

(2009) 09 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4179 of 2008

Satya Narain and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Citation : (2009) 09 RAJ CK 0011

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—By this writ application, two applicants Satya Narain and Prakash Chandra are claiming for a direction to allow benefit of selection grade to them from the date of their initial appointment. A direction is also sought by them for the grant of regular pay scales from the inception of their appointment.

2. In brief facts of the case are that the applicants after qualifying the 8th standard examination got themselves enrolled with employment exchange as unemployed persons and their candidature was sponsored for recruitment as Ward Boy. After regular process of selection the Superintendent, MGH Hospital, Jodhpur by an order dated 26.08.1988 gave appointment to them as Ward Boy, a post in Class IV Cadre. The appointment so given was on daily rate basis. Initially, the appointment was for a period of 28 days but the same was extended time to time.

3. By an order dated 23.04.1992 i.e. after serving for a term of more than three years the Superintendent, Associated Group of Hospitals, MGH Hospital, Jodhpur vide order dated 23.04.1992 terminated the applicants from services. Both the applicants assailed validity of the orders terminating them from service by way of filing separate petitions for writ before this Court. The writ petition (SB Civil Writ Petition No. 2368 of 1992) preferred by Shri Satya Narain came to be accepted on 12.01.1994 by setting aside the order dated 23.04.1992 with a direction to

treat him a permanent employee and also to consider his case for grant of regular pay scale. This Court while accepting the writ petition preferred by Sh. Satya Narain on 12.01.1994 also observed that,

It may be true that the State Government can employ persons on adhoc basis. But, in the instant case, from the writ petition as well as the counter affidavit, it appears that the petitioner was kept on regular basis and by erroneously thinking that his term was over, his services had been terminated. The termination of the service of the petitioner is illegal.

4. The writ petition preferred by Prakash Chand was also accepted on 12.01.1994 itself in the terms of the judgment given in the case of Satya Narain. In view of the judgment dated 12.01.1994 claim of the applicant is that they were working with respondents on permanent basis from the date of their initial appointment, and therefore, they are entitled to regular pay scale since then and all other service benefits, including the grant of selection grades are required to be given by treating them permanent employee from the date they joined service in pursuant to the order dated 26.08.1988. It is also stated that the respondents allowed regular pay scales to the applicants from the month of November 1993, but in view of the judgment dated 12.01.1994, the regular pay scale should have been allowed to them from the date of their initial appointment.

5. It is also pointed out by learned Counsel for the applicants that the judgments dated 12.01.1994 in the writ petitions preferred by the petitioners acquired finality on dismissal of the special appeals by Division Bench of this Court and also the special leave petitions by Hon''ble Supreme Court.

6. Though the notice issued by this Court was served upon the respondents on 30.07.2008 no reply to the writ petition has been filed.

7. Learned Counsel for the respondents sought time to file reply to the writ petition, however, looking to the narrow amplitude of the controversy involved and the fact that the notices have already been served upon the respondents a year back, I do not consider it appropriate to adjourn the matter further and to grant time to file reply.

8. It is not in dispute that the applicant No. 1 joined services as Ward Boy on 28.08.1988 and the applicant No. 2 joined duties on the same post on 08.10.1988. Their services were terminated by respondent No. 3 vide order dated 24.03.1993 and the order aforesaid came to be quashed by this Court in the writ petitions preferred by them. While accepting the writ petitions preferred by the petitioners this Court held that being employed by regular process the petitioners should have been treated as permanent employees. A specific direction was given by this Court to the respondents to treat the applicants as permanent employee. In view of the directions given by this Court the applicant No. 1 is a permanent employee of the respondents from 28.08.1988 and the applicant No. 2 is permanent employee of respondents since 08.10.1988. A permanent employee become entitled for receiving the regular pay scale (as per

the Rules existing at the time of appointment of the petitioners) from the date of their initial appointment. The respondents, therefore, should have allowed regular pay scales to the applicants from the date of their initial appointments and should have also given all other service benefits including the selection grades by taking into consideration the date of their initial appointment under the order dated 28.08.1988. Once the applicants have been declared permanent from the date of their initial appointment no reason is available to the respondents for not considering the date concern for grant of regular pay scale and also for determination of the term required for the grant of selection grades and other ancillary benefits.

9. In view of whatever discussed above, this petition for writ deserves acceptance, therefore, the same is allowed. The petitioner No. 1 is declared as a permanent employee of the respondents w.e.f. 28.08.1988 and the petitioner No. 2 is declared a permanent employee of the respondents w.e.f. 08.10.1988. They are further declared entitled for receiving regular pay scales from the date of their initial appointment. The respondents shall also determine their right for getting selection grades by taking into consideration the dates of their initial appointments those are 28.08.1988 and 08.10.1988 for applicants No. 1 and 2 respectively.

10. No order as to cost.