceptions specifically made in these rules an official shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.

Rule 29. Increment to be drawn as a matter of course unless withheld: Subject to the provisions of Rules 26-A, 27-A and 30, an increment shall ordinarily be drawn as a matter of course unless it is withheld by the authority empowered to withhold such increment in accordance with the relevant provisions of the Classification, Control and Appeal Rules. Any order withholding an increment shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments. (For procedure in regard to drawing of increment by (1) Gazetted Government servants and (2) non-Gazetted Government servants refer to Rule 155 of the General Financial and Accounts Rules)."

7. The Rule 14 of the Rajasthan Civil Services (Revised Pay) Rules, 2008 is quoted herein below for ready reference:-

"14. Date of next increment in the running pay band. - There will be a uniform date of annual increment viz. 1st July of every year. Employees completing 6 months and above in the running pay band as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay on 01.09.2006 or thereafter as per option in the running pay band will be granted to the employees, who have completed 6 months and above as on 10.07.2007:

Provided that in the case of persons who had been drawing maximum of the existing pay scale for more than a year as on the 1st day of September, 2006, the next increment in the running pay band shall be allowed on the 1st day of

September, 2006. Thereafter, the provisions of Rule 14 would apply.

Note - In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to draw more pay in the running pay band than the pay of the senior Government servant in the existing higher scale, the pay in the running pay band of the senior Government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with Rule 14."

8. From the reading of the above quoted Rules, it is clear that Rule 22 clearly specifies that the pay and allowances attached to a post shall be payable from the date the concerned employee assumes the duties of that post and shall cease to draw them from the dates he ceases to discharge his duties. Similarly, Rule 29 permits increments to be drawn as a matter of course unless it is withheld by the competent authority for the reasons to be recorded in writing by the such authority.

9. There is no dispute in the present case that there is no order withholding the grant of annual grade increments to the petitioners and the petitioners were given their annual grade increment w.e.f. July 2011 on completion of their two years" probation period as they were appointed in the month of January 2008 as per the Rule 29 of the Rajasthan Service Rules and on the ground that they were the persons who participated in the same selection process conducted by the respondent RPSC in the year 2007 in pursuance of the Advertisement dated 30.10.2006 with other persons, but they were given appointment in 2008 after five or six months later, therefore, the petitioners cannot claim parity with the persons who were appointed in the year 2007.

10. In view of the discussion foregoing, this Court, therefore, finds no violation of Rule 29 of the Rajasthan Service Rules and other hand, the Rule 22 fortifies the view taken by the respondents that the present petitioners were appointed in the month of January 2008 and consequently, they were given their respective annual grade increment only w.e.f. July 2011 and, therefore, no such assumed retrospective effect can be given to the date of appointment in the case of the petitioners. The writ petition is found to be devoid of merit and, therefore, the same is liable to be dismissed.

11. Accordingly, the writ petition is dismissed. No order as to costs. A copy of this order be sent to the parties concerned forthwith.