
(2014) 05 RAJ CK 0093
In the Rajasthan High Court
Case No : Civil Writ Petition No. 882/2013

Smt. Kaushalya

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 05 RAJ CK 0093

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Moti Singh, Advocate for the Appellant; Anil Bissa, Advocate for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—The petitioner was appointed on contractual appointment as "Safai Karmi" in the respondent No. 2--Medical & Health Department through the Indian Red Cross Society District Pali vide order Annex. 2 dated 21/5/2008. The petitioner is constantly working as such, however, during the course of her employment, when her services were terminated vide order dated 9/10/2009, the petitioner approached this Court by way of SBCWP No. 11378/2009--Kaushalya Devi vs. State of Rajasthan, which writ petition came to be allowed by the learned Single Judge of this Court on 27/4/2011 with the following observations:-

After hearing learned counsel for the parties and upon perusing the entire record of the case, it is abundantly clear that the petitioner was appointed vide order Annex. 2 in pursuance of advertisement Annex. 1 on contract basis to work in a Project. It is nowhere stated by the respondents in their reply that the said project is not in existence or it has come to an end. Meaning thereby, the project in question is still in existence and as per condition No. 3 of the advertisement Annex. 1, the petitioner is entitled for continuance in service till existence of the project under which she was provided appointment.

In this view of the matter, the reasons given in the order of discontinuance of petitioner's services are contrary to the condition No. 3 of advertisement Annex. 1. Therefore, the order Annex. 6 dated 9/10/2009 is not sustainable in the eye of law.

For above reasons, the writ petition is hereby allowed. The order dated 9th Oct. 2009 (Annex. 6) is hereby quashed and set aside. The respondents are directed to reinstate the petitioner in service on the post upon which she was working prior to discontinuance from service and allow her to work till project exists. It is also made clear that the petitioner will be entitled for entire salary for a period commencing from the date of her termination to reinstatement.

Sd/-

(GOPAL KRISHAN VYAS), J.

2. The Division Bench appeal against the said order came to be disposed of on 23/1/2012 vide DBSAW No. 1007/2011--State of Rajasthan & Ors. vs. Smt. Kaushalya with the following observations:-

In our opinion, taking into account all facts and circumstances and the fact that the respondent was reinstated in the service and started rendering service, we while allowing the appeal in part though uphold the finding relating to reinstatement of respondent but modifying the impugned order in so far as it directed payment of full back wages and instead award only 25% of the total back wages in place of full as awarded by the Single Judge and in consequence direct that 75% of the amount be adjusted by deduction in equal installments from the monthly salary of the respondent so long as she is in service. We also make it clear that appellant (State) would be free to terminate services of the respondent for reasons germane for the termination, if case to that effect is made out.

In the light of foregoing discussion, the appeal succeed and is allowed in part and the impugned order is modified to the extent indicated above.

Sd/-

(C.M. TOTLA), J.

sd/-

(A.M. SAPRE), J.

3. The petitioner was accordingly reinstated back in service and since then she is continuously working. The only prayer made in the writ petition is that the petitioner deserves to be paid the minimum of regular pay scale, whereas, presently she is being paid Rs. 2000/- per month, although she is working on full time basis in the respondent Department.

4. The respondent Department has filed reply to the writ petition and has submitted that since the petitioner was engaged through the NGO, namely;

Indian Red Cross Society District Pali, therefore, the respondent State is not entitled to pay the regular pay scale to the petitioner and the remuneration of Rs. 2000/- pm, as per the contract is required to be paid under the NHRM Scheme, which is funded by the Central Government.

5. This Court in SBCWP No. 2636/2014--Mahaveer Singh Bhati vs. State of Rajasthan & Ors. decided on 10th April, 2014 following the Supreme Court decision in the case of U.P. Land Development Corporation and Another Vs. Mohd. Khursheed Anwar and Another, has held as under:-

1. The grievance raised by the petitioners, who are 28 in number, who are working in various positions in the National Rural Health Mission Scheme of the State Government, is that they are not being paid even the minimum of the pay scale of the positions, where they are working as Pharmacists, Data-Entry Operators and clerks etc. and their working conditions are also so bad that they have to work all the working days i.e. 365 days, without any weekly leave etc.

2. Mr. R.S. Saluja, learned counsel for the petitioners also pointed out that despite Policy decision taken by the respondent-State vide Annex. 3 dated 13.01.2003, providing for 20% increase of monthly fixed honorarium after two years and 10% every year after completion of third year and vide the Annex. 4 dated 30.11.2006, to upwardly revise such monthly fixed honorarium, learned counsel for the petitioners argued that the respondent-State Government has not taken any decision in this regard. He also urged that the Hon"ble Apex Court in the case of U.P. Land Development Corporation and Another Vs. Mohd. Khursheed Anwar and Another, has held that even if a person is employed on contractual basis on a monthly fixed honorarium, the fixed monthly honorarium has to be at least at the minimum of the regular pay scale available for such positions. He also brought to the notice of the Court that at the Association level, the petitioners and other similarly situated persons have already moved the respondent-Chief Secretary to the State Government vide Annex. 5 dated 01.07.2013 for such upward revision of fixed monthly honorarium and other benefits, which should be given to such contractually employed persons like the petitioners in the "N.R.H.M. Scheme and the BPL Jeevan Raksha Kosh" of the respondent State, but such representation has not yielded anything for the petitioners and, therefore, the petitioners were constrained to approach this Court by way of present writ petition.

3. The grievances raised by the petitioner in the present writ petition appear to be genuine, but this Court in exercise of its extra ordinary writ jurisdiction under Article 226 of the Constitution of India, before issuing the necessary mandamus directions, should first leave it for the respondent State Government itself to take appropriate decision in this regard because the questions and grievances raised by the petitioners in the present case, essentially require taking certain policy decisions, which have to be based on a broad factual matrix, for which necessary data and material are available with the State Government only; and not in the present writ petition. The factors, like fixed monthly honorarium, which is fixed

on the basis of availability of work, availability of funds, number of persons to be employed in the particular scheme at different places in the State, etc. coupled with legal and constitutional mandate of giving them at least the minimum of the regular pay scale/s for fair and dignified livelihood, etc. are the mixed questions, which require a considered and definite stand of the State Government, to be first taken before any such mandamus direction is issued by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

4. The copies of the representations and the earlier policy decisions placed on record in the present writ petition, adequately shows that the State Government itself is seized of these issues raised in the present writ petition and the representation (Annex. 5) dated 01.07.2013 made to the Chief Secretary of the State, has not yet been decided or responded to by the respondents. Therefore, advisably before exercise of writ jurisdiction, this Court would leave it free for the respondent-State Government to take appropriate decision in this regard by considering the representation of the petitioners in objective and fair manner.

5. The present writ petition is, accordingly disposed of with a liberty and direction to the petitioners to approach the respondent, Chief Secretary of the State Government once again by way of fresh representation, if so required, detailing out their grievances and the basis on which the relief is claimed and it is expected of the respondent, Chief Secretary of the State Government to decide such representation in accordance with law after taking into account the various aspects of the matter and pass appropriate speaking order thereon after giving opportunity of hearing to the petitioners or their authorized representative. It is expected that such representation would be decided within a period of three months from the date of filing of the same.

6. With these observations and directions, the writ petition is disposed of. No costs. A copy of this order be sent to the concerned parties forthwith.

6. In view of the above, the present writ petition deserves to be allowed and same is accordingly allowed. The petitioner is held entitled for grant of minimum pay scale applicable to be said cadre of "Safai Karmi". Accordingly, the respondents are directed to pay her the minimum of pay scales of the post of "Safai Karmi" forthwith in light of the aforesaid law laid down by the Supreme Court. No costs. Copy of the order be sent to the parties concerned forthwith.