

(2015) 05 RAJ CK 0124

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 5967, 5968, 5969, 5970, 5971, 5972, 5973, 5974, 5975, 5993 and 6046 of 2008

Sarojbala and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0124

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : R. Bhatnagar, for the Appellant; R.R. Kanwar, G.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—Heard learned counsel for the parties.

2. The instant writ petitions have been preferred by the petitioners praying for the following relief:-

"(a) by an appropriate writ, order and direction the order dated 31-3-1993 (Annexure - 4) passed by the respondent No. 3 and any other order, if any, in pursuance of which it had been passed, may kindly be quashed to the extent it provides for considering the date of confirmation of services of the petitioner for the purpose of seniority and selection scale rather than the date of initial appointment; and

(b) by an appropriate writ, order and direction the respondents be directed to extend the benefit of selection scale and seniority to the petitioner from the date of her appointment i.e. 1-7-1985 and not from the date of her confirmation; and

(c) by a further writ, order and direction the respondents be directed to revise and prepare the seniority list while taking into consideration the date of appointment of the petitioner as 1-7-1985 and also to pay the consequential

benefits accruing to the petitioner in pursuance thereof;"

3. Facts in brief are that after calling the names of the petitioners from the employment exchange, they were appointed in the pay scale of Teacher Grade-III in Panchayat Samiti, Anoopgarh on temporary basis vide order Annex. 1 dated 14.3.1985. The services of the petitioners were thereafter regularized by order Annex. 2 dated 26.9.1989 in pursuance of a resolution dated 14.8.1989 taken by the District Establishment Committee. The order Annex. 2 specifically stipulated that the petitioners' services were being regularized with effect from the date of their initial appointment which has been mentioned in column No. 4 of the order. The petitioners' services were thereafter absorbed in the education department in pursuance of a policy decision taken by the State Government. The District Education Officer passed an order dated 1.4.1998 (Annex. 3) whereby, the benefit of first selection grade was granted to the petitioners with reference to the date of their initial appointment. Later on, the District Education Officer, Sri Ganganagar issued a rectification vide order dated 31.3.1993 (Annex. 4) directing that the petitioners, whose services had been procured from the Panchayati Raj Department, would be entitled to seniority as well as the benefit of selection scale with reference to their confirmation in service and not in reference to their date of initial appointment.

4. Assailing the legality and validity of the order Annex. 4 dated 31.3.1993, the petitioners have approached this Court by way of the instant writ petition praying for the above stated relief.

5. Learned counsel for the petitioners placed reliance on the judgment dated 13.12.2012 passed by the Division Bench of this Court in the case of Brijesh Chaturvedi vs. State of Rajasthan and another reported in 2013 (3) WLC (Raj.) 637 and submitted that the controversy involved in the instant writ petitions is squarely covered by the aforesaid judgment and the petitioners are entitled to be considered for the benefit of selection scale with reference to the date of their initial appointment because they have been confirmed in service by order Annex. 2 and the order of confirmation itself mentions that the date of their appointment will be the one on which they were initially inducted in service. He thus prays, that the writ petitions deserve to be accepted in the terms prayed for.

6. Per contra, learned Govt. counsel vehemently opposed the submissions advanced on behalf of the petitioners. She urged that the petitioners' initial appointment in service was on urgent temporary basis under Rule 284 of the Panchayati Raj Rules. Thereafter, they were taken in regular pay scale vide order Annex. 3 after an exercise of screening conducted by the District Establishment Committee. Later on, their services were transferred to the Education Department. She contends that as per Rule 6(c)(v) of the Rajasthan Educational Subordinate Service Rules, 1971, the persons, whose services are taken over by the Education Department, are required to be considered as direct recruits in service on the date they are absorbed in the Education department. She further relied upon Rule 29(3) of the Rules of 1971 and urged that the petitioners are

required to be assigned seniority in the Education Department treating them to be freshly recruited in the department. Rule 29(3) and 29(5) of the Rules of 1971 are reproduced herein below:-

"(3) That the seniority interse of persons appointed to a post in a particular section by direct recruitment on the basis of one and the same selection except those who do not join service when a post is offered to them, shall follow the order in which their names have been placed in the list prepared under rule 20;

(5) that in case of substantive employees of different services, cadres or Groups or from Rajasthan Panchayat Samiti and Zila Parishad Service, whose appointment to such posts has been made by different Appointing Authority and whose transfer to a Cadre or Group in this Service is specifically permissible in accordance with provisions of these Rules, and he is so transferred and it becomes necessary to determine the integrated seniority of two or more of such employees, who do not belong to the same Service/Cadre/Circle or Unit under an Appointing Authority, their integrated seniority on initial appointment shall be determined for promotion or confirmation to a Cadre or Group under these Rules, notwithstanding their year of substantive appointment in the different cadre, according to the date of continuous officiation in class or Category, officiation was not of the nature of fortuitous or ad hoc or an urgent temporary appointment and there was no default on the part of the employee to join the appointment when ordered.

The above principle shall be applied to such posts as may be specified with the prior approval of Department of Personnel (Rules) and will be subject to the condition that any pre-determined inter-se-seniority between two or more persons except in case of default or suppression shall not be disturbed."

She submits that as per the clear provisions of the Rules of 1971 referred to above, the petitioners are not entitled to the relief claimed for in the instant writ petitions. She further submits that the controversy in the case at hand is squarely covered by the judgment rendered by the Hon"ble Supreme Court in the case of State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, AIR 2010 SC 157 : (2009) 13 JT 9 : (2009) 8 SCALE 28 : (2009) 12 SCC 49 : (2010) 1 SCC(L&S) 105 : (2009) 9 SCR 1011 : (2009) 8 SLR 505 .

Learned Govt. counsel has also placed reliance upon the circular dated 6.2.1999 issued by the State Government in support of the argument that the employees who are transferred from Panchayat Samiti to Education Department, would be considered as regular employees from the date of their screening. However, on going through the reply filed by the respondents to the writ petitions, it is evident that the respondents have not taken any such stand that a screening process was conducted before issuance of the order Annex. 2 and thereafter only, the petitioners" services were regularized. So far as reference to the circular dated 29.6.2009 is concerned, the said circular would not apply to the present petitioners because the circular cannot have a retrospective effect.

7. Heard and considered the arguments advanced at the Bar and perused the material available on record.

8. On going through the above quoted provisions of the Rules of 1971, it is evident that the provisions which the Government counsel has relied upon, basically deal with the question as to what would be the seniority to be assigned to the persons whose services are taken over from the Panchayati Raj department to the Education department. The Rules clearly provide that the persons who join the services of the Education department from the Panchayati Raj department will be assigned lowest seniority in the Education department in which they joined pursuant to their services being taken over. However, the provisions referred to above do not deal with the question of admissibility of selection scales. The Division Bench of this Court considered a controversy identical to the one involved in the case at hand in the case of Brijesh Chaturvedi (supra) and after considering the import of the circular dated 25.1.1992, in no unequivocal terms held as below:-

"10. In our considered view, circular of the government dated 25.01.1992 was issued with a view to removing stagnation in the career of members of subordinate service, who are not able to secure even a single promotion during span of nine years of service. Therefore the scheme of upgrading their pay scales respectively on completion of 9, 18 and 27 years of service was formulated and it is in that light that subsequent amendment circular dated 03.05.1997 has to be viewed. We have to therefore make purposive as well as contextual interpretation of the words "the same post" in the scheme of things. Words "the same post" are therefore to be construed to mean a post which carries the same pay scale because that is the purpose for grant of selection scales on completion of 9, 18 and 27 years of service. In case the period of initial service of 5 years rendered by appellant in sheep and wool department is not counted for the purpose of grant of first, second and third selection scales on completion of 9, 18 and 27 years of service, then every selection scale of the appellant would be delayed by five years. In order to obviate this situation for the government servants, the government has introduced the amendment and thereby substituted original 4th proviso by afore-quoted proviso that if an employee, who, while serving in one department of the state government is recruited directly in another department on the same post, the service rendered by him in previous department shall be counted for grant of selection scales on completion of 9, 18 and 27 years of service, as the case may be. The effect of this would be that period of service from 14th July, 1987, the date of initial appointment of appellant as stock assistant in the department of sheep and wool till the date of his joining in the office of settlement commissioner on the post of survey amin vide order dated 23.07.1992, would be liable to be counted for the purpose of grant of every selection scale on completion of 9, 18 and 27 years of service."

9. Thus, viewed in light of the ratio of the aforesaid judgment, this Court is of the opinion that the stand taken by the respondents in defence of their action that

the petitioners are not entitled to the benefit of selection scales in reference to their initial induction in service, is not sustainable. It is undisputed that the order Annex. 2 by which the petitioners' services were regularized with effect from their initial induction in service has become final, consequently the benefits of selection scale have to be granted to them with reference to the date of their initial appointment. Of course the petitioners' seniority in the Education department will be governed by the Rules of 1971 and shall be counted with reference to the date on which they joined the services in the Education Department.

10. Resultantly, the instant writ petitions deserve to be and are hereby allowed. The respondents are directed to extend the benefits of selection scales to the petitioners with reference to their date of initial appointment as reflected in the order Annex. 2 dated 26.9.1989.

11. No order as to costs.

12. A copy of this order be placed in each file.