
(2009) 02 RAJ CK 0139
In the Rajasthan High Court

Shanti (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : (2009) 02 RAJ CK 0139

Hon'ble Judges : Govind mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind mathur, J.—The petitioner entered in the services of the Municipal Board, Rani being employed as Safai Karamchari on daily rate basis w.e.f. 19.05.1986. The Executive Officer of the Municipal Board, Rani by an order dt. 25.02.1989 granted permanent status to the petitioner and allowed the pay scale of Rs. 700-865. Accordingly, fixation of the petitioner's pay was made in the pay scale aforesaid and that came to be revised subsequently. The Government of Rajasthan by its notification dt. 22.08.1991 dissolved the Municipal Board, Rani and substituted the same by establishing Gram Panchayat. Consequent thereto, the petitioner and certain other employees of the Municipal Board were declared surplus with a decision to absorb all such surplus employees in different Municipal Councils/Boards in the State of Rajasthan. So far as the petitioner is concerned she was to be absorbed as Safai Karamchari with Municipal Council, Jodhpur, however, she refused for that and was allowed to continue with Municipal Board, Rani, as a daily rated employee. The Government of Rajasthan on 09.12.1992 issued another notification to withdraw the notification dt. 22.08.1991 whereby Municipal Board, Rani was dissolved. The notification dt. 09.12.1992 reads as follows:

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jktLFkku uxjikfydk vf/kfu;e] 1959 (vf/kfu;e la[;k 38 lu~ 1959) esa jkT; ljdkj uxjikfydk] jkuh ftyk ikyh dks xzke iapk;r esa ifjofrZr fd;s tkus dh vf?klwpuk la[;k ,Q(1) lhek@,Q,lth@91@1089&1100 fnukad 22-08-2001 dks vf/kd` f;r@izR;kfjr (foKk) djrs gq, uxjikfydk jkuh] ftyk ikyh dks iqu%LFkkfir djrh gSA

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2. The petitioner after restoration of Municipal Board, Rani requested the respondents including the Director, Local Self Government to restore her position as Safai Karamchari as that was prior to dissolution of the Municipal Board. The cause of the petitioner and other similarly situated employees was also agitated by General Secretary of the Rajasthan Safai Karamchari Sangh. The Addl. Secretary to the Government of Rajasthan, Department of Local Self Government then passed an order dt. 19.02.1996 to allow regular pay scale to the Safai Karamcharis working with Municipal Board, Rani. In pursuant to the order aforesaid, the Executive Officer of the Municipal Board under an order dt. 03.04.1996 allowed regular pay scale to the petitioner and five other employees w.e.f. 01.04.1996. To assail validity of the order dt. 19.02.1996 and 03.04.1996, and also to claim restoration of service status as that was prior to 22.08.1991, this petition for writ is preferred.

3. On behalf of the petitioner it is contended that she was in employment of Municipal Board, Rani in permanent capacity since 21.02.1989 and after withdrawal of the notification dt. 22.08.1991 the factum of abolition of Municipal Board, Rani and establishment of Gram Panchayat, Rani is required to be treated as non-existent, as such, the petitioner should be treated in continuous employment of the Municipal Board, Rani in permanent capacity as ordered on 21.02.1989. It is asserted that the petitioner worked with Gram Panchayat, Rani on daily rate basis only because of abolition of municipal board and once the notification relating to abolition of Municipal Board has been withdrawn then the petitioner is entitled for restoration of all service conditions existing prior thereto.

4. Per contra, stand of the respondents is that after abolition of Municipal Board, Rani the petitioner was employed with Gram Panchayat, Rani, therefore, whatever services rendered by her with Municipal Board, Rani prior to its abolition are of no consequence. It is asserted that the petitioner did not choose to get herself absorbed in services of Municipal Council, Jodhpur and chose to continue with the services of Gram Panchayat, Rani on daily rate basis, thus, the petitioner is having no right to claim regular pay scales in pursuant to the services rendered by her prior to abolition of Municipal Board, Rani.

5. Heard counsel for parties.

6. It is not in dispute that the petitioner was working with Municipal Board, Rani as Safai Karamchari in permanent capacity in pursuant to the order dt. 21.02.1989. She was allowed to continue on daily rate basis with Gram Panchayat, Rani after abolition of Municipal Board, Rani under the notification 22.08.1991. It is also not in dispute that the notification dt. 22.08.1991 was subsequently withdrawn by the Government of Rajasthan by a separate notification dt. 09.12.1992 and by the same notification the Municipal Board, Rani was restored. The natural corollary of withdrawing the notification dt. 22.08.1991 is that the Municipal Board, Rani is required to be treated as has been never abolished or dissolved. If the respondents would have re-established the Municipal Board, Rani without withdrawing the notification dt. 22.08.1991, then certainly the position would have been different, however, as it is apparent from the notification dt. 09.12.1992 that the Government withdrew its earlier notification dt. 22.08.1991 and restored the Municipal Board, Rani, thus, it can be safely assumed that the Municipal Board, Rani was never abolished or dissolved. The petitioner was admittedly declared surplus only as a consequent to abolition of Municipal Board, Rani and once such abolition has been treated nonest then whatever consequential actions including the action relating to declaration of the petitioner surplus are also required to be treated non-existent. The petitioner, therefore, for all purposes is required to be treated in service of Municipal Board, Rani from the date of her initial appointment. She is also required to be treated as a permanent Safai Karamchari with Municipal Board, Rani w.e.f. 21.02.1989. The respondent Municipal Board, therefore, is required to continue the petitioner in regular pay scale applicable for the post concerned w.e.f. 21.02.1989.

7. It is pointed out by learned Counsel for the respondents that the petitioner withdrew her contribution relating to provident fund during the period she served with Gram Panchayat, Rani, and therefore, that period can not be treated as part of service with Municipal Board, Rani. I am of the considered opinion that the withdrawal of contribution can very well be undone if the petitioner deposits her contribution to the provident fund account with applicable interest.

8. For the reasons whatever stated above this petition for writ deserves acceptance, therefore, the same is allowed. The respondents are directed to restore position of the petitioner in service of the respondent-Board as that was prior to 21.02.1989, and also to allow regular pay scale to the petitioner relating to the post of Safai Karamchari from the date it was withdrawn. The petitioner shall also be entitled for all consequential benefits including the payment of arrears accrued as a consequent to the directions above. The orders dt. 19.02.1996 (Annexure-13) and 03.04.1996 (Annexure-14) are quashed so far as they relate to the petitioner. The petitioner shall deposit her provident fund contribution for the period commencing from 21.02.1989 to 20.12.1991 with interest, however the amount of interest is required to be calculated by the

respondents and they are further required to deposit all the dues relating to the petitioner's provident fund account at their own by adjusting with the arrears required to be paid to the petitioner.