
(2022) 04 RAJ CK 0059

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 17020 Of 2017

Santosh Kumar

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Citation : (2022) 04 RAJ CK 0059

Hon'ble Judges : Rekha Borana, J

Bench : Single Bench

Advocate : Yashpal Khileri, Hemant Choudhary

Final Decision : Allowed

Judgement

Rekha Borana, J

Brief facts of the case are as under:

The petitioner was appointed as Teacher Grade-III vide appointment order dated 08.09.1988 and he joined on 13.09.1988. After completion of the probation period, he was confirmed vide order dated 25.08.1995 w.e.f. the initial date of appointment i.e. 13.09.1988. The petitioner was even granted ACP after completion of 9 and 18 years, that too, w.e.f. the date of initial appointment i.e. 13.09.1988.

Vide the impugned order dated 13.10.2017 (Annexure-5), recovery has been sought to be made from the petitioner for the amount paid excess after 29.06.2009 on the premise that the benefit of ACP was wrongly granted from the initial date of appointment.

Counsel for the petitioner relied upon the judgments passed by the Hon'ble Apex Court in State of Rajasthan vs. Jagdish Narayan Chaturvedi reported in (2009) 12 SCC 49 and further the Division Bench Judgment of this Court in D.B. Special Appeal (Writ) 1866/2018; State of Rajasthan vs. Smt. Kanta Sharan decided on 22.01.2020.

The facts in the case of Smt. Kanta Sharan (supra) are almost akin to the present matter. Therein also the same issue whether the period of service as a temporary employee was to be counted for the purposes of grant of ACP or not was in consideration. The Division Bench while considering the said issue observed as under:

"But in the instant case, the fact that the temporary appointment of the respondent vide order dated 3.12.85 was followed by order dated 7.6.90, whereby her services were confirmed from the date of her initial appointment i.e. 3.12.85 is not disputed and thus, for all intent and purposes, the respondent deserves to be treated regular employee from the date of her initial appointment. Moreover, the appellants having accorded the first and second selection grade to the respondent on completion of 9 and 18 years of service, counted from the date of her initial appointment, there is no reason why for the purpose of grant of third selection grade, the services rendered by her before the confirmation on the post of Teacher Gr.II, vide order dated 7.6.90, should be excluded for the purposes of grant of third selection grade on completion of 27 years of service."

In the present case too, it is an admitted fact that the service of the petitioner was confirmed on 25.08.1995 w.e.f. the initial date of appointment i.e. 13.09.1988. Therefore, the ratio as laid down in the case of Kanta Charan (supra) is directly applicable in the present matter too.

In view of the discussion above, the present writ petition is allowed and the impugned order dated 13.10.2017 is quashed and set aside. It is held that the petitioner would be entitled to the 3rd selection Grade on completion of 27 years of service while counting his services from his initial date of appointment i.e. 13.09.1988. All consequential benefits shall follow.