

(1995) 02 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 524, 525, 526, 561, 6193, 6194, 6195 and 6196 of 1990, 7054 of 1991, 2316, 2705, 2861, 2862, 3007, 3150, 4103, 4121 and 6676 of 1994 and 259 of 1995

Sawai Singh and Others

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 22-02-1995

Acts Referred:

Citation : (1995) 3 WLC 643 : (1995) 2 WLN 204

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Judgement

V.K. Singhal, J.—All these writ petitions are disposed of by this common order since the grievance raised in all these writ petitions is common. For the sake of convenience the facts of writ petition No. 4121/94 are taken into consideration.

2. The various petitioners mentioned in this writ petition are serving on the post of Assistant Secretary in different Gram Panchayats at Panchayat Samiti Karauli, Hindaun and Nandoti District Sawai Madhopur since last number of years. Shri Prahlad Kumar Sharma is said to be serving since 1.6.1982 while others are serving since 1989, 1990 and 1992. Salary of Rs. 100/- is said to be paid except in the case of Hari Prasad Sharma to whom salary of Rs. 300/- has been shown as payable. The appointments of these persons were made by the Sarpanch of the concerned Gram Panchayat and it is stated that necessary permission from the Panchayat Samiti as well as Zila Parishad was obtained.

3. The Rajasthan Panchayat Samiti and Zila Parishad Rules, 1959 has prescribed the procedure for recruitment, reservation, qualification, age etc., but in the categories of post, the post of Assistant Secretary has not been specified. The service of the Assistant Secretary is said to be equivalent to the village Level Worker and it is also stated that even earlier the Assistant Secretaries were absorbed on the post of Gram Sevak cum Village Level worker.

4. An advertisement was issued on 16.4.1994 in which the applications were invited from Work Charged employees of Irrigation Department and Public Works Department for considering their cases for the post of Gram Sevak Cum Village Level worker. It is on the basis of this advertisement that the present writ petitions have been filed saying that it one time the Government is collecting informations with regard to persons who are working as Assistant Secretaries and on the other hand the appointments are sought to be given by filling 700 posts from work-charged employees of the Irrigation Department and PWD.

5. During the course of arguments, Mr. Y.C. Sharma has drawn my attention towards the judgment given by the Apex Court in the case of J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., , wherein it was observed by the Apex Court that the adhoc appointment can be made in exercise of the executive power and it is not necessary that there should be existence of statutory rules. The statutory rules if made could only supplement and not supplant the executive power. The direction to regularise the adhoc appointments was given in that case.

6. Mr. S.C. Gupta, learned Counsel for the petitioner has submitted that this Court has taken a view in the case of Ram Pratap v. State 1993(3) WLC 460 that persons who have been appointed without following the procedure should be screened and preference should be given in the appointments and regularisations of such persons.

7. Mr. Sudhir Gupta, has relied upon the decision given in the case of Babulal v. State, S.B. Civil writ petition NO. 1104/89, decided on 29.11.1991 in which it was observed that the petitioner is having 10 years service and no reason has been pointed out as to why they cannot be posted/promoted on the post of Secretary. The petitioner was directed to be reinstated on the post of Asstt. Secretary and it was directed that the candidature of the petitioner for the post of Secretary be considered sympathetically.

8. Mr. Chirania, learned Counsel for the respondents, has relied on the decision of Shiv Ram Jat v. State S.B. Civil writ petition No. 5511/89 decided on 6.5.1993 which was a matter with regard to appointment of Assistant Secretaries. The court considered in this case that by way of administrative circular it is decided by the Government to appoint Village Level Worker cum Secretary for each Gram Panchayat. The petitioner who was working on the post of Asstt. Secretary was not given the post of village Level Worker cum Secretary nor the equal pay was given inspite of the fact that the petitioner was performing the same duties. It was taken into consideration that the post of Asstt. Secretary were not created by the Government or under the Rajasthan Panchayat Act or any rules made thereunder. It was on the basis of the income of the Gram Panchayat that if they are having sufficient income they can appoint the Assistant Secretaries. The various provisions of Gram Panchayat Act, 1953 and Rajasthan Panchayat Samities and Zila Parishad Act, 1959 and the Rajasthan Panchayat Samities and Zila Parishads Rules were taken into consideration on the basis of which the court

come to the conclusion that for the post of Assistant Secretary has not been included there under. The post of Village Level Worker cum ex-officio Secretary was created by the Government and since there was no such post of Asstt. Secretary under the Act or Rules made thereunder, the parl time temporary or adhoc appointment only could have been given and they cannot have a right to be considered in respect of direct recruitment when ever the selection is made in accordance with the rules. In these writ petitions also the appointment was sought to be given to the surplus employees of the Irrigation Deapartment. The claim of equal pay for equal work was also found un-sustainable as the post was not sanctioned one. The writ petitions were dismissed and it was observed that since the petitioners are working since last 10-15 years, it is expected from the government that these persons should be absorbed on other posts.

9. I have considered over the matter. From the various documents including the latter dated 29.6.1978 it was written by the Asstt. Secretary, Government of Rajasthan and is available as Annex. 2 in the file of Gopal Lal and pointed out by Mr. P.V. Calla that instructions were given that the Panchayat Samiti would recruit the Asstt. Secretaries without permission of the Government and the earlier requirement for seeking the permission was withdrawn. This circular refers to the earlier circular dated 22.12.1976, a copy of which has not been provided, but it is stated that it was issued to the effect that Gram Panchayat may appointed Asstt. Secretary and salary is to be paid by those Gram Panchayats from their income. Therefore, it is presumed that the appointment of the Asstt. Secretary was made by this Gram Panchayat only which was having sufficient income to appoint Asstt. Secretary. A claim has been made that the Asstt Secretaries are performing the work of Gram Sevak cum Secretary. It has also been stated that in number of Gram Panchayat, Gram Sevaks are not there.

10. Mr. N.K. Sethi, Director, Panchayati Raj. Department, is present in person in this Court. It is stated that the job of the Asstt. Secretary was only to assist the Gram Sevak.

11. On the basis of the submissions of both the sides, therefore, it can be considered that the Asstt. Secretaries were performing the job of Assisting Gram Sevak cum Secretary and, therefore, the appointment which is given to them was by the concerned Gram Panchayat and not by the Government. A circular dated 5.4.1994 is with regard to the creation of post of Gram Sevak has also been submitted and it is mentioned that the recommendations have been made for 9,173 posts of Gram Sevak out of which the sanctioned strength is of 3,945 and the post of 5228 are yet to be created. It is mentioned that according to budget of 1994-95, 643 Gram Sevak are to be recruited from the Irrigation Department as work-charged employees. In respect of bigger Panchayat on the basis of their income the Asstt. Secretary can be kept on the posts and for that necessary permission has to be obtained from the Government. The terms of the contract are to be settled/approved by the law department.

12. The decisions which have been given in the case of Shiv Ram Jat (referred to

above) has considered the controversy which has been raised in the present writ petitions. According to the said decision it has been found that the work of the Asstt. Secretary and Secretary cannot be said to be similar and that recruitment of those persons is not in accordance with any provision of Act or rules made there under. The recruitment on the post of Secretary by surplus employees of Irrigation department were held to be valid. In the present case instead of the employees of the Irrigation Department, work-charged employees of the Irrigation Department as well as PWD are now to be recruited on the post of Secretaries. The salary has to be paid by the Government to such secretaries and, therefore, so far as petitioners are concerned, they cannot have any grievance in the mode of recruitment of surplus work-charged employees of the Irrigation department/ PWD for which an advertisement has been issued.

13. All the writ petitions, numbered above, therefore, having no force. An observation was made in the judgment of Shivram Jat (referred to above) that it is expected from the Government that the persons who are working on the posts of Asstt. Secretary for last number of years, should be adjusted on other posts available with the Panchayat Samities. It has been stated by the respondents that at the moment there are no posts but if at any point of time any posts of Gram Sevak are sanctioned, the candidature of those persons who have served as Asstt. Secretary in different Panchayat Samities would be sympathetically considered. At that point of time the question of any bar of age would not come in the way.

14. The writ petitions are disposed of with these directions.